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Federal Register

Wednesday
August 21, 1985

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Agricultural Marketing Service

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Presidential Documents

Title 3—

The President

Proclamation 5363 of August 15, 1985

Modification of the Effective Date for Increased Rates of Duty for Certain Pasta Articles From the European Economic Community

By the President of the United States of America

A Proclamation

1. On June 20, 1985, I determined pursuant to section 301(a) of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2411(a)), that the preferential tariffs granted by the European Economic Community (EEC) on imports of lemons and oranges from certain Mediterranean countries deny benefits to the United States arising under the General Agreement on Tariffs and Trade (GATT) (61 Stat. (pts. 5 and 6)), are unreasonable and discriminatory, and constitute a burden or restriction on U.S. commerce. I further determined, pursuant to section 301 (a) and (b) of the Act, that the appropriate course of action in response to such practices is to withdraw concessions with respect to certain imports from the EEC and to increase the U.S. import duties on the pasta articles provided for in items 182.35 and 182.36 of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202) that are the product of any member country of the EEC. Accordingly, in Proclamation 5354 of June 21, 1985 (50 F.R. 26143), the increased duties with respect to such pasta articles from the EEC were proclaimed to be effective on or after the date that was 15 days after the date on which that proclamation was signed.

2. In light of discussions currently being conducted between the United States and the EEC, I have decided that it is appropriate to delay the effective date of the increased rates of duty with respect to such pasta articles in order to encourage a mutually acceptable solution to the situation.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including but not limited to sections 301 (a) and (b) and section 604 of the Trade Act of 1974, do proclaim that:

1. Proclamation 5354 of June 21, 1985, is superseded to the extent inconsistent with this proclamation.

2. The increased duties imposed by Proclamation 5354 are suspended with respect to articles entered, or withdrawn from warehouse for consumption, on or after July 6, 1985, and before November 1, 1985. Any articles entered, or withdrawn from warehouse for consumption, on or after the effective date of Proclamation 5354 and before November 1, 1985, shall be subject to duty and the entries thereof liquidated or reliquidated as if the increased duties imposed by that proclamation were not in effect.

3. The United States Trade Representative is hereby authorized to suspend, modify, or terminate the increase in U.S. import duties on pasta articles, which was imposed by Proclamation 5354, upon the publication in the **Federal Register** of his determination that such suspension, modification, or termination is justified by actions taken by the EEC toward a mutually acceptable resolution of this dispute.

4. This proclamation shall be effective on and after the date of its signing.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of August, in the year of our Lord nineteen hundred and eighty-five, and of the Independence of the United States of America the two hundred and tenth.

Ronald Reagan

[FR Doc. 85-20090
Filed 8-19-85; 2:21 pm]
Billing code 3195-01-M

Rules and Regulations

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Wednesday, August 21, 1985

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Docket No. 2656S]

General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts as final the interim rule which established a new subpart in Chapter IV of Title 7 of the Code of Federal Regulations, prescribing certain financial standards and financial information reporting requirements applicable to all Agency Sales and Service Agreements, to be known as 7 CFR Part 400, Subpart C, General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement.

The intended effect of this action is to make final the interim rule published on Monday, December 13, 1982, at 47 FR 55886, establishing financial standards and financial reporting requirements applicable to private entities entering into Agency Sales and Service Agreements with FCIC. This action is taken under the authority contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: September 20, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 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 September 17, 1987.

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: (a) 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 Environmental Impact Statement is needed.

On Monday, December 13, 1982, FCIC published an interim rule issuing the General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement (7 CFR Part 400, Subpart C) in the **Federal Register** at 47 FR 55886, providing financial standards and financial reporting requirements applicable to private entities entering into an Agency Sales and Service Agreement with FCIC.

Merritt W. Sprague, Manager, FCIC, determined that an emergency situation existed which warranted publication of the interim rule without providing a period of public comment prior to its publication because the Agency Sales and Service Agreement for Spring 1983, to which these standards for approval applied, were shortly to be signed by those entities entering into the agreement with FCIC. The companies executing these agreements had to know what standards they had to comply with before they could execute the agreement.

Public comment on this rule was solicited for 60 days after the publication of this rule in the **Federal Register**. The rule was scheduled for review following the 60-day comment period so that any amendments made necessary by public comment could be published in the Federal Register as quickly as possible, however, no comments were received. Therefore, the interim rule as published is hereby adopted.

List of Subjects in 7 CFR Part 400

Crop insurance, Administrative practice and procedure, Agency sales and service agreements, Application and plan of operation, Standards for approval.

Accordingly, the interim rule published at 47 FR 55886, December 13, 1982, which added Subpart C to Part 400 is adopted as a final rule without change.

1. The Authority citation for 7 CFR Part 400, Subpart C is:

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on August 5, 1985.

Michael A Bronson,
Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-20008 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Parts 420, 421, 424, 432, 434, 435, 436, and 437

[Docket No. 2562S]

Crop Insurance Regulations; Various

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) hereby adopts, as a final rule, an interim rule which was published in the **Federal Register** on

December 21, 1984 (49 FR 49585). The interim rule amended the Grain Sorghum, Cotton, Rice, Corn, Tobacco (Dollar Plan), Tobacco (Quota Plan), Tobacco (Guarantee Plan), and Canning and Freezing Sweet Corn Crop Insurance regulations, effective for the 1985 crop year only, by changing the date for filing contract changes as specified in the policies for insuring such crops. The intended effect of this rule is to provide additional time in which to file changes made in the contracts for such crops for acturial purposes. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 21, 1985.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures.

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: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for customers, 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 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 Environmental Impact Statement is needed.

On December 21, 1984, FCIC published an interim rule, effective upon publication in the **Federal Register** at 49 FR 49585, amending the Grain Sorghum, Cotton, Rice, Corn, Tobacco (Dollar Plan), Tobacco (Quota Plan), Tobacco (Guarantee Plan), and Canning and Freezing Sweet Corn Crop Insurance Regulations (7 CFR Parts 420, 421, 424, 432, 434, 435, 436, and 437), effective for the 1985 crop year only, to change the date for filing contract changes specified in the policies for insuring such crops.

Written comments on the interim rule were solicited by FCIC for 60 days after publication of the rule in the **Federal Register**, and the rule was scheduled for review so that any amendments made necessary by public comment could be published in the **Federal Register** as quickly as possible.

No comments were received, therefore, the interim rule is hereby adopted as final.

List of Subjects in 7 CFR Parts 420, 421, 424, 432, 434, 435, 436, and 437

Crop Insurance, Grain sorghum, Cotton, Rice, Corn, Tobacco (Dollar Plan), Tobacco (Quota Plan), Tobacco (Guarantee Plan), Canning and freezing sweet corn.

Final Rule

Accordingly, the Interim Rule published in the **Federal Register** on December 21, 1985, at 49 FR 49585, is hereby adopted as final.

Authority: Secs. 506, 516, Pub. L. 75–430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Done in Washington, DC, on July 1, 1985.

Michael Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85–20009 Filed 8–20–85; 8:45 am]

BILLING CODE 3410–08–M

Agricultural Marketing Service

7 CFR Part 908

[Valencia Orange Reg. 358]

Valencia Oranges Grown in Arizona and Designated Part of California; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 358 establishes the quantity of fresh California-Arizona Valencia oranges that may be shipped to market during the period August 23–29, 1985. The regulation is needed to provide for orderly marketing of fresh Valencia oranges for the period specified due to the marketing situation confronting the orange industry.

DATE: Regulation 358 (§ 908.658) is effective for the period August 23–29, 1985.

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

SUPPLEMENTARY INFORMATION: *Findings.* This rule has been reviewed under USDA procedures 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.

The regulation is issued under Marketing Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendation and information submitted by the Valencia Orange Administrative Committee (VOAC) and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

The regulation is consistent with the marketing policy for 1984–85. The committee met publicly on August 13, 1985, to consider the current and prospective conditions of supply and demand and recommended a quantity of Valencia oranges for the specified week. The committee reports that demand for Valencia oranges is slow.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because there is insufficient time between the date when information upon which the regulation is based became available and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. To effectuate the declared policy of the act, it is necessary to make the regulatory provisions effective as specified, and handlers have been notified of the regulation and its effective date.

List of Subjects in 7 CFR Part 908

Marketing agreements and orders, California, Arizona, Oranges (Valencia).

PART 908—[AMENDED]

1. The authority citation for Part 7 CFR Part 908 continues to read as follows:

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

2. Section 908.658 is added to read as follows:

§ 908.658 Valencia Orange Regulation 358.

The quantities of Valencia oranges grown in California and Arizona which may be handled during the period August 23, 1985, through August 29, 1985, are established as follows:

(a) District 1: 240,000 cartons;
(b) District 2: 410,000 cartons;
(c) District 3: Unlimited cartons.

Dated: August 15, 1985.

Thomas R. Clark,

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

[FR Doc. 85–19916 Filed 8–20–85; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Part 327

[Docket No. 84–016F]

Imported Product; Withdrawal of Three Countries From the List of Those Eligible To Import Meat Products Into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: On May 6, 1985, the Food Safety and Inspection Service (FSIS) published a proposed rule to withdraw the countries of Bulgaria, Colombia and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States under the Federal Meat Inspection Act (FMIA). To be eligible to have its meat products imported into the United States, the FMIA requires that the meat inspection system of the exporting country assure compliance with requirements that are "at least equal to" the requirements of the FMIA and regulations thereunder as applied to official establishments in the United States. The countries of Bulgaria, Colombia, and Luxembourg have indicated in written responses, or lack of response, to two Food Safety and Inspection Service cables, that they do not wish to remain eligible to have their products imported into the United States. In addition, these countries have no certified plants, and have not exported meat products to the United States in several years. FSIS solicited comments on the proposed rule. No comments were received. Therefore, FSIS is withdrawing Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their meat products imported into the United States.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: William Havlik, Acting Director, Foreign Programs Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447–7610.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator has determined in accordance with Executive Order 12291 that this final rule is not a "major rule." It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, and it will not have a significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule would only formally delist three countries that have not exported meat products to the United States for several years.

Effect on Small Entities

The Administrator has determined that this final rule would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96–354 because there are no domestic importers of meat products from these countries.

Background

On May 6, 1985, FSIS published in the **Federal Register** (50 FR 19029) a proposed rule to withdraw the countries of Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States under the FMIA. Under the FMIA, the Secretary of Agriculture is responsible for administering the programs which are designed to ensure that meat products distributed to consumers are wholesome, not adulterated, and properly marked, labeled, and packaged. The Secretary has delegated to the Administrator of the Food Safety and Inspection Service the authority to issue regulations and implement appropriate procedures to ensure compliance with the requirements of the FMIA. The regulations addressing imported meat products are in 9 CFR Part 327. In these regulations, the Administrator has established procedures by which foreign countries desiring to import meat or meat food products into the United States may become eligible to do so.

Part 327 of the Federal meat inspection regulations requires that foreign countries maintain their meat inspection programs at a level "at least equal to" the requirements of the FMIA and regulations thereunder as applied to official establishments in the United States if they wish to obtain and/or retain their eligibility to import meat products into the United States. Maintenance of eligibility depends on results of periodic reviews of the foreign meat inspection system by an FSIS representative and submission of information and documentation so that the Administrator can determine their eligibility status.

The Administrator has authority to withdraw the eligibility of a foreign country to import meat products into the United States under § 327.2(a)(4) of the regulations (9 CFR 327.2(a)(4)).

" " " Whenever it shall be determined by the Administrator that the system of meat inspection maintained by such foreign country does not assure compliance with requirements at least equal to all the inspection, building construction standards, and other requirements of the Act and the regulations in this subchapter as applied to the official establishments in the United States: " " "

Recent changes in domestic meat inspection requirements, including provisions contained in the 1981 Farm Bill, which amended section 20 of the FMIA (21 U.S.C. 620) dealing with imports, prompted FSIS to require demonstrated compliance in certain technical areas to maintain country eligibility. Special evaluations of country performance resulted in the February 1984 withdrawal of six countries actively exporting to the United States from the list of eligible countries because of their inability to comply with United States requirements. Since that time, four of the six countries have corrected their deficiencies and have regained their eligibility.

This eligibility evaluation was subsequently extended to eligible foreign countries that had not exported meat products to the United States in several years and had no certified plants. In March 1984, telegrams were sent to 11 such countries including Bulgaria, Colombia, and Luxembourg,

requesting that they inform FSIS of their interest in remaining on the list of eligible countries and of their plans for complying with all United States requirements. These countries would have to provide assurance and verification that all provisions contained in the 1981 Farm Bill, amending section 20 of the FMIA, including detailed technical procedures for residue testing, would be met. The telegrams stated that "a no response" would be considered a desire to be removed from the eligible list. Two of the 11 countries—Bulgaria and Colombia—failed to respond to that telegram. A third, Luxembourg, indicated its desire to remain on the list; the Agency then requested preparation of supporting documents and data necessary to remain eligible.

In June 1984, telegrams were sent to Bulgaria and Colombia notifying them that since FSIS had not received a reply, the Agency presumed no interest on their part in remaining on the list. On June 28, 1984, Colombia cabled its desire to be removed. On October 10, 1984, Luxembourg cabled its desire to be removed. Since no response has been received from Bulgaria, FSIS has determined that Bulgaria has no interest in remaining on the list.

Therefore, pursuant to § 327.2 of the regulations (9 CFR 327.2), the Administrator is withdrawing Bulgaria, Colombia, and Luxembourg from the list of countries eligible to have their cattle, sheep, swine, and goat products imported into the United States.

If, at a future date, Bulgaria, Colombia or Luxembourg desire to be placed on the list of eligible countries and the Administrator of FSIS is satisfied that the meat inspection officials of that country have provided verification that their system meets all the provisions of the FMIA and regulations thereunder, that country may again be added to the list of countries eligible to have their meat products imported into the United States.

Comments on the Proposed Rule

FSIS did not receive any comments in response to the proposed rule.

Final Rule

After careful consideration of all relevant information available to FSIS, the Administrator has determined that the proposed rule should be published as a permanent regulation as set forth below.

List of Subjects in 9 CFR Part 327

Imported products, Meat inspection.

PART 327—[AMENDED]

1. The authority citation for Part 327 continues to read as follows:

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

§ 327.2 [Amended]

2. Section 327.2(b) of the Federal meat inspection regulations (9 CFR 327.2(b)) is amended by removing the following countries from the list of countries eligible for importation of products of cattle, sheep, swine, and goats into the United States:

Bulgaria
Colombia
Luxembourg

Done at Washington, D.C., on August 8, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85-19987 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 85-141]

Customs Regulations Amendment Concerning Privileges Extended by Egypt to Aircraft of U.S. Registry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by revising the listing for Egypt in the list of countries whose aircraft are exempt from the payment of Customs duties and internal revenue taxes on supplies and equipment withdrawn from Customs or internal revenue custody for use by aircraft in certain circumstances. By a previous Treasury Decision, Egypt was added to this list, but with a nation limiting the privileges to withdrawal from Customs or internal revenue custody of aircraft fuels or lubricants. However, the Department of Commerce has now informed Customs that Egypt extends privileges to U.S. registered aircraft with respect to exemption from Customs duties and internal revenue taxes on importation of liquor, materials and equipment related to catering, and aircraft spare parts. Therefore, the U.S. will now extend reciprocal privileges to Egyptian registered aircraft and the notation limiting the privileges to withdrawals of aircraft fuels and lubricants is being removed.

EFFECTIVE DATE: This exemption became effective on May 14, 1985.

FOR FURTHER INFORMATION CONTACT: Joni Laura-Foulon, Entry Procedures & Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (202-566-5765).

SUPPLEMENTARY INFORMATION:

Background

Sections 309 and 317, Tariff Act of 1930, as amended (19 U.S.C. 1309, 1317), provide that foreign-registered aircraft engaged in foreign trade may withdraw articles of foreign or domestic origin from Customs or internal revenue custody without the payment of Customs duties and/or internal revenue taxes, for use as supplies (including equipment), ground equipment, maintenance, or repair of the aircraft. This privilege is granted if the Secretary of Commerce finds, and advises the Secretary of the Treasury, that the country in which the foreign aircraft is registered allows substantially reciprocal privileges to U.S. registered aircraft. Section 10.59(f), Customs Regulations (19 CFR 10.59(f)), lists those countries whose aircraft have been found to be entitled to these privileges.

In accordance with 19 U.S.C. 1309(d), the Secretary of Commerce previously found, and advised the Secretary of the Treasury that, with respect to aircraft fuels and lubricants, Egypt allows privileges substantially reciprocal to those provided for in 19 U.S.C. 1309, 1317, to aircraft registered in the U.S. and engaged in foreign trade. Therefore, by T.D. 74-3, published in the **Federal Register** on December 21, 1973 (38 FR 34996), corresponding privileges were extended to aircraft registered in Egypt and engaged in foreign trade.

The Commerce Department has now determined, and conveyed such information to the Customs Service, that Egypt accords aircraft of U.S. registry privileges with respect to exemption from Customs duties and internal revenue taxes imposed by reason of importation of liquor, materials and equipment related to catering, and aircraft spare parts, substantially reciprocal to those provided by 19 U.S.C. 1309, 1317. This finding became effective on May 14, 1985. The privileges Egypt accords to aircraft of U.S. registry with respect to exemption from Customs duties and internal revenue taxes imposed by reason of importation of aircraft fuels and lubricants remains unchanged. This document does, however, require that the notation in

§ 10.59(f), Customs Regulations (19 CFR 10.59(f)), limiting the privileges accorded to Egyptian registered aircraft to exemptions for fuel and lubricants be removed.

Executive Order 12291

This document does not meet the criteria for a "major rule" as defined in section 1(b) of E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601, *et seq.*), it is certified that the change set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis of other requirements of 5 U.S.C. 603 and 604.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because the subject matter of this document does not constitute a departure from established policy or procedures but merely announces the expansion of a previously granted exemption for which there is a statutory basis, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure thereon are unnecessary, and pursuant to 5 U.S.C. 553(d)(1), a delayed effective date is not required.

Drafting Information

The principal author of this document was John E. Doyle, Regulations Control Branch, Office of Regulations and Rulings, Customs Headquarters. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports, Exports, Oil imports, Petroleum.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1622, 1624.

Section 10.59 also issued under 19 U.S.C. 1309, 1317.

§ 10.59 [Amended]

2. Section 10.59(f) is amended by removing from the column headed "Exceptions if any-A noted-", the words "Applicable only as to aircraft fuels and lubricants," opposite the listing for Egypt.

3. Section 10.59(f) is further amended by adding, to the column headed "Treasury Decisions", opposite the listing for Egypt, the number 85-141.

Delegation of Signing Authority

By virtue of the authority vested in the President by section 5 of the Act of May 28, 1908, 35 Stat. 425, as amended (46 U.S.C. 104), the President has delegated the authority to issue this list of nations to the Secretary of the Treasury by E.O. 10289, September 17, 1951. By Treasury Department Order 165-25, the Secretary of the Treasury delegated authority to the Commissioner of Customs to prescribe regulations relating to § 10.59(f) and other sections of the Customs Regulations relating to lists of countries entitled to preferential treatment in Customs matters because of reciprocal privileges accorded to vessels and aircraft of the U.S. Subsequently, by Customs Delegation Order No. 66 (T.D. 82-201), dated October 13, 1982, the Commissioner delegated authority to amend this section to the Assistant Commissioner (Commercial Operations), who redelegated this authority to the Director, Office of Regulations and Rulings, who then redelegated it to the Director, Regulations Control and Disclosure Law Division.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

August 15, 1985.

[FR Doc. 85-19949 Filed 8-20-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 73

[Docket No. 83C-0051]

Listing of Color Additives for Coloring Contact Lenses; 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 of June 17, 1985, for a regulation listing C.I. Vat Orange 1 (previously referred to by FDA as dibromodibenzo (*b,def*)chrysene-7,14-dione) as a color additive for coloring contact lenses. This action responds to a petition filed by Custom Tint Laboratories, Inc.

DATE: Effective date confirmed: June 17, 1985.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of May 16, 1985 (50 FR 20405), FDA amended the color additive regulations to provide for the safe use of C.I. Vat Orange 1 (previously referred to by FDA as dibromodibenzo (*b,def*) chrysene-7, 14-dione) as a color additive for coloring contact lenses. The latter name was used by FDA when it published the notice of filing for the color additive petition (CAP 3C0169). After careful consideration of the description of the substance, FDA concluded that the name of the color additive is more properly C.I. Vat Orange 1.

In the final rule, FDA gave interested persons until June 17, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of May 16, 1985, for C.I. Vat Orange 1 should be confirmed.

List of Subjects in 21 CFR Part 73

Color additives, Cosmetics, Drugs, Medical devices.

PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the May 16, 1985, final rule. Accordingly, the amendments promulgated thereby became effective June 17, 1985.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19935 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 74

[Docket No. 84C-0223]

[Phthalocyaninato(2-)] Copper; Listing as a Color Additive for Coloring Polybutester Nonabsorbable Sutures; 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 of May 29, 1985, for a regulation listing [Phthalocyaninato(2-)] copper as a color additive for coloring polybutester nonabsorbable sutures that are used in general and ophthalmic surgery. This action responds to a petition filed by Davis and Geck, American Cyanamid Co.

DATE: Effective date confirmed: May 29, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Falci, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a final rule published in the **Federal Register** of April 25, 1985 (50 FR 16227), FDA amended the color additive regulations to provide for the safe use of [phthalocyaninato(2-)] copper as a color additive for coloring polybutester nonabsorbable sutures for general and ophthalmic surgery.

In the final rule, FDA gave interested persons until May 28, 1985, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of April 25, 1985, for [phthalocyaninato(2-)] copper should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the April 25, 1985, final rule. Accordingly, the amendments promulgated thereby became effective May 29, 1985.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19939 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Parts 556 and 558

Tolerances for Residues of New Animal Drugs in Food; New Animal Drugs for Use in Animal Feeds; Halofuginone Hydrobromide

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Hoechst Corp. The NADA provides for the use of halofuginone hydrobromide for the prevention of coccidiosis in broiler chickens. The regulations are also amended to establish a tolerance and the safe concentrations for halofuginone in edible chicken tissues.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Adriano Gabuten, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: American Hoechst Corp., Animal Health Division, Route 202-206 North, Somerville, NJ 08876, has filed NADA 130-951 for Stenorol® Premix (halofuginone hydrobromide). The premix is used in making complete feeds for broiler chickens for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.* The application is approved and the regulations amended accordingly. Additionally, the regulations are amended to establish a tolerance and the safe concentrations for halofuginone hydrobromide residues in edible chicken tissues. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm . 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 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 environmental assessment under 21 CFR 25.31a(a).

List of Subjects

21 CFR Part 556

Animal drugs, Foods, Residues.

21 CFR Part 558

Animal drugs, Animal Feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. By adding new § 556.308 to read as follows:

§ 556.308 Halofuginone hydrobromide.

The marker residue selected to monitor for total residues of halofuginone in broilers is parent halofuginone and the target tissue selected is liver. A tolerance is established in broilers of 0.1 part per million for parent halofuginone in liver. A marker residue concentration of 0.1 part per million in liver corresponds to a concentration for total residues of halofuginone of 0.3 part per million in liver. The safe concentrations for total residues of halofuginone in the uncooked edible tissues of broilers are 0.1 part per million in muscle, 0.3 part per million in liver, and 0.2 part per million in skin with adhering fat. As used in this section, "tolerance" refers to a concentration of a marker residue in the target tissue selected to monitor for total residues of the drug in the target animal, and "safe concentrations" refers

to the concentrations of total residues considered safe in edible tissues.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

3. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343–351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. By adding new § 558.265 to read as follows:

§ 558.265 Halofuginone hydrobromide.

(a) *Approvals.* Premix level of 6 grams per kilogram (2.72 grams per pound) to No. 012799 in § 510.600(c) of this chapter.

(b) *Assay limits.* Complete feed 75 to 125 percent of labeled amount.

(c) [Reserved]

(d) *Related tolerances.* See § 556.308 of this chapter.

(e) *Conditions of use.* It is used in feed for broiler chickens as follows:

(1) *Amount.* 2.72 grams per ton.

(2) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenellla, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima.*

(3) *Limitations.* Feed continuously as sole ration; withdraw 4 days before slaughter; do not feed to layers; avoid contact with skin, eyes, or clothing; keep out of lakes, ponds, or streams.

Dated: August 15, 1985.

Gerald B. Guest,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 85–19938 Filed 8–20–85; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Parts 500, 515 and 520

Foreign Assets Control Regulations, Cuban Assets Control Regulations and Foreign Funds Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is making a number of technical and conforming amendments to the Foreign Assets, Cuban Assets and Foreign Funds Control Regulations. None of these amendments changes the effect of any regulation. Sections 500.701 and 515.701 are being amended to correct citations of the statutory penalty provision in the Trading With the Enemy Act, as amended by Pub. L. 95–223 (1977). Section 520.701 is being amended to correct the citation of the statutory penalty provision in the Trading With the Enemy Act, as amended, and to reflect the increase in the maximum penalty for violating the act.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, 202/376–0395.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedures Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Similarly, because the amendments are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291, of February 19, 1981, dealing with federal regulations.

List of Subjects in 31 CFR Parts 500, 515 and 520

Foreign assets, Foreign trade, Penalties.

PART 500—[AMENDED]

31 CFR Part 500 is amended as follows:

1. The authority citation for Part 500 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Section 500.701(a) is revised to read as follows:

§ 500.701 Penalties.

(a) Attention is directed to section 16 of the Trading With the Enemy Act, as amended, which provides:

Whoever shall willfully violate any of the provisions of the Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

* * * * *

PART 515—[AMENDED]

31 CFR Part 515 is amended as follows:

1. The authority citation for Part 515 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959–1963 Comp.; E.O. 9193, 7 FR 5205, 3 CFR 1938–1943 Cum. Supp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943–1948 Comp., p. 748.

2. Section 515.701(a) is revised to read as follows:

§ 515.701 Penalties.

(a) Attention is directed to section 16 of the Trading With the Enemy Act, as amended, which provides:

Whoever shall willfully violate any of the provisions of the Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

* * * * *

PART 520—[AMENDED]

31 CFR Part 520 is amended as follows:

1. The authority citation for Part 520 is revised to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 8389, 5 FR 1400, as amended by E.O. 8785, 6 FR 2897, E.O. 8832, 6 FR 3715, E.O. 8963, 6 FR 6348, E.O. 8998, 6 FR 6785, E.O. 9193, 7 FR 5205; 3 CFR, 1938–1943 Cum. Supp., p. 1174; E.O. 10348, 17 FR 3789, 3 CFR, 1949–1953 Comp., p. 871; E.O. 11281, 31 FR 7215, 3 CFR, 1966 Supp.

2. Section 520.701(a) is revised to read as follows:

§ 520.701 Penalties.

(a) Attention is directed to section 16 of the Trading With the Enemy Act, as amended, which provides:

Whoever shall willfully violate any of the provisions of the Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act shall, upon conviction, be fined not more than $50,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment,

concerned in such violation shall be forfeited to the United States.

* * * * *

Dated: August 14, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: August 16, 1985.

John M. Walker, Jr.,

Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-20004 Filed 8-20-85; 8:45 am]

BILLING CODE 4810-25-M

31 CFR Parts 500 and 515

Foreign Assets Control Regulations and Cuban Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Foreign and Cuban Assets Control Regulations by adding new §§ 500.567 and 515.567. The new sections provide for the issuance, in certain limited circumstances, of specific licenses unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory (as that term is defined in these regulations) in the U.S.-located assets of corporations formed under the laws of countries designated in the Foreign or Cuban Assets Control Regulations. The treatment of such assets will now correspond to the treatment currently accorded to the U.S.-located assets of designated country partnerships.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: John D. McInerney, Attorney-Advisor, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, 202/376-0412.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the amendments are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal Regulations. The information collection requirements in these regulations have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and assigned control number 1505-0075.

List of Subjects

31 CFR Part 500

Communist countries, North Korea, Vietnam, Cambodia (Kampuchea), Foreign assets control regulations.

31 CFR Part 515

Communist countries, Cuba, Cuban assets control regulations.

PART 500—[AMENDED]

31 CFR Part 500 is amended as follows:

1. The "Authority" citation for Part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

2. New § 500.567 is added to read as follows:

§ 500.567 U.S. Assets of Certain Designated Country Corporations.

(a) Specific licenses may be issued unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory, and who are not specially designated nationals, in U.S.-located assets of corporations formed under the laws of countries designated in this part, after deducting the total debt due creditors for claims that accrued prior to the effectiveness date, in cases where all of the following conditions are met:

(1) The assets were owned by, or accrued to, the corporation before the effective date of the regulations;

(2) The corporation did not carry on substantial business in the designated country under the management or control of the applicant(s) after the effective date;

(3) In cases where the blocked assets purportedly have been nationalized by the designated country, compensation has not been paid to the applicant(s).

(b) Applications for specific licenses under this section must include all of the following information:

(1) A detailed description of the corporation, its by-laws, activities, distribution of shares, and its current status;

(2) Proof of the permanent residence of the applicant(s) in the United States or the authorized trade territory.

(3) A list of all officers, directors and shareholders of the corporation, giving the citizenship and the residence of each person as of the date of application;

(4) A detailed description of all of the assets of the corporation, wherever located, including a statement of all known encumbrances or claims against them; and

(5) Detailed information regarding the status of all debts and other obligations of the corporation, specifying the citizenship and residence of each creditor on the effective date and on the date of the application.

PART 515—[AMENDED]

31 CFR Part 515 is amended as follows:

1. The "Authority" citation for Part 515 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; 22 U.S.C. 2370(a); Proc. 3447, 27 FR 1085, 3 CFR, 1959-1963 Comp., E.O. 9193, 7 FR 5205, 3 CFR, 1938-1943 Cum. Supp., p. 1174, E.O. 9989, 13 FR 4891, 3 CFR, 1943-1948 Comp., p. 748.

2. New § 515.567 is added to read as follows:

§ 515.567 U.S. Assets of Certain Cuban Corporations.

(a) Specific licenses may be issued unblocking the net pro rata shares of individuals who are permanent residents of the United States or the authorized trade territory, and who are not specially designated nationals, in U.S.-located assets of corporations formed under the laws of Cuba, after deducting the total debt due creditors for claims that accrued prior to the effective date, in cases where all of the following conditions are met:

(1) The assets were owned by, or accrued to, the corporation before the effective date of the regulations;

(2) The corporation did not carry on substantial business in Cuba under the management or control of the applicant(s) after the effective date;

(3) In cases where the blocked assets purportedly have been nationalized by Cuba, compensation has not been paid to the applicant(s).

(b) Applications for specific licenses under this section must include all of the following information:

(1) A detailed description of the corporation, its by-laws, activities, distribution of shares, and its current status;

(2) Proof of the permanent residence of the applicant(s) in the United States or the authorized trade territory;

(3) A list of all officers, directors and shareholders of the corporation, giving the citizenship and the residence of each person as of the date of the application;

(4) A detailed description of all of the assets of the corporation, wherever located, including a statement of all

known encumbrances or claims against them; and

(5) Detailed information regarding the status of all debts and other obligations of the corporation, specifying the citizenship and residence of each creditor on the effective date and on the date of the application.

Dated: August 15, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: August 16, 1985.

John M. Walker, Jr.

Assistant Secretary, Enforcement and Operations.

[FR Doc. 85-20005 Filed 8-20-85; 8:45 am]

BILLING CODE 4810-25-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 84-1311; RM-4764; FCC 85-285]

Amendment of Part 90 of the Commission's Rules and Regulations To Relax the Frequency Tolerance of Portable Seismic Telemetry Transmitters in the 72-76 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended 47 CFR 90.65(c)(11) to allow seismic telemetry transmitters type-accepted with a mobile equipment frequency tolerance to be operated as temporary fixed stations. This action simplifies the licensing of this equipment in the Petroleum Radio Service.

EFFECTIVE DATE: July 10, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 90

Private land mobile radio service, Radio.

Report and Order (Proceeding Terminated)

In the matter of Amendment of Part 90 of the Commission's Rules and Regulations to Relax the Frequency Tolerance of Portable Seismic Telemetry Transmitters in the 72-76 MHz Band; PR Docket No. 84-1311, RM-4764, FCC 85-285.

Adopted: May 29, 1985.

Released: June 3, 1985.

By the Commission.

Background

1. On December 6, 1984, in response to a petition filed by Fairfield Industries, Inc. (Fairfield),[1] The Commission adopted a Notice of Proposed Rule Making which proposed to amend Part 90 of the Rules and Regulations.[2] The proposal would allow Petroleum Radio Service eligibles to utilize portable seismic telemetry transmitters that operate in the 72-76 MHz band and have a frequency tolerance of 0.005% for temporary fixed operation. Fixed and mobile operations are permitted in the 72-76 MHz band subject to protection of reception of TV Channels 4 and 5. Fixed stations must maintain a frequency tolerance of 0.0005% but mobile stations are allowed a less stringent tolerance of 0.005%.

2. In the NPRM, we noted that frequency tolerances tighter than 0.005% often required the use of crystal ovens, large batteries, and larger power supplies. Because these devices increase the weight, size, and expense of transmitters, we allow mobile units in this band to employ frequency oscillators which meet the less stringent 0.005% tolerance. Mobile transmitters normally emit less power than base stations and therefore have a reduced potential for interference with other operations. The less stringent mobile frequency tolerance has worked well in the 72-76 MHz band to date.

Discussion

3. Comments on the NPRM were received from Fairfield and the Central Committee on Telecommunications of the American Petroleum Institute. Reply comments were received from Fairfield. Both parties supported our proposal. Portable seismic telemetry transmitters are low powered, have a low duty cycle, and are used in remote areas. Therefore the likelihood of interference to other devices is small. After considering the comments in this proceeding, we conclude that the rule change proposed in the NPRM would provide the relief sought by Fairfield without any significant increase in the potential of interference to existing operations. We are therefore adopting our proposal to permit Petroleum Radio Service eligibles to operate, in a temporary fixed mode, seismic telemetry transmitters type-accepted at one watt or less power output with a ± 0.005% frequency tolerance.

4. As stated in the NPRM, the Commission certifies that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to the rule change in this Report and Order because this change will not have a significant economic impact on a substantial number of small entities. The Secretary shall cause a copy of this Report and Order, including the above certification, to be published in the **Federal Register**, and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. section 601 *et. seq.* (1981).

5. Accordingly, it is ordered, that pursuant to sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 90 of the Commission's Rules is amended, effective July 10, 1985, as set forth in the attached Appendix. It is further ordered that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Part 90 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 90—[AMENDED]

Section 90.65(c)(11) is revised to read:

§ 90.65 Petroleum Radio Service.

* * * * *

(c) * * *

(11) The frequencies available for use at operational fixed stations in the band 72-76 MHz are listed in § 90.257(a)(1). These frequencies are shared with other services and are available only in accordance with the provisions of Section 90.257. Seismic telemetry transmitters type accepted with 1 watt or less power and a frequency tolerance not exceeding ±0.005% may be used as temporary operational fixed stations.

* * * * *

[FR Doc. 85-19897 Filed 8-20-85; 8:45 am]

BILLING CODE 6712-01-M

[1] Petition for Rule Making, RM-4764, filed January 24, 1984.

[2] Notice of Proposed Rule Making, PR Docket No. 84-1311, 49 FR 48860, December 17, 1984.

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-09; Notice 18]

Federal Motor Vehicle Safety Standards; Child Restraint Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule amends Standard No. 213, *Child restraint systems*, with respect to the requirements applicable to buckles used in child restraints. The requirement regarding the force necessary to operate the buckle release mechanism in the pre-impact test is changed from the previous minimum level of 12 pounds to a range between 9 and 14 pounds. The maximum release force for the buckle release in the post-impact test is reduced from the previous level of 20 pounds to 16 pounds. Additionally, this rule adds buckle size and buckle latching requirements to the standard. The effect of this rule is to ensure that child restraint buckles are easier for adults to operate, while still ensuring that small children will not be able to open the buckles by themselves.

EFFECTIVE DATE: The changes made by this rule become effective February 18, 1986.

ADDRESS: Petitions for reconsideration may be submitted within 30 days after publication of this notice in the **Federal Register** to: Administrator, NHTSA, 400 Seventh Street, S.W., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel Daniel, Office of Vehicle Safety Standards, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-426-2242).

SUPPLEMENTARY INFORMATION: As an initial step toward ensuring that child restraint systems would offer adequate protection for their occupants, NHTSA issued Standard No. 213 in 1970. That version of the standard required, among other things, that the buckle release mechanism operate when a force of not more than 20 pounds was applied.

NHTSA issued a new Standard No. 213, *Child restraint systems* (49 CFR 571.213) at 44 FR 72131, December 13, 1979. This new standard substantially upgraded the performance requirements for child restraint systems. It also specified that the buckles must not release when a force of less than 12 pounds was applied to the buckle before conducting the dynamic systems test required by section S6.1 of Standard No. 213 and must release when a force of not more than 20 pounds was applied after conducting that dynamic systems test. The test for measuring the amount of force needed to release the buckle was to be conducted in accordance with the procedures set forth in section S6.2 of the standard. The purpose of the buckle force requirements is to prevent young children from unbuckling the restraint belt(s), while allowing adults to do so easily.

After the adoption of the standard, the agency received information indicating that the minimum force level needed to release the buckles was too high to permit many adults to easily release the buckles. Some of the buckles tested in the field required more than 20 pounds of pressure to release, according to a report done for the agency by K. Weber and N.P. Allen (Docket No. 74-09-GR-120). This same report concluded that even a force of 20 pounds is difficult for most women to generate with one hand. The agency has also been provided with consumer letters received by one child restraint manufacturer commenting on the difficulty of operating the child restraint harness buckles. The agency itself has received numerous telephone calls from consumers complaining about the size of the release buttons on child restraint belts and the high force levels required to operate them.

The agency's safety concerns over child restraint buckle force release and size stem from the need for convenient buckling and unbuckling of a child and, in emergencies, to quickly remove the child from the restraint. This latter situation can occur in instances of post-crash fires, immersions, etc. A restraint that is difficult to disengage, due to the need for excessive buckle pressure or difficulty in operating the release mechanism because of a very small release button, can unnecessarily endanger the child in the restraint and the adult attempting to release the child.

This amendment is also intended to reduce the everyday misuse rate of child restraint harness and shields. Several studies conducted by Goodell-Grives, Inc. under contract to NHTSA indicate that the harness and shield misuse rate for infant and toddler restraints is between 25 and 40 percent. According to this study and others, misused child restraints may not only fail to protect the child in a crash situation, but may increase injury severity. The December 1984 study asked parents why they were apparently misusing the harness and shields. The misuse did not result from the lack of knowledge about the proper use of the harness and shields, because 95 percent of those parents knew the child restraint was being used incorrectly. Although the buckles were not cited directly, the inconvenience of the harness and shield operation was the most frequent reason given for misuse. This amendment will improve the operational convenience of the harness and shield buckles and thus should increase the correct usage rate of child restraint systems.

Accordingly, NHTSA published a notice of proposed rulemaking (NPRM) at 48 FR 20259, May 5, 1983 which proposed several changes to the buckle release force measurement test procedures. Those changes were intended to facilitate the use of buckles which would require approximately 10½ pounds of force to release. The buckle force release test procedure specified that the buckle was to be tested both before and after the impact testing of the child restraint. In both the pre- and post-impact tests, tension was applied to the buckle prior to measuring the buckle release force. The purpose of applying tension was to simulate the force that would be applied to the buckle by a child hanging upside down in the child restraint.

The first proposed change was to eliminate the tension applied to the buckle in the pre-impact test. While it was considered appropriate for the post-impact test to simulate tension which would be present on the buckle in the event of a rollover crash, it was tentatively concluded that there were no forces whose presence ought to be simulated in the pre-impact test. Therefore, the notice proposed to measure the buckle release force in the pre-impact test with no load applied to the belt buckle, except the load exerted by properly adjusting the belt system around a child.

The second proposed change was to reduce the minimum buckle force permitted in the pre-impact test by three pounds, from 12 pounds to 9 pounds. According to the evidence available to the agency, a minimum buckle force level of 9 pounds is sufficient to prevent children up to the age of approximately 4 from opening the buckle by themselves. Further, the notice proposed to set a force of 12 pounds as the maximum force permitted in the pre-impact test. The NRPM specifically sought comments on whether this 3 pound range was sufficient to account for the amount of buckle force variation which inevitably arises from mass production manufacturing techniques.

The third change was proposed for the post-impact testing of the buckles. The tension previously specified in the standard would still be applied to the buckles before the release force was measured. However, the maximum force

needed to release the buckles was proposed to be reduced from 20 pounds to 16 pounds. A higher force level is specified in the post-impact test as compared to the pre-impact test allow for damage which would occur to the buckles during an actual crash and to allow for the additional belt loading which is possible from a child suspended upside down in the restraint system. The proposed lowering of the maximum force level was intended to permit a large portion of adults to more easily and quickly release the buckle in normal use (thus encouraging routine correct use of the restraints which would provide enhanced child safety) and in emergency post-crash situations.

The NPRM also proposed a change to Standard No. 213 in response to complaints about instances where a child restraint buckle was seemingly securely fastened by a parent, but subsequently popped open. This problem is commonly referred to as false latching. To address this problem, the NPRM proposed to require that child restraint buckles meet the latching requirements in section S4.3(g) of Standard No. 209, *Seat Belt Assemblies*. These requirements ensure that the design and construction of the buckle release mechanism are sufficiently durable to permit repeated latching and unlatching of the buckle and that the buckle releases when it is falsely latched and a minimum force (in this case, 5 pounds) is applied to it.

The final change proposed in the NPRM related to the size of the buckle release area. The agency believed that some of the problems experienced by parents in fastening and unfastening the child restraint buckles might be attributable to the size of the buckle release mechanism. For instance, the smaller the area of a push button release mechanism, the more difficult it would be to use more than one finger, and hence apply a greater force, to open the buckle. The release mechanisms on some buckles were too small to allow sufficient engagement area for easy release of the buckle, particularly for persons with large hands. Most child restraint buckles use push bottons to release the buckle, so the NPRM proposed that push bottons have a minimum area of 0.6 square inch. The minimum surface area requirements applicable to motor vehicle seat belts were specified for other types of release mechanisms used on child restraint buckles.

The NPRM also requested comments on regulatory and non-regulatory ways in which the issues of belt length and shell width could be addressed. This request was based on the Weber and Allen report referenced above which raised questions about the length of the harness webbing used in child restraints and the seating width of the shells. The researchers noted that use of winter clothing significantly increased the amount of harness webbing needed to accommodate a fully clothed child. They reported that a snowsuit can add six inches to the length necessary for a harness lap belt to accommodate a child. Further, researchers said that nearly all child restraints are too narrow for the size children they claim to accommodate.

The agency received 16 comments on the NPRM, and the commenters included private citizens, safety advocacy groups, child restraint manufacturers, and the National Transportation Safety Board. All these comments were considered in developing this final rule, and the most relevant ones were specifically addressed in the following discussion.

Pre-Impact Test Buckle Release Force Limit. In the NPRM, the agency specifically sought comments on the feasibility of manufacturing buckles within the 3 pound range. Many of the commenters objected to the proposed 9 to 12 pound force limits, primarily because the 3 pound range was said to be too narrow based on current manufacturing techniques, to ensure that all buckles would comply with the proposed requirement. Some of these commenters asserted that the proposed 3 pound range would cause the buckle manufacturers to increase buckle prices in order to recoup the costs of the changes in manufacturing techniques and quality control which would have to be implemented to satisfy the proposed requirement. One child restraint manufacturer offered a statistical analysis of buckle release force tests in an effort to demonstrate the difficulty of maintaining a 3 pound range with current buckle manufacturing techniques. The manufacturer indicated that buckle release forces can vary up to 3 times the standard deviation for a given sample. The standard deviation for current production buckles is sufficiently large that, given a mean of 10.5 pounds and a range of 3 pounds, some buckles would have release forces outside the range. A different manufacturer submitted data from tests of current buckle designs showing that the release force can vary by as much as 6 pounds for current buckles. Finally, several commenters objected to the proposed 9 pound minimum release force on the grounds that buckles manufactured in compliance with the Canadian child restraint standard, which specifies an 8 pound minimum release and 16 pound maximum release force, would not satisfy the proposed U.S. standard. These commenters further stated that NHTSA should use this opportunity to harmonize this requirement with the Canadian standard.

In response to these comments, NHTSA has reconsidered its proposed 9 to 12 pound range for the buckle release force permitted in the pre-impact testing. The agency has concluded that a 3 pound range in release force would not be feasible with current manufacturing techniques, and the benefits of narrowing the feasible range to 3 pounds do not warrant requiring a change in current manufacturing techniques.

The only research study of which the agency is aware examining the most apporpriate release force range for child restraint buckles is entitled "Child Restraint System", and was published in 1976 by Peter Arnberg of the National Swedish Road and Traffic Institute. This study, which is available in the General Reference section of Docket No. 74–09, presented the results of testing 60 children aged 2½ to 4½ years and 200 women. This study concluded that, child restraint buckles should have a release force of 40 to 60 Newtons (approximately 9 to 13½ pounds).

After analyzing the comments, NHTSA has determined that a 5 pound range in buckle release force is needed to allow for current buckle manufacturing techniques. Based on this determination and the recommendations of the Arnberg study, this requires child restraint buckles to have a release force of between 9 and 14 pounds before the buckles are subjected to dynamic testing.

The agency notes that this rule is not precisely harmonized with the Canadian standard for child restraint buckle release forces, which specifies a minimum release force of 8 pounds before dynamic testing and a maximum release force of 16 pounds after dynamic testing. NHTSA has adopted a 9 pound minimum release force because of its concern that 3½ to 4 year old children could open their child restraint buckles if the release force were 8 pounds, as shown in the Arnberg study. Further, the 14 pound maximum release force before dynamic testing was added in this rule because buckles with a release force of more than 14 pounds are difficult for many women to open in everyday use, as demonstrated in the Arnberg study. The result of these differing requirements on the United States and Canadian is that buckles which comply with the Canadian buckles force

requirements will not automatically comply with Standard No. 213. However, buckles which comply with Standard No. 213 will also comply with the buckle force requirements of the Canadian standard.

Pre-Impact Buckle Test Procedure. The NPRM proposed a new procedure for this test. The same procedures have been used for measuring the buckle release force in both the pre-impact and the post-impact testing. Briefly stated, the child restraint is installed on a standard seat assembly, the dummy is positioned in the child restraint, a sling is attached to each wrist and ankle of the dummy, and the sling is pulled by a designated force. As noted above, the presence of the dummy and the force applied to the sling simulate a rollover crash situation.

The NPRM proposed, and this final rule adopts, a new test procedure for the pre-impact testing, because there is no need to simulate a rollover crash situation before impact. The NPRM proposed placing the buckle on a hard, flat surface and loading each end of the buckle with a force of two pounds before measuring the force required to release the buckle. None of the commenters objected to this basic change in the test procedure, and it is adopted for the reasons stated in the NPRM.

Several commenters did object to the release force application device, which was proposed as a rigid, right circular cone with an enclosed angle of 90 degrees or less. This device would be used to transfer the release force to the push button release. Some commenters argued that this device would not adequately represent real world push button actuation. Specifically, they were concerned that the pointed device applies the release force over an area considerably smaller than that of a finger or thumb. Other commenters argued in favor of a different release force application device, contending that this device would permanently deface some of the tested buckles.

NHTSA had decided to adopt the proposed conical test device. Its small contact area allow accurate positioning on the release button, which will yield consistently repeatable test results. The buckle release force test procedures proposed in the NPRM, as modified for this final rule, were conducted by the Calspan Corporation in July 1984 during the annual FMVSS No. 213 compliance test procedures. On the basis of these tests, the agency concluded that the amended test procedures simulate real world actuation of push button release mechanisms because the release force is applied in a manner similar to hand operation and tests with several alternative devices indicated that conical devices produce release force values consistent with those generated by different probes. Manufactures choosing to test a large number of buckles to be used on their child restraints can place a protective surface between the button and the test device to prevent defacing of the buckles. Those manufacturers which want to use an alternative test device are free to do so, provided that they can correlate the results obtained with that alternative device with results obtained with the specified test device, which will be used by the agency in compliance tests.

The NPRM proposed that the force applied by the test device be "at the center line of the push button 0.125 inches from a movable edge and in the direction that produces maximum releasing effect." Many commenters argued that this procedure needed to be refined to take account of the different release mechanisms. One commenter stated that there are two different types of push button release mechanisms, hinged and floating. A hinged button has one fixed edge and release forces applied near the fixed edge may not activate the release mechanism. Instead, the hinged button is designed to release when force is applied near the center of the button or toward the edge opposite the fixed edge. On the other hand, the floating button has no fixed edges and is designed to release when force is applied near the center of the button. This commenter noted that, while the force application proposed on the NPRM may be suitable for hinged buttons, it would be inappropriate for floating buttons.

The agency agrees with the commenters that some further refinements should be made to the test procedures to account for the different types of push buttons. Accordingly, this rule specifies that, for hinged buttons, the force shall be applied according to the procedures proposed in the NPRM. For floating buttons, the force shall be applied at the geometric center of the button. These differing force application points will take into account the differing designs of push buttons, without favoring one or the other design.

Several commenters stated that the NPRM failed to specify any test procedures for buckles designed for the insertion of two or more buckle latch plates, even though a number of buckles on current models of child restraints are designed to secure more than one belt. Further, these commenters noted that, while the NPRM did specify a two pound pre-load force should be applied to buckles before conducting the pre-impact buckle release test, it failed to specify the direction in which the force should be applied. To remedy these perceived shortcomings, some of the commenters recommended that the final rule specify that the two pound pre-load force be applied along the direction of the latch plate insertion for single latch plate buckles and that the two pound force be divided by the number of latch plates and the resultant force applied to each latch plate in the direction of latch plate insertion for multiple latch plate buckles. This final rule adopts this recommendation. The NPRM's intent was that the force be applied along the direction of latch plate insertion, and it is appropriate to make this intent explicit in this final rule. Further, the one pound pre-load force for multiple latch plate buckles is sufficient force to simulate the tension which would be present in properly adjusted belts, yet small enough so as not to simulate other forces which would not be present in normal everyday use.

Along these lines, one commenter suggested that the pre-load force be increased from two to five pounds. This commenter stated that the proposed pre-load force of two pounds might not be sufficient to release the buckles, while the five pound load would assure that the buckles always release. Further, the commenter noted that Standard No. 209 allows a false latching load of five pounds maximum, and that this change would make the two Standards consistent.

NHTSA is not persuaded by these comments, and has not incorporated the suggested change in this final rule. For the pre-impact buckle release force test procedure, the 2 pound pre-load is designed to simulate the separation tension in the harness restraint system during normal use and approximate the buckle loading on a restraint system adjusted for the compliance impact test.

Section S5.2(g) of Standard No. 209, on the other hand, is not intended to approximate forces present during normal buckle operation. That section requires that the buckle latching mechanism be tested for durability and then the latch plate or hasp inserted in any position of "partial" engagement (false latching). When the buckle and latch plate are in this position of "induced" partial engagement, a force of 5 pounds force or less shall separate the latch plate from the buckle. The separation of the latch plate is affected without operating the release mechanism. Since this procedure is not intended to simulate normal buckle operation but to test the susceptability of the buckle to false latching, it would

not be appropriate to incorporate its loading into Standard No. 213.

Post-Impact Buckle Test Procedure. As noted above, the NPRM proposed to reduce the maximum force needed to release the buckle after it had been subjected to the impact test from the 20 pound level currently specified to 16 pounds. A higher release force is specified for the post-impact test to account for damage which might occur to the buckle during the impact test and to counter the forces which could be exerted on the buckle by a child hanging upside down in rollover crash conditions. The reason for proposing the lower force was that it was sufficient to account for damage which might occur to the buckle, and such force can be generated by almost all women using only one hand, according to the Arnberg study. The current 20 pound force requirement allows buckles which require two hand operation by many adults, and two hand operation is often awkward and may adversely affect safety in emergency situations. The agency notes that the Canadian standard also specifies a maximum post impact force of 16 pounds. No commenters objected to this proposed change, and it is adopted herein for the reasons explained above.

The preamble to the NPRM did not discuss any other changes to the post-impact testing procedure, because the agency did not intend to propose any changes other than reducing the maximum release force for the buckles. However, section S6.2.2 of Standard No. 213 as published in the NPRM indicated that the self-adjusting sling which is attached to the dummy to simulate a rollover crash situation should be attached only to the dummy's ankles. The Standard currently requires the sling to be attached to the dummy's *wrists* and ankles, and this requirement was inadvertently omitted from the NPRM language. This final rule corrects this omission, so no change is specified for the post-impact testing except the reduction in buckle release force.

Buckle latching. The NPRM proposed adding the latching performance requirements of sections S4.3(g) and S5.2(g) of Standard No. 209 to Standard No. 213. These procedures test the latching performance of seat belt buckles to ensure that the buckle materials and structure will operate properly after numerous cycles of latchings and unlatchings. As explained in the NPRM, this step should reduce or eliminate the false latching problems experienced by child restraint users. False latching occurs when buckles are apparently latched, but then subsequently pop open. NHTSA believes that most of the false latchings result from poorly designed or cycle degraded latching mechanisms, and that the Standard No. 209 requirements will eliminate latching mechanisms which are poorly designed or subject to cycle degradation.

Most of the commenters who addressed this proposal supported its adoption, although several commenters stated that additional requirements may be needed to ensure that false latching does not continue to be a significant problem. The National Transportation Safety Board stated that it had evidence that brand-new child restraint buckles, not yet subject to material wear, are prone to false latching, and that additional requirements, along the lines of the European requirement that latchplates be ejected by a spring located in the buckle when the buckle is not properly latched, may be necessary to prevent false latching. Other suggestions from the commenters included requiring the use of color-coded push buttons to show when the buckle was properly latched and requiring specific warnings in the manufacturer's instruction manuals urging parents to check for false latchings every time they fasten the buckles.

NHTSA has adopted the requirements proposed in the NPRM to reduce the false latching problems. The agency believes that the Standard No. 209 seat belt buckle tests will identify buckles which are subject to false latchings because of materials wear or poor design, because false latching complaints by consumers have been eliminated for motor vehicle seat belts and the agency expects that these tests will substantially reduce this problem for child restraint buckles as well. The agency will continue to monitor problems of false latchings, and will consider additional requirements to address that problem if necessary.

Buckle Size. The NPRM proposed to specify a minimum area for the buckle release mechanism, because some of the difficulties reported in opening child restraint buckles were believed to arise from the small size of the buckle release mechanism. As noted earlier, the smaller the area of the push button, the more difficulty there is in applying the forces which must be exerted to open the buckle. Those commenters which addressed this issue supported the proposed requirement that push buttons used on child restraints have a minimum release area of 0.6 square inch, and it is adopted in this final rule.

Belt Length/Shell Width. The NPRM solicited comments on steps which could be taken to address the issues of belt length and shell width. These issues arose after a research report noted that children clad in winter clothes need up to six additional inches of belt webbing, and that many current child restraints do not have this extra belt length. In addition, the report noted that nearly all child restraints are too narrow for the size children they claim to accommodate. The NPRM noted that a long-range solution was for the agency to use additional test dummies to simulate larger children. A possible short-term answer was to conduct the crash tests with the dummies clad in a typical snowsuit.

Several commenters stated that regulatory action was not needed in this area. Child restraint manufacturers generally believe that the industry will adjust belt length and shell width in response to consumer demand, and believe that any regulations at this time would only add costs and research burden without substantially benefiting child safety. The Physicians for Automotive Safety stated that the agency should approach those manufacturers with problems in these areas and request voluntary remedial action, instead of pursuing rulemaking. That group also stated that it knew of only one model of child restraint with problems along these lines. The National Transportation Safety Board stated that the agency should develop regulations in these areas.

Some of the commenters opposed the use of snowsuits on the test dummies because those snowsuits would absorb some of the crash energy. According to these commenters, the agency would, in effect, reduce the severity of the crash tests by so dressing the test dummies.

In view of the above comments rulemaking will be deferred in this area. The agency will continue to monitor the issues of seat shell size and harness webbing length associated with infant and toddler restraints (40 pounds and below) to determine if rulemaking in this area will be necessary in the future.

Editorial Correction. Several commenters noticed that there was a typographical error in section S5.4.3.5(a) of the NPRM. That section referred to testing in accordance with section S6.2.2, while the correct reference was to section S6.2.1. This error is corrected in this final rule.

Economic Effects. NHTSA has considered the effects of this rule and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and

procedures. The reduction of the force levels needed to open the buckles, the incorporation of the latching requirements of Standard No. 209, the minimum release area requirements, and the slight changes to the pre-impact buckle testing procedure will have such minimal impacts on the industry and on the costs to consumers that a full regulatory evaluation is not needed.

The agency has also considered the impacts of this rule as required by the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule will not significantly increase the testing or design costs for child restraint manufacturers. Small organizations and governmental jurisdictions will be affected as purchasers of child restraints. However, the cost effect of these changes is minimal. Accordingly, a regulatory flexibility analysis has not been prepared.

Finally, the agency has analyzed this rule for the purposes of the National Environmental Policy Act, and determined that this rule will not have any significant effects on the human environment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

§ 571.213 [Amended]

In consideration of the foregoing, § 571.213 of Title 49 of the Code of Federal regulations is amended as follows:

1. The authority citation for 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, and 1407; delegation of authority at 49 CFR 1.50.

2. Section S5.4.3.5 is revised to read as follows:

* * * * *

S5.4.3.5 *Buckle Release.* Any buckle in a child restraint system belt assembly designed to retrain a child using the system shall:

(a) When tested in accordance with S6.2.1 prior to the dynamic test of S6.1, not release when a force of less than 9 pounds is applied and shall release when a force of not more than 14 pounds is applied;

(b) After the dynamic test of S6.1, when tested in accordance with S6.2.3, release when a force of not more than 16 pounds is applied;

(c) Meet the requirements of S4.3(d)(2) of FMVSS No. 209 (§ 571.209), except that the minimum surface area for child restraint buckles designed for push button application shall be 0.6 square inch;

(d) Meet the requirements of S4.3(g) of FMVSS No. 209 (§ 571.209) when tested in accordance with S5.2(g) of FMVSS No. 209; and

(e) Not release during the testing specified in S6.1.

* * * * *

(3) Section S6.2 is revised to read as follows:

* * * * *

S6.2 *Buckle release test procedure.* The belt assembly buckles used in any child restraint system shall be tested in accordance with S6.2.1 through S6.2.4 inclusive.

* * * * *

4. Section S6.2.1 is revised to read as follows:

* * * * *

S6.2.1 Before conducting the testing specified in S6.1, place the locked buckle on a hard, flat, horizontal surface. Each belt end of the buckle shall be pre-loaded in the following manner. The anchor end of the buckle shall be loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure a single latch plate, the belt latch plate end of the buckle shall be loaded with a two pound force in the direction away from the buckle. In the case of buckles designed to secure two or more latch plates, the belt latch plate ends of the buckle shall be loaded equally so that the total load is 2 pounds, in the direction away from the buckle. For pushbutton-release buckles the release force shall be applied by a conical surface (cone angle not exceeding 90 degrees). For pushbutton release mechanisms with a fixed edge (referred to in Figure 6 as "hinged button"), the release force shall be applied at the centerline of the button, 0.125 inches away from the movable edge directly opposite the fixed edge, and in the direction that produces maximum releasing effect. For pushbutton release mechanisms with no fixed edge (referred to in Figure 6 as "floating button"), the release force shall be applied at the center of the release mechanism in the direction that produces the maximum releasing effect. For all other buckle release mechanisms, the force shall be applied on the centerline of the buckle lever or finger tab in the direction that produces the maximum releasing effect. Measure the force required to release the buckle. Figure 6 illustrates the loading for the different buckles and the point where the release force should be applied, and Figure 7 illustrates the conical surface used to apply the release force to pushbutton-release buckles.

* * * * *

5. Section S6.2.2 is revised to read as follows:

* * * * *

S6.2.2 After completion of the testing specified in S6.1, and before the buckle is unlatched, tie a self-adjusting sling to each wrist and ankle of the test dummy in the manner illustrated in Figure 4.

* * * * *

6. Section S6.2.4 is revised to read as follows:

* * * * *

S6.2.4 While applying the force specified in S6.2.3, and using the device shown in Figure 7 for pushbutton-release buckles, apply the release force in the manner and location specified in S6.2.1 for the type of buckle. Measure the force required to release the buckle.

* * * * *

7. Section S6.2.5 is removed.

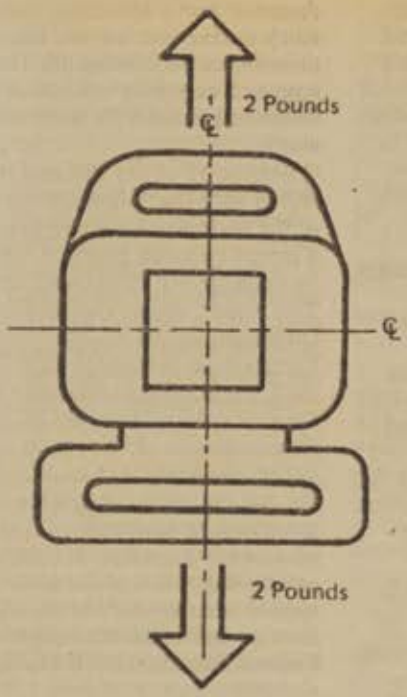
8. Two new drawings (Figures 6 and 7) are added at the end of § 571.213, appearing as follows:

Issued on August 15, 1985.

Diane K. Steed,

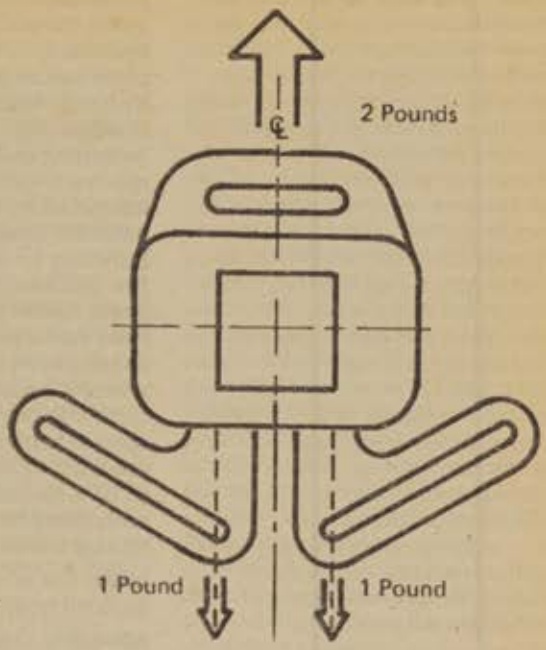
Administrator.

BILLING CODE 4910-57-M

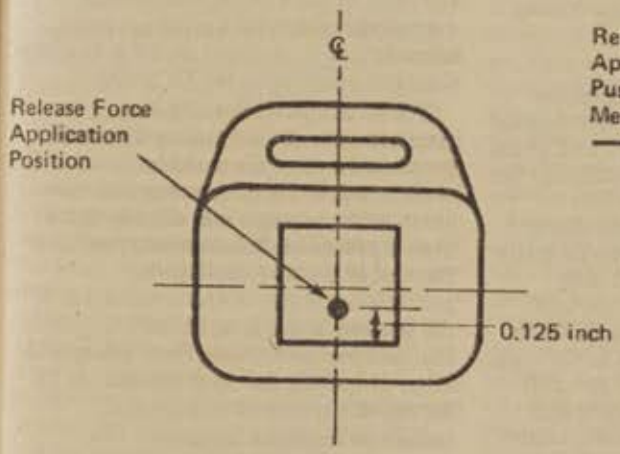


6a. Single Latch Plate Pre-load

Buckle Pre-load

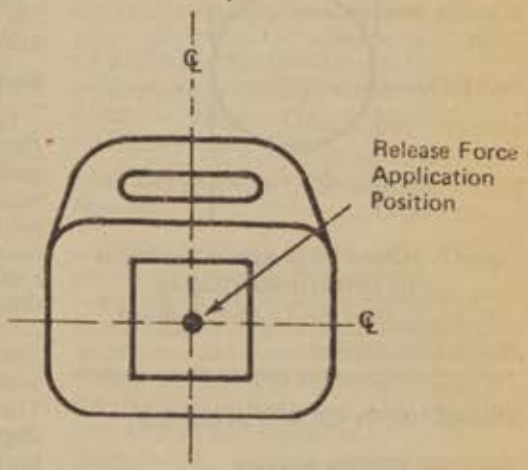


6b. Double Latch Plate Pre-load



6c. Hinged Button

Release Force Application Position Push Button Mechanisms



6d. Floating Button

Figure 6. Pre-impact Buckle Release Force Test Set-up

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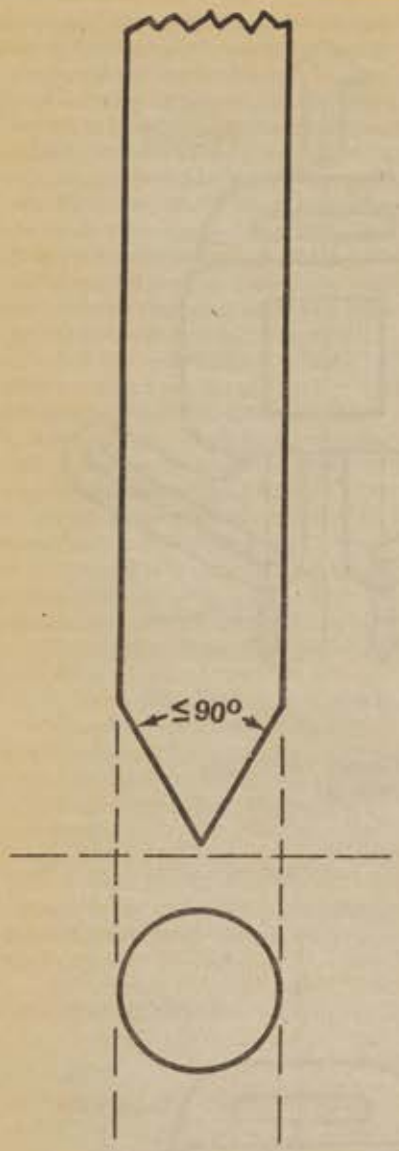

Figure 7. Release Force Application Device – Push Button Release Buckles

[FR Doc. 85-19907 Filed 8-20-85; 8:45 am]
BILLING CODE 4310-57-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for Gardenia Brighamii (Na'u or Hawaiian Gardenia) and Withdrawal of Proposed Designation of Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Gardenia brighamii* (na'u or Hawaiian gardenia) to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. This plant occurs in the wild on Lanai (about 6 plants), Molokai (2 plants), and Oahu (a single plant), but is now believed to be extinct on Hawaii and Maui. This species is vulnerable to any substantial habitat alteration and faces the potential threats of grazing and browsing by domestic and feral animals, fire, soil erosion, introduced insect pests, rodent predation, competition from exotic plants, and potential development on and/or near the sites where it occurs. This determination that *Gardenia brighamii* is an endangered species implements the protection provided by the Endangered Species Act of 1973, as amended. The Service further withdraws its proposal to designate critical habitat for this species.

DATE: The effective date of this rule is September 20, 1985.

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

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

Past collections and field notes on *Gardenia brighamii* indicate that it once grew on the islands of Hawaii and Maui, where it is not known to be extant in the wild today. The species was first collected in 1864–65 by Horace Mann and William Brigham, and was formally described by Mann in 1867. It still occurs on Lanai (about 6 plants) and Molokai (2 plants), as well as on Oahu, where a single plant remains in the wild. The current habitat has been severely degraded and altered by grazing and browsing animals (e.g., domestic cattle and feral goats, respectively). The invasion of exotic plants such as *Lantana camara, Leucaena Leucocephala, Schinus terebinthifolius,* and various grass species crowds out the remaining dry forest and shades out any seedlings that may have survived rat predation on the fruits. The remaining habitats on Lanai and Molokai are found on marginal land used for grazing.

Gardenia brighamii was a distinctive element of the lowland dry forest. It is a tree growing 20 to 30 feet in height, with a smooth trunk 6 to 12 inches or more in diameter and a spreading canopy of shiny dark-green leaves. The white to cream-colored flowers are 1 to 2 inches long and very fragrant, and resemble the Tahitian gardenia (*G. taitensis*) in shape.

Section 12 of the Endangered Species Act of 1973 (Act) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 CFR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. *Gardenia brighamii* was included in the July 1, 1975, notice and the June 16, 1976, proposal. General comments on the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, the Service published a notice of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with other proposals that had expired (44 FR 70796); this notice of withdrawal included *Gardenia brighamii.* The Service published an updated notice of review on December 15, 1980 (45 FR 82480), which included *Gardenia brighamii.* A reproposal was published on October 12, 1984 (49 FR 40058), based on information available at the time of the 1976 proposal and information gathered after that time and summarized in a detailed status report prepared under contract by a University of Hawaii botanist (Gagne 1982). The Service now determines *Gardenia brighamii* to be an endangered species with the publication of this final rule.

Summary of Comments and Recommendations

In the October 12, 1984, proposed rule (49 FR 40058) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, the county government, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Honolulu Advertiser* on December 7, 1984. Five comments were received and are summarized and discussed below.

The Hawaii State Department of Land and Natural Resources, Division of Forestry and Wildlife, supported the listing of *Gardenia brighamii* as an endangered species because of the low population numbers, the deterioration of its habitat, and the need for more protection of this species. The Division stated that its office is aware of three individuals on Lanai and two on Molokai, which have not been visited for several years and may no longer be alive; it had no information on the Oahu plant. The Division believes that the 685 acres proposed for critical habitat is too large an area to set aside for a single purpose, and may cause problems for the landowner. It recommended that alternate land uses, compatible with the survival of the tree, should be explored, as more than just the designation of critical habitat will be required to save this species.

A member of the Friends of the Maui Botanical Garden concurred that *Gardenia brighamii* should be listed as endangered. He also supported the designation of critical habitat. Because the trees need to be protected from exotic grasses and shrubs, and deer need to be fenced out, he commented that 685 acres would be too large an area to manage effectively. He suggested that a permanent botanical worker be hired to oversee and protect the endangered species in Hawaii.

Castle & Cooke, Inc. (C&C), owner of the land on Lanai that had been proposed as critical habitat, opposed the listing of *Gardenia brighamii* as an endangered species, although it stated that it is sensitive to the efforts to protect the species and will fully cooperate with conservation actions by Federal and State agencies should the species be listed. One of the main concerns of C&C is the impact that designating critical habitat would have upon its long-term land management plans. C&C noted that Betsy H. Gagne, in the status report she compiled on the gardenia, reported that Kenepu'u population occurs within an area of only about 275 acres. Since her report, other plants have been located in remote areas of Lanai that are not contiguous with the proposed critical habitat. C&C believes that the proposed critical habitat is excessive, and, as it does not embrace all of the plants, questions the need for it. C&C continued, "* * * we feel that the designation of a critical habitat for *G. brighamii* will cause more harm to the species by calling attention to the species. We have observed that often a greater damage results from well-meaning parties collecting plants with the intention of protecting the species by cultivation and propagation * * *." Also, C&C questioned the accuracy of the species census and noted that the species is in cultivation in botanical gardens and has been offered for sale in plant sales.

The single individual plant known from Oahu occurs on land owned by the Campbell Estate and leased to the Tongg Ranch. Neither the owner nor the lessee provided recommendations or additional information in their letters.

In response to the comment on the accuracy of the census of the Lanai population, it appears that the original estimate of ten was high. Three plants are presently known from the Kanepu'u area and an additional three recently were discovered on the north and west slopes of Lana'ihale, making a total of six trees on that island. A re-estimate of the patchy remnants of dry forest at Kanepu'u also was undertaken. Two of the three trees of this area are in a 330-acre forested area; the other is in a 48-acre forested patch.

In response to the comment on cultivated plants and plants offered for sale, one of the purposes of the Act is to conserve the ecosystems which sustain endangered species. Cultivated plants do not aid in the conservation of native habitat, nor do they normally represent an adequate diverse sample of the gene pool of a species. Their value is as a backup resource for the wild population. The presence of the species in private gardens and the fact that it has been sold at plant sales in the past indicate that the species has potential ornamental value. This may be an added threat to its existence, as the collection of cuttings may damage the few remaining wild trees and the collection of seed may prevent reproduction in native populations.

In response to the question of critical habitat, the Service has considered the three that commented on critical habitat and has reconsidered its proposal to designate critical habitat for *Gardenia brighamii*. The proposed critical habitat consisted of 685 acres in the Kanepu'u area of Lanai. The proposed critical habitat comprises a remnant of native forest; eroded, laterized areas; and areas vegetated with introduced grasses, shrubs, and trees. Only two of the six known gardenia trees on Lanai are now known to be within the boundary of the proposed critical habitat; a third is in another patch of native dry forest about a half mile away, while the remaining three trees are on other parts of the island. To designate the proposed area as critical habitat would not reflect the habitat needs of the plant. The area proposed for designation exceeds that which could be justified as critical habitat for the two trees it contains. However, any more narrowly delimited designation for these or other individuals of the species would expose them to an increased threat of collection or vandalism. Given the negligible increment of protection for the species that would be provided by such designation, the Service no longer believes it prudent to designate critical habitat for this species. Because *Gardenia brighamii* is presently in cultivation, and young plants have been sold in the past, the Service believes there is an interest in and a market for the species. The fact that there are documented acts of vandalism against plants in Hawaii and other parts of the United States further supports the inappropriateness of designating critical habitat in this case (see "Critical Habitat" section below).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Gardenia brighamii* should be determined to be 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 threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Gardenia brighamii* Mann (na'u or Hawaiian gardenia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* This species once grew on five of the Hawaiian Islands, where, at least on the island of Molokai, it was a fairly common component of

the native dryland forests. Today it still occurs on the islands of Lanai (about 6 plants), Molokai (2 plants), and Oahu (1 plant). It is now believed extinct on Hawaii and Maui. Grazing and browsing by domestic and feral animals and the invasion of exotic shrubs, forbs, and grasses have caused severe degradation of its habitat. Urbanization, pineapple fields (on Lanai and Molokai), sugar cane fields (on Oahu and Maui), and pastures (on Oahu, Maui, and Hawaii) have replaced most of the dryland forests in Hawaii. The Molokai population grows at the edge of an erosion gully; several trees were lost recently when the gully walls collapsed during winter storms. Further grazing and browsing by domestic and feral animals, further invasion and spread of exotic plants, potential urbanization or development, and, as the plants grow in dry parts of the islands, the continual possibility of fires, are all existing threats to the future survival of the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Although the species has apparently not been adversely affected by collecting in the past, it is potentially an attractive garden subject. Because of the extremely low number of remaining individuals, any further horticultural collecting could jeopardize the species.

C. *Disease or predation.* The introduced black twig borer, *Xylosandrus compactus* (Scolytidae), attacks terminal shoots and has severely affected the one wild tree on Oahu. Rats appear to gnaw the fruit while it is still on the tree, severely reducing the chances of successful regeneration. The full impact of grazing remains to be determined.

D. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms exist at the present time. Federal listing would automatically invoke listing under Hawaii State law, which prohibits taking and encourages conservation by State government agencies.

E. *Other natural or man made factors affecting its continued existence.* The number of plants of this species has been greatly reduced due to factors enumerated above. Further reduction of the breeding population (gene pool) may have adverse effects of the reproductive capacity and survival of this species.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the species in determining to make this rule final. Based on this evaluation, the perferred action is to list *Gardenia brighamii* as endangered. Due to the low number of extant trees and the threats posed to the species, threatened status is not appropriate. The designation of critical habitat is 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 critical habitat at the time a species is determined to be endangered or threatened. Critical habitat is not being designated for *Gardenia brighamii*, as it is believed to be neither prudent nor beneficial to the species to do so. Due to the additional information provided during the open comment period (see "Summary of Comments and Recommendations" section, above), the area proposed as critical habitat would not accurately reflect the habitat requirements of the species. Any reduction or further refinement of the area to be designated might threaten the plant with taking, an activity difficult to enforce against and not regulated by the Endangered Species Act with respect to plants, except for a prohibition against removal and reduction to possession of endangered plants from areas under Federal jurisdiction. Publication of critical habitat descriptions would make this species more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for *Gardenia brighamii* at this time. The proposed designation of critical habitat for this species is therefore withdrawn.

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)(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 a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Currently, no Federal involvement is known to exist with regard to *Gardenia brighamii*.

The only known potential action that may be affected by the listing is the casual use of the Kanepu'u area. Federal listing automatically results in similar listing by the State and, therefore, enforcement of the State's own regulations comes into effect. These regulations may limit casual use by prohibiting the taking of the plants. Take, in the State law, is defined as picking or otherwise damaging the plants. Voluntary or mandatory protection of this species and its habitat will require cooperation among the land owners, Castle & Cooke, Inc., the State of Hawaii, the County of Maui, and the U.S. Fish and Wildlife Service.

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 *Gardenia brighamii*, 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 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. No interstate or foreign trade in this species is known, although it has been sold locally. It is anticipated that few trade permits involving *Gardenia brighamii* would ever be sought or issued since the species is not common in cultivation or in the wild.

Section 9(a)(2)(B) of the Act, as amended in 1982, prohibits the removal

and reduction to possession of endangered plant species from areas under Federal jurisdiction. This prohibition is not expected to be significant for *Gardenia brighamii*, since all of the known plants are on private property. 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 under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Foote, D.E., E.L. Hill, S. Nakamura, and F. Stephens. 1972. Soil survey of the islands of Kauai, Oahu, Maui, Molokai, and Lanai, State of Hawaii. U.S. Dept. of Agriculture, Soil Conservation Service: Washington, D.C. 232 pp., 130 maps.

Gagne, B.H. 1982. Status report of *Gardenia brighamii*. Research Corporation of the University of Hawaii, under contract 14–16–0001–79096 to the U.S. Fish and Wildlife Service. 42 pp.

Spence, G., and S.L. Montgomery. 1976. Ecology of the dry land forest of Kanepu'u, island of Lanai. Newsletter, Hawaiian Bot. Soc. 15(⅔): 62–80.

Author

The primary author of this final rule is Dr. Derral Herbst, U.S. Fish and Wildlife Service, P.O. Box 50167, Honolulu, Hawaii 96850 (808/546–7530).

List of Subjects in 50 CFR Part 17

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

Regulations Promulgation

PART 17—[AMENDED]

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

1. The authority citation for Part 17 reads as follows:

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

2. Amend § 17.12(h) by adding the following in alphabetical order under the family Rubiaceae, to the list of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*
Rubiaceae—Coffee family: *Gardenia brighamii*	Na'u (Hawaiian gardenia)	U.S.A. (HI)	E	195	NA	NA
*	*	*	*	*	*	*

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–19909 Filed 8–20–85; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule To Determine Primula Maguirei (Maguire Primrose) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined *Primula maguirei* (Maguire primrose) to be a threatened species under the authority of the Endangered Species Act of 1973, as amended. Critical habitat is not included in this final rule. There are nine known populations of *Primula maguirei*; all are located in Logan Canyon, Cache County, Utah, on U.S. Forest Service lands. The species is found only on ledges and in cracks of vertical cliffs and outcroppings of rock within the canyon. The plant is threatened by rock climbing, collecting, and potential campground and highway construction. The determination that *Primula maguirei* is a threatened species will provide it protection under the authority of the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is September 20, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Regional Endangered Species Office, U.S. Fish and Wildlife Service, 134 Union Boulevard, Fourth Floor, Lakewood, Colorado, and at the Endangered Species Field Office, U.S. Fish and Wildlife Service, Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Mr. John L. England, Botanist, Endangered Species Field Office at the Salt Lake City address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Primula maguirei was first collected by Aldous and Owen on May 10, 1911, and was later described by L.O. Williams (Williams 1936). The plant is a perennial herb, with conspicuous and showy lavender flowers. Stems are 1.5–4 inches (4–10 cm) tall and bear from one to three flowers. Leaves are broadly spatulate, rounded at the tip, and 1–2.5 inches (3–7 cm) long and 0.3–0.5 inch (0.9–1.3 cm) broad (Welsh and Thorne 1979).

This species is found only in Logan Canyon, Utah, and grows on damp ledges, crevices, and overhanging rocks of the canyon walls. It occurs within an area approximately 10 miles (16 km) by 0.5 mile (0.8 km) (L.M. Shultz, Utah State University, pers. comm. 1984). Montane shrubs, aspen, spruce, and fir are the dominant species of the plant community in this area. *Primula maguirei* is typically found on northerly exposures with a slope of 50 to 100 percent and at elevations of 4,800 to 5,500 feet (1,350–1,700 m). Geological formations of the canyon are composed mostly of carboniferous limestones and dolomites (Welsh 1979).

Primula maguirei was first observed in Logan Canyon in 1911, and was seen again in 1932, 1937, and periodically since then (A. Cronquist, New York Botantical Garden, pers. comm. 1984); however, there is no estimate of the number of plants found on these

occasions. At present, there are nine known populations, one of which contains approximately 100 plants, and the remainder of which contain fewer than 30 each. There appears to be good reproduction within populations and reestablishment of seedlings where habitat is unaltered and impacts minimal (L.M. Shultz, Utah State University, pers. comm. 1984). All populations are threatened by rock climbing and collecting. Some, including the largest and most vigorous extant populations, are threatened by potential highway construction.

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

On December 15, 1980, the Service published a new notice of review for plants in the Federal Register (45 FR 82480), which included *Primula maguirei* as a Category 1 species. Category 1 comprises taxa for which the Service presently has substantial information on the biological vulnerability of and threats to the taxa to support the appropriateness of proposing to list the taxa as endangered or threatened species. The Endangered Species Act Amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The species listed in the December 15, 1980, notice of review were considered to be petitioned, and the deadline for a finding on those species, including *Primula maguirei*, was October 13, 1983.

On October 13, 1983, the petition finding was made that listing *Primula maguirei* was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. Such petitions are recycled under section 4(b)(3)(C)(i). The Service published a proposed rule to list *Primula maguirei* as a threatened species on April 13, 1984 (49 FR 14771), constituting the next 1-year finding that would have been required on or before October 13, 1984.

Summary of Comments and Recommendations

In the April 13, 1984, proposed rule (49 FR 14771) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in *The Logan Herald Journal* on May 14, 1984, which invited general public comment. Six comments were received. Summaries of the comments and the Service's response are discussed below. No public hearing was requested prior to May 29, 1984. However, a meeting under the auspices of the Utah Governor's Office of Planning and Budget was held June 18, 1984. This meeting is also summarized below.

Five comments supported the listing of *Primula maguirei* as threatened without the designation of critical habitat and one comment opposed the listing of the species. The Forest Service expressed support for the proposal, and indicated that other activities such as the construction of trails, bike paths, and power transmission line corridors may be potential threats to *Primula maguirei*.

Utah Governor S.M. Matheson supported the proposal, and informed the Service that no populations of *Primula maguirei* have been identified on State lands. The final rule has been corrected to reflect this comment. The Governor's Office also indicated that the State has no plans for Highway 89 development at this time and the Utah Department of Transportation has no current plans for highway work in the vicinity of *Primula maguirei* that would affect the plant populations.

Dr. Arthur Cronquist of the New York Botanical Garden supported the proposal, and suggested the Service modify the collection dates to include several more, which he provided the Service. The final rule reflects this information. Two additional comments of general support for the proposal were received from G.E. Gordon, Utah Wildlife Federation, and L.M. Shultz, Utah State University.

The Utah Cattlemen's Association opposed the listing of *Primula maguirei* because of concern regarding the effect that a listed plant species would have on future U.S. Highway 89 improvement projects in Logan Canyon. Highway 89 is the primary route from the regional commercial and cultural center of Logan to summer cattle ranges in the Bear River Range and to agricultural areas of the Bear Lake region of northern Utah and southeastern Idaho. The Utah Cattlemen's Association believes that public safety will be enhanced by improvements on Highway 89, which passes through *Primula maguirei* habitat, and that this should outweigh any consideration for absolute preservation of the Maguire primrose. It suggests that adequate protection could be extended to the species through the National Forest Management Act (Title 2600, Chapter 2670.3(2)). The Service recognizes the concerns of this group and will work with the necessary State and Federal agencies through the section 7 interagency consultation process in an effort to resolve potential conflicts between road construction and the conservation of *Primula maguirei* in Logan Canyon.

A public meeting was held on June 18, 1984, in Ogden, Utah. Representatives from the Utah Governor's Office, Utah Department of Transportation, Utah Division of Wildlife Resources, Utah Division of State Lands and Forestry, Utah State University, U.S. Forest Service, and U.S. Fish and Wildlife Service participated. The effect of listing *Primula maguirei* on possible future improvements on Highway 89 through Logan Canyon as well as foot trail and campground development was discussed. It was pointed out by Utah State University and U.S. Forest Service biologists that *Primula maguirei* is essentially restricted to north facing, moss covered limestone cliffs at or near the bottom of Logan Canyon. Alteration of the microenvironment of Logan Canyon may adversely affect the Maguire primrose. Two factors were identified as being of special concern:

1. Cold air drainage down Logan Canyon may be a factor in the location of specific populations of the Maguire primrose. Any change in the geomorphology of the canyon may alter the cold air drainage patterns which may in turn adversely affect one or more populations of the species.

2. Canyon bottom vegetation may have a moderating effect on adjacent cliffs that provide habitat for the Maguire primrose, buffering the possibly adverse thermal effect of the existing paved highway through the canyon. Removal of canyon bottom tree groves for highway or campground construction may alter the microenvironment of the lower canyon cliffs, which in turn may adversely affect populations of the species.

The State Department of Transportation and the U.S. Forest Service both stated that there are no current plans for highway or

campground improvements other than routine maintenance, and that populations of *Primula maguirei* would be avoided when projects are within its range. No State lands are in the immediate vicinity of *Primula maguirei* populations.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Primula maguirei* should be classified as a threatened 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 (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Primula maguirei* L.O. Williams (Maguire primrose) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range. Primula maguirei* is found only in Logan Canyon, Cache County, Utah (Welsh and Thorne 1979; Welsh 1979; Beedlow *et al.* 1980). A 1980 survey located two new populations in addition to the seven previously known, bringing the total known populations to nine (Beedlow *et al.* 1980). Increased human activities in Logan Canyon pose a threat to this species. Rock climbing activity is presently damaging some plants; climbers "clean" vegetation from cracks and ledges as they climb (Beedlow *et al.* 1980). Any transportation of utility construction along U.S. Highway 89 from the mouth of Logan Canyon to the Right Fork of Logan Canyon without consideration of *Primula maguirei* could impact the species. Development of campgrounds in the Logan Canyon area also may impact the species (Welsh 1979).

B. *Overutilization for commercial, recreational, scientific, or educational purposes. Primula maguirei* is a beautiful flowering plant that could be used for ornamental purposes and because of this is subject to overcollection. Therefore, exploitation for commercial and amateur gardening is a potential threat (Welsh and Thorne 1979).

C. *Disease or predation.* None known.

D. *The inadequacy of existing regulatory mechanisms.* No State laws or regulations currently protect *Primula maguirei.* The U.S. Forest Service has established a national policy, based on the National Forest Management Act, of protecting species that it has designated as "sensitive" species (Title 2600, Chapter 2670.3(2)). *Primula maguirei* has received such a classification and hence it is the policy of the U.S. Forest Service to provide for its protection. Listing of this species under the Endangered Species Act will provide additional protection and the necessary regulations to aid the U.S. Forest Service in carrying out its national sensitive species policy on behalf of *Primula maguirei.*

E. *Other natural or manmade factors affecting its continued existence.* None known.

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 *Primula maguirei* as threatened. While not in immediate danger of extinction *Primula maguirei* is rare, restricted, and highly vulnerable to modification of its habitat. The status of threatened most closely follows the intent of the Endangered Species Act for this species. A decision to take no action would exclude *Primula maguirei* from needed protection available under the Act. For the reasons discussed below, critical habitat is not being determined.

Critical Habitat

Section 4(a)(3) of the 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 is not prudent for the species at this time. As discussed under factor B in the Summary of Factors Affecting the Species, *Primula maguirei* is potentially threatened by taking. Publication of critical habitat maps and descriptions would make this species even more vulnerable and increase enforcement problems. Because *Primula maguirei* occurs only on U.S. Forest Service land and the Act requires Federal agencies to carry out programs for the conservation of listed species, and because the Forest Service is aware of the localities of *Primula maguirei* and will need to protect its essential habitat once the species is listed, the determination of critical habitat would not provide any additional benefits for the species. Therefore, it would not be prudent to determine critical habitat for *Primula maguirei* at this time.

Available Conservation Measures

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

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Primula maguirei*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under

certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Primula maguirei*, although a potentially desirable horticultural species, is not common in cultivation. Its rarity in the wild also precludes any significant trade.

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. Section 4(d) allows for the provision of such protection to threatened species through regulations. This protection will apply to *Primula maguirei* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) of the Act, until revised regulations are promulgated to incorporate the 1982 Amendments. Proposed regulations implementing this prohibition were published on July 8, 1983 (48 FR 31417), and it is anticipated that these will be made final following public comment. *Primula maguirei* is known only from lands under the jurisdiction of the U.S. Forest Service. It is not known if a significant number of collecting permits will be requested. 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 under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Literature Cited

Beedlow, Peter A., John C. Carter, and Frank J. Smith. 1980. *Primula maguirei* L. Wms. (Primulaceae): A Preliminary Report on the Population Biology of an Endemic Plant. Bio-Resources, Inc., Logan, Utah. 2 pp.

Welsh, S.L. 1979. Status Report: *Primula maguirei*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.

Welsh, S.L., and K.H. Thorne. 1979. Illustrated Manual of Proposed Endangered and Threatened Plants of Utah. U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service, Denver, Colorado. 318 pp.

Williams, Louis O. 1936. Revision of the Western Primulas. American Midland Naturalist 17:741–748.

Author

The primary author of this final rule is Mr. John L. England, Endangered Species Field Office, U.S. Fish and Wildlife Service, 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104. Dr. James L. Miller of the Regional Endangered Species Division, U.S. Fish and Wildlife Service, Denver, Colorado, 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 under Primulaceae, 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					
*	*	*	*	*	*	*
Primulaceae—Primrose family: *Primula maguirei*	Maguire primrose	U.S.A. (UT)	T	197	NA	NA
*	*	*	*	*	*	*

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–19908 Filed 8–20–85; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Rule To Determine Townsendia Aprica (Last Chance Townsendia) To Be a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service has determined *Townsendia aprica* (Last Chance townsendia) to be a threatened species under the authority of the Endangered Species Act, as amended. The Last Chance townsendia has three populations totaling approximately 2,000 individuals in Sevier, Emery, and Wayne Counties, Utah. Most of the plants are on public land managed by the Bureau of Land Management; a few are on private land. One small population is in Capitol Reef National Park. Trampling by cattle, highway construction, off-road vehicle activity, and coal and petroleum exploration are current threats, and coal mining and oil and gas recovery are potential threats to this species. This final rule implements protection provided by the Endangered Species Act of 1973, as amended.

DATES: The effective date of this rule is September 20, 1985.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Service's Regional Endangered Species Office at 134 Union Boulevard, fourth floor, Lakewood, Colorado 80228, and the Endangered Species Field Office at Room 2078, 1745 W. 1700 S., Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: John L. England, Botanist, at the above Salt Lake City address (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Townsendia aprica (Last Chance townsendia) was discovered in 1966 by Stanley L. Welsh and James L. Reveal, and was described as a new species by them in 1968. It is a herbaceous perennial, less than one inch tall and 1–2 inches wide. *Townsendia aprica* is a member of the aster or sunflower family

(Asteraceae). Stems grow from an underground base and branch to form a dense mat or tuft low to the ground. The flower heads are about one-inch wide with almost no stalk and have distinctive yellow to golden rays. The ray florets are densely glandular, the pappus is very short. The golden ray florets make the plant unusual in its genus; ray florets of the other known taxa are white, blue, or red with fresh (Welsh and Reveal 1968), except in *Townsendia jonesii* var. *lutea* (Welsh 1983) where the yellow is not so intense.

It appears that *Townsendia aprica* has never been abundant. At present, there are 12 individual sites clustered in three known populations in eastern Sevier, adjacent western Emery, and north central Wayne Counties, Utah. *Townsendia aprica* occurs on silty soils of the Mancos Formation, and is associated with the pinyon-juniper vegetative community. The species location on this formation makes it vulnerable to disturbance by coal mining and oil and gas drilling activity.

The first discovered population, with about 400 individual plants, is in the Last Chance Creek drainage about six miles south of Fremont Junction in eastern Sevier County (Welsh 1978, Welsh and Thorne 1979, Welsh and Reveal 1968, England 1984). A second population, with about 1,500 plants, is located about six miles northeast of the Last Chance Creek population in scattered stands between Ivie Creek and Willow Springs Wash in extreme western Emery County (Harris 1980, England 1984, Welsh 1978; N.D. Atwood and S.L. Welsh, pers. comm.). The third population, with about 100 plants, is about 15 miles south of the other two populations in the extreme northern portion of Capitol Reef National Park (England 1984). A botanical collection made in 1971 may represent a fourth population east of the second population near Rock Canyon. The locality information on the museum specimen is not definite and recent searches for this population have failed to locate it (England 1984; N.D. Atwood, pers. comm.). The populations are threatened by current and potential off-road vehicle use, coal mining, petroleum exploration and development, cattle grazing and trampling, and highway construction.

Section 12 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2) of the 1973 Act (petition acceptance is now governed by section 4(b)(3) of the Act, as amended), and of its intention thereby to review the status of the plant taxa named within. On June 16, 1976, the Service published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to section 4 of the Act. This list was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1975 **Federal Register** notice. *Townsendia aprica* was included in the July 1975 notice (40 FR 27880) and the June 1976 proposal (41 FR 24527). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, Federal Register publication (43 FR 17909).

The Endangered Species Act amendments of 1978 required that all proposals over two years old be withdrawn. On December 10, 1979, the Service published a notice of withdrawal (44 FR 70796) of the still applicable portions of the June 1976 proposal along with other proposals that had expired. The July 1975 notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82480) of a new notice of review for plants, which included *Townsendia aprica*. No comments on this species have been received in response to the 1980 notice. On February 15, 1983, the Service published a notice in the **Federal Register** (48 FR 6752) of its prior finding that the petitioned action on this species may be warranted, in accordance with section 4(b)(3)(A) of the Act, as amended in 1982.

On October 13, 1983, the petition finding was made that listing *Townsendia aprica* 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). Such a finding requires a reevaluation of the petition, pursuant to section 4(b)(3)(C)(i) of the Act. Therefore a new finding was made that the petitioned action was warranted and the proposed rule to list the species as endangered in accordance with section 4(b)(3)(B)(ii) of the Act was published in the **Federal Register** (49 FR 22352) on May 29, 1984.

This endangered status was based upon the then current status information, which indicated that the species was found in only 3 disjunct populations with a total of about 215 individuals. During the 1984 field season and subsequent herbarium searches, the Service's Salt Lake City Field Office developed more accurate status information. *Townsendia aprica* is now known from at least 12 different locations, over an area about 30 miles across, and with a population in excess of 2,000 individuals. The Service, after evaluating the threats and the biological status of *Townsendia aprica*, has determined that the species should be listed as threatened rather than endangered as was proposed in the May 29, 1984, **Federal Register**.

Summary of Comments and Recommendations

In the May 29, 1984, proposed rule (49 FR 22352) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice was published in the Richfield *Reaper* on June 18, 1984, which invited general public comment. One comment was received. Gerald E. Gordon of the Utah Wildlife Federation commented in favor of the proposed listing by agreeing with the information as contained within the **Federal Register** proposal. No public hearing was requested.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Townsendia aprica* should be classified as a threatened species. Procedures found at section 4(a)(1) of the Endangered Species Act 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 threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Townsendia aprica* (Last Chance townsendia) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* At present, there are three known populations of *Townsendia aprica* within a ten-mile radius between Fremont Junction in extreme eastern Sevier County, Utah, and the northern portion of Capitol Reef

National Park in the extreme northwest corner of Wayne County, Utah (J. Anderson, pers. comm.). The two northern populations occupy habitat that corresponds with the geological strata (Blue Gate Shale) immediately above the coal-bearing seams (Ferron Sandstone) of the Mancos Formation. This area constitutes the bulk of the exposed coal seam area of the Emery Coal Field (Doelling and Smith 1983). Development of the Dog Valley Mine, located in the middle of Willow Springs Wash, has disturbed some potential habitat of *Townsendia aprica*. Coal mining development and production, especially strip mining along the exposed coal seams in the Emery coal field, has the potential of impacting and possibly eradicating 95 percent of the total population of *Townsendia aprica*. Most of the habitat of *Townsendia aprica* under Federal ownership (approximately 80 percent) is under lease either for coal or oil and gas. A cattle driveway and Utah Highway 72 traverse the habitat of the Last Chance Creek population of *Townsendia aprica*. Use of the livestock driveway is continually affecting this population by trampling. Proposed realignment and improvement of Highway 72 has the potential of also affecting this population. Unimproved roads provide access to all populations of *Townsendia aprica* exposing them to the possibility of vehicular disturbance (Harris 1980, MacBryde 1984, England 1984).

B. *Overutilization for commercial, recreational, scientific, or educational purpose.* None.

C. *Disease or predation.* None.

D. *The inadequacy of existing regulatory mechanisms. Townsendia aprica* is not specifically protected by any Federal or State laws or regulations. Known populations of *Townsendia aprica* are found on BLM, National Park Service, and private lands. Although the BLM is aware of this species, it cannot completely regulate activities affecting its survival. The small population in Capitol Reef National Park may be vulnerable to roadside disturbance unless actively protected.

E. *Other natural or manmade factors affecting its continued existence.* The small size and few populations of *Townsendia aprica* make it vulnerable to adverse changes in ecological factors associated with human activities.

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 *Townsendia aprica* as a threatened species. With only about 2,000 individuals known, the damage occurring, and other damage possible to the species' three populations, threatened status seems an accurate assessment of the species; condition. It is not prudent to propose critical habitat, because doing so would increase risk for the species, as discussed 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. *Townsendia aprica* is threatened by off-road vehicles damaging it and its habitat. Publication of critical habitat descriptions and maps would make this species even more vulnerable through possible wanton vandalism and would increase enforcement problems. Therefore, the Service finds that it would not be prudent to determine critical habitat for *Townsendia aprica*.

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, as appropriate, 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 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. Possible effects of this rule on the BLM might include restricting traffic to some existing roads, fencing to control cattle and vehicles, and administering leases so that the species is accommodated in mineral exploration or development activity.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general trade prohibitions and exceptions that apply to all threatened plant species. With respect to *Townsendia aprica*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, or sell or offer for sale this species in interstate or foreign commerce. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species, under certain circumstances. No such trade in *Townsendia aprica* is known. It is anticipated that few trade permits would ever be sought or issued since this species is not known in cultivation or common in the wild and is not of particular trade interest.

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. Section 4(d) allows for the provision of such protection to threatened species through regulations. This new protection will apply to *Townsendia aprica* once revised regulations are promulgated. Permits for exceptions to this prohibition are available through sections 10(a) and 4(d) 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 these will be made final following public comment. *Townsendia aprica* occurs primarily on public lands managed by the BLM. It is anticipated that few taking permits for the species would ever be requested, as this plant is not common in the wild and has not been of interest to collectors. 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 under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Literature Cited

Doelling, H.H., and M.R. Smith. 1983. Overview of Utah Coal Fields, 1982. Utah Geological and Mineral Survey, Bulletin 118.

England, [J.]L. 1984. Field report: Herbarium searches and field reconnaissance of *Townsendia aprica* populations. U.S. Fish and Wildlife Service, Salt Lake City, Utah. 4 pp.

Harris, J. 1980. Inventory of endangered and threatened plants on proposed coal lease lands in Emery County. Bureau of Land Management, Moab, Utah. 3 pp.

MacBryde, B. 1984. Supplemental status information, *Townsendia aprica*, January 1984. U.S. Fish and Wildlife Service, Washington, D.C. 1 p.

Welsh, S.L. 1978. Status report: *Townsendia aprica*. U.S. Fish and Wildlife Service, Denver, Colorado. 6 pp.

Welsh, S.L. 1983. Utah flora: Compositae (Asteraceae). Great Basin Naturalist 43(2):179-357.

Welsh, S.L., and J.L. Reveal. 1968. A new species of *Townsendia* (Compositae) from Utah. Brittonia 20:375-377.

Welsh, S.L., and K.H. Thorne. 1979. Illustrated manual of proposed endangered and threatened plants of Utah. U.S. Fish and Wildlife Service, Bureau of Land Management, and U.S. Forest Service; Denver, Colorado. 318 pp.

Author

The primary author of this rule is John L. England, Botanist, U.S. Fish and Wildlife Service, Salt Lake City Field Office, Salt Lake City, Utah. Dr. James L. Miller, of the Regional Endangered Species Division, U.S. Fish and Wildlife Service, Denver, Colorado, 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 under the family Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Asteraceae—Aster family:						
Townsendia aprica	Last Chance townsendia	U.S.A. (UT)	T	196	NA	NA

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-19911 Filed 8-20-85; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 20

Final Frameworks for Selecting Early Hunting Seasons on Certain Migratory Game Birds in the United States for the 1985-86 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final frameworks (i.e., the outer limits for dates and times when shooting may begin and end, hunting areas, and the numbers of birds which may be taken and possessed) for early season migratory bird hunting regulations from which States may select season dates and daily bag possession limits for the 1985-86 season. These seasons may open prior to October 1, 1985, and apply to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; and experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and special extended falconry seasons.

DATES: Effective on August 21, 1985. Selected season dates are to be transmitted to the U.S. Fish and Wildlife Service (hereinafter the Service) for publication in the Federal Register as amendments to §§ 20.103 through 20.106 and 20.109 of 50 CFR Part 20.

ADDRESSES: Season selections from States are to be mailed to: Director (MBMO Room 3252), U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, Department of the Interior, Washington, DC 20240, telephone (202) 254-3207.

SUPPLEMENTARY INFORMATION: On March 14, 1985, the U.S. Fish and Wildlife Service published for public comment in the Federal Register (50 FR 10276) proposals to amend 50 CFR Part 20, with comment periods ending June 20, 1985, for Alaska, Hawaii, Puerto Rico and the Virgin Islands frameworks; July 15, 1985, for other early season frameworks; and August 19, 1985, for late season frameworks. That document dealt with establishment of seasons, limits and shooting hours for migratory game birds under §§ 20.101 through 20.107 and 20.109 of Subpart K. A supplemental proposed rulemaking for both the early and late hunting season frameworks appeared in the Federal Register dated June 4, 1985 (50 FR 23459).

On June 20, 1985, a public hearing was held in Washington, D.C., to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, sandhill cranes and other species. The meeting was announced in the **Federal Register** on March 14, 1985, (50 FR 10276) and June 4, 1985 (50 FR 23459). Proposed hunting regulations were discussed for these species and for common snipe; rails; common moorhens and purple gallinules; September teal seasons in the Mississippi and Central Flyways; experimental early duck seasons in Florida, Iowa, Kentucky and Tennessee; special sea duck seasons in the Atlantic Flyway; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; extended falconry seasons and hunting regulations for Alaska, Puerto Rico and the Virgin Islands. Public comments on these matters were received.

On July 5, 1985, the Service published in the **Federal Register** (50 FR 27638) a third document in the series of proposed and final rulemaking ⅓documents dealing specifically with proposed frameworks for the 1985–86 season from which, when finalized, wildlife conservation agency officials may select season dates for hunting certain migratory birds in their respective jurisdictions during the 1985–86 season. On July 26, 1985, the Service published in the **Federal Register** (50 FR 30424) a fourth document in the series which dealt specifically with final frameworks for Alaska, Puerto Rico and the Virgin Islands.

This rulemaking is the fifth in the series and deals specifically with final frameworks for other early season migratory game bird hunting regulations from which State wildlife conservation agency officials may select season dates and daily bag and possession limits for the 1985–86 season. These seasons may open prior to October 1, 1985, and apply to mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens and purple gallinules; teal (September only, in designated States); sea ducks (Atlantic Flyway only); experimental September duck seasons in Florida, Iowa, Kentucky and Tennessee; an experimental early goose season framework in a portion of Michigan; sandhill cranes in the Central Flyway and Arizona; sandhill cranes and Canada geese in southwestern Wyoming; and special extended falconry seasons.

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

Review of Public Comments

The Service has already responded to earlier comments on proposed regulations published in the **Federal Register** on March 14, 1985 (50 FR 10276) and June 4, 1985 (50 FR 23459), and discussed at the June 20, 1985, Public Hearing in Washington, DC. These responses appeared in the **Federal Register** on June 4, 1985 (50 FR 23459), July 5, 1985 (50 FR 27638), and July 26, 1985 (50 FR 30424). Two additional comments, relating to proposed early season frameworks, have been received and are discussed here. They are discussed in the same order as the items, to which they apply, were listed in previous 1985 **Federal Register** publications.

2. *Framework dates for ducks and geese in the continental United States.* In the June 4, 1985, **Federal Register** (at 50 FR 23463) the Service gave notice of the recommendations received from the Mississippi Flyway Council Upper Region Regulations Committee requesting that the September 26 framework opening date for goose hunting in the western portion of Michigan's Upper Peninsula (UP) be expanded to include the entire UP. The Service's response indicated that because the upcoming 1985–86 waterfowl season is the final year of the scheduled 3-year study, expansion of the early goose season option to other areas should be deferred until Michigan's ongoing goose season framework extension study has been completed and their final report has been submitted to and evaluated by the Service and Mississippi Flyway Council.

By letter dated July 12, 1985, Michigan requested that the Service reconsider its position on the Upper Region's recommendation because it would not affect the evaluation of their experimental season and would simplify goose hunting regulations across the UP.

The State also requested that, in an effort to reduce unintended harvest of Mississippi Valley Population Canada geese and/or Tennessee Valley Population Canada geese during their late extended hunting season in the Southern Michigan Goose Management Area (to control local giant Canada geese) they be given the option to conduct a hunt for local giant Canada geese in the Area on September 14–16, 1985. Michigan indicated that the timing of the season would precede the arrival of northern migrant Canada geese into the Area and the 3 days in September would be taken in lieu of any December hunting days for the late extended season.

Response. The Service continues to believe that until Michigan's experimental early goose season in the western UP has been completed and its effect on the waterfowl resource has been evaluated by the flyway council and the Service, expansion of the option for an early goose season should be deferred.

The Service noted that Michigan's request for a 3-day hunting season in September for the control of local giant Canada geese has not received Mississippi Flyway Council review and therefore defers action on it pending receipt of recommendation from the Council.

6. *September teal season.* Michigan, by letter dated July 12, 1985, requested that the Service include the State among those in the Central and Mississippi Flyways eligible for selection of a 1985 September teal season.

Response. States, such as Michigan, that have breeding populations of teal are classified as waterfowl production States and are not presently offered a September teal season because the Service believes that additional hunting pressure in September would be detrimental to local breeding populations. The Service favors continuing to limit the September teal season option to States in the Central and Mississippi Flyways not classified as waterfowl production States. It is noted that in lieu of the September teal season option, Michigan has the option to include additional teal in the daily bag limit during a portion of its regular duck hunting season.

21. *Woodcock.* One individual from Maine requested that the Service reconsider its proposed changes in woodcock hunting regulations in the Atlantic Flyway for 1985. He suggested that the restrictive changes were unwarranted in view of increased counts of woodcock at Moosehorn National Wildlife Refuge and general reports of above average brood rearing conditions.

Response. The Service believes that while increased counts of woodcock at Moosehorn Refuge are gratifying, such local conditions do not make the proposed changes unwarranted. More important considerations are that counts in Maine and in the Atlantic Flyway as a whole were up only 4.2 and 7.6 percent, respectively, from 1984 counts. Despite these modest increases over 1984 and a favorable outlook for production in 1985, woodcock populations in Maine and the Atlantic Flyway remain at low levels. The

Service views the proposed restrictive changes in hunting regulations as being necessary to adjust harvest opportunities to a level commensurate with the populations' status.

Comments received are available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

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 25241). 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 purposes 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." The Service therefore initiated Section 7 consultation under the Endangered Species Act for the proposed hunting season frameworks.

On June 18, 1985, the Acting Chief, Office of Endangered Species, concluded that the proposed actions were not likely to jeopardize the continued existence of listed species.

As in the past, hunting regulations this year are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species.

The Service's biological opinions resulting from its consultation under Section 7 are considered public documents and are available for inspection in the Office of Endangered Species and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act and Executive Order 12291

In the **Federal Register** dated March 14, 1985 (50 FR 10276), the Service reported measures it had undertaken to comply with requirements for 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 substantial 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, DC 20240.

Memorandum of Law

The Service published its Memorandum of Law, as required by section 4 of Executive Order 12291, in the **Federal Register** dated July 26, 1985 (50 FR 30424).

Authorship

The primary author of this final rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

Regulations Promulgation

The rulemaking process for migratory bird hunting must, by its nature, operate under severe time constraints. However, the Service is of the view that every attempt should be made to give the public the greatest possible opportunity to comment on the regulations. Thus, when the proposed rules were published March 14, June 4, and July 5, the Service established what it believed were the longest periods possible for public comment. In doing this, the Service recognized that at the periods' close, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the Service is of the opinion that States would have insufficient time to select their season dates, shooting hours and limits; to communicate those selections to the Service; and finally establish and publicize the necessary regulations and procedures to implement their decisions.

Therefore, the Service under authority of the Migratory Bird Treaty Act of July 3, 1918, as amended, (40 Stat. 755; 16 U.S.C. 701–711), prescribes final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials may select hunting season dates and other options. Upon receipt of season and option selections from State officials, the Service will publish in the **Federal Register** a final rulemaking amending 50 CFR Part 20 to reflect seasons, limits, and shooting hours for the contiguous United States, Alaska, Hawaii, Puerto Rico and the Virgin Islands for the 1985–86 season.

The Service therefore finds that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act and these frameworks will, therefore, take effect immediately upon publication.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Final Regulations Frameworks for 1985–86 Early Hunting Seasons on Certain Migratory Birds

Pursuant to the Migratory Bird Treaty Act, the Secretary of the Interior has approved proposed frameworks which prescribe season lengths, limits, shooting hours and outside dates within which States may select seasons for mourning doves; white-winged and white-tipped doves; band-tailed pigeons; rails; woodcock; snipe; common moorhens; purple gallinules; September teal seasons; experimental duck seasons opening in September in Iowa, Florida, Kentucky, and Tennessee; sea ducks (scoters, eider and oldsquaw) in certain defined areas of the Atlantic Flyway; sandhill cranes; sandhill cranes-Canada geese in southwestern Wyoming; experimental early goose framework in a portion of Michigan; and special extended falconry seasons. For the guidance of State conservation agencies, these frameworks are summarized below.

Notice

Any State desiring its hunting seasons for mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, rails, woodcock, common snipe, common moorhens, purple gallinules, sandhill cranes or special extended falconry seasons to open in September must make its selection no later than July 26, 1985. States desiring these seasons to open after September 27 may make their selections at the time they select regular waterfowl seasons. Season selections for the 4 States offered experimental September duck

seasons must also be made by July 26, 1985.

Atlantic Flyway Coastal States desiring their seasons on sea ducks in certain defined areas to open in September must make their selection no later than July 26, 1985. Those desiring this season to open after September may make their selections when they select their regular waterfowl seasons.

Outside Dates: All dates noted are inclusive.

Shooting Hours: Between ½ hour before sunrise and sunset daily for all species except as noted below. The hours noted here and elsewhere also apply to hawking (taking by falconry).

Mourning Doves

Outside Dates: Between September 1, 1985 and January 15, 1986, except as otherwise provided, States may select hunting seasons and bag limits as follows:

Eastern Management Unit

(All States east of the Mississippi River and Louisiana)

Hunting Seasons, and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively, or

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Shooting Hours: Between ½ hour before sunrise and sunset daily.

Zoning:—Alabama, Georgia, Illinois, Louisiana, and *Mississipi,* may elect to zone their States as follows:

A. Two zones per State having the following descriptions or division lines:

Alabama—South Zone: Mobile, Baldwin, Excambia, Covington, Coffee, Geneva, Dale, Houston and Henry Counties. North Zone: Remainder of the State.

Georgia—The Northern Zone shall be that portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County, thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans to Bulloch County; thence north along the western border of Bulloch County to Highway 301; thence northeast along Highway 301 to the South Carolina line.

Illinois—U.S. Highway 36.

Louisiana—Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

Mississippi—U.S. Highway 84.

B. Within each zone, these States may select hunting seasons of not more than 70 days (or 60 under the alternative) which may be split into not more than 3 periods.

C. The hunting seasons in the South Zones of Alabama, Georgia, Louisiana and Mississippi may commence no earlier than September 20, 1985.

Central Management Unit

(Arkansas, Colorado, Iowa, Kansas, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas and Wyoming).

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24, respectively,

Not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

Texas Zoning.—In addition to the basic framework and the alternative, Texas may select hunting seasons for each of 3 zones described below.

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Interstate Highway 20; northeast along Interstate Highway 20 to Interstate Highway 30 at Fort Worth; northeast along Interstate Highway 30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. 90 to San Antonio; then southeast on U.S. Highway 87 to port Lavaca (*or,* as an option from San Antonio: then northeast on Interstate 10 to Orange).

Special White-Winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Fort Hancock; north along FR 1088 to State Highway 20; west along State Highway 20 to State Highway 148; north along State Highway 148 to Interstate Highway 10 at Fort Hancock; east along Interstate Highway 10 to Van Horn, south and east on U.S. Highway 90 to Uvalde, south on U.S. Highway 83 to State Highway 44; east along State Highway 44 to State Highway 16 at Freer; south along State Highway 16 to State Highway 285 at Hebbronville; east along State Highway 285 to FM 1017; southeast along FM 1017 to State Highway 186 at Linn; east along State Highway 186 to the Mansfield Channel at Port Mansfield east along the Mansfield Channel to the Gulf of Mexico.

Central Zone—That portion of the State lying between the North and South Zones.

Hunting seasons in these zones are subject to the following conditions:

A. The hunting season may be split into not more than 2 periods, except that, in that portion of Texas where the special 2-day white-winged dove season is allowed, a limited mourning dove season may be held concurrently with the white-winged dove season and with shooting hours coinciding with those for white-winged doves (see white-winged dove frameworks).

B. Each zone may have a season of not more than 70 days (or 60 under the alternative). The North and Central zones may select a season between September 1, 1985 and January 25, 1986; the South zone between September 20, 1985 and January 25, 1986.

C. Except during the special 2-day white-winged dove season in the South Zone, each zone may have an aggregate daily bag limit of 12 doves, (or 15 under the alternative), no more than 2 of which may be white-winged doves and no more than 2 of which may be white-tipped doves. The possession limit is double the daily bag limit.

Western Management Unit (Arizona, California, Idaho, Nevada, Oregon, Utah and Washington)

Hunting Seasons and Daily Bag and Possession Limits: Not more than 70 days with bag and possession limits of 12 and 24 respectively, or

In all states except Arizona, not more than 60 days with bag and possession limits of 15 and 30, respectively.

Hunting seasons may be split into not more than 3 periods under either option.

White-Winged Doves

Outside Dates:—Arizona, California, Nevada, New Mexico, and *Texas* (except as shown below) may select hunting seasons between September 1 and December 31, 1985. *Florida* may select hunting seasons between September 1, 1985 and January 15, 1986.

Arizona may select a hunting season of not more than 29 consecutive days running concurrently with the first period of the split mourning dove season. The daily bag limit may not exceed 12 mourning and white-winged doves in the aggregate, no more than 6 of which may be white-winged doves, and a possession limit twice the daily bag limit after the opening day.

In the *Nevada* counties of Clark and Nye, and in the *California* counties of Imperial, Riverside and San Bernardino, the aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24, respectively, with a 70-day season, or 15 and 30 if the 60-day option for mourning doves is selected; however, in either season, the bag and possession limits of white-winged doves may not exceed 10 and 20, respectively.

New Mexico may select a hunting season with daily bag and possession limits not to exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected) white-winged and mourning doves, respectively, singly or in the aggregate of the 2 species. Dates, limits, and hours are to conform with those for mourning doves.

Texas may select a hunting season of not more than 2 days for the special white-winged dove area of the South Zone. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate including no more than two mourning doves and two white-tipped doves per day; and the possession limit may not exceed 20 white-winged, mourning and white-tipped doves in the aggregate including no more than four mourning doves and four white-tipped doves in possession; and

In addition, *Texas* may also select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1985, and January 25, 1986, and coinciding with the mourning dove season. The daily bag limit may not exceed 12 white-winged, mourning and white-tipped doves (or 15 under the alternative) in the aggregate, of which not more than 2 may be white-winged doves and not more than 2 of which may be white-tipped doves. The possession limit may not exceed 24 white-winged, mourning and white-tipped doves (or 30 under the alternative) in the aggregate, of which not more than 4 may be white-winged doves and not more than 4 of which may be white-tipped doves.

Florida may select a white-winged dove season of not more than 70 days (or 60 under the alternative for mourning doves) to be held between September 1, 1985, and January 15, 1986, and coinciding with the mourning dove season. The aggregate daily bag and possession limits of mourning and white-winged doves may not exceed 12 and 24 (or 15 and 30 if the 60-day option for mourning doves is selected); however, in either season, the bag and possession limits of white-winged doves may not exceed 4 and 8, respectively.

Band-Tailed Pigeons

Pacific Coast States and Nevada—California, Oregon, Washington and the Nevada counties of Carson City, Douglas, Lyon, Washoe, Humboldt, Pershing, Churchill, Mineral and Storey.

Outside Dates—Between September 1, 1985, and January 15, 1986.

Hunting, Seasons, and Daily Bag and Possession Limits—Not more than 30 consecutive days, with a bag and possession limit of 5. Each band-tailed pigeon hunter in Nevada must have in possession while hunting a permit issued by the State for the purpose of collecting harvest and hunter participation data.

Zoning—California may select hunting seasons of 30 consecutive days in each of the following two zones:

1. In the counties of Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama and Trinity; and

2. The remainder of the State.

Four-Corners—Arizona, Colorado, New Mexico and Utah.

Outside Dates—Between September 1 and November 30, 1985.

Hunting Seasons, and Daily Bag and Possession Limits—Not more than 30 consecutive days, with bag and possession limits of 5 and 10, respectively.

Areas—These seasons shall be open only in the areas delineated by the respective States in their hunting regulations.

Zoning—New Mexico may be divided into North and South Zones along a line following U.S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and along Interstate Highway 25 from Socorro to the Texas State line. Hunting seasons not to exceed 20 consecutive days may be selected between September 1 and November 30, 1985, in the North Zone and October 1 and November 30, 1985, in the South Zone.

Rails

(Clapper, King, Sora and Virginia)

Outside Dates—States included herein may select seasons between September 1, 1985, and January 20, 1986, on clapper, king, sora and Virginia rails as follows:

Hunting Seasons—The season may not exceed 70 days. Any State may split its season into two segments.

Clapper and King Rails

Daily Bag and Possession Limits—In *Rhode Island, Connecticut, New Jersey, Delaware,* and *Maryland,* 10 and 20 respectively, singly or in the aggregate of these two species. In *Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina,* and *Virginia,* 15 and 30, respectively, singly or in the aggregate of the two species.

Sora and Virginia Rails

Daily Bag and Possession Limits—In the Atlantic, Mississippi and Central [1] Flyways and portions of Colorado, Montana, New Mexico and Wyoming in the Pacific Flyway,[2] 25 daily and 25 in possession, singly or in the aggregate of the two species.

Woodcock

Outside Dates—States in the Atlantic Flyway may select hunting seasons between October 1, 1985, and January 31, 1986. States in the Central and Mississippi Flyways may select hunting seasons between September 1, 1985, and February 28, 1986.

Hunting Seasons, and Daily Bag and Possession Limits: In the Atlantic Flyway, seasons may not exceed 45 days, with bag and possession limits of 3 and 6, respectively; in the Central and Mississippi Flyways, seasons may not

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[1] The Central Flyway is defined as follows: Colorado (east of the Continental Divide), Kansas, Montana (east of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nebraska, New Mexico (east of the Continental Divide but outside the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dokota, Texas and Wyoming (east of the Continental Divide).

[2] The Pacific Flyway is defined as follows: Arizona, California, Idaho, Nevada, Oregon, Utah and Washington; those portions of Colorado and Wyoming lying west of the Continental Divide; New Mexico west of the Continental Divide plus the entire Jicarilla Apache Indian Reservation; and in Montana, the counties of Hill, Chouteau, Cascade, Meagher and Park, and all counties west thereof.

exceed 65 days, with bag and possession limits of 5 and 10, respectively. Seasons may be split into two segments.

Zoning—New Jersey may select seasons by north and south zones divided by State Highway 70. The season in each zone may not exceed 35 days.

Common Snipe

Outside Dates—Between September 1, 1985, and February 28, 1986. In *Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland* and *Virginia* the season must end no later than January 31.

Hunting Seasons, and Daily Bag and Possession Limits—Seasons may not exceed 107 days in the Atlantic, Mississippi and Central Flyways and 93 days in Pacific Flyway portions of Montana, Wyoming, Colorado and New Mexico. In the remainder of the Pacific Flyway the season shall coincide with the duck seasons. Seasons may be split into two segments. Bag and possession limits are 8 and 16, respectively.

Common Moorhens And Purple Gallinules

Outside Dates—September 1, 1985, through January 20, 1986, in the Atlantic and Mississippi Flyways and September 1, 1985, through January 19, 1986, in the Central Flyway. States in the Pacific Flyway must select their hunting seasons to coincide with their duck seasons.

Hunting Seasons, and Daily and Possession Limits—Seasons may not exceed 70 days in the Atlantic, Mississippi and Central Flyways; in the Pacific Flyway seasons may be the same as the duck seasons. Seasons may be split. Bag and possession limits are 15 and 30 common moorhens and purple gallinules, singly or in the aggregate of the two species, respectively; except in the Pacific Flyway the daily bag and possession limits may not exceed 25 coots and common moorhens, singly or in the aggregate of the two species.

Sandhill Cranes

Regular Seasons in the Central Flyway—Seasons not to exceed 58 days between September 1, 1985, and February 28, 1986, may be selected in the following States: *Colorado* (the Central Flyway portion except the San Luis Valley); *Kansas; Montana* (the Central Flyway portion except that area south of I–90 and west of the Bighorn River); *North Dakota* (west of U.S. 281); *South Dakota;* and *Wyoming* (in the counties of Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte and Weston).

For the remainder of the flyway, seasons not to exceed 93 days between September 1, 1985 and February 28, 1986 may be selected in the following States: *New Mexico* (the counties of Chaves, Curry, DeBaca, Eddy, Lea, Quay and Roosevelt); *Oklahoma* (that portion west of I–35); and *Texas* (that portion west of a line from Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Sonora; U.S. 277 to Abilene; Texas 351 to Albany; U.S. 283 to Vernon; and U.S. 183 to the Texas-Oklahoma boundary).

Bag and Possession Limits—3 and 6, respectively.

Permits—Each person participating in the regular sandhill cranes season must obtain and have in his possession while hunting, a valid Federal sandhill crane hunting permit.

Special Seasons in the Pacific Flyway—Arizona may select a sandhill crane season subject to the following conditions:

1. The season may not exceed 6 days in November 1985.

2. The hunting area is confined to Game Management Units 30A, 30B 31, and 32.

3. Each hunter must obtain and have in possession while hunting a special permit issued by the State. No more than 200 permits may be issued. Each permittee may take 2 sandhill cranes per season.

4. Emergency closures for all crane hunting may be invoked as necessary.

Special Sandhill Crane-Canada Goose Season

Wyoming may select a season(s) on sandhill cranes and Canada geese subject to the following conditions:

1. Outside dates for the season(s) are September 1–22, 1985.

2. Hunting will be by State permit, with 125 permits issued for the Bear River drainage and 125 permits issued for Star Valley, all in Lincoln County. Each permittee may take 2 sandhill cranes and 3 Canada geese per season.

3. Emergency closures for all crane hunting may be invoked as necessary.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates—Between September 15, 1985, and January 20, 1986.

Hunting Seasons, and Daily Bag and Possession Limits—Not to exceed 107 days, with bag and possession limits of 7 and 14, respectively, singly or in the aggregate of these species.

Bag and Possession Limits During Regular Duck Season—In the Atlantic Flyway, States may set, in addition to the limits applying to other ducks during the regular duck season, a daily limit of 7 and a possession limit of 14 scoter, eider and oldsquaw ducks, singly or in the aggregate of these species.

Areas—In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in *Maine, New Hampshire, Massachusetts, Rhode Island* and *Connecticut;* in those coastal waters of the State of *New York* lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters of *New York* lying south of Long Island; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island and emergent vegetation in *New Jersey, South Carolina,* and *Georgia;* and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 years or open water from any shore, island and emergent vegetation in *Delaware, Maryland, North Carolina* and *Virginia;* and provided that any such areas have been described, delineated and designated as special sea duck hunting areas under the hunting regulations adopted by the respective States. In all other areas of these States and in all other States in the Atlantic Flyway, sea ducks may be taken only during the regular open season for ducks.

Deferred Selection—Any State desiring its sea duck season to open in September must make its selection no later than July 26, 1985. Any State desiring its sea duck season to open after September may make its selection at the time it selects the waterfowl season.

September Teal Season

Outside Dates—Between September 1 and September 30, 1985, an open season on all species of teal may be selected by *Alabama, Arkansas, Colorado* (Central Flyway portion only), *Illinois, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico,* (Central Flyway portion only), *Ohio, Oklahoma, Tennessee* and *Texas* in areas delineated by State regulations.

Hunting Seasons, and Bag and Possession Limits—Not to exceed 9 consecutive days, with bag and possession limits of 4 and 8, respectively.

Shooting Hours—From sunrise to sunset only.

Deadline—States must advise the Service of season dates and special provisions to protect non-target species by July 26, 1985.

Special September Duck Seasons

Iowa September Duck Season—Iowa may experimentally hold a portion of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. In 1985, the 5-day season segment may commence no earlier than September 21, with daily bag and possession limits being the same as those in effect during the 1985 regular duck season.

Tennessee, Kentucky and Florida September Duck Seasons—Experimental 5-consecutive-day duck seasons may be selected in September by *Tennessee, Kentucky,* and *Florida* subject to the following conditions:

1. In *Kentucky* and *Tennessee* the seasons will be in lieu of September teal seasons; in *Florida* the season will be in lieu of the extra teal option.

2. In all States, the daily bag limit will be 4 ducks, no more than 1 of which may be a species other than teal or wood ducks, and the possession limit will be double the daily bag limit.

Experimental September Goose Season

Michigan—In the counties of Baraga, Dickinson, Delta, Gogebic, Houghton, Iron, Keweenaw, Marquette, Menominee and Ontonagon, the framework opening date for geese is September 26. Season length and limits for geese in this area will be established later with other regulations for the regular waterfowl season.

Special Falconry Regulations

Extended Seasons—Falconary 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 season framework dates and, if offered and accepted, other special season framework dates for hunting.

Daily Bag and Possession Limits—Falconry 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 seasons 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 seasons, special scaup season, special scaup and goldeneye season or falconry season) exceed 107 days for a species in one geographical area.

Dated: August 6, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-19873 Filed 8-20-85; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 50, No. 162
Wednesday, August 21, 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 446

[Docket No. 2550S]

Walnut Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to revise and reissue the Walnut Crop Insurance Regulations (7 CFR Part 446), effective for the 1986 and succeeding crop years. The intended effect of this rule is to: (1) Change to a mandatory "Actual Production History" (APH) basis by removing the Premium Adjustment Table and providing for cancellation for not furnishing records; (2) change the method of computing indemnities when acreage, share, or practice is underreported; (3) limit the insured's share of an indemnity on crops sold before harvest; (4) shorten the length of time an insured has to give notice when claiming an indemnity; (5) add a definition for the term "Loss ratio;" and (6) redefine "Unit" to restrict division. 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 20, 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, DC, 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 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 July 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: (a) 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 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 Environmental Impact Statement is needed.

Other than minor changes in language and format, the principal changes in the walnut policy are:

1. Section 2.c.—Add a clause to change the method of calculating the insured's share of an indemnity on crops sold before harvest. This limits the insured's indemnity to his interest in the crop at the time of loss.

2. Section 5.—Remove the Premium Adjustment Table. The crop will be insured on an actual production history (APH) basis, and coverages will therefore reflect the actual production history of the crop on the unit.

Remove the provisions for the transfers of insurance experience and for premium computation when insurance has not been continuous. Deletion of the Premium Adjustment Table eliminates the need for these provisions.

3. Section 8.a.(4)—Shorten from 30 days to 10 days the time an insured has to give notice of loss when claiming an indemnity. This change will allow FCIC to determine indemnities in a more timely fashion.

4. Section 9.d.—When acres are underreported, the production from all acres will be applied against the report acres in calculating the indemnities. This change will reduce the complexity of calculations.

5. Section 15.c.—Add a clause to cancel the contract if production history is not furnished by the cancellation date. An exception will be allowed if the insured can show, prior to the cancellation date, that records are unavailable due to conditions beyond the insured's control. This clause is required by the proposed change to mandatory APH.

6. Section 17.—Add a definition for the term "Loss ratio" to clarify its use in section 5.

7. Section 17.—Amend the "Unit" definition by deleting the provision allowing unit division. The difficulty of maintaining and auditing accurate and adequate records of production by small units requires elimination of this provision.

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, Room 4096, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 446

Crop insurance, Walnut.

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 revise and reissue the Walnut Crop Insurance Regulations (7 CFR Part 446), effective for the 1986

and succeeding crop years, to read as follows:

PART 446—WALNUT CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1956 and Succeeding Crop Years

Sec.
446.1 Availability of walnut crop insurance.
446.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
446.3 OMB control numbers.
446.4 Creditors.
446.5 Good faith reliance on misrepresentation.
446.6 The contract.
446.7 The application and policy.

Authority: Secs. 506, 516, Pub. L. 75-430, 52 Stat. 73, 77 as amended (7 U.S.C. 1506, 1516).

Subpart—Regulations for the 1986 and Succeeding Crop Years

§ 446.1 Availability of walnut crop insurance.

Insurance shall be offered under the provisions of this subpart on walnuts in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended. The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation.

§ 446.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for walnuts which will be included in the actuarial table on file in applicable service offices and which may be changed from year to year.

(b) At the time the application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices contained in the actuarial table for the crop year.

§ 446.3 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400, Title 7, CFR.

§ 446.4 Creditors.

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

§ 446.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the walnut insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000.00, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Application for relief under this section must be submitted to the Corporation in writing.

§ 446.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation of a duly executed application for insurance by the Corporation. The contract shall cover the walnut crop as provided in the policy. The contract shall consist of the application, the policy, and the county actuarial table. Any changes made in the contract shall not affect its continuity from year to year. The forms referred to in the contract are available at the applicable service offices.

§ 446.7 The application and policy.

(a) Application for insurance on a form prescribed by the Corporation may be made by any person to cover such person's share in the walnut crop as landlord, owner-operator, or tenant. The application shall be submitted to the Corporation at the service office on or before the applicable closing date on file in the service office.

(b) The Corporation may discontinue the acceptance of applications in any county upon its determination that the insurance risk is excessive, and also, for the same reason, may reject any individual application. The Manager of the Corporation is authorized in any crop year to extend the closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the Federal Register upon the Manager's determination that no adverse selectivity will result during the period of such extension. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1986 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a walnut contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1986 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Walnut Insurance Policy for the 1986 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Walnut—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.)

AGREEMENT TO INSURE: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted Application, and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

Terms and Conditions

1. Causes of loss.

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

(1) Adverse weather conditions;
(2) Fire;
(3) Wildlife;
(4) Earthquake;
(5) Volcanic eruption;
(6) Direct Mediterranean Fruit Fly damage; or
(7) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches;

unless those causes are excepted, excluded, or limited by the actuarial table or section 9e(3). Direct Mediterranean Fruit Fly damage will be actual physical damage to the walnuts which causes such walnuts to be considered unmarketable and will not include unmarketability of such walnuts as a direct result of a quarantine, boycott or refusal to accept the walnuts by any entity without regard to actual physical damge to such walnuts.

b. We will not insure against any loss of production due to:

(1) The neglect, mismanagement, or wrongdoing of you, any member of your household, your tenants or employees;

(2) The failure to follow recognized good walnut farming practices;

(3) The impoundment of water by any governmental, public or private dam or reservoir project;

(4) The failure to carry out a good walnut irrigation practice;

(5) The failure or breakdown of irrigation equipment or facilities; or

(6) Any cause not specified in section 1a as an insured loss.

2. Crop, acreage, and share insured.

a. The crop insured will be English walnuts (excluding black walnuts) hereafter called "walnuts" which are grown on insured acreage and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be walnuts grown on insurable acreage as designated by the actuarial table and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share will be your share as landlord, owner-operator, or tenant in the insured walnuts at the time insurance attaches. However, for the purpose of determining the amount of indemnity, your share will not exceed you share on the earlier of:

(1) The time of loss; or

(2) The beginning of harvest.

d. We do not insure any acreage:

(1) On which the trees have not reached the ninth growing season after being set out, unless we agree, in writing, to insure such acreage; or

(2) Planted with a crop other than walnuts.

e. If insurance is provided for an irrigated practice you must report as irrigated only the acreage for which you have adequate facilities and water to carry out a good walnut irrigation practice at the time insurance attaches.

f. Insurance may attach only by written agreement with us on any unit which consists of less than 5 acres of insurable walnut trees.

g. We may limit the insured acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, share, and practice.

You must report on our form:

a. All the acreage of walnuts in the county in which you have a share;

b. The practice; and

c. Your share at the time insurance attaches.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any walnuts grown in the country. This report must be submitted annually on or before March 1. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by March 1, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Production guarantees, coverage levels, and prices for computing indemnities.

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (ninth growing season and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent for each percent reduction in excess of 10 percent.

c. Coverage level 2 will apply if you do not elect a coverage level.

d. You may change the coverage level and price election on or before the closing date for submitting applications for the crop year as established by the actuarial table.

5. Annual premium.

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-half percent (1-½%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its Agencies.

7. Insurance period.

Insurance attaches for each crop year on March 1 and ends at the earliest of:

a. Total destruction of the walnuts;

b. Harvest of the walnuts;

c. Final adjustment of a loss; or

d. November 15.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice if, during the period before harvest, the walnuts on any unit are damaged and you decide not to further care for them.

(2) You must give us notice of probable loss at least 15 days before the beginning of harvest if you anticipate a loss on any unit.

(3) If probable loss is later determined or if damage occurs during harvest, immediate notice must be given.

(4) In addition to the notices required by this section, if you are going to claim an indemnity on any unit, we must be given notice not later than 10 days after the earliest of:

(a) Total destruction of the walnuts on the unit;

(b) Harvest of the unit; or

(c) November 15 of the crop year.

b. You must obtain written consent from us before you destroy any of the walnuts which are not to be harvested.

c. We may reject any claim for indemnity if any of the requirements of this section or section 9 are not complied with.

9. Claim for indemnity.

a. Any claim for indemnity on a unit must be submitted to us on our form not later than 60 days after the earliest of:

(1) Total destruction of the walnuts on the unit;

(2) Harvest of the unit; or

(3) November 15 of the crop year.

b. We will not pay any indemnity unless you:

(1) Establish the total production of walnuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and

(2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

(1) Multiplying the insured acreage by the production guarantee;

(2) Subtracting therefrom the total production of walnuts to be counted (see section 9e);

(3) Multiplying the remainder by the price election; and

(4) Multiplying this product by your share.

d. If the information reported by you under section 3 of the policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

(a) Unharvested production on harvested acreage and potential production lost due to uninsured causes and failure to follow recognized good walnut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our prior written consent; and

(c) Any appraised production on unharvested acreage.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

(a) Marketed; or

(b) Further damaged by an insured cause and reappraised by us.

(3) If you elect to exclude hail and fire as insured causes of loss and the walnuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire".

f. You must not abandon any acreage to us.

g. You may not sue us unless you have complied with all policy provisions. If a claim is denied, you may sue us in the United States District Court under the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial is received by you.

h. We have a policy for paying your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. We will, however, pay simple interest computed on the net

indemnity ultimately found to be due by us or by a final judgment from and including the 61st day after the date you sign, date, and submit to us the properly completed claim for indemnity form, if the reason for our failure to timely pay is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the Federal Register on or about January 1 and July 1 of each year. The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

i. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the person(s) determined to be beneficially entitled thereto.

j. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance. For the purpose of this section, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

12. Assignment of indemnity.

You may assign to another party your right to an indemnity for the crop year only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

13. Subrogation. (Recovery of loss from a third party.)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay you for your loss, then your right of recovery will at our option belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

14. Records and access to farm.

You must keep, for two years after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all walnuts produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the applicable crop year, assignment of production to units by us, or a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: Cancellation and termination.

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year. Thereafter, the contract will continue in force for each succeeding crop year unless canceled or terminated as provided in this section.

b. This contract may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding such crop year.

c. This contract will be canceled if you do not furnish to us on or before the cancellation date satisfactory records of the previous year's production. If you show prior to the cancellation date to our satisfaction, that the records are unavailable due to conditions beyond your control, such as fire, flood, or other natural disaster, the Field Actuarial Office may assign a yield for that year.

d. This contract will terminate as to any crop year if any amount due us on this or any other contract with you is not paid on or before the termination date preceding such crop year for the contract on which the amount is due. The date of payment of the amount due:

(1) If deducted from an indemnity will be the date you sign the claim; or

(2) If deducted from payment under another program administered by the United States Department of Agricutural will be the date both such other payment and setoff are approved.

e. The cancellation and termination dates are January 31.

f. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

g. The contract will terminate if no premium is earned for 5 consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by October 31 preceding the cancellation date. Acceptance of any change will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of walnut crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us which are available for public inspection in your service office, and which show the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding walnut insurance in the county.

b. "Contiguous land" means land which is touching at any point, except that land which is separated by only a public or private right-of-way will be considered contiguous.

c. "County" means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

d. "Crop year" means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the walnuts are normally harvested.

e. "Harvest" means picking up the walnuts for the purpose of removal from the orchard.

f. "Insurable acreage" means the land classified as insurable by us and shown as such by the actuarial table.

g. "Insured" means the person who sumbitted the application accepted by us.

h. "Loss ratio" means the ratio of indemnity to premium.

i. "Person" means an individual, partnership, association, corporation, estate, trust, or other business enterprise or legal entity, and wherever applicable, a State, a political subdivision of a State, or any agency thereof.

j. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

k. "Tenant" means a person who rents land from another person for a share of the walnuts or a share of the proceeds therefrom.

l. "Unit" means all insurable acreage of walnuts in the county located on contiguous land on the date insurance attaches for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the walnuts on such land will be considered as owned by the lessee. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

19. Determinations.

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with Appeal Regulations.

20. Notices.

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given immediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

Done in Washington, DC, on June 26, 1985.

Michael Bronson,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-20007 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 978

[Docket No. TVR-PA-1]

Vegetables Grown in Texas; Recommended Decision and Opportunity To File Written Exceptions to Proposed Agreement

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This recommended decision proposes an agreement which would authorize a coordinated research and promotion type program for vegetables grown in Texas and provides interested persons an opportunity to file written exceptions concerning the recommendations.

The proposed agreement would establish commodity committees consisting of two to eight members and a Texas Vegetable Council consisting of the chairman of each commodity committee, who would handle the local administration of the research and promotion programs. Program costs would be financed by assessements collected only from shippers of vegetables grown for fresh market who voluntarily sign the agreement. There are no provisions for any inspection, grade, size, container or volume regulations. To become effective the proposal would require that the marketing agreement be signed by handlers representing at least 75 percent of a particular vegetable shipped to fresh market from a district.

DATE: Written exceptions to this recommended decision must be received by September 10, 1985.

ADDRESS: Interested persons may file written exceptions to this decision with the Hearing Clerk, Room 1077-S, U.S. Department of Agriculture, Washington, DC 20250. Two copies of all written exceptions should be submitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: James B. Wendland, Vegetable Branch, Fruit, and Vegetable Division, AMS, USDA, Washington, DC 20250, telephone (202) 447-5432.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of section 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291. Prior documents in this proceeding: Prenotice press release—Issued regionally on January 4, 1985; Notice of Hearing—Issued February 7, 1985, and published February 11, 1985 (50 FR 5593).

Small businesses. The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. Interested persons were invited to present evidence on the probable regulatory and informational impact of the proposed rule on small business at the public hearing.

The record shows all of the witnesses testified that their firms were "small businesses." Also the executive vice president of the Texas Citrus and Vegetable Association testified that a very high proportion of the approximately 120 vegetable industry members of his association would come under the definition of small business. Record evidence deocuments that the total value of production of Texas vegetables for fresh market averaged approximately $385 million. Using the conservative number of handlers in the Association (which does not include all Texas vegetable handlers) would result in an average value of approximately $3.2 million. This amount is under the $3.5 million volume for small business considered appropriate now for this agricultural service category by officials of the Small Business Administration. It is important to consider that the typical method of doing business is for the terminal market or chain store buyers to remit the proceeds from the sale to the handlers, who in turn remit to the growers a net amount after deducting fees charged for the services of the handlers. Hence, the grower's shares merely pass through the handlers' hands and the handlers' gross receipts represent fees for performing specified services. Thus, very few Texas vegetable handlers would not be classed as small businesses.

The Agricultural Marketing Agreement Act requires the application of uniform rules to regulated handlers. Since signatory handlers that would voluntarily sign the proposed agreement are predominantly small businesses, the program itself is tailored to the size and nature of these small businesses. Other persons would not be bound by the agreement.

Further, while the proposal recommended herein would impose some requirements on the small businesses who sign the agreement and the potential number of such may be approximately 100, any added burden should not be significant, especially in light of the potential benefits that should be derived by such small businesses.

The testimony presented at the hearing on the proposal indicated that the burden of financing and implementing the agreement—should it be put into effect by the Secretary after the 75 percent volume has been signed up—would be no more than the burden of the current non-Federal voluntary promotion program. Rather than reporting and sending assessments to several industry organizations under the agreement signatory handlers might report and send assessments only to the Texas Vegetable Council which would operate under the agreement. This economy of operation would be equally advantageous to large and small businesses, with small business perhaps benefiting to a greater degree in that their operating margins may be smaller.

Additionally, the concept of the agreement itself is particularly beneficial to small businesses. It would authorize large numbers of small businesses to pool their resources to mount a research program or promotional campaign to benefit all such growers and handlers of Texas vegetables. Small businesses are the least likely to be in a position to initiate and maintain the magnitude of a marketing expansion program as forseen by the proponents of the agreement.

With respect to small businesses that are not Texas vegetable growers or handlers, the impact of the proposed agreement would be different. Some such businesses, including retail food stores, restaurants, and others that sell

Texas vegetables to the public in various forms, could experience increased costs due to the proposed amendment. However, the magnitude of such added costs is difficult to quantify and is speculative. Moreover, these hypothetical added costs would be counterbalanced by the benefits to Texas vegetable growers and handlers and other small businesses, due to increased public awareness and demand for vegetables as a result of promotion and paid advertising projects conducted by the commodity committees.

Preliminary statement. Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to a proposed vegetable research and promotion program covering Texas. The above notice of filing and opportunity to file exceptions to it are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and in accordance with the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900). Copies of this decision may be obtained from James B. Wendland whose address is listed above.

The proposed agreement was formulated on the record of a public hearing held at San Antonio, Texas, February 20–21, 1985. Notice of the hearing was published in the February 11, 1985, issue of the **Federal Register**. The notice set forth a proposed marketing agreement submitted by the Texas Vegetable Research and Promotion Steering Committee, listing handlers "representing over 75 percent of Texas acreage of vegetables for fresh market."

Material issues. The material issues presented on the record of the hearing are as follows:

(1) The existence of circumstances which would warrant exercise of Federal jurisdiction in this instance;

(2) The need for the proposed research and promotion type agreement to effectuate the declared policy of the Act;

(3) The definition of the commodities and determination of the area to be effected by the agreement;

(4) The identity of the persons and transactions to be assessed; and

(5) The specific terms and provisions of the proposed agreement including:

(a) Definitions of terms used in it which are necessary and incidential to attain the declared objectives of the Act;

(b) The establishment, maintenance, composition, powers, duties and operation of the commodity committees and the Texas Vegetable Council which shall be the local administrative agencies for this program;

(c) The authority to establish production research, marketing research, consumer education, advertising, market development, product development, and promotion programs, studies, or projects for Texas vegetables;

(d) The authority to incur expenses and to levy assessments on handlers who sign the agreement covering Texas vegetables grown for fresh market;

(e) The establishment of reporting and related recordkeeping requirements; and

(f) Additional terms and conditions as set forth in §§ 978.70–978.84 published in the **Federal Register** (50 FR 5593) on February 11, 1985, which are necessary to effectuate the provisions of the Act.

Findings and conclusions. The findings and conclusions on the material issues are based upon the evidence presented at the hearing:

(1) Vegetables for fresh market are or can be grown in each of the 254 counties in Texas. In recent years, Texas has consistently ranked third in the United States in fresh market vegetable acreage. From 1981–1983, the harvested acreage of all vegetables in Texas averaged close to 200,000 acres. From this came annual shipments of major fresh vegetables averaging 17.4 million hundredweight.

Each of the numerous fresh vegetables produced in Texas is marketed in the 23 major U.S. cities with Federal-State Market News Service offices. This data for 1983 shows that Texas vegetables are in interstate and foreign commerce by supplying the five reported Canada cities with 368,000 hundredweight and 23 U.S. ones with 6.9 million hundredweight of the vegetables included in the proposed agreement. Additionally, 1983 arrivals in two Texas cities showed 5.15 million hundredweight of out of State vegetables. This data is representative of the shipments to other nonreported cities in the United States. Such vegetables are prepared for shipment in essentially the same manner, whether intended as intrastate or interstate commerce. Also, generally no producer is the sole supplier to a particular market. Because of the market information on prices being paid in competing areas and those offered by competing producers, buyers seek to maximize their returns by buying the quality they are seeking at the lowest prices available anywhere. Conversely, producers seek to maximize their returns by selling their vegetables at the highest available prices. As a result, any shipment or sale of vegetables, whether intrastate, interstate or international, affects prices for all vegetables marketed. The evidence in the record is in accord with the findings in the Act that these products are either in the current of interstate or foreign commerce or directly burden, obstruct, or affect such commerce and except as otherwise provided all such vegetables should be subject to the authority of the Act and the proposed agreement.

(2) The record evidence shows that a program of production research, marketing research, consumer education, advertising, market development, product development and promotion could help the Texas vegetable industry increase its returns and that there is a need for a marketing agreement such as that recommended herein to effectuate the declared policy of the Act.

The maintenance and expansion of existing markets and the development of new markets or uses are vital to the welfare of Texas vegetable producers and shippers and others concerned with marketing and using these vegetables. Record evidence shows it has been difficult to bring about a coordinated program of research and promotion because the industry is composed mainly of small sized businesses spread geographically across the State. Without cooperative action to develop and fund such a program, the industry has been stifled. Record evidence documents several voluntary attempts to provide such projects which were not fully successful because of eventual decline of support and cooperation from the industry. The industry had previously pursued attempting this type activity under the Texas Commodity Referendum Act. However, the Texas Department of Agriculture required that a separate Board would need to be created for each individual vegetable and furthermore separate hearings and referenda would have to be held for each vegetable in each of the 254 counties. The industry deemed such an exceedingly expensive, time consuming and uncoordinated approach to be unworkable, thus a need for this Federal marketing agreement. The latter would provide a more effective self-help type approach where only those who sign the agreement would be assessed to pay program costs and submit needed reports. Record evidence shows all of the witnesses, who consider their firms "small businesses," stressed their support for the program and testimfied that the proposed reports would pose no additional burden. Most emphasized that, individually, they were not large enough to undertake the research or promotion needed. But through this program they could join together to accomplish the worthy objectives. Thus,

the proposal is designed basically by and for small businesses and in keeping with the Regulatory Flexibility Act could carry out the program with the least possible government regulatory involvement or burden on the industry.

Record evidence affirms that the market for fresh vegetables, including Texas vegetables, is fluid and sensitive to many changing factors. Buyers pursue numerous sources in many States to obtain the variety, quality and price of vegetables to satisfy their customers.

The more well known a source becomes and the better its reputation, the more likely buyers are to continue buying there. Conversely, poor reputations have the opposite effect. The record indicates Texas vegetable growers and shippers need this proposed agreement to build a desirable reputation and a national awareness based on improved varieties developed through effective and coordinated production research, marketing research and promotion activities, which should tend to result in increased returns to the growers and handlers.

The record was uncontested in documenting the urgent need for developing improved, disease resistant, high yielding varieties adapted to the respective districts, with characteristics desired by consumers.

Evidence shows that the once valuable South Texas tomato industry has declined from over 111,000 acres to now less than 1,000 due to failure to develop a suitable variety to compete in the marketplace against Florida and California. Similarly the Rio Grande Valley's Imperator 58 carrot, developed 27 years ago, only yields from one-half to one-fourth that of Texas' competition, resulting in a significant cost disadvantage. Expert witnesses documented other similar vegetable variety problems including broccoli, celery, cabbage, peppers, sweet corn, cucumbers, and potatoes.

In addition, research is needed on cultural, harvesting and handling practices for Texas vegetables. Record evidence indicates the development of mechanical harvesters for radishes in Florida captured the national radish market for it. Also, that Texas lost the sweet corn market to Florida when Texas failed to develop worm free sweet corn. These examples illustrate another need for the agreement to provide the funds and leadership necessary to maintain or increase market shares to the benefit of Texas, its vegetable industry and the consumers alike.

(3) The definition of the commodities and determination of the area to be covered by the proposed agreement.

The term "area" should be defined to include all of the State of Texas. Record evidence shows vegetables can be grown in every part of the area, and to omit any part of the State from the program would likely encourage production in that exempt part to obtain advantages from the program without assuming any share of the responsibility.

The term "vegetable" should mean any edible product of all varieties of plants known as *Angiospermae* or others designated by the Secretary which are grown in the area for fresh market. These plants are usually herbaceous and grown for an edible part. However, the term should not be restricted to only those botanically defined as vegetables or those varieties listed in § 978.5, but should include any variety viewed in practice as a commercial vegetable by the industry or the Secretary now or in the future.

(4) Handler. The term "handler" is synonymous with "shipper." It should be defined in the agreement to identify the persons who would be subject to the agreement. Therefore, the term should apply to all persons who perform any of the activities within the scope of the term "handle" as hereinafter defined and who have signed the marketing agreement. These persons are responsible for meeting requirements of the agreement and any rules or regulations issued thereunder, such as paying assessment, submitting reports and maintaining records.

Common or contract carriers of vegetables owned by another person should be exempt from the proposed agreement since such carriers are not the persons who cause the introduction of such vegetables into the normal channels of commerce. The only interest of common or contract carriers in such vegetables is to transport them for a service charge to destinations given by others. The person or persons delivering vegetables to a common or contract carrier, or causing such delivery, should be responsible for compliance under the proposed agreement.

A grower who handles the vegetables he/she had produced and who had signed the agreement should also be considered a "handler" when he/she performs the handling function on such fresh vegetables.

Growers who sell or otherwise market fresh vegetables directly from the field to a consumer, itinerant trucker or other buyer should also be "handlers" if they have signed the agreement. Any signatory person who purchases vegetables from growers and performs any other handling function such as packing such vegetables for market or grading or otherwise preparing them for market would be a "handler."

The term "handle" should be defined in the proposed agreement to establish the specific marketing functions which primarily place fresh vegetables in the current of commerce within the area or between the area and any point outside thereof. "Handle" and "ship" are used synonymously and the definition should so indicate.

(5) Certain terms and provisions of the proposed agreement should be defined and explained for the purpose of designating specifically their applicability and limitations whenever they are used.

(a) "Secretary" should be defined to include not only the Secretary of Agriculture of the United States, the official charged by law with the responsibility for this agreement, but also, in recognition that it is physically impossible for him/her to perform personally all of the functions and duties imposed upon him/her by law, any other officer or employee of the U.S. Department of Agriculture who is, or who may hereafter be, authorized to act in his stead.

The definition of "Act" provides the correct legal citation for the statute authorizing this proposed marketing agreement and makes it unnecessary to refer to such citation thereafter.

The definition of "person" follows the definition of that term as set forth in the Act (Sec. 608a(9)) and will ensure that it will have the same meaning as it has in the Act.

"Grower" should be synonymous with producer and means any person engaged within the area in a proprietary capacity in the production of vegetables for fresh market. The term is used specifically to indicate those individuals who would be eligible to vote for termination pursuant to § 978.76(c) or who have this one of two necessary qualifications (the other of being a signatory handler) to be eligible to vote for or qualify as members or alternates on applicable commodity committees.

"Grower" should include any person who owns or shares in the ownership of a vegetable such as a landowner, landlord, tenant or sharecropper. The person who owns and farms land resulting in his ownership of vegetables produced on such land should clearly be considered a "grower". The same is true with respect to the person who rents and farms land resulting in his ownership of all or a part of the vegetables produced thereon.

Likewise, a person who owns land, which he does not farm, but as rental for such land obtains the ownership of a

portion of the vegetables produced thereon, should be regarded as a "grower." In each of the above situations the person involved in production, regardless of whether an individual, partnership, corporation, or other business unit should be considered as a "grower." The chief test of a grower is whether or not the individual or other business unit has title to and shares in the risk of loss of the vegetables that are produced.

In the situation where growers sell their vegetables shortly before harvesting to packing shed operations or others, while title may actually pass, contracts in most instances include additional requirements that the producer will care for the crop until it is harvested. In such cases even though title passes to the handler at the time of purchase, the buyer should not be classified or qualified as a producer since the buyer does not actually perform customary producer functions with regard to growing the crop.

In the case where a producer performs handling functions or owns or operates a packing shed, he/she should not be precluded from qualifying as a producer under the provisions of the proposed agreement.

The terms "promotion," "research," "consumer education," and "programs and projects" should be defined to indicate the types of activities authorized by the agreement.

"Promotion" should be defined as any action, including paid advertising, to advance the image or desirability of vegetables.

"Research" should mean any type of research to advance the image, desirability, marketability, production, or quality of vegetables.

"Consumer education" should mean any action to provide information that will assist consumers in making evaluations and decisions regarding the purchasing, storage, preparation or utilization of vegetables.

"Programs" and "projects" should be defined as those production research, marketing research, consumer education, advertising, market development, project development, or promotion programs, studies, or projects conducted pursuant to § 978.40.

"Fiscal period" should be defined as the calendar year or such other period recommended by the Council and approved by the Secretary. This would provide sufficient flexibility to authorize the Council and Secretary to set the beginning of the fiscal period close to the beginning of the shipping season. At the same time, it would permit subsequent changes in the dates in the event of changes in shipping seasons or when operational experience otherwise indicates such changes are needed.

"Part" should be defined as the marketing agreement authorizing research and promotion type activities, along with all other subparts such as the Rules and Regulations. The marketing agreement shall be a "subpart" of such "part." Such subparts will appear in the Code of Federal Regulations in which the agreement would be codified and published.

(b) Section 608c(7)(C) of the Act provides for an administrative agency or agencies for effective operation of this type program. The record evidence supports establishing a Commodity Committee consisting of two to eight members, and their respective alternates, for each commodity subject to the agreement. The number of members will be proportional to the number of districts participating. This number should provide adequate representation and assure reasonable judgment and deliberation with respect to recommendations to the Secretary and in the discharge of the committee duties yet keep the committee operation from being too unwieldy and costly. Such membership on the committee should be apportioned among the districts according to the number of signatory handlers of that commodity in each district but limiting membership so, that if more than one district, no one district has a majority representation to avoid domination. The agreement should require that each commodity committee person be both a signatory handler (or officer or employee thereof) and a grower to assure consideration of grower interest since the Act is designed primarily to benefit growers, even though the agreement is between signatory handlers and the Secretary.

Record evidence supports a three-year term of office with staggered terms as a necessary and reasonable approach to assure adequate time to become effective committee persons and yet set up a desirable rotation process which will assure continuity of operations and leadership by retaining experienced members yet allow some new persons with fresh ideas to become committee members. However, the terms of approximately one-third of the intital committee persons should be only one year and another one-third only two years to place into effect the staggered terms. It may be desirable for nominees receiving the lowest number of votes to have the shortest initial terms.

Nominations for initial members and alternates of each commodity committee should be submitted to the Secretary no later than 60 days after the effective date of this agreement. Such nominations should be made at a meeting or meetings of signatory handlers of that particular vegetable in each applicable district. At least one nominee should be designated for each position to be filled. If a greater number is submitted, the number of votes each received should be listed on the report to the Secretary, along with such other information as he/she may prescribe. This requirement of the industry, through the committee, providing the Secretary with background information on each nominee is necessary so the Secretary may be able to determine if each nominee is qualified before he/she appoints that commodity committee. To allow sufficient time for this purpose, nominations for successor members should be submitted by the Texas Vegetable Council not later than November 1 of each year, or by such other date or in such other manner as may be specified by the Secretary.

Only signatory handlers (or their duty authorized employees) of that particular vegetable in that particular district who are present at such nomination meeting are eligible to vote for nominees. To be eligible, nominees must meet these same qualifications above plus being a grower of that commodity in that district. Each such handler, including employees, shall be entitled to cast only one vote for each position in each balloting in which eligible to participate.

In order to assure the existence at all times of an administrative agency, the Secretary should be authorized to select commodity committee members and alternates without regard to nominations, if for any reason they are not submitted to the Secretary in conformance with the procedures prescribed in the agreement or supplementary rules and regulations. However, such selections must be on the basis of the representation provided for in § 978.20 of the agreement. Record evidence adequately supports every provision relating to commodity committees and the Texas Vegetable Council, which is essentially a needed unifying and administrative body that ties together the functions of the several Commodity Committees and hires the staff which services them, thus avoiding expensive duplication of each committee hiring separate staffs. These provisions should be adopted as prescribed in the proposed agreement which is a part of this recommended decision.

Record evidence supports the delineation of the "area," i.e. the State of Texas into districts as defined in § 978.28 in the Notice of Hearing. Such delineation generally recognizes the

topography and climatic characteristics of the State and existing vegetable producing districts.

However, if future events necessitate, authority should be provided (§ 978.29) for redistricting and reapportionment of members among districts by the various commodity committees. Before recommending any such changes to the Secretary, a commodity committee should consider significant shifts in vegetable acreage, importance of new production, equitable relationship of membership and district and economies to result in promoting efficient administration.

Witnesses, testified that a Committee member should be permitted to serve as long as that member was nominated and to do otherwise would be impractical due particularly to the small number of people that are involved in handling some of the commodities. However, the Department's guidelines for marketing orders covering such commodities specify the Secretary will require that all committee membership be limited in tenure. In general, the maximum tenure adopted by several marketing order committees is six consecutive years. But the Secretary will work with each committee to develop an appropriate time frame that takes into account the circumstances of the particular committee.

Since it may be possible that replacement member and alternate nominees may not be appointed immediately, the agreement should provide for existing committee persons to continue to serve until their successors are selected and have qualified. Such a provision is necessary to insure continuity of commodity committees and Texas Vegetable Council operations.

The committees and Council should be given those specific powers which are set forth in section 608c(7)(C) of the act because the record evidence supports the conclusion that they are necessary for such administrative agencies to carry out their proper functions.

The respective powers and duties for the Commodity Committees and Council as set forth in the proposed agreement are necessary for the discharge of their responsibilities. These powers and duties are generally similar to those specified for administrative agencies under other programs of this nature. They are reasonable and necessary if the committees are to function in the manner prescribed under the act and the proposed agreement. It should be recognized that the duties specified are not necessarily all inclusive; and it is likely that there are other duties which the committees may need to perform which are incidental to, and not inconsistent with, these specified duties.

(c) The record indicates that one of the important functions of the Commodity Committees would be to provide for production and marketing research, consumer education, advertising, market development, product development, and promotion programs, studies or projects designed to improve or promote the production and marketing of Texas vegetables. The Act, as amended permits such projects and such authorization should be included in the proposed agreement.

Record evidence indicates that there is a consumer trend to eat more fresh vegetables and fruits. While per capita vegetable consumption has increased by 20 percent over the past 20 years, Texas vegetable have not shared fully in these trends. During this same period size of the typical produce department increased more than three fold and the number of items increased from 65 to 216 in 1984. This increase makes it necessary for Texas to establish a more favorable reputation and develop increased national awareness of its vegetables to be able to effectively compete. This supports the need for the agreement as a self-help means of solving the problems through various research and promotion type programs for Texas vegetables. Evidence documents numerous cases of the need for research in developing locally adapted varities with resistence to various diseases, which possess physical attributes that meet the consumer's preferences, as indicated by marketing research and then promoting them in a variety of ways. Evidence also documents how research funds are decreasing due to budget cuts in numerous Federal, State and private organizations.

The record describes numerous promotion alternatives and techniques which have proven succesful for various commodites. It also outlines various research and promotion expertise that is available and interested in assisting the industry if the industry can provide consistent funding. Exhibit 6 documents the total funds spent in seven States under Federal fruit and vegetable marketing orders in FY 1984 for research as over $1.5 million and for promotion as nearly $13 million.

The committees should have the authority to determine the types of activities including research, promotion, education and market development, to be undertaken, and should be charged with the responsibility for initiating and recommending to the Secretary the establishment of such projects as are authorized.

For example, the record supports the use of a Texas vegetable logo or trademark on packages or other applications as one of the possible means under this agreement to develop more indentity for Texas vegetables with produce purchasers and consumers. Only signatory handlers should be authorized the use of such logo and only on vegetables grown in Texas.

The use of various promotional techniques, including paid advertising, merchandising and public relations would provide the committees with a means of stimulating sales and enhancing returns to producers. Therefore, the use of these promotional activities should be authorized.

The evidence indicates that marketing research could be a valuable tool in designing an effective promotional program. Studies of consumer buying habits or consumer preferences, could aid the producers and handlers in making decisions regarding the types of vegetables to grow and how they should be marketed.

It is not possible to anticipate all the promotion, research or market development type activities that may be required to meet the needs of the industry. As the industry and the committee become more aware of the value of and need for production and marketing research and market development type activities, projects will undoubtedly be initiated, the need for which cannot be foreseen. Therefore, committees should have the authority to recommend, subject to the approval of the Secretary, the establishment of appropriate projects. After project approval, committees should be empowered to engage in or contract for such projects, to spend funds for that purpose and to consult and cooperate with other agencies with regard to their establishment. All such projects should receive the prior approval of the Secretary.

(d) Each committee should be authorized to incur such expenses as the Secretary finds are reasonable and legitimate and are incidental to the proper administration of the proposed agreement. Authorized expenses should include such items as salaries for the council manager and staff, office equipment, supplies and maintenance, as well as travel expenses for the council staff, committee and council members and alternates incurred in connection with official program activities. However, the authority to

incur expenses should not be confined to a predetermined list.

Expenses incurred by a committee in operating the proposed agreement must, under the Act, be borne by signatory handlers. The fairest and most practical way of distributing the costs of the program among such handlers is to require each such handler who first handles a covered commodity to pay his pro rata share of such expenses on the basis of the ratio of his/her total fresh market shipments of that commodity to such total shipments by all signatory handlers during each fiscal period. Vegetables for canning and freezing are exempt from assessment, as are potatoes for those uses or for "other processing" including chipping and dehydration. The first handler is usually the one who starts the commodity on its way to market. The requirement that such first handlers pay assessments will preclude multiple assessments on commodities that are handled more than once.

Each commodity committee should be required to prepare a budget prior to or at the beginning of each fiscal period showing estimates of income and expenditures necessary for the administration of the agreement for such period. The budget should be presented to the Secretary with an analysis of its components and an explanation thereof in the form of a report. No increase should be made in the total budget without prior recommendations of the committee and approval of the Secretary.

Each committee should be authorized to recommend a rate of assessment to the Secretary which is designed to bring in during each fiscal period sufficient income to cover expenses incurred by it.

The rate of assessment should be established by the Secretary on that committee's recommendation, which should be based on estimated expenses and the volume of covered shipments during a fiscal period. Such rate should be applied on a fair and equitable unit basis, on a volume basis in terms of the predominate customary container such as so much per bag, carton, or hundredweight, or its equivalent.

Each affected signatory handler, therefore, who ships regulated vegetables as the first handler thereof, should promptly pay assessments to the applicable committees, which assessments shall be in payment of such handler's pro rata share of that program's expenses, so that each commodity may have adequate funds to carry out its operations on a current basis. Although the Department's general policy is that such committees should not be authorized deficit financing one exception is to authorize it for initial start up of their programs. Therefore there should be authority for the Council to accept advance payments of assessments, to be credited toward such handler's account for the upcoming fiscal period or allow the Council to borrow money for such start up or other expenses when assessment and reserve funds are not sufficient to cover them.

Authority should be included to require that if an affected signatory handler does not pay his/her assessment within the time prescribed by the committee, it may be subject to a late payment charge or an interest charge at rates set by the Secretary. The record indicates the committee or Council should be authorized to recommend to the Secretary a rate of interest on the unpaid balance approximating that which is being charged by commercial businesses within the area. An account should be considered to be due and payable when submitted to the handler for payment and delinquent after a period designated by the Secretary in rules and regulations.

Should developments indicate that assessments collected, or to be collected, during any fiscal period will not provide sufficient income to cover such committee's expenses, that committee should be authorized to recommend that the Secretary approve an amended budget and fix an increased rate of assessment. If such a revised budget is approved, together with an increased rate of assessment, such increased rate should be retroactive to the beginning of the fiscal period, so as to avoid inequities among signatory handlers.

Good business practice requires provision for contingencies. Each committee should be authorized with approval of the Secretary, to set aside excess funds in an operating financial reserve to be used for specific purposes. Such funds could be used to allow that committee to function at the beginning of a season prior to the time assessment income is available or to cover any deficits during a fiscal period in which assessment income is not sufficient to cover expenses. Since breeding research normally involves long term commitments to get improved varieties, a relatively larger reserve is reasonable. However, in order that such reserve funds not be accumulated beyond that, no more than an amount equivalent to three fiscal periods' budgeted expenses should be authorized.

If, at the close of a fiscal period a committee has a carryover of funds in excess of expenses, and such funds are not retained in a reserve, signatory handlers should be entitled to a proportionate refund. Such refund should be credited to each contributing handler against his/her operations for the following fiscal period, unless payment should be demanded, in which event proportionate refund should be paid.

Any balance remaining after liqudation should be prorated, to the extent practical, to the persons from whom such funds were collected.

All funds received by a committee may be used only for administration of the proposed agreement. Each committee should be required to maintain books and records clearly reflecting the operations of its affairs, so that its administration may be subject to inspection at any time by the Secretary. This is merely a sound business practice. Also, persons who deal with committee funds should be properly bonded as appropriate.

Each member and each alternate, as well as employees, agents, and other persons working for or on behalf of a committee or the Council should be required to account for all receipts and disbursements, funds, property, or records for which they are responsible and the Secretary should have the authority, at any time, to ask for such accounting.

Whenever any person ceases to be a member or alternate of a committee or the council he/she should be required to account for all receipts, disbursements, funds, property, books, records, and other program assets for which he/she is responsible. Such person would also be required to execute assignments or such other instruments as may be appropriate to vest in his/her successor, or any agency or person designated by the Secretary, the right to all such property and all claims vested in such person.

If a committee should recommend that the operations of the program should be suspended, or if no program should be in effect for a part or all of a marketing season, the committee should be authorized to recommend, as a practical measure, that one or more if its members, or such other person, should be designated by the Secretary to act as trustee(s) during such period. This would provide a practical method for taking care of a committee's business affairs during periods of inactivity and would permit resumption of operations with a minimum of delay.

(e) The committees and Council should have authority, with the approval of the Secretary, to require that each handler subject to the agreement submit such reports and information as may be needed for the performance of committee functions under the agreement. Record evidence shows signatory handlers already have such necessary information which they maintain for other routine business purposes such as income tax reporting and the requirement that they furnish such information to the manager of the Council in the form of reports would not constitute an undue burden. It is anticipated that the information needed will include vegetable shipments by days by each covered commodity and number and type of containers. If other information is needed by the committees, it may be prescribed through rules regulations issued by the Secretary, since it is difficult to anticipate every type of report or kind of information which they may need in administering the program. However, the right to approve, or to modify, change or rescind any requests by the committees for information is retained by the Secretary in order to protect signatory handlers from unreasonable requests for reports.

Since it is possible that a question may arise with respect to compliance with the agreement, each signatory handler should maintain complete records of his/her handling of vegetables for a period of not less than two years beyond the fiscal period of their applicability and make them available to employees of the Council or the Secretary during regular business hours.

(f) The proposed provisons of § 978.70–978.84 as published in the **Federal Register** of February 11, 1985 (50 FR 5593) and as hereinafter set forth, are generally common to marketing agreements and orders now operating. Each of these sections set forth certain rights, obligations, privileges or procedures which are necessary and appropriate for the effective operation of the proposed agreement. These provisons are incidental to, and not inconsistent with, subsections 608c(6) and (7) of the Act, and are necessary to effectuate the other provisons of the proposed agreement and to effectuate the declared policy of the act. The record evidence supports the inclusion of each such provision in the agreement including an amendment to the final paragraph, immediately ahead of the signature line, as follows: "with respect to the commodities and in the districts listed in Appendix A, which is made a part hereof." These provisons, therefore, should be included in the proposed agreement.

Rulings on briefs of interested parties. At the conclusion of the hearing the Administrative Law Judge fixed April 1, 1985, as the final date for interested parties to file proposed findings and conclusions and written arguments or briefs based upon the evidence received at the hearing.

One brief was filed on behalf of the proponents by Mr. Ernest J. Holcomb. Every point in the brief was carefully considered along with the record evidence in making the findings and conclusions contained herein. To the extent that any findings or conclusions proposed by him, such as placing no restriction on committee tenure, are inconsistent with the findings and conclusions set forth herein, the request to make such findings or to reach such conclusions is denied.

General findings. Upon the basis of the evidence introduced at such public hearing, and the record thereof, it is found that:

(1) The marketing agreement, and all terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The said agreement regulates the signatory handlers of fresh vegetables grown in the area in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed marketing agreement upon which a hearing has been held;

(3) The said agreement is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several agreements applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) All handling of fresh vegetables grown in the area, as defined in said agreement, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Recommended marketing agreement. The following marketing agreement is recommended as the detailed means by which the foregoing conclusions may be carried out.

List of Subjects in 7 CFR Part 978

Marketing agreements and orders, Vegetables, Texas.

The marketing agreement proposed on behalf of Texas vegetables growers and handlers is as follows:

PART 978—TEXAS VEGETABLE RESEARCH AND PROMOTION AGREEMENT—NO. 978

Definitions

Sec.

Administrative Bodies

Commodity Committees

Council

Administration

Research and Promotion

Expenses and Assessments

Reports, Books and Records

Miscellaneous

Sec.
978.79 Patents, copyrights, trademarks, inventions, and publications.
978.80 Amendments.
978.81 Separability.
978.82 Counterparts.
978.83 Additional parties.
978.84 Withdrawal.

Authority: 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*

Definitions

§ 978.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any other officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 978.2 Act.

"Act" means Public Act No. 10, 73d Congress (May 12, 1933), as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Secs. 1–19, 48 Stat 31, as amended; 78 U.S.C. 601 et seq.).

§ 978.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 978.4 Area.

"Area" means the State of Texas.

§ 978.5 Vegetables.

"Vegetables" means the edible product of all varieties of plants known as *Angiospermae* or others designated by the Secretary grown in the area and includes but is not limited to the following: Broccoli, cabbage, carrots, celery, cantaloupes, honeydrew melons, cucumbers, onions, peppers, potatoes, and mixed greens.

§ 978.6 Grower.

"Grower" is synonymous with producer and means any person engaged within the area in a proprietary capacity in the production of vegetables for market.

§ 978.7 Handle.

"Handle" and "ship" are synonymous and mean to sell, consign, deliver, transport, or in any other way to place fresh vegetables, produced in the area, or cause such vegetables to be placed, in the current of commerce within the area or between the area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the area of field-run vegetables to a person for the purposed of having such vegetables prepared for market.

§ 978.8 Handler.

"Handler" is synonymous with "shipper" and means any signatory person (except a common or contract carrier of vegetables owned by another person) who handles vegetables or causes vegetables to be handled.

§ 978.9 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of vegetables.

§ 978.10 Research.

"Research" means any type of research to advance the image, desirability, marketability, production, or quality of vegetables.

§ 978.11 Consumer education.

"Consumer education" means any action to provide information that will assist consumers in making evaluations and decisions regarding the purchasing, storage, preparation and utilization of vegetables.

§ 978.12 Programs and projects.

"Programs" and "projects" mean those production research, marketing research, consumer education, advertising, market development, product development, and promotion programs, studies, or projects pursuant to § 978.40.

§ 978.13 Fiscal period.

"Fiscal period" is synonymous with fiscal year and means the calendar year or such other period recommended by the Council and approved by the Secretary.

§ 978.14 Part and subpart.

"Part" means the Texas Vegetable Research and Promotion Agreement and all rules, regulations, and supplemental orders issued pursuant to the Act and the agreement. The aforesaid agreement shall be a "subpart" of such "Part."

§ 978.15 Commodity Committee.

"Commodity Committee" means a committee established pursuant to § 978.20.

§ 978.16 Council.

"Council" means the Texas Vegetable Council pursuant to § 978.24.

§ 978.17 District.

"District" means any of the geographic divisions of the area initially established pursuant to § 978.28 or as reestablished pursuant to § 978.29.

Administrative Bodies

Commodity Committees

§ 978.20 Establishment and membership.

(a) A Commodity Committee is hereby established for each commodity subject to this agreement. Whenever a commodity is added to this subpart, a Commodity Committee shall be formed fur such.

(b) Each Commodity Committee shall consist of not less than two or more than eight members, each of whom shall have an alternate. The members and alternates shall be selected in accordance with the provision of § 978.21. To the extent practical, the membership of each Commodity Committee shall be apportioned among signatory districts in accordance with the number of signatory handlers and respective volume in each district: Except that whenever two or more districts are represented on a Commodity Committee, no single district's representation shall constitute a majority of that committee.

§ 978.21 Eligibility.

Each Commodity Committee member and alternate member shall be at the time of selection and throughout the term of office a signatory handler or an officer or an employee of a signatory handler of the particular commodity, and a grower of such commodity in the district for which selected.

§ 978.22 Term of office.

(a) The term of office of the Commodity Committee members and their respective alternates shall be for three years beginning January 1 and ending December 31, or such other three-year period as the Committees and the Council may recommend and the Secretary approve. The term shall be so determined that approximately one-third of each committee shall terminate each year. Members and alternates shall serve in such capacity for the portion of the term for which they are selected and have qualified. However, no member shall serve more than two full consecutive terms without approval from the Secretary.

(b) The term of office of the initial members and alternates shall begin on the date determined by the Secretary. The initial members and alternates shall be selected for terms of one, two, or three years so that approximately one-third of each Commodity Committee may be replaced each year.

§ 978.23 Powers and duties.

Each Commodity Committee shall have, among others, the following

powers and duties with regard to the respective vegetable for which it was established:

(a) To meet and organize and to select from among its members a chairman, vice chairman, and such other officers as may be necessary, to select subcommittees from its membership, and such consultants as it deems advisable. To adopt such by-laws for the conduct of its business as it may deem advisable, and it may establish consultant committees of persons other than Commodity Committee members and alternates;

(b) To act as intermediary between the Secretary and any grower or shipper;

(c) To investigate, from time to time, and assemble data on the growing, shipping, anbd marketing conditions;

(d) To establish production research, marketing research, and marketing development projects authorized under § 978.40;

(e) To consult, cooperate, and exchange information with marketing agreement and order committees and other individuals or agencies in connection with all proper activities and objectives under this part;

(f) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Commodity Committee.

(g) To make and adopt, subject to approval of the Secretary, such rules and regulations with respect to the vegetable for which the committee was established as are necessary or incidental to the administration of the agreement as are consistent with its provisions, and as may be necessary to accomplish the purposes of the Act and the efficient administration of this part;

(h) To submit to the Secretary, for approval, as soon as practicable after the beginning of each fiscal period, a budget of its expenses for such fiscal period, including its proportional share of the expenses of the Council, the probable cost of each research, information, advertising, promotion, and development program or project, and an explanation of the items therein and a recommendation as to the rate of assessment for the respective vegetable for which the Commodity Committee was established;

(i) With the approval of the Secretary, to redefine the districts pursuant to § 978.29 or change the represenatation of any signatory district affecting the Commodity Committee;

(j) To develop programs and projects and, with the approval of the Secretary, to enter into contracts or agreements with appropriate contracting parties, including, but not limited to, industry groups, profit or nonprofit companies, private or State colleges and universities, and governmental groups, for the development and carrying out of the projects and programs of the Commodity Committee, and for the payment of the costs thereof with funds collected pursuant to this part, except that nothing in this subpart shall preclude a Commodity Committee from directly, without the use of contracts, conducting projects or activities pursuant to § 978.40. Any such contract or agreement shall provide (1) that such contracting parties shall develop and submit to the Commodity Committee a plan or project, together with a budget, which shows the estimated cost to be incurred for such plan or project; (2) any such plan or project shall not become effective until after approval by the Secretary; (3) any such contract or agreement shall also require the contracting parties to keep accurate records of all of their activities with respect to the contract or agreement; (4) to make periodic reports to the Commodity Committee of activities carried out; (5) to account for funds received and expended; and (6) such other reports as the Commodity Committee and/or the Secretary may require;

(k) To appoint and convene from time to time special panels drawn from, but not limited to, any one or more of the following: production, wholesale, retail, or consuming sectors of the vegetable industry or advertising, promotion, education, or consumer education persons, to assist in the development of research, information, education, advertising and promotion programs or projects and to disburse the necessary funds for such panel or panels; and

(l) To accumulate a reasonable monetary reserve not to exceed approximately three fiscal period's budgets to maintain the continuity of programs and fulfill other obligations and expenses.

Council

§ 978.24 Establishment and membership.

(a) A Texas Vegetable Council is hereby established consisting of the Chairmen of each Commodity Committee. Their alternates shall be the Vice Chairmen of each such Committee.

§ 978.25 Term of office.

(a) The term of office of the Texas Vegetable Council and their respective alternates shall be for one year beginning January 1 and ending December 31, or such other one-year period as the Council may recommend and the Secretary approve.

(b) The term of office of the initial members and alternates shall begin on the date they are appointed by the Secretary and end when their successors are selected and have qualified.

(c) Council members and alternates shall serve during the term of office for which they are selected and have qualified, or during that protion thereof beginning on the date on which they qualify during such term of office and continuing until the end thereof, and their successors are selected and have qualified.

§ 978.26 Powers.

The Council shall have the following powers:

(a) To supervise and coordinate the administration of this part in accordance with its terms and conditions;

(b) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(c) To recommend to the Secretary amendments to this part.

§ 978.27 Duties.

The Council shall have, among others, the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, and also to select committees and subcommittees from its membership, and consultants, to adopt such by-laws for the conduct of its business as it may deem advisable. It may make and adopt, subject to approval of the Secretary, such rules and regulations with respect to the agreement as are necessary or incidental to its administration and as may be necessary to accomplish the purposes of the Act. The Council may also establish consultant committees of persons other than Council members and alternates and reimburse their necessary and reasonable expenses;

(b) To appoint from its members an Executive Committee consisting of not less than four nor more than eight members, which shall, to the maximum extent practicable, reflect the membership composition of the Council, and whose commodity group representation shall be proportional to that of the Council. Also to delegate to said committee authority to administer the terms and conditions of their agreement under the direction of the Council and within the policies determined by the Council, and to appoint or employ such persons as it may deem necessary and to determine the composition, define the duties and fix the bonds of such employees.

Whenever three or less Commodity Committees are effective pursuant to § 978.70 or paragraph (b) of § 978.76, the Commodity Committee(s) may assume the responsibilities of the Council and appoint members from its membership to a temporary Executive Committee to serve in such capacity until more Commodity Committees become effective. When this occurs the Council will be established in accordance with § 978.24 and the Executive Committee will be appointed by such Council, replacing the temporary Executive Committee;

(c) To keep minutes, books, and records which clearly reflect all the acts and transactions of the Council, Commodity Committees, Executive Committee, and subcommittees. Such minutes, books, and records shall be subject at any time to examination by the Secretary or by such persons as may be designated by the Secretary. Minutes of each such meeting shall be promptly transmitted to the Secretary;

(d) To develop and provide the Commodity Committees data on shared expenses to facilitate equitable apportionment of such expenses in the development of budgets;

(e) To establish and define the duties of additional committees or subcommittees to assist in the performance of any of the duties and functions of the Council;

(f) To cause the books of the Council and Commodity Committees to be audited by a competent public accountant at least once each fiscal period and at such other time or times as the Council may deem necessary or as the Secretary may request. Such audit shall be submitted to the Secretary and shall indicate whether the funds have been received and expended in accordance with the provisions of this part;

(g) To give the Secretary the same notice of meetings of the Council, Commodity Committees, Executive Committee, and subcommittees as is given to their members in order that representatives of the Secretary may attend such meetings;

(h) To submit to the Secretary such available information pertaining to this subpart as may be requested;

(i) To prepare periodic statements of the financial operations of the Council and Commodity Committees and to make copies of such statements available to signatory handlers for examination at the Council office;

(j) To prepare and forward to the Secretary, as soon as is practicable after the close of each fiscal period, an annual report and make copies available to each signatory handler. This report shall contain at least a review and summary of all activities, programs, and projects conducted during the fiscal period; and

(k) To maintain books and records of the Council, Commodity Committees, Executive Committee, and subcommittees, and prepare and submit reports from time to time to the Secretary as may be prescribed and to make appropriate accounting with respect to the receipt and disbursements of funds entrusted thereto.

Administration

§ 978.28 Districts.

The area is hereby initially divided into the following districts:

District 1: (Rio Grande Valley) The Counties of Cameron, Hidalgo, Starr, and Willacy.

District 2: (South Texas) The Counties of Maverick, Kinney, Val Verde, Edwards, Real, Kerr, Bandera, Gillespie, Kendall, Blanco, Travis, Hays, Bastrop, Caldwell, Fayette, Gonzales, Colorado, Lavaca, Wharton, Jackson, Matagorda, Uvalde, Medina, Bexar, Comal, Guadalupe, Wilson, Karnes, Goliad, Refugio, Aransas, De Witt, Victoria, Calhoun, Zavala, Frio, Atascosa, Live Oak, Bee, San Patricio, Dimmit, La Salle, McMullen, Jim Wells, Nueces, Webb, Duval, Kleberg, Zapata, Jim Hogg, Brooks, and Kenedy.

District 3: (Plains) The Counties of Bailey, Briscoe, Castro, Cochran, Crosby, Dawson, Deaf Smith, Floyd, Gaines, Hale, Hartley, Hockley, Howard, Lamb, Lubbock, Lynn, Martin, Parmer, Potter, Swisher, Terry, Yoakum, Dallam, Sherman, Hansford, Andrews, Ochiltree, Mitchell, Cottle, Lipscomb, Nolan, Hardeman, Moore, Taylor, Foard, Hutchinson, Callahan, Wilbarger, Roberts, Dickens, Hemphill, King, Oldham, Knox, Carson, Baylor, Gray, Garza, Wheeler, Kent, Randall, Stonewall, Armstrong, Haskell, Donley, Throckmorton, Collingsworth, Borden, Hall, Scurry, Childress, Fisher, Motley, Jones, and Shackelford.

District 4: (Trans-Pecos) The Counties of Brewster, Crane, Culberson, Jeff Davis, Ector, El Paso, Hudspeth, Loving, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, and Winkler.

District 5: (Remainder of State) All of the countries not in Districts 1 through 4.

§ 978.29 Redistricting and reapportionment.

(a) The various Commodity Committees may recommend and the Secretary may approve, the reestablishment of districts for each commodity within the area and the reapportionment of members among districts. In recommending any such changes, the Committee shall give consideration to: (1) shifts in vegetable acreage: (2) the importance of new production; (3) the equitable relationship of membership and districts; (4) economies to result in promoting efficient administration; and (5) other relevant factors.

(b) No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendation for such redistricting or reapportionment may be made less than six months prior to such date.

§ 978.30 Nominations.

(a) *Initial members.* Nominations for initial members of each Commodity Committee, together with nominations for the initial alternate members for each position, may be submitted to the Secretary by the Committee responsible for promulgation of this subpart. Such nominations may be made by means of a meeting or meetings of the handlers of the particular commodity in each district. Such nominations, if made, shall be filed with the Secretary no later than 60 days after the effective date of this agreement. In the event nominations for initial members and alternate members of the Commodity Committee are not filed pursuant to, and within the time specified in this section, the Secretary may select such initial members and alternate members without regard to nominations, but selections shall be on the basis of the representation provided in § 978.20.

(b) *Successor members.* (1) The council shall hold or cause to be held and shall reasonably publicize a meeting or meetings of handlers for each applicable Commodity Committee in each district for the purpose of designating at least one nominee for each position on said Committee which either is or is about to become vacant. These meetings shall be supervised by the Council in accordance with procedure prescribed for each commodity.

(2) The names of nominees shall be supplied to the Secretary in such manner as may be prescribed not later than November 1 of each year, or by such other date as may be specified by the Secretary.

(3) Only signatory handlers from a given district who are present at such nomination meetings, or represented at such meetings by duly authorized employees, may participate in the election of nominees. Each such handler, including employees, shall be entitled to

cast but one vote in each balloting in which eligible to participate.

(4) Each handler, including employees of such handler, is entitled to cast one vote on behalf of itself, its agents, subsidiaries, affiliates, and representatives of each position in each district for each commodity the shipper handles in such district.

(5) Each Commodity Committee shall prescribe such additional clarifications, qualifications, administrative rules and procedures for nominations as it deems necessary and the Secretary approves.

§ 978.31 Selection.

The Secretary shall appoint the members and alternate members of each Commodity committee from nominations made in accordance with § 978.30

§ 978.32 Failure to nominate.

If nominations are not made within the time and manner prescribed in §§ 978.30 and 978.31, the Secretary may, without regard to nominations, select members and alternate members of the Council.

§ 978.33 Alternate members.

(a) There shall be an alternate member for each member of each Commodity Committee. Each such alternate shall possess the same qualifications, shall be nominated and selected in the same manner, and shall hold office for the same term as the member for whom he/she is an alternate.

(b) An alternate member of a Commodity Committee shall act in the place and stead of the member during such member's absence or when designated to do so. In the event both a member and that member's respective alternate are unable to attend a committee meeting, the member, alternate, or committee, in that order, may designate another alternate from the same commodity group to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is selected and has qualified.

(c) The Commodity Committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 978.34 Vacancies.

To fill Commodity Committee vacancies, the Secretary may select members or alternates from nominees on the latest nomination reports or from nominations made in the manner specified in § 978.30, unless filling such vacancy is deemed unnecessary by the Secretary.

§ 978.35 Procedure.

(a) A majority of all of the members of the Council shall constitute a quorum, and any action of the Council shall require the concurrence of the majority of all members present at a meeting.

(b) A quorum of each Commodity Committee shall consist of the majority of the members and all actions shall require the concurrence of the majority of all members present at a meeting.

(c) The Council and each Commodity Committee shall give to the Secretary the same notice of each meeting that is given to the members of the respective committee.

(d) At assembled meetings, all votes shall be cast in person. However, the Council and Commodity Committees may vote by mail, telephone, telegraph, or other means of communication: Except that each proposition is explained accurately, fully, and identically to each member. All such votes shall be prompty confirmed in writing and recorded in the minutes of each meeting so as to reflect how each member voted.

§ 978.36 Reimbursement.

All Council and Commodity Committee members, alternates, and subcommittees, including any special subcommittees, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred in the performance of their duties under this subpart.

Research and Promotion

§ 978.40 Production research, market research, information, education, advertising, promotion, and market development.

(a) Each Commodity Committee shall in the manner prescribed in § 978.23 provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate programs or projects for, but not be limited to: advertising, promotion, consumer education, and trade information, with respect to any one or more of particular vegetables and products of such, and for the disbursement of necessary funds for such purposes;

(2) The establishment and conduct of research, market development projects and studies with respect to the production, sale, distribution, processing, marketing, or utilization, of one or more vegetables, and the creation of new products thereof, to the end that the production, marketing and distribution and utilization of a particular vegetable or vegetables and products thereof, may be encouraged, expanded, improved, or made more efficient and/or acceptable; and for the disbursement of necessary funds for such purposes; and

(3) The development and expansion of sales, both within the United States and in international markets, with respect to a particular vegetable or vegetables and products thereof.

(4) Each program or project authorized under paragraphs (a) (1) and (2) of this section shall be periodically reviewed or evaluated by the Council to insure that such program or project contributes to an effective and coordinated program of research, information, education, and promotion. If the Council finds that a program or project is not effective, then the Council shall terminate such program or project.

(5) No reference to a private brand or trade name shall be made. No advertising, consumer education, nor sales promotion program shall make use of false or misleading claims on behalf of a particular vegetable or vegetables or the products thereof; or no such programs or projects shall make use of false or misleading statements with respect to the quality, value, or use of any competing commodity or product.

Expenses and Assessments

§ 978.50 Expenses.

Each Commodity Committee is authorized to incur such expenses including provision for an operating reserve as the Secretary finds are reasonable and are likely to be incurred by the Commodity Committee during each fiscal period for the maintenance and functioning of such Committee, including its proportionate share of the expenses of the Council, to enable it to exercise its powers and perform its duties in accordance with this subpart. Such expenses shall be paid from assessments received pursuant to § 978.51 and other funds available to the Committee, including donations.

§ 978.51 Assessments.

(a) *Requirements for payment.* Each signatory handler who first handles vegetables shall pay to the Council that handler's pro rata share of the Commodity Committee's expenses and the Council's overhead expenses authorized by the Secretary for each fiscal period. The payment of assessments for the maintenance and functioning of the Committees may be required under this part throughout the period it is in effect irrespective of

whether particular provisions thereof are suspended or become inoperative.

(b) The Secretary shall fix the respective rate of assessment which handlers shall pay with respect to each vegetable during each fiscal period in an amount designed to secure sufficient funds to cover the respective expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rates of assessment as necessary to cover authorized expenses. Such increases shall apply to all such vegetables handled during the fiscal period. In order to provide funds for the administration of this part, the Council may accept advance payments of assessments, which shall be credited toward assessments levied against such handler during the fiscal period. The Council may also borrow money for such purposes when assessment and reserve funds are not sufficient to cover them.

(c) There shall be a late payment charge imposed on any handler who fails to pay his/her assessment within the prescribed time. In the event the handler thereafter fails to pay the amount outstanding, including the late payment charge, within the prescribed time, there shall be imposed an additional charge in the form of interest on the outstanding amount. The rate of such charges shall be recommended by the Commodity Committees, subject to the approval of the Secretary.

§ 978.52 Accounting.

(a) If, at the end of a fiscal period the assessments collected are in excess of expenses incurred, each Commodity Committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as an operating monetary reserve except that funds already in such reserve shall not exceed approximately three (3) fiscal periods' budgeted expenses or such lower limits as each Commodity Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Commodity Committee for expenses authorized pursuant to § 978.50 and to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following fiscal period, or be paid such refund upon demand.

(b) Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be used, to the extent practicable, to continue one or more of the research projects, education or promotion programs hitherto authorized.

§ 978.53 Influencing governmental action.

No funds collected under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except as provided in this subpart.

Reports, Books and Records

§ 978.60 Reports.

(a) Each handler subject to this subpart shall be required to furnish to the manager of the Council, at such times and for such periods as the Council or Commodity Committee may designate, certified reports containing such information as is required by regulations and will effectuate the purposes of the Act. Such information may include but not be limited to the following:

(1) The name of the handler and the shipping point;

(2) The date of shipment;

(3) The number and type of containers in the shipment; and

(4) The quantities shipped shown separately by commodity.

(b) Upon request of the Council, with the approval of the Secretary, each handler shall furnish to the manager of the Council, in such manner and at such time as it may prescribe, such other information as may be necessary for the Council to perform its duties under this part.

§ 978.61 Books and records.

Each handler subject to this subpart shall maintain, and during normal business hours make available for inspection by employees of the Council and the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 978.62 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§ 978.60 and 978.61 shall be kept confidential by all persons, including employees of the Secretary, and all officers and employees of contracting parties, and shall not be available to Council or subcommittee members and alternates or any other handlers, producers, wholesalers, or retailers. Only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: Except that nothing in the subpart shall be deemed to prohibit that such data and information may be combined, and made available in the form of general reports in which the identities of the individual handlers are not disclosed and may be revealed to any extent necessary to effect compliance with the provisions of this part and the regulations issued thereunder.

Miscellaneous

§ 978.70 Effective time.

The provisions of this agreement, and of any amendment thereto, shall become effective at such time as the Secretary may declare, and shall continue in force until terminated or suspended in one of the ways specified in § 978.76: Except that the Secretary shall not execute this agreement in regard to a particular vegetable until the agreement has been executed by persons who handle not less than 75 percent of the total quantity of such vegetable handled in such district during the most recent completed calendar year.

§ 978.71 Right of the Secretary.

Members and alternates of the Council, Commodity Committees, Executive Committee, subcommittees, and any agents, employees or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every decision, determination, and other act of the Council and the Commodity Committees shall be subject to the continuing right of the Secretary to disapprove of the same at any time, and upon such disapproval, shall be deemed null and void.

§ 978.72 Personal liability.

No member or alternate member of the Council, any Commodity Committee, any committee, or any subcommittee, nor any employee, representative or agent thereof shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or any other person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, representative, or agent, except for acts of dishonesty, gross negligence or willful misconduct.

§ 978.73 Derogation.

Nothing contained in this agreement is, or shall be construed to be, in

derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 978.74 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this agreement shall cease upon its termination, except with respect to acts done under and during the existence thereof.

§ 978.75 Agents.

The Secretary may, by a designation in writing, name any person, including any officer or employee of the United States Government, or name any service, division or branch in the U.S. Department of Agriculture, to act as an agent or representative in connection with any of the provisions of this agreement.

§ 978.76 Suspension or termination.

(a) *Failure to effectuate policy of Act.* The Secretary shall terminate or suspend the operation of any or all of the provisions of this part, whenever, the Secretary finds that such do not tend to effectuate the declared policy of the Act.

(b) The Secretary shall terminate the provisions of this part as it pertains to a particular vegetable whenever the Secretary finds that such is favored by a majority of the signatory handlers who during the most recent crop year handled more than 50 percent of such vegetable in any district. Such termination shall become effective on the first day of January subsequent to such announcement by the Secretary.

(c) *Producer referendum.* The Secretary shall terminate, in accordance with section 8c(16)(B) of the Act, the provisions of this agreement, as it pertains to any vegetable, at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of the producers in a district of that particular vegetable who during the fiscal year have been engaged in the production of that vegetable in that district for the fresh market: Except that such majority has during such period produced for fresh market more than 50 percent of the volume of such vegetable produced for the fresh market within that district, but such termination shall be effective only if announced on or before November 1 of the then current fiscal period.

(d) *Termination of Act.* The provisions of this agreement shall terminate, in any event, whenever the provisions of the Act authorizing them cease to be in effect.

§ 978.77 Proceedings after termination.

(a) Upon the termination of the provisions of this part pertaining to any vegetable or vegetables, the Council then functioning shall for the purpose of liquidating the affairs of the Council with respect to such vegetable continue as trustee of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of termination.

(b) The said trustees shall: (1) continue in such capacity until discharged by the Secretary; (2) carry out the obligations of Commodity Committees under any contracts or agreements entered into pursuant to §§ 978.23 and 978.40; (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and Commodity Committee, committees and subcommittees and also of the trustees to such persons as the Secretary may direct; and (4) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property and claims vested in the Council and Commodity Committees or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same objections imposed upon the Council and upon the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or if not practicable, shall be turned over to the Secretary to be used, to the extent practicable, in the interest of continuing one or more of the research projects, information programs, or promotion programs hitherto authorized.

§ 978.78 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this agreement or of any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provisions of this agreement or any regulation issued thereunder, or (b) release or extinguish any violation of this agreement or any regulation issued thereunder, or (c) affect or impair any rights or remedies of the Secretary, or of any other person, with respect to such violation.

§ 978.79 Patents, copyrights, trademarks, inventions, and publications.

(a) Any patents, copyrights, trademarks, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Council.

(b) Funds generated by such patents, copyright, trademarks, inventions, or publications shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Council and Commodity Committees.

(c) Upon termination of the agreement, the Council shall transfer custody of all patents, copyrights, trademarks, inventions, and publications to the Secretary pursuant to the procedure provided for in § 978.77 of this subpart.

§ 978.80 Amendments.

Amendments to this subpart may be proposed from time to time by the Council, or by any interested person affected by its provisions, including the Secretary.

§ 978.81 Separability.

If any provision of this agreement is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 978.82 Counterparts.

This agreement may be executed in multiple counterparts and, when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

§ 978.83 Additional parties.

After the effective date of this agreement, any nonsignatory handler may become a party hereto if a counterpart is executed by him or her and delivered to the Secretary. This agreement shall take effect as to such new contracting party at the time such counterpart is delivered to the Secretary. The obligations, benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

§ 978.84 Withdrawal.

(a) Any signatory handler may withdraw from this agreement during November 1990, and every fifth year thereafter by filing with the Council and the Secretary written notice of such withdrawal. If it is determined, after such withdrawal period, that less than 75 percent of the total volume of a particular vegetable in any one district is subject to this agreement, the Secretary shall suspend the provisions pertaining to that particular vegetable or vegetables for that district.

(b) At such time as sufficient persons become signatories, representing at least 75 percent of the total volume of a particular vegetable handled for fresh market in any one district during the most recent calendar year, the Secretary shall reinstate the provisions applying to such vegetable for that district.

Signed at Washington, DC., on August 16, 1985.

William T. Hanley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85-19962 Filed 8-20-85; 8:45 am]

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7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098 and 1099

[Docket Nos. AO-366-A25 et al.]

Milk in the Georgia and Certain Other Marketing Areas; Proposed Termination of Proceeding on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR Parts	Marketing area	Docket Nos.
1007	Georgia	AO-366-A25
1006	Upper Florida	AO-56-A23
1011	Tennessee Valley	AO-251-A28
1012	Tampa Bay	AO-347-A26
1013	Southeastern Florida	AO-286-A33
1046	Louisville-Lexington-Evansville	AO-123-A54
1093	Alabama-West Florida	AO-386-A4
1094	New Orleans-Mississippi	AO-103-A46
1096	Greater Louisiana	AO-257-A33
1097	Memphis, TN	AO-219-A41
1098	Nashville, TN	AO-184-A48
1099	Paducah, KY	AO-183-A40

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed termination of rulemaking proceeding.

SUMMARY: This action invites written comments from interested parties on a proposal by the Department to terminate the current rulemaking proceeding on proposals to increase Class I milk prices under 12 southeastern Federal milk marketing orders. At the request of Dairymen, Inc., a public hearing was held June 25–28, 1985, to consider the cooperative's proposals to increase Class I price differentials. The transcript of the hearing in its current state is missing approximately two-thirds of the 3rd day's testimony and one-third of the testimony on the 4th day of the hearing.

Under usual circumstances, the Department would reopen the hearing to retake testimony to obtain a transcript that could be certified as a complete record of the hearing testimony. In this case, however, milk production data that have become available since the close of the hearing indicate a very significant change in marketing conditions. Such change raises the question whether there is any point in reopening the hearing since the existing pricing and pooling provisions of the orders will probably assure an adequate supply of milk for the Southeast. From all indications, it appears that if the hearing were reopened, no valid basis could be developed for the pricing changes initially proposed. Thus, the Department is proposing that the hearing not be reopened and that the proceeding be terminated.

DATE: Comments are due on or before September 5, 1985.

ADDRESS: Comments (two copies) should be filed with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Clayton H. Plumb, Chief, Order Formulation Branch, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6274.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing: Issued May 24, 1985; published May 30, 1985 (50 FR 23021).

Extensions of Time for Filing Briefs: Issued July 18, 1985; Issued August 1, 1985.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), termination of the proceeding as set forth in a notice of hearing on proposals to amend certain provisions of the Georgia and certain other milk orders is being considered. The aforesaid notice of hearing was issued May 24, 1985 (50 FR 23021) and the hearing was held on June 25–28, 1985.

All persons who desire to submit written data, views or arguments in connection with the proposed termination should file the same with the Hearing Clerk, Room 1079, South Building, U.S. Department of Agriculture, Washington, DC 20250, not later than 15 days after publication in the **Federal Register**. All documents filed should be in duplicate.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Statement of consideration

This proposed action would terminate the proceeding on proposals that would increase the Class I price differentials under 11 of the 12 orders listed above, increase the plant location adjustments rates under all 12 orders, and modify a pooling provision of the Louisville-Lexington-Evansville Federal order.

The public hearing on the proposals was held in Atlanta, Georgia, on June 25–28, 1985. The Department received on August 2, 1985, (28 days after the date when the transcript was due) the reporting contractor's transcript of the last day of the hearing. The 3rd and 4th days' transcript of the hearing do not contain a full account of the testimony given on those days. The record is therefore inadequate to complete the rulemaking proceeding. A reopening of the hearing appears to be the only means of obtaining a transcript that could be certified by the Administrative Law Judge who presided at the hearing as a true transcript of the testimony given at the hearing.

At this juncture, however, a very substantial increase in milk production under the 12 order that has become known since the close of the hearing raises the question of whether the hearing should be reopened. The market administrators for the 12 orders have published the volume of producer milk pooled under such orders and the Class I utilization of such milk for the months of June and July 1985. Producer milk pooled under the 12 orders exceeded the volume pooled one year ago by 16 percent in both June and July. In June, the volume of producer milk in Class I use was only about 2 percent more than last year. Similarly, July Class I volume was up only 3.6 percent.

Milk production in the southeastern United States is approaching a level comparable to that in 1982 and 1983 when temporary actions were taken under several orders in the region to facilitate the transportation of surplus milk supplies on the markets to distant outlets. Such increased production appears to be prompted in part by the termination of the milk diversion incentives under the price support program and by the favorable milk-feed price ratio. The ratio (pounds of 16 percent mixed dairy feed equal in value to 1 pound of whole milk) for July 1985 was 1.44, which may be compared to 1.35 in July 1984 and 1.45 in July 1983. It is expected that milk production for the remainder of 1985 will be substantially greater than milk production during 1984.

It is recognized that it was found necessary to provide temporary increases in Class I differentials and transportation credits in 11 of these markets for the September 1984–February 1985 period to facilitate the movement of supplemental milk supplies from other order areas. However, the recent increases in producer receipts on the markets far exceed the volume of supplemental Class I milk that was needed last year for these markets. Thus, it is apparent that the shortfall in milk supplies for the region last year was largely related to producer participation in the milk diversion program that ended in March 1985.

In view of these changed marketing conditions, it appears unlikely that a reopened hearing would provide a basis for concluding that Class I price differentials should be increased as proposed in light of the supply and demand pricing standard of the Act. A further consideration is that a reopened hearing would require a number of interested parties to incur the added costs involved in participating in such proceeding. For these reasons, the Department is proposing that the proceeding be terminated.

List of Subjects in 7 CFR Parts 1007, 1006, 1011, 1012, 1013, 1046, 1093, 1094, 1096, 1097, 1098 and 1099

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, DC, on: August 16, 1985.

William T. Manley,

Deputy Administrator, Marketing Programs.

[FR Doc. 85–20019 Filed 8–20–85; 8:45 am]

BILLING CODE 3410–02–M

Food Safety and Inspection Service

9 CFR Parts 302, 303, and 381

[Docket No. 84–030P]

Exemption of Certain Restaurant Central Kitchens; Retail Exemption Provisions

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal meat and poultry products inspection regulations to implement Pub. L. 98–487. This law amended the Federal Meat Inspection Act and the Poultry Products Inspection Act to exempt restaruant central kitchens under certain conditions from Federal inspection requirements. Furthermore, this proposed rule would amend the regulations by defining the limits of the applicability of Federal inspection requirements to retail stores, restaurants, and similar retail-type establishments as interpreted by the Department in conjuction with an Attorney General's opinion.

DATE: Comments must be received on or before October 21, 1985.

ADDRESS: Written comments to Regulations Office, Attn: Annie Johnson, FSIS Hearing Clerk, Room 2637, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided under the Poultry Products Inspection Act to: Mr. Robert Gonter, (202) 447–7745. (See also "Comments" under Supplmentary Information.)

FOR FURTHER INFORMATION CONTACT: Mr. Robert Gonter, Director, Compliance Division, Meat and Poultry Inspection Operations, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7745.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has made a determination that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; or a major incease in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The proposed rule would benefit certain segments of the industry by exempting portions of their operations from Federal inspection requirements, thus reducing their costs and removing an obstacle to centralizing food preparation for restaurants. It also would result in Federal government savings since Federal inspection would no longer be required in certain central kitchens. It is estimated that approximately 40 restaurant central kitchens could be affected immediately by this proposed rule.

Effect on Small Entities

The Administrator, Food Safety and Inspection Service (FSIS), has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601). This proposed rule would reduce the regulatory burden on industry by exempting some small restaurant businesses from Federal inspection requirements. The costs associated with inspection may discourage small restaurant businesses from centralizing food preparation to become more efficient.

The proposed rule permits a more flexible regulatory approach with regard to small restaurant operations. See gen., Regulatory Flexibility Act, Pub. L. 96–354 (5 U.S.C. 601 *et seq.*).

Comments

Interested persons are invited to submit comments concerning this proposed rule. Written comments must be sent in duplicate to the Regulations Office and should bear reference to the docket number located in the heading of this document. Any person desiring an opportunity for an oral presentation of views as provided under the Poultry Products Inspection Act must make such request from Mr. Gonter so that arrangements may be made for the presentation. A transcript will be made of all views orally presented. All comments submitted pursuant to this proposed rule will be made available for public inspection in the Regulations Office between 9 a.m. and 4 p.m., Monday through Friday.

Background

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*) require, among other things, inspection of a broad spectrum of operations and facilities involved in the preparation and processing of food derived from

livestock (i.e., cattle, sheep, swine, goats, horses, mules, or other equines) and poultry. The FMIA provides that meat and meat food products prepared for interstate or foreign commerce in any slaughtering, meat-canning, salting, packing, rendering, or similar establishment must be prepared under Federal inspection unless the operations of the establishment are exempted (21 U.S.C. 603, 604, 606, 608, 610, and 623). The PPIA includes comparable inspection requirements for the processing of poultry products (21 U.S.C. 454, 455, 456, 458, and 459). Establishments prepared or processing product solely for distribution within a State may instead be subject to State inspection if the State develops and effectively enforces requirements that are at least equal to those under the FMIA or PPIA. Section 301(c) (1) and (3) of the FMIA (21 U.S.C. 661(c)(1) and (3)) and section 5(c)(1) and (3) of the PPIA (21 U.S.C. 454(c)(1) and (3)) provide, in relevant part, that the Secretary of Agriculture shall designate any State for Federal inspection (including organized territories) which does not have, or is not effectively enforcing, such requirements; and if a State is so designated, wholly intrastate operations also are subject to Federal inspection and other requirements of the FMIA and PPIA.

The FMIA and PPIA each include exemption provisions for certain retail store and restaurant operations. Section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)) provide, in part, that the statutory provisions requiring inspection do not apply to "operations of types traditionally and usually conducted at retail stores and restaurants when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal quantities or service of such articles to consumers at such establishments" if they are subject to such inspection provisions only because they are in designated States. Moreover, the Department has interpreted the FMIA and the PPIA, in conjunction with the Opinion of the Attorney General of August 17, 1972 (Vol. 42, Op. No. 44), as excluding from inspection requirements the operations of such retail establishments, including restaurants, operating in interstate commerce in any State.

The last 20 years have seen many changes in the food service industry. One significant trend has been the centralization of meal preparation systems. New technology and the increase in large restaurant chains and fast food operations have contributed to this trend. By centralizing preparation of products, a restaurant business can improve its efficiency. Unlike restaurants, which are exempt from inspection requirements under the FMIA and PPIA, these central kitchens, even though owned or operated by the same person or business unit as the restaurant in which their products are served, have been subject to the inspection requirements directed under the FMIA and PPIA. Since inspection under the FMIA and PPIA entails some costs, the imposition of inspection on central kitchens has probably discouraged such centralization. Congress has now addressed this issue.

On October 17, 1984, Pub. L. 98-487 was adopted (98 Stat. 2265). This law amended section 301(c)(2) of the FMIA (21 U.S.C. 661(c)(2)) and section 5(c)(2) of the PPIA (21 U.S.C. 454(c)(2)) to provide that for the purposes of that provision, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant, and thus be exempt from the inspection requirements of the FMIA and/or PPIA if certain conditions are met. The conditions are that the restaurant central kitchen prepares meat or meat food products and/or poultry products that (1) are ready to eat when they leave the faciltiy and (2) are served in meals or as entrees only to customers at restaurants owned or operated by the same person or business unit owning or operating the restaurant central kitchen. The amendments also provide that these restaurant central kitchen facilities reamin subject to the provisions of section 202 of the FMIA (21 U.S.C. 642; see Part 320 of the Federal meat inspection regulations) and section 11 of the PPIA (21 U.S.C. 460; see Part 381, Subpart 0, of the poultry products inspection regulations), and, therefore, records must be maintained and access to places of business and opportunity for examinations must be provided to representatives of the Secretary. Further, the amendments provide that any exempted restaurant central kitchen may be subject to the FMIA and PPIA inspection requirements for as long as the Secretary of Agriculture deems necessary if the Secretary determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any meat or meat food products and/or poultry products are rendered adulterated.

Congress noted that not all restaurant central kitchens are suitable for exemption from Federal inspection.

> [L]arge central kitchens that supply food products for sale to a variety of outlets, such as airlines or retail stores . . . should continue to operate under Federal inspection. (S. Rep. No. 98-610, 98th Cong., 2d Sess. 3 (1984)).

Congress intended limit the exemption to those facilities that:

> . . . are very similar to traditional restaurants, . . . those central kitchens that are essentially retail restaurant facilities, that is, establishments that prepare food products that are ready to eat and served, without an intervening sale, only to customers, at restaurants owned or operated by the same person owning or operating the central kitchen (*id.*).

Congress restricted the scope of the exemption to facilities that differ from the kitchens of restaurants only in that the products they prepare are moved to another site before being served. Thus, meat and meat food products and/or poultry products must be ready to eat when they emerge from the restaurant central kitchen, and they must be served to customers without an intervening sale. These conditions exclude many central kitchen facilities, including those preparring products that are frozen or otherwise preserved so that they may be transported over long distances or held for resale.

Congress' conclusion that only restaurant central kitchens meeting these conditions are suitable for exemption limited the effects of the legislative change to a small number of restaurant central kitchens. However, Congress anticipated a positive economic impact due to improved efficiency in the restaurant business. In Congress' view, compliance with Federal inspection requirements is particularly costly for small restaurant businesses. Therefore, this legislative change was regarded as removing a barrier that until now has discouraged such businesses from centralizing food preparation. (See, e.g., S. Rep. No. 98-610, 98th Cong., 2d Sess. 2, 9 (1984).)

The Proposal

FSIS is proposing amendments to the Federal meat inspection regulations and poultry products inspection regulations to implement Pub. L. 98-487. Section 303.1(d)(2)(iv) of the Federal meat inspection regulations (9 CFR 303.1(d)(2)(iv)) and § 381.10(d)(2)(iv) of the poultry products inspection regulations (9 CFR 303.1(d)(2)(iv)) would be amended by revising the definition of "restaurant" to provide that operations conducted at those restaurant central kitchens which qualify for exemption under the new law are considered to be conducted at a restaurant. The current

exemption from inspection requirements for restaurants would be extended to include the operations of restaurant central kitchens that prepare meat or meat food products and/or poultry products as they would have been prepared at the restaurant location. Thus, to qualify for the exemption, such food products must be ready to eat without further preparation such as thawing or cooking when they leave the restaurant central kitchen and must be maintained without preservation during transportation. In other words, during transportation between exempted restaurant central kitchens and the restaurants, products that are to be served cold shall be maintained cold, and products that are to be served hot shall be maintained hot; that is, in a ready-to-eat state. However, products may not be preserved. For example, products that are to be served hot may not be chilled or frozen for transportation. Furthermore, such products must be served in meals or as entrees only to customers at restaurants owned or operated by the same person owning or operating the restaurant central kitchen, without an intervening sale.

Under the proposed regulations, the recordkeeping and the access and examination requirements of Part 320 and/or 381 of the regulations (9 CFR parts 320 and 381) would continue to apply to such facilities. Any such facility would become subject to inspection requirements if the Administrator, Food Safety and Inspection Service, determines that sanitary conditions or practices of the facility or processing procedures or methods at the facility are such that any products are rendered adulterated.

The proposed rule would also reorganize §§ 303.1(d) and 381.10(d) of the regulations (9 CFR 303.1(d) and 381.10(d)) slightly and make certain other changes. FSIS is proposing to include in the restaurant central kitchen provision those establishments that prepare and distribute ready to eat products for service in meals or as entrees to individual consumers through vending machines owned or operated by the same person that owns or operates the establishment. It has been FSIS policy for some time to treat such operations the same as those of restaurant central kitchens, and the regulations should be clarified to avoid any confusion. Also, the Federal meat inspection regulations, but not the poultry products inspection regulations, presently provide that the definition of "restaurant" includes a caterer which delivers or serves product in meals or as entrees only to individual consumers and otherwise meets the requirements of the regulation. Since FSIS interprets the restaurant exemption in the PPIA as covering such caterers, it is proposing to amend the poultry products inspection regulations to include caterers of poultry products under the same conditions.

In addition, the proposed rule would revise section 303.1(d)(1) of the Federal meat inspection regulations (9 CFR 303.1(d)(1)) and § 381.10(d)(1) of the poultry products inspection regulations (9 CFR 381.10(d)(1) by deleting language limiting their scope to establishments to which FMIA and/or PPIA provisions requiring inspection apply only because they are in designated States (including organized territories). As indicated earlier, the exemptions are part of the statutory provisions that direct the Secretary to designate for Federal inspection establishments with wholly intrastate operations in States that do not have or are not effectively enforcing an inspection program which imposes requirements that are at least equal to those under the FMIA and/or PPIA. As also indicated, in keeping with the Opinion of the Attorney General of August 17, 1972 (Vol. 42, Op. No. 44), the Department has interpreted the FMIA and PPIA as excluding retail operations under specified conditions even when their products are not solely for distribution within a State. In other words, the FMIA and PPIA are construed as reflecting Congress' intent not to rest the applicability of inspection requirements on the interstate or intrastate character of an ordinary retail establishment's business. The regulations implement the statutory criteria for ordinary retail operations, including provisions to assure that the exemption applies only to operations of types traditionally and usually conducted at retail stores and restaurants. This change is intended simply to clarify the regulations by reflecting the Department's position that the applicability of inspection requirements is not affected by the geographical scope of retail stores and restaurants' business activities.

Finally, the proposal would revise § 302.2 of the Federal meat inspection regulations (9 CFR 302.2) by deleting paragraph (a), which refers to special provisions (which appear in Part 330 (9 CFR Part 330)) for certain retail stores and restaurants operating within the District of Columbia. Under the FMIA (21 U.S.C. 601(h)), the term "commerce" means "commerce between any State, any Territory, or the District of Columbia, and any place outside thereof; or within any Territory not organized with a legislative body, or the District of Columbia." Since, as this proposal makes clear, retail stores and restaurants are exempt from the inspection requirements of the FMIA regardless of wherever they are operating in "commerce", there is no need to make special provisions for such operations within the District of Columbia.

List of Subjects

9 CFR Part 302

Applications, Meat inspection.

9 CFR Part 303

Meat and meat food products, Meat inspection, Exemptions, Recordkeeping requirements.

9 CFR Part 381

Poultry products inspection, Exemptions, Reporting and Recordkeeping requirements.

1. The authority citation for Parts 302 and 303 would be revised to read as follows:

Authority: 34 Stat. 1260, 81 Stat. 584, as amended (21 U.S.C. 6001 *et seq.*); 72 Stat. 862, 92 Stat. 1069, as amended (7 U.S.C. 1901 *et seq.*); 76 Stat. 663 (7 U.S.C. 6001 *et seq.*).

PART 302—[AMENDED]

§ 302.2 [Amended]

2. The title of § 302.2 (9 CFR 302.2) would be amended by removing the words "in the District of Columbia or".

3. Section 302.2 (9 CFR 302.2) would be amended by removing paragraph (a) and removing the paragraph designation "(b)".

PART 303—[AMENDED]

4. Section 303.1(d)(9 CFR 303.1(d)) would be amended by revising paragraphs (1) and (2)(iv) to read as follows:

§ 303.1 Exemptions.

* * * * *

(d)(1) The requirements of the Act and the regulations in this subchapter for inspection of the preparation of products do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar retail-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments.

(2) * * *

(iv) *Restaurants.* (*a*) A restaurant is any establishment where:

(1) Product is prepared only for sale or service in meals or as entrees directly to individual consumers at such establishment;

(2) Only federally or State inspected and passed product or such product prepared at a retail store exempted under paragraph (d)(2)(iii) of this section is handled or used in the preparation of any product;

(3) No sale of product is made in excess of a normal retail quantity as defined in paragraph (d)(2)(ii) of this section; and

(4) The preparation of product is limited to traditional and usual operations as defined in paragraph (d)(2)(i) of this section.

(b) This definition includes a caterer which delivers or serves product in meals, or as entrees, only to individual consumers and otherwise meets the requirements of this paragraph.

(c) For purposes of this paragraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares meat or meat food products that are ready to eat when they leave such facility (i.e., they shall be consumed without further preparation such as cooking or thawing), so maintained without freezing or other preservation during transportation, and served in meals or as entrees only to customers at restaurants or through vending machines, owned or operated by the same person that owns or operates such facility, and which otherwise meets the requirements of this paragraph: *Provided, That* the requirements of §§ 320.1 through 320.4 of this subchapter apply to such facility. *Provided further, That* the exempted facility may be subject to inspection requirements under the Act for as long as the Administrator deems necessary if the Administrator determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its meat or meat food products are rendered adulterated. When the Administrator has made a determination and subjected a restaurant central kitchen facility to such inspection requirements, the operator of such facility shall be afforded an opportunity to dispute the Administrator's determination in a hearing pursuant to rules of practice which will be adopted for the proceeding.

* * * * *

PART 381—[AMENDED]

5. The authority citation for Part 381 continues to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended (21 U.S.C. 451 *et seq.*); 76 Stat. 663 (7 U.S.C. 451 *et seq.*).

6. Section 381.10(d) of the poultry products inspection regulations (9 CFR 381.10(d)) would be amended by revising subparagraphs (1) and (2)(iv) to read as follows:

§ 381.10 Exemptions for specified operations.

* * * * *

(d)(1) The requirements of the Act and the regulations for inspection of the processing of poultry and poultry products do not apply to operations of types traditionally and usually conducted at retail stores and restaurants, when conducted at any retail store or restaurant or similar-type establishment for sale in normal retail quantities or service of such articles to consumers at such establishments.

(2) * * *

(iv) *Restaurants.* (1) A restaurant is any establishment where:

(1) Poultry products are processed only for sale or service in meals or as entrees directly to individual consumers at such establishment;

(2) Only federally inspected and passed, or exempted (or, as provided in § 381.223, State or local agency inspected and passed or exempted) poultry products are handled or used in the preparation of any poultry products;

(3) No sale of poultry products is made in excess of a normal retail quantity as defined in paragraph (d)(2)(ii) of this section; and

(4) The processing of poultry products is limited to traditional and usual operations as defined in paragraph (d)(2)(i) of this section.

(b) This definition includes a caterer which delivers or serves product in meals, or as entrees, only to individual consumers and otherwise meets the requirement of this paragaph; and

(c) For purposes of this paragraph, operations conducted at a restaurant central kitchen facility shall be considered as being conducted at a restaurant if the restaurant central kitchen prepares poultry products that are ready to eat when they leave such facility (i.e., they shall be consumed without further preparation such as cooking or thawing), so maintained without freezing or other preservation during transportation, and served in meals or as entrees only to customers at restaurants, or through vending machines, owned or operated by the same person that operates such facility, and which otherwise meets the requirements of this paragraph: *Provided, That* the requirements of §§ 381.175 through 381.178 of this subchapter apply to such facility. *Provided further, That* the exempted facility may be subject to inspection requirements under the Act for as long as the Administrator deems necessary if the Administrator determines that the sanitary conditions or practices of the facility or the processing procedures or methods at the facility are such that any of its poultry products rendered adulterated. When the Administrator has made such determination and subjected a restaurant central kitchen facility to such inspection requirements, the operator of such facility shall be afforded an opportunity to dispute the Administrator's determination in a hearing pursuant to rules of practice which will be adopted for the proceeding.

Done at Washington, DC, on: April 29, 1985.

Donald L. Houston,

Administrator, Food Safety and Inspection Service.

[FR Doc. 85–19986 Filed 8–20–85; 8:45 am]

BILLING CODE 3410-DM-M

FARM CREDIT ADMINISTRATION

12 CFR Part 611

Incorporation of Service Organizations by Farm Credit System Banks

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), by its Federal Farm Credit Board (Federal Board), publishes for comment a proposed amendment to its regulation dealing with the incorporation of service organizations by Farm Credit System (System) banks. This proposed amendment will allow System banks to incorporate service organizations with limited liability.

DATES: Written comments must be received on or before September 19, 1985.

ADDRESS: Comments or suggestions should be submitted in writing to Donald E. Wilkinson, Governor, Farm Credit Administration, 1501 Farm Credit Drive, McLean VA 22102–5090. Copies of all communications received will be available for examination by interested parties in the Office of Director, Congressional and Public Affairs Division, Office of Administration, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Kenneth L. Peoples, Office of General Counsel, (703) 883–4024.

or

Thomas J. Holland, Office of Examination and Supervision, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090, (703) 883–4452.

SUPPLEMENTARY INFORMATION: FCA regulations 12 CFR 611.1150 provides procedures for the incorporation of service organizations by System banks for the purpose of performing any function or service that the bank can perform except the extension of credit and the sale of insurance. The present regulation requires that Articles of Incorporation include a requirement that stockholders pay all valid claims of creditors in the event of the service organization's insolvency. Such a restriction prevents System banks from making full use of their statutory authority to incorporate such subsidiaries..

Amendment of the current regulation will enable System banks to limit their liability in the event of a service organization's insolvency to the extent of their investment consistent with general corporate law.

The FCA may continue to restrict the ability of service organizations to incur indebtedness to nonrecourse obligations and obligations guaranteed by the banks who are their stockholders. The Federal Board believes that this approach is sufficient to accomplish the purpose of the regulatory restriction.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Organization and functions (Government agencies), Rural areas.

As stated in the preamble, it is proposed that Part 611 of Chapter VI, Title 12, of the Code of Federal Regulations, be revised as follows:

PART 611—[AMENDED]

1. The authority citation for Part 611 continues to read as follows:

Authority: Secs. 1.13, 2.10, 4.12, 5.9, 5.12, 5.18, Pub. L. 92–181, 85 Stat. 619, 620, 621 (12 U.S.C. 2031, 2091, 2183, 2243, 2246, and 2252).

§ 611.1150 [Amended]

2. Section 611.1150 is amended by removing paragraph (b)(3)(xii).

Marvin Duncan,

Acting Governor.

[FR Doc. 85–19948 Filed 8–20–85; 8:45 am]

BILLING CODE 6705–01–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 115

[Revision 2]

Surety Bond Guarantee Regulations

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: On August 19, 1983 SBA published an Advance Notice of Proposed Rulemaking (48 FR 37658) which proposed new concepts for the relationship between SBA and commercial surety companies in their assistance to small concerns unable to obtain required bonds by themselves. Numerous and extensive comments were received, and this Notice adopts some and rejects some of those comments.

DATE: Comments must be received on or before October 21, 1985.

ADDRESS: Comments should be addressed to: Howard F. Huegel, Acting Director, Office of Special Guarantees, Small Business Administration, 4040 N. Fairfax Drive, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Howard F. Huegel, (703) 235–2900.

SUPPLEMENTARY INFORMATION: One commenter questioned the wisdom and the purpose of varying SBA's share of premiums and losses among sureties [§ 115.3(b)]. The statutory authority for this variation was enacted by 111 of Pub. L. 95–507, approved October 24, 1978, and stated expressly that the variation shall be based on "the Administration's experiences with the particular surety." Accordingly, SBA will apply the criteria set forth in that paragraph. The same comment singled out the criterion of "performance as an integrated surety" as unclear. The meaning of this criterion is that SBA can share with sureties, either through a smaller premium share or a higher loss guarantee, program economies achieved through the sureties' efforts. For example, the claims expenses of a surety, and therefore SBA's share in these expenses, will tend to be lower where an integrated surety administers claims in-house, as distinguished from another surety which retains outside claims adjusters. In this connection, it should be borne in mind that Congress amended the surety bond guarantee statute to require its administration "on a prudent and economically justifiable basis" [Section 11(a) of Pub. L. 93–386, approved August 23, 1974]. Thus, SBA is mandated to review its administration continually to achieve greater program economy. In this same comment it was suggested that it would not be fair to compare the loss rate of an "active" participant with that of an "insignificant" participant. SBA recognizes the validity of this comment and proposes to compare sureties with each other on the basis of their participation "to a comparable degree."

Another comment would have preferred § 115.3(b) to speak of a division of "premiums and guaranteed percentages" instead of "premiums and losses." The original language is retained because SBA believes that the word "loss" is more widely understood.

Another comment pointed out correctly that a judgment on the surety's underwriting and credit analysis function should not be based on both accepted and rejected guarantee proposals submitted by the surety to SBA, as it would discourage the submission of meritorious but marginal proposals. The proposed § 115.3(b) therefore limits this criterion to "bonds guaranteed by SBA." Proposed § 115.3(b) also adopts Grace Commission Recommendation 06–1 by limiting SBA's guarantee of loss to 85% instead of the statutory 90% maximum. The Grace Commission's recommendation is proposed to effect a projected reduction of $9.9 million in SBA losses per annum.

A comment on § 115.3(c) has asked whether a surety has a further appeal from the result of a failed negotiation for admission to the program, which has been reviewed by SBA's Associate Administrator for Finance and Investment. As the proposed subsection states, the Associate Administrator's decision represents final Agency action and is not subject to further SBA reconsideration. This contrasts with § 115.16(a) where a sanction imposed by SBA's Associate Administrator on a participating surety is appealable to SBA's Office of Hearings and Appeals.

A comment on § 115.3(d) suggested that a non-premium charge should be permitted only if agreed to by the Principal. This change was made. Another comment suggested that the lifting of a cap on premiums would cause premiums to sky-rocket. In this regard, SBA anticipates that competition from "substandard risk" sureties will impose restraint. Yet another comment suggested that non-premium charges could include tie-in sales. For this reason, the words "or any other services" were added to the prohibition against sales of insurance.

Comments on § 115.3(e) suggested that the timeliness provisions were too strict. For this reason, substitute documentation has been added to replace the documentation required to

support an SBA exemption from the bar against bond guarantees after a job has begun, and the requirement for an architect's certificate has been dropped. The restriction on the authority of regional officers to grant exceptions has been omitted to afford SBA greater flexibility in such approvals. Other editorial changes were also made.

The greatest number and length of comments related to the definitions section.

One comment on "Amount of Contract" suggested that no ban should be placed on a contractor obtaining several contracts (within an integral project) aggregating in excess of the statutory amount, since legitimate (non-phased) multiple contracts, such as for excavation and painting, should not be barred. SBA believes that the statutory maximum of $1,000,000 is sufficiently in excess of the average SBA guaranteed contract ($70,000) to allow for smaller multiple contracts within its limits, and that multiple contracts in excess of the maximum represent an increased risk which is not warranted.

Another comment, to add the time as of which the contract amount would be established, was adopted; the date of SBA's guarantee was chosen for this purpose.

An explanation of "coterminous" as co-existing with the principal bond was added to the definitions of the words "ancillary and coterminous bond" which are taken from the statute.

A comment on the definition of "Contract" suggested that a prohibition against performance by the surety could be contained in the bond form as well as the contract, and should therefore be expanded. This suggestion was adopted, but SBA thought it more appropriate to add this prohibition to the definition of "performance bond" rather than to that of "Contract." Another comment, on the negative aspect of this definition, criticized that the limitation on warranty "which is not related to delivery" was unclear. It has therefore been expanded to make clear that a warranty of performance of efficiency must terminate with delivery and acceptance by the obligee unless SBA otherwise agrees as a special condition.

Several comments criticized the proposed deductions from bond amounts "by reason of" the Principal's defenses, or of sums "due" from indemnitors. This language has been changed to provide for the deduction of amounts when actually recovered, subject to reimbursement to, or credit in favor of, SBA in case of recoveries after SBA payment. See § 115.14.

A comment on the definition of "Loss" suggested that forfeiture bid bonds, proposed to be excluded by the definition of "Loss" on bid bonds, should be permitted because they are in wide use, and the Surety has little control over the bond form. Because of the large number of bid bonds guaranteed by SBA without charge, SBA has determined that forfeiture bid bonds should not be guaranteed by it; therefore, the definition excludes forfeiture of money. Several comments explained that the description of loss on a payment bond was unrealistic since it only considered direct contractual obligations, while most payment bonds cover second and subsequent-tier suppliers also. The description was therefore changed to encompass "all just and timely claims against the principal." Another comment suggested replacing the term "complete" in the description of a performance bond, with "perform." The term "complete" was used because it is used in the statute; nevertheless, SBA has replaced it since the comment indicated that it was "outdated" and could increase penal exposure.

Subsection (d) of the loss definition attempted to exclude from "loss" that kind of expense which is inherent in the operations of a surety, viz claims administration. If an affiliated or other external organization undertakes claims administration for the Surety (other than the activities expressly included in the definition), SBA should not bear a share of such cost. Objections were raised to the proposed wording as overly broad. SBA has therefore omitted most of the criticized language, and limited the exclusion to external claims administration expenses; i.e., expenses that would be regarded as overhead if SBA were not involved.

Several comments pointed out that the requirement in paragraph (e) of the loss definition that SBA approve in advance legal cost exceeding one-third of anticipated recovery is impractical. Accordingly, this requirement has been dropped; however, SBA is proposing to eliminate from allowable expenses any expense incurred by a surety if it files suit against federal entities or employees without advance written concurrence by SBA that the suit may be brought. This is because in such suits the major share of such expenses might be borne by the Federal Government. Requiring SBA's approval would afford an opportunity for settlement.

Thr proposed definition of "loss ratio" has been omitted in response to the comment that the loss rate, not its ratio to fees, should be measured by SBA.

The definition of "obligee" was extended to include both the contract and the bond (in the alternative) as the required ties between the principal and the beneficiary of the bond, sufficient to support the naming of a co-obligee on the bond.

The definition of "surety" has been expanded in response to the comment that a surety does not always "fulfill" the terms of the bonded contract, but sometimes pays the panel sum of the bond. The definition now describes a performance bond as guaranteeing either a penal sum, or the cost of performance. It should be pointed out, however, that the statute speaks of "fulfiling the terms of the contract", see section 410(4)(B), not (as suggested) fulfilling the terms of the bond.

Section 115.5(b) has been amended to clarify that the owners of 10 or more percent of the equity of a Principal, and all officers, directors or partners, must be of good character. One comment suggest that the criterion (negating good character) of an adverse final civil judgment adjudicating breach of trust, etc., was too vague and ambiguous. SBA does not share this concern.

Section 115.5(f) has been amended to make clear SBA's intent not to guarantee bonds for brokers, packagers and others who do not themselves perform a significant part of the contract.

Section 115.9(a) has been rewritten in response to a comment pointing out that the proposed wording threatened to penalize a surety proposing to SBA a marginal contract and bond which SBA considers unacceptable. The wording now proposed makes clear that the underwriting standards of § 115.8 are a factor but not the entire rule of decision.

One comment questioned the meaning of "when a claim is filed" in § 115.10 relating to the suspension of a contractor from further bond guarantees until SBA is reimbursed. This meaning is explained in Articles VII of the National and Individual Agreements as a claim "which Surety in good faith believes it will be required to pay" and files within 30 days of SBA Form 994J. SBA therefore believes that the Surety's dilemma as to when to file a claim is minimized, and prior investigation is permitted. In response to another comment, the number of conditions for reinstatement has been reduced from six to three. The third condition is a new condition proposed by SBA to bring this program into alignment with other SBA programs which make bankruptcy or similar debt discharging state procedures a credit factor for consideration in the application process.

One comment on § 115.11 critized the requirement that the Surety collect, and remit to SBA, the contractor's fee of $5 per $1000 of contract amount.

Accordingly, the provision has been revised to give both Surety and Contractor the option of direct or indirect payment to SBA, but in either case the contractor's payment must accompany the application.

Section 115.12, relating to surety bonding lines, has been reworded to make definite the contractor's obligation to inform surety of all its contracts during the term of such line. It has also been amended to substitute "underwriting evaluation" for "experience" as a basis for SBA's decision to issue a bonding line commitment.

Section 115.13 has been rewritten to make clear that either secured or unsecured indemnity agreements, in the surety's and SBA's judgment, are acceptable. Another suggestion, to drop the word "standard" before "indemnity agreement" has also been followed.

Section 115.14, *Claims for losses*, has been amended so that all losses paid may be claimed, and shall be paid by SBA within 90 days, subject to adjustment at a later time for salvage.

Section 115.15 has been clarified, in response to a comment, to authorize denial by SBA of liability for any material misrepresentation, irrespective of its origin, if surety knew or should have known that such representation is false.

Section 115.16(a) has been amended, in response to a comment, to specify the sanctions SBA may impose for improper practice: either demanding a higher premium share or guaranteeing a lower percentage of loss. It has further been amended to incorporate the delegation by the Administrator of review authority relating to termination of program participation to the Office of Hearings and Appeals, 48 FR 29646 (June 27, 1983).

Section 115.16(b) has been revised, in response to comments, to specify that only the revocation or suspension of those licenses required to engage in the surety business will affect "business integrity". The proposed agreements, Appendices A and B, contain a representation of "business integrity" by Surety (Articles XIII and XI, respectively).

Section 115.16(b) has also been amended in accordance with 48 FR 29646, *supra*.

A new § 115.17(c) has been added, making clear that SBA will apply the cost principles of the Federal Acquisition Regulation, 48 CFR Part 31, in its audits of Surety Losses.

A new § 115.18, *Savings Clause*, has been added at the end, to conform to other parts of this chapter, and to clarify that these regulations, when promulgated, will apply prospectively, while transactions consummated before such promulgation will be governed by the prior (current) regulations.

For the purpose of Executive Order 12291, SBA hereby determines that this proposed rule would not constitute a major rule because it is not likely to result in an annual effect on the economy of $100 million or more. SBA expects the competitive factors prevalent in the surety industry to compensate for its removal of restrictions on participating sureties premiums; further, no economic impact is expected as a result of changing from a static division of premiums and losses to a negotiated division of premiums and losses because the basic premiums and anticipated losses are not expected to increase.

For the purposes of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, SBA has determined that this proposed rule will not have a significant economic impact on a substantial number of small businesses. Nothwithstanding SBA's determination concerning Executive Order 12291 and the Regulatory Flexibility Act, the following information is furnished:

(1) *Reason for Action.* SBA desires to induce more sureties into providing bonds for small businesses by creating greater flexibility in the formation of the financial terms of the Guaranty Agreements.

(2) *Objectives of Action.* The objectives are to provide more bonds to more small concerns which are unable to obtain bonds without SBA assistance; to have a larger number of participating sureties and to reflect several years of practical experience wherein SBA has solved numerous problems in day-to-day operations of this authorized bonding assistance.

(3) *Number of Businesses Involved.* SBA expects, based on past experience, that approximately 25,000 businesses, including sureties, will be involved with this action.

(4) *Additional Recordkeeping Requirements.* The proposal would not impose any recordkeeping requirement which is not already expected of both small businesses and sureties in the ordinary course of their operations.

(5) *Federal Rules Duplicated.* No federal rules duplicate, overlap or conflict with this action.

(6) *Alternatives to this Action.* There is no known alternative to this action consistent with the objectives of this action.

Paperwork Reduction Act

Some of the information collection requirements contained in this proposal have been approved by the Office of Management and Budget (OMB) and are identified by OMB number. Some of the information collection requirements contained in this proposal are subject to the Paperwork Reduction Act and have not been approved by OMB; these will be identified in the text and will be submitted to OMB for review and comment. The final rule will include all applicable OMB approval numbers.

List of Subjects in 13 CFR Part 115

Small businesses, Surety bonds.

Pursuant to the authority contained in section 411(d) of Title IV, Part B, Small Business Investment Act of 1958, as amended (15 U.S.C. 694b(d)), Part 115 would be revised as follows:

PART 115—SURETY BOND GUARANTEE

Section

Authority: Title IV—Part B of the Small Business Investment Act of 1958 (15 U.S.C. 694a, 694b), and the Inspector General Act of 1978 (5 U.S.C. App. 1).

§ 115.1 Statutory provisions.

The relevant statutory provisions will be found at 15 U.S.C. 694a, *et seq.*

§ 115.2 Headings.

Headings are inserted as required by the Office of the Federal Register and are not a part of the regulations.

§ 115.3 Policy.

(a) *Congressional intent.* It is the intent of Congress to strengthen the competitive free enterprise system by assisting qualified small business concerns to obtain on a prudent and economically justifiable basis Bid, Payment, or Performance Bonds which

are otherwise unobtainable without a Small Business Administration (SBA) guarantee. Consequently, Congress has authorized SBA to guarantee (upon such terms and conditions as SBA may prescribe) Sureties participating in the Surety Bond Guarantee Program up to 90 percent of the losses incurred as a result of a Principal's breach of the terms of a Bid Bond, Payment Bond, Performance Bond, or bonds which are ancillary and coterminous with such bonds, on any contract not exceeding one million dollars in face value.

(b) *Guarantee Agreement.* A Surety company participating in this program shall be listed by the U.S. Treasury as eligible to issue bonds in connection with Federal procurement contracts. The terms and conditions of SBA's bond guarantee agreements may vary from Surety to Surety, depending on SBA's experience with a particular Surety. The Surety Bond Guarantee Agreements (SBA Forms 1427 and 1428) [1] shall be generally standardized except for the division of premiums and Losses which shall be negotiated by the Surety with the Office of Special Guarantees in Washington, D.C. In determining the division of premiums and Losses, the Office of Special Guarantees will consider, among other things, the adequacy of the Surety's underwriting and credit analysis of applications for bonds which are guaranteed by SBA, the judgment of the Surety in exercising bond options upon Contract defaults, the accuracy and adequacy of the documentation of its claims and settlement practices, its minimization of Loss, the Surety's Loss rate in comparison with other sureties participating to a comparable degree, its ability to perform as an integrated Surety with its own employees, and the rating or ranking designation assigned to the Surety by recognized authorities or rating agencies. SBA shall not guarantee more than 85% of Losses as defined herein.

(c) *Appeal of surety.* Any Surety which deems itself adversely affected as a result of the Guarantee Agreement negotiation process outlined above to determine the division of premiums and Losses may file an appeal within 30 days of the determination pursuant to paragraph (b) of this section with SBA's Associated Administrator for Finance and Investment. That officer will review the division of premiums and Losses proposed by the Office of Special Guarantees and will render the final Agency decision.

[1] Subject to OMB approval. See Appendices A and B.

(d) *Premium and guarantee fee.* A Surety shall charge no premium in excess of the premium rate authorized by the appropriate State insurance department and shall make no other premium charge to a Principal. A surety shall make no requirement of a Principal that it purchase life or other insurance or any other services from the Surety or any Affiliate or Associate (as defined in § 120.1 of this Chapter) or agent of the Surety. A Surety shall not make non-premium charges to a Principal except where other services are performed and the additional charge or fee is permitted by the appropriate State law or regulation and agreed to by the Principal. The fee paid by a Surety for SBA's guarantee shall be the negotiated percentage of the premium as set forth in the Surety Bond Guarantee Agreement.

(e) *Timeliness.* A guarantee issued by SBA (or a written commitment to guarantee) will be honored only if either is issued prior to the date the work under the Contract is actually begun, unless SBA, in writing, consents to an exception from this policy. Such exception may be authorized only by the SBA surety bond guarantee officer upon receipt of the following from the Surety (subject to OMB approval):

(1) Evidence (certified copy of contract or sworn affidavit) from Contractor that the surety bond requirement was contained in the original job contract, or adequate documentation as to why a surety bond was not previously secured and is now being requred.

(2) A certification by the contractor listing all suppliers and indicating that they are paid to date, attaching a waiver of lien from each; that all labor costs are current; that all subcontractors are paid to their current position of work and a waiver of lien from each, or an explanation satisfactory to SBA why such certification cannot be produced.

(3) A certification by Obligee that all payments due under the contract to present status have been made and that the job has been satisfactorily completed to present status.

§ 115.4 Definitions.

This section incorporates terms defined at 15 U.S.C. § 694a and provides definitions of other terms. Defined terms are capitalized throughout this regulation.

"Affiliate" is defined in § 121.3(a) of this Chapter.

"Amount of Contract." The Amount of the Contract to be bonded shall be established as of the date of SBA's guarantee and shall not exceed one million dollars in face value, nor shall an integral project be phased to result in bonded Contracts of less than one million dollars but aggregating more than one million dollars for one Principal and its Affiliates, nor shall one Principal and its Affiliates be bonded for Contracts exceeding one million dollars within an integral project.

"Ancillary and Coterminous Bond" means a bond incidental and essential to performance of the bonded Contract and coexisting with the related principal bond.

"Bid Bond" means a bond conditioned upon the bidder on a Contract entering into the Contract, if bidder receives the award thereof, and furnishing the prescribed Payment Bond and Performance Bond.

"Contract" means an obligation of the Principal requiring the furnishing of services, supplies, labor, materials, machinery, equipment or construction (including maintenance thereof not to exceed one year) in exchange for money. The Contract shall not be a permit, subdivision contract, lease, land contract, evidence of debt, financial guarantee, warranty of performance or efficiency (which warranty does not terminate at the time of delivery to and acceptance by the obligee unless SBA agrees otherwise in writing as a special condition of its approval, see § 115.7(a)), warranty of fidelty or release of lien nor shall a Contract prohibit a Surety from performing a Contract upon default of the Principal.

"Contractor" means the person with whom the Obligee has contracted to perform the Contract.

"Loss" shall have the following meanings:

(a) In the case of a Bid Bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the Principal's defenses against the Obligee's demand for performance by the Principal and less any sums recovered from indemnitors and other salvage.

(b) In the case of a Payment Bond, at the Surety's option, the sums necessary to pay all just and timely claims against the Principal thereunder or the penal sum of the Payment Bond, less any amounts recovered by reason of the Principal's claims against laborers, materialmen, subcontractors or suppliers and less any sums recovered from indemnitors and other salvage.

(c) In the case of a Performance Bond, at the Surety's option, the sums necessary to perform that portion of the bonded Contract which is in default by the Principal; or the penal sum of the

bond, less amounts recovered (by offset or otherwise) by reason of the Principal's defenses or causes of action against the Obligee on the bonded Contract and less any sums recovered from indemnitors and other salvage.

(d) Expenses specifically allocable to the investigation, adjustment, negotiation, settlement of or resistance to ba given claim (including court costs and reasonable attorney's fees) for Loss resulting from the breach of the terms of any guaranteed bond, but excluding all office expense, all employment costs pertaining to permanent employees, all other internal expenses of Surety, or external expenses for claims administration.

(e) Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this definition, including suits to obtain sums due from obligees, indemnitors, principals and others: *Provided, however,* That no such expense shall be paid for any such suits filed against the United States of America or any of its agencies, officers or employees unless the Surety has, prior to filing such suit, received written concurrence from SBA that such suit may be filed.

(f) "Loss" shall not include attorney's fees and court costs incurred by a Surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments arising out of a suit by a Principal against such Surety.

"Obligee" means (a) in the case of a Bid Bond, the person requesting bids for the performance of a Contractor, or (b) in the case of a Payment Bond or Performance Bond, the person to whom the obligation of the Surety runs in the event of a breach by the Principal of the conditions of a Payment Bond or Performance Bond. No person (including financial institutions) shall be named co-Obligee on a bond unless such person is bound by the Contract or the bond to the Principal to the same extent as the Obligee.

"Payment Bond" means a bond conditioned upon the payment by the Principal of money to persons under contract with such Principal.

"Performance Bond" means a bond conditioned upon the completion by the Principal of a Contract in accordance with its terms. Such bond shall not prohibit a Surety from performing the Contract upon default of the Principal.

"Principal" means (a) in the case of a Bid Bond, a person bidding for the award of a Contract, or (b) the person primarily liable to complete a Contract for the Obligee, or to make payments to other persons in respect of such Contract, and for whose performance or payment the Surety is bound under the terms of a Payment or Performance Bond. A Principal may be a prime Contractor or a Subcontractor.

"Subcontractor" means a person who has contracted with a Contractor or with another Subcontractor to perform a Contract.

"Surety" means the person who is listed by the U.S. Treasury, see § 115.3(b), who has entered into a Surety Bond Guarantee Agreement with SBA and (a) under the terms of a Bid Bond, undertakes to pay a sum of money to the Obligee in the event the Principal breaches the conditions of the bond, (b) under the terms of a Performance Bond, undertakes to pay a sum of money or to incur the cost of fulfilling the terms of a Contract in the event the Principal breaches the conditions of the Contract, or (c) under the terms of a Payment Bond, undertakes to make payment to all persons supplying labor and material in the prosecution of the work provided for in the Contract if the principal fails to make prompt payment, or (d) is an agent, independent agent, underwriter, or any other company or individual empowered to act on behalf of such person.

§ 115.5 Eligibility of principal.

In order to be eligible for a bond guaranteed by SBA, the Principal must:

(a) *Size.* Qualify as a small business under Part 121 of this Chapter;

(b) *Character.* Possess good character and reputation, as determined by SBA. A Principal will be deemed to meet this standard if each owner of 10% or more of its equity, and each of its officers, directors, or partners possesses good character and reputation. Good character and reputation shall be presumed absent when any such person (1) has been indicted (pending disposition of such indictment) for or convicted of a felony, or has suffered an adverse final civil judgment that he or she has committed a breach of trust or the violation of a law or regulation protecting the integrity of business transactions or business relationships, or (2) a regulatory authority has denied, revoked, cancelled or suspended the license of such person necessary to perform the contract;

(c) *Need for bond.* Certify that a bond is required in order to bid on a Contract or to serve as a prime Contractor or Subcontractor thereon;

(d) *Availability of bond.* Certify that a bond is not obtainable on reasonable terms and conditions without SBA's bond guarantee assistance; and

(e) *Partial subcontract.* Certify the percentage of the contract to be subcontracted. SBA will not guarantee bonds for contractors who are primarily brokers or packagers, see §§ 124.108(d) and 124.109(a) of this Chapter.

§ 115.6 Procedure for surety bond guarantee assistance.

(a) *Application.* Application for an SBA guarantee (including a bonding line application) is made by the Contractor and the Surety on the SBA Application for Surety Bond Assistance, SBA Forms 994 (OMB Approval No. 32450007), and the Schedule of Contractor's Uncompleted Work, SBA Form 994F or equivalent (subject to OMB approval). Except for premium charges, Surety shall itemize, and Contractor confirm, on a form provided by SBA, all payments made, or to be made, by Contractor to Surety (as defined in § 115.4 of this Part) for whatever purpose as a condition of, or in connection with, the issuance of the bonds(s) to be guaranteed by SBA. Surety and Contractor shall disclose, to the best of their knowledge, any business and close family relationship between them (for definition of "close relative", see § 120.2-2(d) of this Chapter). The Contractor shall be required to execute SBA Form 1261 (Statements required by Law or Executive Order) with the initial application and therewith. In addition, the Contractor shall complete and provide SBA Form 912, Statement of Personal History (OMB Approval No. 32450178), for each owner of 20% of its equity and each officer, director and partner, for submission with Contractor's initial application and on subsequent applications will either certify that the information provide in the initial SBA Forms 912 remains complete and accurate, or will submit updated SBA Forms 912. The complete application, together with the surety's report of underwriting review on SBA Form 994B (OMB Approval No. 32450007), shall be submitted to SBA only by a person empowered by the Surety in writing to issue a bond.

(b) *Fees.* SBA makes no charge for reviewing an application for a surety bond guarantee. The application for a final bond shall be accompanied by the Contractor's guarantee fee (see § 115.11 of this Part).

§ 115.7 Approval or decline of Surety's application.

(a) *Approval.* SBA's approval or decline action will be made in writing by the SBA officer having delegated authority to take final action (see Part 101 of this Chapter). This subsection does not prohibit advance telephone

notice by such office to a Surety of approval (pending receipt by Surety of written approval): *Provided however,* That the written approval with all its conditions, if any, shall be controlling.

(b) *Conditional approval.* Written conditions to approval may be made by the approving official. SBA shall not condition approval on the prior granting of other SBA assistance nor shall SBA require subcontracts to be entered into subsequent to approval. If the Surety disagrees with any condition to an approval, the Surety and SBA shall resolve the disagreement in writing before the issuance of the bond, failing which no SBA guarantee shall attach to the bond.

(c) *Reconsideration—Appeal.* A request by a Surety for reconsideration of a decline shall be directed to the Regional Administrator or District Director who made the decision. If the decision on reconsideration is negative, the Surety may make a further appeal to the Office of Special Guarantees for a final decision.

§ 115.8 Underwriting standards.

The Surety shall adhere to SBA's general principles and practices used in evaluating the credit, capacity, and character of a Contractor as set forth in SBA's Surety Bond Guarantee Program Standard Operating Procedure (SOP 50–45), as amended from time to time,[2] as well as generally accepted standards of the surety business, to assure that the Contract meets the requirements for feasibility of successful completion, reasonableness of cost and that the terms and conditions of the proposed bond are reasonable in light of the risks involved.

§ 115.9 SBA's review of Surety's underwriting.

The SBA office referred to in § 115.7 shall review the Surety's underwriting of a bond, taking into consideration the standards specified in § 115.8 for the purpose of making SBA's determination that the Principal will perform the covenants and conditions of the Contract under consideration, that the cost of the Contract is reasonable and that completion thereof by the small business is feasible.

§ 115.10 Reinstatement for underwriting purposes.

(a) *Conditions for Reinstatement.* When a claim is filed by a Surety on a guaranteed bond, or a Principal has failed to pay SBA the fee required by § 115.11(a) of this Part, the Principal's file is transferred to SBA's Office of Special Guarantees, Claims Section. The application file will be retained in that office and the Principal, including any Affiliates, will not be considered for guarantees of bonds until Principal pays the fee or Surety has repaid SBA in full for all payments due to Principal's default, as the case may be, or one of the following circumstances exists:

(1) Surety has settled its claim with Principal for a cash payment of not less than half the amount of Loss; Principal paid Surety amount as settled.

(2) Principal is presented with a claim which it contests and Principal provides collateral to Surety which has a liquidation value of not less than the amount of the claim.

(3) The Principal's indebtedness to the Surety is discharged by operation of law as in Bankruptcy or any State judicial or quasi judicial process.

(b) *Underwriting after reinstatement.* A guarantee application after default is subject to the most stringent underwriting review, taking into account the previous default, past work experience, present and future financial and work capability, and SBA's budgetary guidelines. While a settlement, as described above, permits reinstatement, prudent underwriting must take into consideration all past experience. Where, however, Surety with full knowledge of past experience is willing to bond the Principal again, and states its belief that the Principal can complete the proposed Contract successfully and without another Loss, SBA will give careful consideration to the Surety's representation.

§ 115.11 Fees and premiums.

(a) *SBA charge to Principal.* No application or bid bond guarantee fee will be charged to the small business by SBA. No bid bond guarantee fee will be charged to the Surety. If SBA guarantees a Payment and/or Performance Bond, the Principal shall pay to SBA a guarantee fee of $5 per thousand dollars of the Contract amount, to be remitted to SBA by Surety or Principal together with the guarantee application on SBA Form 994.

(b) *SBA charge to Surety.* The Surety shall pay SBA the guarantee fee expressed as a percentage of the bond premium, in accordance with the National or Individual Surety Bond Guarantee Agreement as negotiated between SBA and the Surety. SBA shall not receive any portion of a Surety's non-premium charges.

§ 115.12 Surety bonding line.

A surety bonding line is a written commitment to a Surety by SBA pursuant to a National Surety Bond Guarantee Agreement which allows the issuance of multiple bonds to a small business within preapproved terms, conditions and limitations. A bonding line shall not exceed one year's duration. In addition to the other limitations and provisions set forth in this Part 115, the following conditions apply to each surety bonding line (OMB Approval No. 32450007, and subject to OMB approval):

(a) *Underwriting.* A bonding line may be issued by SBA for a small business if SBA's underwriting evaluation is satisfactory and the Surety recommends the bonding line. The Surety shall require the Principal to keep it informed of all its Contracts during the time limit of the bonding line.

(b) *Application for bonding line.* Upon requesting a bonding line, the Surety shall provide SBA with:

(1) In addition to the forms required pursuant to § 115.6, information about the small business deemed necessary by SBA.

(2) A recommendation regarding the limit of the number of Contracts with SBA guaranteed bonds under the bonding line into which the small business may enter.

(3) A recommendation regarding the maximum dollar amount of any single bonded Contract the small business can reasonably be expected to perform.

(4) A recommendation concerning the limit of the total value of all outstanding bids plus uncompleted Contracts (bonded and unbonded) which the small business can reasonably be expected to perform simultaneously.

(5) A recommendation whether the small business' bonds should be restricted to a specific type or specialty of work or should be restricted to a geographical area.

(c) *Bonding line commitment conditions.* In the event a bonding line is approved, SBA's written commitment will be conditioned to limit (1) the time period of the bonding line not to exceed one year, (2) the total dollar volume of the small business' guaranteed bonded and unbonded Contracts during the period of the bonding line, (3) the number of such Contracts during the period of the bonding line, (4) the maximum dollar amount of any single guaranteed bonded Contract and (5) any other limitation related to type, specialty of work, geographical area or credit.

(d) *Excess bonding.* If, after a bonding line is committed, the Principal desires a bond and the Surety desires a guarantee exceeding a limitation of the bonding line, an application may be made under regular procedures.

[2] The SOP may be obtained from SBA's Office of Special Guarantees.

(e) *Submission of forms to SBA.* Within 45 calendar days of issuance of any final bonds under a bonding line, the Surety shall submit SBA Forms 994 to SBA showing that the bond or bonds have been issued. Failure of the Surety to submit such forms to SBA as required shall void SBA's guarantee of the bond from its inception.

(f) *Cancellation.* SBA or the Surety may cancel a bonding line commitment at any time upon written notice to the other party. In either event Surety shall promptly notify the small business in writing. Cancellation by SBA will be effective upon receipt of such notice by the Surety: *Provided, however,* That bonds issued before the effective date of cancellation shall remain guaranteed by SBA.

§ 115.13 Indemnification agreements and collateral.

A Surety shall secure from each bonded Principal a written indemnification agreement secured by such collateral as the Surety or SBA may deem appropriate. Other indemnity agreements from other persons or entities, secured by collateral or unsecured, may also be required by either the Surety or SBA. All SBA requirements concerning collateral and indemnity from parties other than the Principal shall be communicated to the Surety in the written commitments issued pursuant to §§ 115.7(b) and 115.12(c).

§ 115.14 Claims for losses.

Claims for Losses which Surety has paid shall be submitted to SBA's Washington Office of Special Guarantees on forms prescribed by SBA. SBA may request additional information before paying a claim. Claims are subject to review and/or audit in accordance with the cost principles set forth in § 115.17. Loss will be determined as of the date of filing of such claims or as of such later date as additional information requested by SBA is filed, and SBA shall pay its share of Loss within ninety (90) days of such filing, subject to reimbursement of or credit to SBA within ninety (90) days of any recovery or salvage by Surety.

§ 115.15 Defenses of SBA.

In addition to equitable and legal defenses and remedies afforded by the general law of contracts, SBA shall be relieved of all liability under any Surety Bond Guarantees Agreement if:

(a) *Excess Contract amount.* The total contract amount at the time of the execution of the guarantee of the bond or bonds exceeds $1,000,000 in face value, or

(b) *Misrepresentation.* The Surety obtained the guarantee or agreement or applied for reimbursement for Losses by fraud or material misrepresentation. Material misrepresentation includes (but is not limited to) both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made, and includes the adoption by the Surety of a misstatement made by others which Surety knew or in the exercise of due diligence should have known to be false or misleading. Failure by the Surety to disclose its ownership (or the ownership by any owner of 10% or more of its equity, or by any officer, director, or partner) of an interest in a Principal or an Obligee shall be deemed the omission of a statement of material fact.

§ 115.16 Refusal to issue further guarantees.

(a) *Improper Surety Bond Guarantee Practice.* SBA at its sole discretion may refuse to issue further guarantees to a Surety where SBA finds that the Surety, in its underwriting of surety bonds guaranteed by SBA, or in its efforts to minimize Loss, or in its claims practices, or its documentation related to such bonds, has failed to adhere to prudent underwriting standards or other practices, as compared to those of other sureties participating in the SBA Bond Guarantee Program, including any standards or practices established by SBA. Acts of wrongdoing such as fraud or material misrepresentation (as defined in § 115.15 above) shall constitute adequate grounds for refusal to issue further guarantees. SBA may also impose other sanctions (i.e., a larger premium share or lower percentage of loss guaranteed) against a Surety which experiences excessive losses on SBA-guaranteed bonds resulting from unacceptable underwriting and/or claims practices, relative to those of other sureties participating in the program to a comparable degree. Such refusals or sanctions will be issued by SBA's Associate Administrator for Finance and Investment. Any Surety that has been penalized may file a petition in accordance with § 134.11(a) of this Chapter. Proceedings concerning such petition shall be conducted in accordance with the provisions of Part 134. The Assistant Administrator of the Office of Hearings and Appeals or an Administrative Law Judge of such office shall be the reviewing official for purposes of § 134.034.

(b) *Business Integrity.* Any person qualifying as a Surety or any agent, independent agent, underwriter or individual empowered to act on behalf of such person shall be presumed to have good character and reputation for business integrity and shall, until one of the following events occur, be entitled to present applications for guarantees of bonds:

(1) A state or other authority regulating insurance (including the surety industry) has denied, revoked, cancelled or suspended the license required of such person to engage in the surety business.

(2) Such person has been indicated or otherwise formally charged with, or convicted of, a misdemeanor or felony, or suffered an adverse final civil judgment that such person has committed a breach of trust or a violation of law or regulation protecting the integrity of business transactions or relationships.

(3) Such person has made a material misrepresentation or willful false statement within the meaning of 115.15(b) of this Part in the presentation of oral or written information to SBA in connection with applications for surety bond guarantees or the presentation of claims thereon.

(4) Upon an indictment or formal charge of a misdemeanor or felony against such person, SBA may suspend the privilege of such person to present applications for guarantees of bonds, in a proceeding pursuant to Part 134 of this Chapter. Upon the occurrence of any of the other events specified in this subsection, SBA may suspend or revoke the privilege of such person to present applications for guarantees of bonds, in a proceeding pursuant to Part 134 of this Chapter.

§ 115.17 Audit and investigation.

(a) *Audit.* At all reasonable times, SBA may audit in the office of either a Surety, its attorneys, or the Contractor or Subcontractor completing the Contract all documents, data and other materials or information relevant to SBA's surety bond guarantees and commitments. Such relevant records shall be maintained for a period of three years beyond the term of each bond, plus such additional time as may be required to settle claims for which the Surety may seek recovery from SBA or attempt salvage or other recovery and shall include the following records (subject to OMB approval):

(1) The bond agreement;

(2) All documentation submitted by the Principal in applying for the bond;

(3) All information gathered by the Surety in reviewing the Principal's application;

(4) All documentation of any breach by the Principal;

(5) All records of any transactions for which the Surety makes payment pursuant to the bond, including, but not limited to, copies of all claims, bills, judgments, settlement agreements and court or arbitration decisions, contracts and receipts;

(6) Attorney work products paid for by the Surety pursuant to the bond;

(7) All documentation relating to efforts to mitigate losses; and

(8) Records of any accounts into which fees and funds obtained in mitigation of Losses have been paid, and from which payments have been made pursuant to the bond.

Failure of a Surety to consent to such audit or maintain such records will be grounds for SBA to refuse to issue further surety bond guarantees or to honor claims until such time as the Surety consents to such audit.

(b) *Investigation.* SBA may conduct such investigations as it deems necessary to inquire into the possible violation by any person of the Small Business Investment Act of 1958, as amended, or of any rule or regulation under the Act, or of any order issued under that Act, or of any Federal law relating to programs and operations of the SBA.

(c) In auditing Losses by the Surety on which claims under SBA's bond guarantee are based, SBA shall apply the cost principles set forth in the Federal Acquisition Regulation, especially 48 CFR 31.105, with respect to completion costs and with respect to professional (including legal) fees.

(d) *Authority.* Authority for paragraphs (a) and (b) of this section is contained in sections 310(a) and 411(g) of the Small Business Investment Act of 1958, as amended, and in the Inspector General Act of 1978 (5 U.S.C., App. 1).

§ 115.18 Savings clause.

The legality of transactions, including the issuance by SBA of bond guarantees, pursuant to provisions of SBA regulations in effect before amendment, shall be governed thereby, notwithstanding subsequent changes. Nothing herein shall bar SBA enforcement with respect to any transaction consummated or bond guarantees issued in violation of provisions applicable at the time, but no longer in effect. If any section or part of a section of these regulations should be adjudged invalid, only that section or part shall be invalid, and no other part or section shall be affected thereby.

Appendix A—National Surety Bond Guarantee Agreement

The Small Business Administration, an Agency of the United States of America, hereinafter called SBA, is authorized by Part B of Title IV of the Small Business Investment Act of 1958 [15 U.S.C. 694a and b] to guarantee, upon such varying terms and conditions as it may prescribe, any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,000,000 in face value.

————, hereinafter called Surety, is a commercial surety which has been determined by SBA to be eligible to participate in the Surety Bond Guarantee Program in accordance with 13 CFR Part 115 and desires to obtain SBA guarantees on bonds it would not issue without an SBA Guarantee.

In consideration of the mutual benefits and the benefits to the small business segment of the economy, to be derived from this Agreement, SBA and the Surety agree as follows:

Article I

Limitations

This agreement shall apply to bonds issued by Surety, only if, as determined by Surety and SBA, at the time of issuance of SBA's written approval (1) the principal of the bond is a small business concern as defined by 13 CFR Part 121; (2) the bond is required to bid on a contract, or to serve as prime contractor or subcontractor thereon; (3) the principal is not able to obtain such bond on reasonable terms and conditions without an SBA guarantee; (4) the Surety and SBA have determined that there is a reasonable expectation that such person will perform the contract with respect to which the bond is required; (5) the contract meets requirements for feasibility of successful completion and reasonableness of cost; (6) the terms and conditions of the bond are reasonable in light of the risks involved; and (7) the contract does not exceed $1,000,000 in face value.

Article II

Scope of This Agreement

This agreement shall attach only to a bond for which application for SBA's guarantee has been submitted to, and approved by, SBA in writing prior to Surety's issuance and delivery of the bond(s). Where a bonding line commitment by SBA is in effect [13 CFR 115.12(c)], this agreement shall attach to any bond issued thereunder: *Provided*, That the appropriate forms are submitted to SBA within 45 days of issuance as required by subsection (e) of the cited section. If a bond is not delivered to the designated obligee, this agreement does not apply to such bond. Surety shall decline to issue any SBA guaranteed bond, if SBA's conditions to such issuance are not met or if additional information comes to the attention of the Surety so as to change its underwriting determination. Surety shall promptly notify SBA of such disapproval. Until delivery of the bond to the obligee, while such delivery is within the control of the Surety, SBA may withdraw its commitment to guarantee a bond.

The Surety shall not, without SBA's prior written consent (a) agree to any material alteration in the terms, conditions or provisions of the contract or bond, excluding an increase in bond liability less than 20% of the original liability; (b) name as an obligee on the bond any party, including a lender to the principal, which is not bound by the contract to the principal to the same extent as the original obligee; (c) issue the bond after the date the work under the contract is actually begun.

The Surety shall not reduce its agreed percentage of loss on any guaranteed bond by any arrangement of co-surety, subsurety, or any other agreement, except existing reinsurance.

Article III

SBA's Statutory Defenses

SBA shall be relieved of all liability if—

(1) the Surety obtained written approval of the application for the guarantee or applied for reimbursement by fraud or material misrepresentation. Material misrepresentation includes both the making of an untrue statement of material fact and the omission of a statment of material fact necessary to make a statement not misleading in light of the circumstances in which it was made and includes the adoption of a misstatement made by others which Surety knew or in the exercise of reasonable diligence should have known to be false or misleading (failure by the surety to disclose its ownership of an interest in a Principal or an Obligee shall be deemed the omission of a statement of material fact); or

(2) the total contract amount at the time of SBA's approval of the application for the guarantee of the bond or bonds exceeds $1,000,000.

Article IV

Application, Approval or Decline

Surety's applications for guarantees (OMB Approval No. 32450007) of bonds shall be written upon forms prescribed by SBA and shall be submitted to SBA offices having delegated authority as published in 13 CFR Part 101. SBA will approve or decline an application by timely written notice to the Surety.

In submitting applications for guarantees the Surety will, on Forms prescribed by SBA, represent that the information furnished is accurate and complete and that it has used due diligence to ascertain its accuracy and completeness and that its recommendation for approval was formulated in accordance with such underwriting practices as may be established by SBA from time to time and furnished to the Surety.

The Surety's application shall represent that (a) it has determined that the contract price is reasonable; (b) the terms and conitions of the bond to be executed are in accordance with those generally used by the surety or construction industry; (c) the bond to be issued is appropriate to the contract requiring it and will conform to other bonds generally established and accepted in the surety industry as bid, payment or

performance bonds or bonds ancillary and coterminous with the payment and performance bonds and which are incidental to the contract and essential for its performance; (d) the bond or bonds are required by the invitation for bids or by the proposed contract and would not be provided by the Surety without an SBA Guarantee.

Article V

The Statute, the Surety and Authorized Representatives

By statutory definition (15 U.S.C. 694a) the term Surety includes an agent, independent agent, underwriter or any other company or individual empowered to act on behalf of the person (Surety) undertaking the obligations set forth in the definition. SBA shall accept applications for guarantees only from persons authorized by Surety in writing to act for Surety in issuing final bonds. The Surety agrees to furnish to SBA (Attention: Director, Office of Special Guarantees) annually, but not later than April 30th of each year hereafter, a list of all active representatives authorized to act for Surety with true copies of the written authorization including any limitations thereon (subject to OMB approval).

SBA, by dealing with an authorized representative, does not waive its right to communicate with the Surety concerning any matter deemed in need of Surety's attention; further, SBA may express to Surtey its dissatisfaction with the activity or performance of an authorized representative for willful or persistent non-compliance with SBA Regulations, this Agreement or lack of cooperation with SBA employees. If SBA's complaints, as expressed by the Director, Office of Special Guarantees, are not recognized by corrective measures of the authorized representative, SBA may impose such sanctions as are authorized by 13 CFR Part 115.

Article VI

The Guarantee, Loss and Mitigation

For each application approved pursuant to this Agreement SBA shall reimburse the Surety ——% of the loss defined herein which the Surety sustains and pays as a result of a breach by the principal of the terms of the approved bond.

1. "Loss" shall have the following meanings:

(a) In the case of a bid bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the principal's defenses against the obligee's demand for performance by the principal and less any sums received from indemnitors and other salvage.

(b) In the case of a payment bond, at the Surety's option the sums necessary to pay all just and timely claims against the principal under the bonded contract or the penal sum of the payment bond, less amounts recovered by reason of the principal's claims against laborers, materialmen, subcontractors or suppliers and less any sums recovered from indemnitors and other salvage.

(c) In the case of a performance bond, at the Surety's option, the sums necessary to perform that portion of the bonded contract which is in default by the Principal; or the penal sum of the bond less amounts recovered (by offset or otherwise) by reason of the principal's defenses or causes of actions against the obligee on the bonded contract and less any sums recovered from indemnitors and other salvage.

(d) Expenses specifically allocable to the investigation, adjustment, negotiation, settlement of or resistance to a given claim (including court costs and reasonable attorney's fees) for loss resulting from the breach of the terms of any guaranteed bond, but excluding all office expense, all employment costs pertaining to permanent employees, all other internal expenses of Surety, or external expenses for claims administration.

(e) Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this Article, including suits to obtain sums due from obligees, indemnitors, principals and others; *Provided,* however, That no such expense shall be paid for any such suits filed against the United States of America or any if its agencies, officers or employees unless the Surety has, prior to filing such suit, received written concurrence from SBA that such suit should be filed.

(f) "Loss" shall not inlcude attorney's fees and court costs incurred by a Surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments arising out of a suit by a Principal against such Surety.

2. The Surety shall take all reasonable action to minimize loss including, but not limited to, obtaining indemnification agreements of the principal and third parties, secured by such collateral as is deemed necessary by the Surety or SBA. In the event of loss, the Surety will pursue all sources of recovery at law or equity and will discontinue such efforts only with the written consent of SBA. Surety shall own all suits, claims, defenses, rights, privileges and legal interests arising out of any guaranteed bond and shall be the real party in interest thereto; provided, however, any dispute between Surety and another Surety or Sureties whose losses are guaranteed by SBA shall be referred in writing to SBA for mediation and possible settlement before the Sureties engage in litigation concerning the bonded contracts.

Article VII

Claims, Salvage and Parties

If any suit or claim is filed against the Surety which Surety in good faith believes it will be required to pay, the Surety shall inform SBA on SBA Form 994J within 30 calendar days of receipt of notice of the suit or claim at its home office. The Surety shall manage the suit or claim and compromise, settle, or defend such suit or claim unless SBA notifies the Surety within 30 calendar days of the receipt from Surety of such notice to assign all of its right, title and interest in the suit or claims to SBA. In the event of such assignment the agreed percentages of loss shall not change. In the administration of such claim the Surety will follow, to the extent practical and possible, the guidelines set forth in the SBA Standard Operating Procedure, Surety Bond Guarantee Program (SOP 50–45) as furnished by SBA and as amended from time to time. Any proposed major departure from these guidelines will be promptly communicated to SBA for its prior written approval. Any salvage or other recovery by Surety or SBA will be shared in the same proportion as loss by the Surety and SBA: provided, however, that existing reinsurance shall not be considered as salvage or other recovery.

This Agreement is made exclusively for the benefit of the Surety and SBA, and does not confer any rights or benefits on any other party, including any right of action against SBA by any person claiming under SBA guaranteed bonds or otherwise.

Article VIII

Premium, Contractor's Fee and Guarantee Fee

The Surety warrants that it will charge and collect as its premium for each guaranteed bond no greater amount than set forth in its rate schedule as filed and approved by the applicable state or other regulatory authority, if any. The Surety shall pay to SBA as a fee for each approved application ——% of the premium for each guaranteed bond. The same percentage of premium will apply to increases or reductions due to contract changes. At Surety's option, SBA shall partially compensate Surety for its production by crediting Surety with ——% of said guarantee fee, adjusted for increases or reductions due to contract changes, at the time of Surety's payment to SBA. SBA shall charge no guarantee fee to the Surety or to the contractor on bid bond guarantees. Premium and surety guarantee fee adjustments based on a bond amount adjustment of $10,000 or less shall be disregarded. Surety shall make no charge to the contractor except as stated above, or where services are performed at the request of and for the benefit of the contractor, and the additional charge or fee is permitted by the applicable state or other regulatory authority, if any, such additional charge or fee to be promptly disclosed to SBA.

Article IX

Accounting Reports and Remittances

Surety shall mail to SBA, on forms prescribed by SBA, within forty-five calendar days after the last day of each month the following information for the reporting month (subject to OMB approval):

(a) Statement of Surety's and Contractor's Guarantee fees owed to SBA;

(b) Statement of Losses paid with expenses pertaining thereto segregated;

(c) Statement of salvage or other recovery;

(d) Statement of all claim reserves established or changed;

(e) An estimate of expected attorney fees with names of attorneys, hours of estimated work, title of suit or nature of work and guaranteed bond involved.

With these monthly statements Surety shall remit to SBA payment of the amount due SBA on account of premiums as shown on such statements, with any amounts in dispute to be remitted by Surety to SBA with the statement covering the month during which such dispute was settled. SBA shall pay undisputed claim amounts within ninety days after the end of each month during which such claim was received by SBA, with any amounts in dispute to be remitted by SBA to Surety within ninety days following the month during which such dispute was settled.

On each February 15 following the year of execution of this agreement the Surety shall submit to SBA a list of all its outstanding claims against SBA.

Article X

Cash Claims

Any item of loss chargeable to SBA that does not exceed $50,000 shall be reported in the monthly accounts as specified in Article IX. Any item of loss chargeable to SBA in excess of $50,000 may, at the option of the Surety, be reported (subject to OMB approval) separately to SBA as a special cash claim. SBA shall pay the special cash claim in a timely fashion subject to the right of SBA to offset such claim against any balance past due from Surety to SBA.

Article XI

Insolvency

In the event of the insolvency of the Surety the rights of the receiver, trustee in bankruptcy or other representative of the insolvent Surety shall be no greater than those of the Surety while solvent and no claim against SBA will be paid to a receiver, trustee in bankruptcy or other representative of the insolvent Surety until a creditor's claim has been paid by the receiver, trustee in bankruptcy or other representative. Surety and SBA agree that there is nor privity of contract between SBA and the principals or obligees on the guaranteed bonds and the Surety covenants that it will not represent that such privity exists or represent that it is the agent or representative of SBA in the issuance of its bonds.

Article XII

Suspension and Termination

Either Surety or SBA may, upon written notice to the other by certified mail, suspend this agreement, effective on the date of such notice, for a stated cause for a specified period. Either Surety or SBA may terminate this Agreement without a stated cause upon not less than 30 days written notice (excluding Saturdays, Sundays and National Holidays). Suspension or termination of this Agreement shall not invalidate approvals of applications by SBA for bonds issued and delivered prior to the date of suspension or termination in the notice as provided for. All conditions of this Agreement involving claims and SBA's regulations will remain in full force and effect after the termination date and during the period of suspension as to any guaranteed bonds outstanding prior to the date of termination or prior to the beginning date of suspension. Suspensions shall expire on the date ending the period of suspension and this Agreement, in the absence of termination, shall be automatically reinstated.

Article XIII

Surety represents that, to the best of its knowledge, its agents, officers, directors, individual partners or individuals holding ten or more percent of its voting securities, as the case may be, possess business integrity, as defined in 13 CFR 115.16(b), except as separately noted. Surety will notify SBA when any of these individuals subsequently ceases to qualify under said section. Surety agrees that SBA may require submission of SBA Form 912, Statement of Personal History (OMB Approval NO. 32450178) from any of these individuals.

Article XIV

Construction of Agreement; Other Laws

SBA's Surety Bond Guarantee Regulations, 13 CFR Part 115, as they may be amended from time to time, are incorporated herein as if full set forth here and if any Article, sentence, phrase or part of this Agreement is in conflict with the regulations as amended, the latter will prevail over the former in construing and applying this Agreement.

In Witness Whereof, SBA and Surety have caused this agreement to be executed in duplicate originals.

Small Business Administration

by _____ [SBA Seal]

Title

on _____

_____ [Corp. Seal]

Surety

by _____

President

Attest _____

on _____

Appendix B—Individual Surety Bond Guarantee Agreement

The Small Business Administration, an Agency of the United States of America, hereinafter called SBA, is authorized by Part B of Title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694 a and b) to guarantee, upon such varying terms and conditions as it may prescribe, any surety against loss resulting from a breach of the terms of a bid bond, payment bond, performance bond or bonds ancillary and coterminous therewith, by a principal on any contract up to $1,000,000 in face value.

_____, hereinafter called Surety, is a commercial surety which has been determined by SBA to be eligible to participate in the Surety Bond Guarantee Program in accordance with 13 CFR Part 115 and desires to obtain an SBA guarantee on a bond it would not issue without an SBA Guarantee.

In consideration of the mutual benefits and the benefits to the small business segment of the economy, to be derived from this Agreement, SBA and the Surety agree as follows:

Article I

Limitations

This agreement shall apply to the bond or bonds described in Article II hereof issued by Surety, only if, as determined by Surety and SBA at the time of issuance of SBA's written approval in the form of this guarantee (1) the principal of the bond is a small business concern as defined by 13 CFR Part 121; (2) the bond is required to bid on a contract, or to serve as prime contractor or subcontractor thereon; (3) the principal is not able to obtain such bond on reasonable terms and conditions without an SBA guarantee; (4) the Surety and SBA have determined that there is a reasonable expectation that such person will perform the contract with respect to which the bond is required; (5) the contract meets requirements for feasibility of successful completion and reasonableness of cost; (6) the terms and conditions of the bond are reasonable in light of the risks involved; and (7) the contract does not exceed $1,000,000 in face value.

Article II

Scope of This Agreement

SBA's guarantee shall attach only to the bid, payment or performance bonds described below:

Description of contract, location, amount, nature, and extent of work: _____

Name of principal: _____

Principal's address: _____

_____

_____

Name of obligee: _____

_____

Bid or award date: _____

Type or kind of bond or bonds: _____

If the bond is not delivered to the designated obligee this agreement does not apply to the bond. Surety shall decline to issue the bond, if SBA's conditions to such issuance are not met or if additional information comes to the attention of the Surety so as to change its underwriting determination. Surety shall promptly notify SBA of such disapproval. Until delivery of the bond to the obligee, while such delivery is within the control of the Surety, SBA may cancel this agreement by written notice to the Surety prior to such delivery.

The Surety shall not, without SBA's prior written consent, (a) agree to any material alteration in the terms, conditions or provisions of the contract or bond, excluding an increase in bond liability less than 20% of the original liability; (b) name as an obligee on the bond any party, including a lender to the principal, which is not bound by the contract to the principal to the same extent as the original obligee; (c) issue the bond after the date the work under the contract is actually begun.

The Surety shall not reduce its agreed percentage of loss on the guaranteed bond by any arrangement of co-surety, subsurety, or

any other agreement, except existing reinsurance.

Article III

SBA's Statutory Defenses

SBA shall be relieved of all liability if—

(1) the Surety obtained this guarantee or applied for reimbursement by fraud or material misrepresenatation. Material misrepresenation includes both the making of an untrue statement of material fact and the omission of a statement of material fact necessary to make a statement not misleading in light of the circumstances in which it was made and includes the adoption of a misstatement made by others which Surety knew or in the exercise of reasonable diligence should have know to be false or misleading (failure by the surety to dislose its ownership of an interest in a Principal or an Obligee shall be deemed the omission of a statement of material fact); or

(2) the total contract amount at the time of execution of this guarantee of the bond or bonds exceeds $1,000,000.

Article IV

Application, Approval or Decline

In submitting its application for guarantee (OMB Approval No. 32450007), the Surety represents that the information furnished was accurate and complete and that it used due diligence to ascertain its accuracy and completeness and that its recommendation for approval was formulated in accordance with such underwriting practices were be established by SBA and furnished to the Surety.

The Surety represents that (a) it has determined that the contract price is reasonable; (b) the terms and conditions of the bond to be executed are in accordance with those generally used by the surety or construction industry; (c) the bond to be issued is appropriate to the contract requiring it and will conform to other bonds generally established and accepted in the surety industry as bid, payment or performance bonds of bonds ancillary and coterminous with the payment and performance bonds and which are incidental to the contact and essential for its performance; (d) the bond or bonds are required by the invitation for bids or by the proposed contract and would not be provided by the Surety without an SBA Guarantee.

Article V

The Statute, the Surety and Authorized Representatives

By statuory definition (15 U.S.C. 694a) the term Surety includes an agent, independent agent, underwriter or any other company or individual empowered to act on behalf of the person (Surety) undertaking the obligations set forth in the defintion. The application for guarantee is submitted by a person authorized by Surety in writing to act for Surety in issuing final bonds.

SBA, by dealing with the authorized representative, does not waive its right to communicate with the Surety concerning any matter deemed in need of Surety's attention; further, SBA may express to Surety its dissatisfaction with the activity or performance of the authorized representative for non-compliance with SBA Regulations, this Agreement or lack of cooperation with SBA employees.

Article VI

The Guarantee, Loss and Mitigation

SBA shall reimburse the Surety ——% of the loss defined herein which the Surety sustains and pays as a result of a breach by the principal of the terms of the bond(s) guaranteed hereunder.

1. "Loss" shall have the following meanings:

(a) In the case of a bid bond, the lesser of the penal sum or the sum which is the difference between the bonded bid and the next higher responsive bid, less any amounts recovered by reason of the principal's defenses against the obligee's demand for performance by the principal and less any sums received from indemnitors and other salvage.

(b) In the case of a payment bond, at the Surety's option, the sums necessary to pay all just and timely claims against the principal under the bonded contact or the penal sum of the payment bond, less amounts recovered by reason of the principal's claims against laborers, materialmen, subcontractors or suppliers and less any sums recovered from indemnitors and other salvage.

(c) In the case of a performance bound, at the Surety's option, the sums necessary to perform that portion of the bonded contract which is in default by the Principal; or the penal sum of the bond less amounts recovered (by offset or otherwise) by reason of the principal's defenses or causes of actions against the obligee on the bonded contract and less any sums recovered from indemnitors and other salvage.

(d) Expenses specifically allocable to the investigation, adjustment, negotiation, settlement of or resistance to a given claim (including court costs and reasonable attorney's fees) for loss resulting from the breach of the terms of the guaranteed bond, but excluding all office expense, all employment costs pertaining to permanent employees, all other internal expenses of Surety, or external expenses for claims handling or administration.

(e) Expenses shall also include court costs and reasonable attorney's fees incurred in suits to enforce mitigation of loss as defined in paragraphs (a) through (c) of this Article, including suits to obtain sums due from obligees, indemnitors, principals and others; *Provided, however,* That no such expense shall be paid for any such suits filed against the United States of America or any of its agencies, officers or employees unless the Surety has, prior to filing such suit, received written concurrence from SBA that such suit should be filed.

(f) "Loss" shall not include attorney's fees and court costs incurred by Surety in a suit by or against SBA or its Administrator, and shall not include such costs or payments arising out of a suit by a Principal against Surety.

2. The Surety shall take all reasonable action to minimize loss including, but not limited to, obtaining indemnification agreements of the principal and third parties, secured by such collateral as is deemed necessary by the Surety or SBA. In the event of loss, the Surety will pursue all sources of recovery at law or equity and will discontinue such efforts only with the written consent of SBA. Surety shall own all suits, claims, defenses, rights, privileges and legal interests arising out of the guaranteed bonds and shall be the real party in interest thereto; provided, however, any dispute between Surety and another Surety or Sureties whose losses are guaranteed by SBA shall be referred in writing to SBA for mediation and possible settlement before the Sureties engage in litigation concerning the guaranteed bond.

Article VII

Claims, Salvage and Parties

If any suit or claim is filed against the Surety which Surety in good faith believes it will be required to pay, the Surety shall inform SBA on Form 994] within 30 calendar days of receipt of notice of the suit or claim at its home office. The Surety shall manage the suit or claim and compromise, settle, or defend such suit or claim unless SBA notifies the Surety within 30 calendar days of the receipt from Surety of such notice to assign all of its right, title and interest in the suit or claim to SBA. In the event of such assignment the agreed percentage of loss shall not change. In the administration of such claim the Surety will follow, to the extent practical and possible, the guidelines set forth in the SBA Standard Operating Procedure, Surety Bond Guarantee Program (SOP 50-45) as furnished by SBA. Any proposed major departure from these guidelines will be promptly communicated to SBA for its prior written approval. Any salvage or other recovery by Surety of SBA will be shared in the same proportion as loss by the Surety and SBA: provided, however, that existing reinsurance shall not be considered as salvage or other recovery.

This Agreement is made exclusively for the benefit of the Surety and SBA, and does not confer any rights or benefits on any other party, including any right of action against SBA by any person claiming under the SBA guaranteed bonds or otherwise.

Article VIII

Premium, Contractor's Fee and Guarantee Fee

The Surety warrants that it will charge and collect as its premium for the guranteed bond no greater amount than set forth in its rate schedule as filed and approved by the applicable state or other regulatory authority, if any. The Surety shall pay to SBA as a fee for this guarantee —— % of the premiums for the guaranteed bonds. The same percentage of premiums will apply to increases or reductions due to contract changes. SBA shall charge no fee to the Surety or to the contractor on a bid bond guarantee. Premium and surety guarantee fee adjustments based on a bond amount adjustment of $10,000 or less shall be disregarded. Surety shall make no charge to the contractor except as stated above, or where services are performed at the request of and for the contractor and the additional charge or fee is permitted by the applicable state or other regulatory authority.

if any, such additional charge or fee to be promptly disclosed to SBA.

Article IX

Accounting Reports and Remittances

Surety shall mail to SBA, on a form prescribed by SBA, within forty-five calendar days of the issuance of the final bond, a statement of Surety's guarantee fee owed to SBA, and remit to SBA the amount due as shown on such statement.

In addition, Surety shall within forty-five calendar days from the end of each month give a statement of all claim reserves established or changed during such month, and the following information (subject to OMB approval):

(a) Statement of Losss paid, with expenses pertaining thereto segregated.

(b) Statement of salvage or other recovery (with payment of SBA's share).

(c) An estimate of expected attorney fees with names of attorneys, hours of estimated work, title of suit or nature of work.

Article X

Insolvency

In the event of the insolvency of the Surety the rights of the receiver, trustee in bankruptcy or other representative of the insolvent Surety shall be no greater than those of the Surety while solvent and no claim against SBA will be paid to a receiver, trustee in bankruptcy or other representative of the insolvent Surety until a creditor's claim has been paid by the receiver, trustee in bankruptcy or other representative. Surety and SBA agree that there is no privity of contract between SBA and the principals or obligees on the guaranteed bonds and the Surety covenants that it will not represent that such privity exists or represent that it is the agent or representative of SBA in the issuance of its bonds.

Article XI

Surety represents that, to the best of its knowledge, its agents, officers, directors, individual partners or individuals holding ten or more percent of its voting securities, as the case may be, possess business integrity, as defined in 13 CFR 115.16(b), except as separately noted. Surety will notify SBA when any of these individuals subsequently ceases to qualify under said section. Surety agrees that SBA may require submission of SBA Form 912, Statement of Personal History (OMB Approval No. 32450178) from any of these individuals.

Article XII

Construction of Agreement; Other Laws

SBA's Surety Bond Guarantee Regulations, 13 CFR Part 115, as they may be amended from time to time, are incorporated herein as if fully set forth here and if any Article, sentence, phrase or part of this Agreement is in conflict with the regulations as amended, the latter will prevail over the former in construing and applying this Agreement.

In Witness Whereof, SBA and Surety have caused this agreement to be executed in duplicate originals.

Small Business Administration

by _____ [SBA Seal]

Title

on _____

_____ [Corp. Seal]

Surety

by _____

President

Attest _____

on _____

[Catalog of Federal Domestic Assistance Program No. 59.016, Bond Guarantee Assistance for Surety Companies]

Dated: July 24, 1985.

James C. Sanders,

Administrator.

[FR Doc. 85-19677 Filed 8-20-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ASW-14]

Airworthiness Directives; Bell Helicopter Textron, Inc. (BHTI), Model 222B and 222U Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection and repair (if necessary) or modification of tailbooms on BHTI Model 222B and 222U helicopters. The AD is prompted by two reports of tailbooms with cracked skin. The proposed AD is needed to preclude operation of the helicopter with a crack in the tailboom skin. The crack may propagate and thus result in failure of the tailboom and probable loss of the helicopter.

DATES: Comments must be received on or before September 20, 1985.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, P.O. Box 1689, Forth Worth, TX 76101, or delivered in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Forth Worth, TX 76106. Comments delivered must be marked: Docket Number 85-ASW-14. Comments may be inspected in Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between 8 a.m. and 4 p.m. weekdays, except Federal holidays.

The applicable service instructions are BHTI Alert Service Bulletin Numbers 222-85-28 and 222U-85-3 for the BHTI Model 222B and 222U helicopters, respectively. The alert service bulletins may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Forth Worth, TX 76101.

Copies of the alert bulletins are contained in the Rules Dockets, Office of the Regional Counsel, FAA, Southwest Region, 4400 Blue Mound Road, Forth Worth, TX 76106.

FOR FURTHER INFORMATION CONTACT: Gary B. Roach, Helicopter Certification Branch, ASW-170, Aircraft Certification Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Forth Worth, TX 76101, telephone number (817) 877-2593.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Forth Worth, TX, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must sumbit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 85-ASW-14." The postcard will be dated/time stamped and returned to the commenter.

There have been two reports of cracks in the tailboom of BHTI Model 222B and 222U helicopters. These cracks originated in the skin on top of the tailboom between the legs of the aft driveshaft cover support at Boom Station 341. In one report, the crack extended through the upper flange of one supporting longeron.

Since this condition is likely to exist or develop on other aircraft of this type, the proposed AD would require inspection and repair (if necessary), or

modification of tailboom Part Numbers (P/N) 222-035-150-103 and 222-035-150-107. The proposed rule will incorporate, by reference, manufacturer's service instructions.

The FAA has determined this proposed regulation involves 44 helicopters for an estimated total cost of $54,282.80 or approximately $1,233.70 per helicopter. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291, (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal; and (4) if promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—[AMENDED]

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

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

2. By adding the following new AD:

Bell Helicopter Textron, Inc. (BHTI): Applies to BHTI Model 222B and 222U helicopters that have tail boom assembly, P/N 222-035-150-103 or -107, installed.

To prevent possible failure of the tail boom, accomplish the following:

(a) Within the next 25 hours' time in service and thereafter at intervals not to exceed 25 hours, inspect the tailboom in accordance with Part I of BHTI Alert Service Bulletin Number 222-85-28 for the Model 222B and Number 222U-85-3 for the Model 222U.

(b) If any crack is identified during the inspection required in paragraph (a) above, Part II (Repair) or Part III (Modification) of Alert Service Bulletin Number 222-85-28 for the Model 222B or Number 222U-85-3 for the Model 222U must be accomplished before further flight.

(c) Upon completition of Part II (Repair) or Part III (Modification) of Alert Service Bulletin Number 222-85-28 for the Model 222B or Number 222U-85-3 for the Model 222U, the inspection required by paragraph (a) of this AD are no longer necessary.

(d) This AD does not apply if Part II (Repair) or Part III (Modification) of Alert Service Bulletin Number 222-85-28 for the Model 222B or 222U-85-3 for the Model 222U has been previously accomplished.

(e) Any equivalent method of compliance with this AD must be approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76106.

(f) In accordance with §§ 21.197 and 21.199, flight is permitted to a base where the inspection required by this AD may be accomplished.

Issued in Fort Worth, Texas, on August 2, 1985.

C.R. Melugin, Jr.,

Director, Southwest Region.

[FR Doc. 85-19896 Filed 8-20-85; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. 9182]

Weider Health and Fitness, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Woodland Hills, Calif. manufacturer and distributor of nutrient supplements and three corporate officers, among other things, to make refunds to purchasers of "Anabolic Mega-Pak" or "Dynamic Life Essence." If the refunds total less than $400,000, respondents would be required to donate the difference to fund research on the relationship of nutrition to muscle development. Respondents would be required to publish notices of the refund offer in two bodybuilding magazines. Additionally, respondents would be prohibited from: (1) Making unsubstantiated claims that its products promote muscular development, produce human-growth hormone or that its products are unique; and (2) misrepresenting any scientific test, research article, survey or other scientific opinion or data as it applies to their products.

DATE: Comments must be received on or before October 21, 1985.

ADDRESS: Comments should be addressed to: FTC/Office of the Secretary, Room 136, 6th St. and Pa. Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Sirota, Chicago Regional Office, Federal Trade Commission, 55 East Monroe St., Suite 1437, Chicago, IL 60603. (312) 353-4423.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Nutrient supplements, Trade practices.

Before Federal Trade Commission

[Docket No. 9182]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Weider Health and Fitness, Inc., a corporation, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, and Ben Weider, individually and as a director of Weider Health and Fitness, Inc., and as an officer of M.L.E. Holding Co. Ltd.

The agreement herein, by and between Weider Health and Fitness, Inc., a corporation, by its duly authorized officer, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, by its duly authorized officer and Ben Weider, individually, as a former director of Weider Health and Fitness, Inc. and as an officer of M.L.E. Holding Co. Ltd., hereafter sometimes referred to as respondents, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith the parties hereby agree that:

1. Respondent Weider Health and Fitness, Inc. is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its office and principal place of business at 21100 Erwin Street, Woodland Hills, California 91367.

Respondent Joseph Weider is an officer of the corporate respondent Weider Health and Fitness, Inc. He has formulated, directed and controlled the acts and practices of that corporation.

His address is the same as that of Weider Health and Fitness, Inc.

Respondent M.L.E. Holding Co. Ltd. is a corporation organized, existing and doing business under and by virtue of the laws of the Province of Quebec, Canada, with its office and principal place of business at 2875 Bates Road, Montreal, Quebec, Canada H3S 1B3. M.L.E. Holding Co. Ltd. owns Weider Health and Fitness, Inc. It has the authority to formulate, direct and control the acts and practices of Weider Health and Fitness Inc. and derives significant financial benefits from the allegedly deceptive acts and practices of Weider Health and Fitness, Inc.

Respondent Ben Weider is the President of M.L.E. Holding Co. Ltd. and has voting control of all shares of that corporation. In addition, he was a member of the Board of Directors of Weider Health and Fitness, Inc. until June 1, 1983. He has the authority to control the acts and practices of Weider Health and Fitness, Inc. His address is the same as that of M.L.E. Holding Co. Ltd.

2. Respondents have been served with a copy of the complaint issued by the Federal Trade Commission charging them with violation of section 5 and section 12 of the Federal Trade Commission Act and have filed answers to said complaint denying said charges.

3. Respondents admit all the jurisdictional facts set forth in the Commission's complaint in this proceeding.

4. Respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of the law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the respondents, in which event it will take such action as it may consider appropriate, or issue and serve its decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in the said copy of the complaint issued by the Commission.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may without further notice to respondents, (1) issue its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service to respondents Weider Health and Fitness, Inc. and Joseph Weider or by the Canadian postal service to respondents M.L.E. Holding Co. Ltd. and Ben Weider of the decision containing the agreed-to order to respondents' addresses as stated in this agreement, or to their counsel, shall constitute service. Respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or to contradict the terms of the order.

8. Respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

9. With respect to the deceptive acts or practices which are alleged in the complaint and which occurred prior to the date of service of this Order, the Commission's acceptance of this agreement will constitute a waiver of all claims the Commission may have against respondents for consumer redress under section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b.

Order

I

It is ordered that respondents Weider Health and Fitness, Inc., a corporation, its successors and assigns, and its officers, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, its successors and assigns, and its officers, Ben Weider, individually, as a former director of Weider Health and Fitness, Inc. and as an officer of M.L.E. Holding Co. Ltd., and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising the nutrient supplements known from 1983 to 1985 as "Anabolic Mega-Pak" and Dynamic Life Essence" or of any other food or substantially similar composition, or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, directly or by implication, that:

A. A typical user of any such food will achieve greater for faster muscular development than a non-user;

B. A typical user of any such food will achieve results similar to or superior to those results bodybuilders generally believe are achievable through use of anabolic steroids, e.g., rapid and substantial muscular development;

C. Any such food will stimulate greater production or release of human growth hormone, resulting in greater or faster muscular development in users than in non-users;

D. The nutrient supplement know from 1983 to 1985 as "Dynamic Life Essence" or any other food of substantially similar composition is unlike any other amino acid source in the world, e.g., it is unique; or

E. The nutrient supplement known from 1983 to 1985 as "Anabolic Mega-Pak" or any other food or substantially similar composition was developed by a team of the world's most renowned nutritional biochemists, exercise physiologists and trainers, unless it was so developed.

II

It is further ordered that respondents, their successors and assigns, and their officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling packaging, offering for sale, selling, distribution or advertising any nutrient supplement or other food, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, do

forthwith cease and desist from representing, directly or by implication, that:

A. Typical user of any such nutrient supplement or other food will achieve greater or faster muscular development than a non-user;

B. A typical user of any such nutrient supplement or other food will achieve results similar to or superior to those results bodybuilders generally believe are achievable through use of anabolic steroids, e.g., rapid and substantial muscular deveopment;

C. Any such nutrient supplement or other food will stimulate production or release of human growth hormone or any other bodily substance that affects or is represented to affect muscular development;

D. Any such nutrient supplement or other food is unique; or

E. Any such nutrient supplement or other food was developed, approved, tested or endorsed by any person(s) having the particular qualifications, status, reputation or expertise claimed

Unless, at the time of making such representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates the representation. "Competent and reliable scientific evidence" shall mean for purposes of this Order any test, analysis, research, study, survey or other evidence that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession or science to yield accurate and reliable results.

III

It is further ordered that respondents, their successors and assigns, and their offices, agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising any nutrient supplement or other food, in or affecting commerce, as "food" and "commerce" are defined in the Federal Trade Commission Act, marketed to assist users in achieving greater or faster muscular growth or development than non-users, do forthwith cease and desist from misrepresentating in any manner, directly or by implication, the purpose, content, sample, reliability, results or conclusions of any scientific test, research article, survey or any other scientific opinion or data.

IV

It is further ordered that respondents, within 30 days of service of this Order, send a Notice Letter, Refund Form and Notarized Statement by first class mail, in an envelope, as described below, in all material respects consistent with, but not necessarily identical to, the materials attached to this Order as Appendices A and B, and no other information, to all consumer mail order purchasers of the Anabolic Mega-Pak or Dynamic Life Essence, or both, whose orders Weider Health and Fitness, Inc. received on or before October 5, 1984, to all consumer telephone purchasers whose orders were received on or before September 30, 1984, to all consumers who answered respondents' Anabolic Mega-Pak questionnaire that appeared in the September 1984 issue of *Muscle and Fitness* magazine, to all current subscribers of *Muscle and Fitness* or *Flex* magazines, and to all consumers who call or write to respondents requesting information about this Order. In addition, respondents shall send a pre-paid self-addressed return envelope, as described below, to all consumers to whom notice shall be sent by first class mail, except those consumers who are current subscribers to *Muscle and Fitness* or *Flex* magazine. Respondents are not required to send duplicate notice materials if a consumer falls within more than one of the foregoing categories.

The envelope that contains the Notice Letter, Refund Form, Notarized Statement and return envelope mailed to consumers shall contain in the upper left hand corner the following return address: Federal Trade Commission/ Weider Refund Agreement, 21100 Erwin Street, Woodland Hills, CA 91367.

The envelope mailed to consumers shall also have the words "ADDRESS CORRECTION REQUESTED" and "RETURN POSTAGE GUARANTEED" in the upper left hand corner. For each Notice Letter for which respondents receive a corrected address, respondents shall within twenty-one (21) business days after respondents have received the corrected address send the Notice Letter, Refund Form, Notarized Statement and return envelope, addressed to the original addressee with the corrected address.

The pre-paid self-addressed return envelope shall contain the following words on the outside of the envelope under, on or below the envelope seal flap:

MAKE SURE YOU HAVE ENCLOSED YOUR REFUND FORM AND
(for those who didn't purchase by mail or telephone from Weider)
ONE OF THE THREE WAYS OF SHOWING PROOF OF PURCHASE

V

It is further ordered that respondents shall place, at least twice in the first four (4) months after the date of service of this Order, and cause to be disseminated in the national full-circulation editions of both *Muscle and Fitness* and *Flex* magazines:

(1) A prominently placed, conspicuously printed, black on white half page version of the Notice Letter attached to this Order as Appendix A, or a half page Notice Letter in all material respects consistent with the NOTICE LETTER attached to this Order as Appendix A; and

(2) a REFUND FORM and NOTARIZED STATEMENT form in all material respects consistent with those forms as they appear in Appendix B with the top half of the page containing the Notice Letter (Appendix A) separated the bottom half by a dotted line and the bottom half containing the Refund Form and Notarized Statement.

VI

It is further ordered that respondents shall in the manner described below offer reimbursement of the total purchase price paid for these products, (including costs of postage, handling and tax) to any mail order consumer purchaser of Anabolic Mega-Pak, Dynamic Life Essence, or both, whose orders Weider Health and Fitness, Inc. received on or before October 5, 1984, and to any consumer who purchased such product(s) on or before September 30, 1984.

Respondents shall mail refund checks, and no other information, within sixty (60) days of the closing date for receipt of both refund requests and proper evidence of purchase, for the total pruchase price (including costs of postage, handling and tax) to those purchasers eligible to receive reimbursement who make requests and provide proper evidence of purchase on or before the closing date. Respondents shall reimburse each customer who is eligible for a refund and who did not use a postage-paid return envelope furnished by respondents to request a refund, an additional twenty-two cents ($.22). The dollar amount of reimbursements shall be based on Weider Health and Fitness, Inc.'s suggested retail price for Anabolic Mega-Pak and Dynamic Life Essence if

records of actual purchase prices are not available. For purposes of this Order the "closing date" for receipt of refund requests shall be the last day of the month following the month in which magazines containing the second notice are offered for sale. For purposes of this Order, "proper evidence of purchase" shall mean:

(1) For mail order purchases from respondents, respondents' own sales records of purchase orders received on or before October 5, 1984;

(2) For telephone purchases from respondents, respondents' own sales records of purchase orders received on or before September 30, 1984;

(3) For purchases of Anabolic Mega-Pak or Dynamic Life Essence by any other means,

(a) The portion of the Anabolic Mega-Pak box, or Dynamic Life Essence bottle lable that contains the batch control numbers issued for those products on or before July 29, 1984; or

(b) Copies of a receipt, invoice, credit card record or both sides of a cancelled check, dated on or before September 30, 1984, that indicate the specific product(s) purchased; or

(c) The NOTARIZED STATEMENT form attached to this Order as part of Appendix B, or a form in all material respects consistent with the form attached as part of Appendix B. A Notarized Statement shall not be deemed "proper evidence of purchase" for more than two boxes of Anabolic Mega-Pak and two bottles of Dynamic Life Essence.

If respondents' own sales records do not confirm the amount a consumer claims to have purchased by mail order or telephone from respondents, respondents shall immediately notify the consumer of the consumers' right to verify the purchase with the same "proper evidence of purchase" available to other consumer purchasers, and shall, at the time all other refund checks are mailed, mail refund checks to sush consumers in the amount that sales records do confirm.

VII

It is further ordered that if the total of the amount of reimbursement respondents pay to purchasers of the Anabolic Mega-Pak or Dynamic Life Essence, or both, plus the amount respondents pay in postage for mailing of the Notice Letters, return envelopes and refund checks is less than Four Hundred Thousand Dollars ($400,000.00), then respondents shall in the manner described below donate an amount equal to the difference between the total of the amount paid in reimbursements and Four Hundred Thousand Dollars ($400,000.00), minus the amount paid for first class postage, to a university, foundation or research institute to which the National Science Foundation awarded program grants or contracts in Fiscal Year 1981 or any year thereafter for research in the fields of physiology, cell or molecular biology. The donation shall be payable in four equal installments over a four year period, the first payment to be made within one hundred and twenty (120) days of issuing the final reimbursement checks and each subsequent payment to be made no later than every twelve months thereafter. Such funds shall be designated "for the purpose of research on the relationship of nutrition to muscle development." Respondents may divide such funds between no more than two (2) recipients. Respondents' donation shall have no conditions attached thereto, including but not limited to retaining any proprietary interest in the results of the recipient's research or requiring the donation recipient to publish in any of respondents' magazines. No portion of these funds may be used to compensate any person, or his or her agent(s), who has been employed by, has consulted for, or has received remuneration from respondents at any time prior to the date of service of this Order. In the event of default in any payment, which default continues for ten (10) days beyond the due date of payment, the entire remaining amount shall immediately become due, and be placed in escrow under control of the Federal Trade Commission for the benefit of the university, foundation or research institute previously designated by respondents to receive the funds.

VIII

If is further ordered that whenever, in any publication that respondents own or control, respondents identify themselves as the funding source for the research referred to in Paragraph VII, they shall also state clearly and conspicuously that the funding was provided as part of a settlement agreement with the Federal Trade Commission resulting from a complaint issued by the Federal Trade Commission.

IX

It is further ordered that respondents shall, for at least two (2) years after the date of the last dissemination of the representation, maintain and upon request make available to the Federal Trade Commission at a place it designates for inspection and copying copies of:

1. All materials that respondents relied upon in disseminating any representation covered by this Order.

2. All test reports, studies, surveys, or demonstrations in their possession or control or of which they have knowledge that contradict any representation of respondents that is covered by this Order.

3. All materials evidencing respondents' compliance with Paragraph VII above.

X

It is further ordered that respondents shall for at least two (2) years after service of this Order, maintain and upon request make available to the Federal Trade Commission at a place it designates for inspection and copying copies of:

1. Records evidencing the number and cost of Notice Letters sent to the U.S. Postal Service for mailing and the actual cost for mailing the return envelopes referred to in Paragraph IV above and the refund checks referred to in Paragraph VI above.

2. All Notice Letters returned to the respondents as undeliverable.

3. The name and last known address of each purchaser of the Anabolic Mega-Pak and/or Dynamic Life Essence, or both, who was sent the Notice Letter and the address to which any subsequent Notice Letter to that purchaser was sent.

4. A copy of each Refund Form, returned to respondents.

5. The name and last known address of each purchaser of the Anabolic Mega-Pak or Dynamic Life Essence, or both, who received reimbursement and the amount of such reimbursement.

6. The name and last known address of each purchaser of the Anabolic Mega-Pak or Dynamic Life Essence, or both, who requested reimbursement, was refused and the reason for each refusal to reimburse.

XI

It is further ordered that the corporate respondents shall for ten (10) years following service of this Order, notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of the Order, or of any change in the positions or responsibilities of Joseph Weider or Ben Weider in regard to any corporation or subsidiary of which they are an officer.

XII

It is further ordered that the individual respondents named herein shall promptly notify the Commission of their discontinuance of their present business or employment and of their affiliation with a new business or employment engaged in the manufacturing, labeling, packaging, offering for sale, selling, distributing or advertising of any foods, physical fitness products or publications relating thereto, or the offering for sale, selling, distributing or advertising of any services relating to any foods or physical fitness, and, for a period of five (5) years from the date of service of this Order, shall promptly notify the Commission of each affiliation with any such new business or employment, each such notice to include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment.

XIII

It is further ordered that respondents shall, within sixty (60) days after service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

Appendix A.—Notice to Customers Who May have Bought Anabolic Mega-Pak or Dynamic Life Essence

Weider Health and Fitness, Inc. (Weider) has recently entered into a consent agreement with the Federal Trade Commission (FTC) regarding its advertising for the "Anabolic Mega-Pak" and "Dynamic Life Essence." Weider has entered into this agreement purposes only and does not admit that it has violated the law.

This agreement contains four main provisions:

(1) Weider's advertising will not claim that the Anabolic Mega-Pak or Dynamic Life Essence will cause greater or faster muscular development;

(2) Weider will support all advertising claims for its food supplements with competent and reliable scientific proof;

(3) Weider will offer refunds to eligible consumers who purchased Anabolic Mega-Pak or Dynamic Life Essence. To determine if you are eligible, complete and send in the attached form. You do *not* have to return unused portions of either product to qualify for a refund; and

(4) Weider will fund research on the relationship of nutrition to muscle development. The amount of funding will be based on the refunds made in connection with this offer.

If you bought any of these products by mail or telephone from Weider Health and Fitness, Inc., just fill out the enclosed REFUND FORM. We will check it against our records of your purchases and the total amount you paid for them and then determine your eligibility. *This refund offer expires on [to be inserted].*

If you bought any of these products at a store, health club, etc., you may prove that you purcahsed them in one of three ways. Just enclose in an envelope the REFUND FORM *and* one of the following:

1. An original or copy of the receipt, invoice or credit card record or both sides of a cancelled check that indicates the specific product(s) you bought, *OR*

2. The portion of the Anabolic Mega-Pak box or the label of the Dynamic Life Essence bottle, that contains the blue 4 or 7-digit batch number (not the 10-digit UPC number), *OR*

3. A completed NOTARIZED STATEMENT,

AND mail the REFUND FORM and one of the three types of proof or purchase to: Federal Trade Commission/Weider Refund Agreement, 21100 Erwin Street, Woodland Hills, California 91367.

Weider Health and Fitness, Inc. will refund your postage if you are eligible to receive a refund.

Weider looks forward to serving you in the future.

Yours truly,
WEIDER HEALTH AND FITNESS, INC.
By———————
Joe Weider

Appendix B.—Refund Form

Please determine my eligibility for a refund and if I am eligible send me a refund for my purchases of (number) box(es) of, Anabolic Mega-Pak and/or (number) bottle(s) of Dynamic Life Essence that I made on (date(s))

Name

Signature

Address

If you bought the Anabolic Mega-Pak and/or Dynamic Life Essence by mail or telephone from Weider and if you want a refund from Weider STOP here. You don't have to fill out or mail in anything else unless you also want refunds for purchases made at a store, health club, etc.

This refund offer expires on [to be inserted].———————

If you bought the Anabolic Mega-Pak and/or Dynamic Life Essence at a store, health club, etc., fill out and mail to us the REFUND FORM above, *AND* enclose:

1. An original or copy of the receipt, invoice credit card record or both sides of the cancelled check, that indicates the specific product(s) you bought, *OR*

2. The portion of the Anabolic Mega-Pak box or the label of the Dynamic Life Essence bottle, that contains the blue 4 or 7-digit batch control number (not the 10-digit UPC number), *OR*

3. A completed NOTARIZED STATEMENT.

NOTARIZED STATEMENT

State of ———————
County of ——————— *ss*

I, (Your Name—Printed or typed), being duly sworn on oath state as follows:

(1) That I bought (number) box(es) of Anabolic Mega-Pak at the following places on the following dates:

and (number) bottle(s) of Dynamic Life Essence at the following places on the following dates:

(2) That these facts are true and correct to the best of my knowledge.

(Your Signature)

Sworn and subscribed before me this —— day of —— 198—.

Notary Signature

Before the Federal Trade Commission

[Docket No. 9182]

Analysis of Proposed Consent Order To Aid Public Comment

In the Matter of Weider Health and Fitness, Inc., a corporation, Joseph Weider, individually, and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a corporation, and Ben Weider, individually, and as a director of Weider Health and Fitness, Inc., and as an officer of M.L.E. Holding Co. Ltd.

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Weider Health and Fitness, Inc., a California corporation, Joseph Weider, individually and as an officer of Weider Health and Fitness, Inc., M.L.E. Holding Co. Ltd., a Canadian corporation, and Ben Weider, individually, as a former director of Weider Health and Fitness, Inc. and as an officer of M.L.E. Holding

Co. Ltd. (collectively referred to as "respondents"). Under this agreement respondents will cease and desist from making certain claims for products, give refunds to purchasers of two products, Anabolic Mega-Pak and Dynamic Life Essence, and fund research on nutrition and muscle development.

The proposed consent order has been placed on the public record for sixty (60) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

This matter concerns advertisements for "Anabolic Mega-Pak" and "Dynamic Life Essence," two nutrient supplements. The Complaint accompanying the proposed consent order alleges that in connection with promoting these products the respondents engaged in deceptive acts and practices in violation of section 5 of the Federal Trade Commission Act and that they disseminated false advertisements in violation of Section 12 of the Federal Trade Commission Act. According to the Complaint the respondents alleged that the typical user of respondents' amino acid-based products, "Anabolic Mega-Pak" and "Dynamic Life Essence," would achieve greater and faster muscular development than a non-user of these products, and would achieve the results bodybuilders generally believe are achievable through use of anabolic steroids—rapid and substantial muscular development; that these products would stimulate greater than normal production of release of human growth hormone, resulting in greater or faster muscular development. The Complaint further alleges that respondents represented that Dynamic Life Essence was unique and that the Anabolic Mega-Pak was developed by a team of the world's most renowned nutritional biochemists, exercise physiologists and trainers.

The Complaint also alleges that the advertisements were deceptive because the respondents represented to consumers that they had a reasonable basis for the representations challenged in the Complaint when in fact they had no reasonable basis for these representations.

The consent order contains provisions designed to remedy the injury resulting from the advertising violations charged and to prevent respondents from engaging in similar allegedly illegal acts and practices in the future.

If the proposed consent order becomes final, it will prohibit respondents from:

1. Making the claims challenged in the complaint;

2. Making similar claims for any of respondents' nutrient supplements or other foods, unless respondents possess and rely upon competent and reliable scientific evidence that substantiates their claims; and

3. Misrepresenting the results of tests or surveys.

The proposed consent order also requires respondents to:

4. Offer refunds to prior purchasers of Anabolic Mega-Pak or Dynamic Life Essence by sending first class mail notice to identifiable purchsers and current subscribers of respondents' two magazines *Muscle and Fitness* and *Flex;* and

5. By placing a notice in these two magazines informing readers of the refund offer and other major provisions of the proposed consent order.

The proposed consent order further requires respondents

6. To fund research on the relationship of nutrition to muscle development up to $400,000, if the amount of redress paid to consumers is less than $400,000; and

7. Prohibit respondents from misrepresenting the reason they are funding this research.

Finally, the order contains provisions requiring respondents to:

8. Retain records that respondent contend support certain future advertising claims;

9. Retain records evidencing respondents' compliance with the terms of the consent order; and

10. Inform the Federal Trade Commission if they change or discontinue their present business affiliations or if they affiliate with certain types of new businesses.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 85-19912 Filed 8-20-85; 8:45 am]

BILLING CODE 6750-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300/36; FRL-2870-9]

N-Butanol; Tolerance Exemptions

Correction

In FR Doc. 85-17882 beginning on page 30963 in the issue of Wednesday, July 31, 1985, make the following correction: On page 30964, in the second column, in the fourth line from the top, "180.100(e)" should read "180.1001(e)".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 205

Disaster Assistance; Proposed Subpart I (Reimbursement of Other Federal Agencies)

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: This subpart prescribes procedures for obtaining or authorizing the provision of services or use of resources of other Federal agencies in providing assistance under the authorities of the Disaster Relief Act of 1974, Pub. L. 93-288, as amended. The procedures include those relating to reimbursement expenditures and the submission of costs.

DATE: Comments must be received by October 21, 1985.

ADDRESS: Send comments to: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Bruce Baughman, Office of Disaster Assistance Programs, Federal Emergency Management Agency, Room 714, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646-3689.

SUPPLEMENTARY INFORMATION: The proposed rule changes the existing rule: (1) To require the submission of reimbursement requests on a monthly basis for amounts in excess of $1,000, (2) to require other agencies to submit a billing schedule when they are unable to submit a final bill within 90 days after completion of mission assignment work, (3) to recommend the usage of a standardized cost summary form FEMA Form 76-41 entitled "Claim for

Reimbursement for Mission Assignment Expenditures." This form's use is optional and is intended to supplement the information shown on the Standard Form 1081.

This regulation is essentially administrative in nature and pertains solely to financial reimbursement of Federal agencies tasked with providing service or resources under Pub. L. 93-288. Thus, it will not have a substantial economic impact on small entities, within the meaning of 5 U.S.C. 605 (the Regulatory Flexibility Act). Therefore, no regulatory analysis will be prepared. The rule is not a major rule within the terms of E.O. 12291, nor are there any information collection requirements subject to section 3504(h) of the Paperwork Reduction Act.

This proposed rule relates to administrative actions which are categorically excluded in accordance with 44 CFR 10.8(c). Therefore, an environmental assessment is not required.

List of Subjects in 44 CFR Part 205

Disaster assistance: Grant programs—housing and community development.

Accordingly, Chapter I of Title 44, Code of Federal Regulation is amended by revising Subpart I of Part 205 to read as follows:

PART 205—[AMENDED]

Subpart I—Reimbursement of Other Federal Agencies

Sec.
205.150 Purpose.
205.151 Assistance from other Federal agencies.
205.152 Expenditures eligible for reimbursement.
205.153 Procedure for reimbursement.

Authority: 42 U.S.C. 5201, Reorganization Plan No. 3 of 1978 Executive Order 12148.

Subpart I—Reimbursement of Other Federal Agencies

§ 205.150 Purpose.

This purpose of this part is to prescribe procedures for obtaining or authorizing the provision of services or use of resources of other Federal agencies in providing assistance under the authorities of the Act. Further details of direct Federal assistance other than reimbursement are covered in Subpart H, § 205.121.

§ 205.151 Assistance from other Federal agencies.

(a) The Associate Director or Regional Director, in determining the nature and extent of assistance required to implement authorities under the Act, shall consider the types of resources and assistance from other Federal agencies. The Associate Director or the Regional Director may request or direct other Federal agencies to provide available assistance as necessary.

(b) All requests or directives to other Federal agencies shall be confirmed in writing if made orally. Such requests shall specify the anticipated level of reimbursement.

§ 205.152 Expenditures eligible for reimbursement.

(a) Reimbursement for resources or assistance provided under an agency's own statutory authority will not be approved.

(b) Reimbursement of the following costs incurred in the provision of assistance may be approved.

(1) Overtime, travel and per diem of all permanent personnel assigned solely to perform the services requested of that agency.

(2) Regular time, overtime, travel and per diem of all temporary personnel assigned solely to perform the services requested of that agency.

(3) Travel and per diem of military personnel assigned solely to perform services requested of that agency.

(4) Cost of work, services, and materials procured under contract.

(5) Cost of materials, equipment and supplies (including transportation, repair, and maintenance) from regular stocks.

(6) All costs incurred which are paid from trust, revolving, or other funds whose reimbursement is required by law.

(7) Other costs agreed to in writing by the Associate Director or the Regional Director and the agency.

§ 205.153 Procedure for reimbursement.

(a) Federal agencies shall submit reimbursement requests on a monthly basis for amounts in excess of $1,000. Request for lesser amounts shall be submitted quarterly. An agency must submit a final accounting of expenditures within 90 days after completion of the agency's work under each request or directive for assistance. In those instances, where a Federal agency is unable to comply with the 90-day limitation, that agency must submit to FEMA request for an extension of time. Such requests must provide an explanation as to the need for an extension of time and a proposed schedule for project closeout. Requests for reimbursement shall be made on a Standard Form 1081, Voucher and Schedule of Withdrawals and Credits.

(b) Agencies shall document requests for reimbursement with specific details on salary, per diem, transportation, administration, equipment and material costs. All expenses should be segregated by object class as specified in OMB Circular A-12 and by any subject class used in the agency's accounting system. Object class codes will be broken out into three categories: (1) Previously billed; (2) current billing; and (3) cumulative billed to date. Where contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs. It is recommended that FEMA For 76-41 entitled "Claim For Reimbursement for Mission Assignment Expenditures" be utilized in summarizing costs claimed under each billing.

(c) Reimbursement requests shall cite the specific directive or request for assistance under which the work was performed, and the disaster identification number. Requests for reimbursement of costs incurred under more than one directive or request may not be combined for billing purposes.

(d) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Director of the region in which the costs were incurred.

(e) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts for a period of 3 years starting from the date of submission of the final billing.

Dated: July 30, 1985.

Samuel W. Speck,

Associate Director, State and Local Programs and Support.

[FR Doc. 85-19904 Filed 8-20-85; 8:45 am]

BILLING CODE 6718-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

45 CFR Part 201

Aid To Families With Dependent Children; Grants to States for Public Assistance Programs; Reporting the Federal Share for Child Support Collections by States.

AGENCY: Social Security Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation which implements section 407(c) of Pub. L. 96–265, the Social Security Disablity Amendments of 1980, requires the Department of Health and Human Services to reduce the quarterly grant award made to a State under title IV–A by the appropriate Federal share of child support collections made by a State. This proposed rule is a technical change to clarify that the amount of the quarterly grant award made to a State will be reduced by the Federal share of child support collections made, like any other pro rata share of recovered funds to which the Federal government is entitled.

DATE: We will consider your comments if we receive them on or before October 21, 1985.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore MD 21203, or delivered to the Office of Family Assistance, Social Security Administration, Room B–442, 2100 Second Street, SW., Washington, DC 20201, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact persons shown below.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara M. Levering Director, Office of Intergovernmental Communications, Office of Family Assistance, Social Security Administration, 2100 Second Street, SW., Washington, DC 20201, telephone (202) 245–2637.

SUPPLEMENTARY INFORMATION:

Background

Section 403(b)(2)(B) of the Social Security Act requires the Department to reduce the amount of the quarterly grant award made to a State under title IV–A by a sum equivalent to the pro rata share to which the Federal government is equitably entitled from the net amount recovered during any prior quarter by a State or political subdivision within a State. In 1980, Congress clarified the Department's authority to reduce quarterly grant awards by child support collections when it passed Pub. L. 96–265. Section 407(c) of Pub. L. 96–265 amended the Social Security Act (the Act) by adding a new section 403(b)(2)(C) to title IV–A that specifically provided that the quarterly grant awards made to a State under the AFDC program are to be reduced by whatever amount is necessary to assure that the appropriate Federal share of child support collections made by a State are returned to the Federal government.

We are proposing to reflect section 407(c) in our regulations by amending 45 CFR 201.5(a)(3) to provide that States must report on their quarterly statement of expenditures the appropriate Federal share of child support collections that they make.

If States do not fully or properly report the Federal share of child support collections made on their quarterly statement of expenditures, the Federal government will adjust the Federal share reported accordingly. The adustment will be made pursuant to 45 CFR 201.5(c). We saw no need to amend 45 CFR 201.5(c) since that section already requires quarterly grant awards to be reduced "because of over-or under-estimate for the prior quarter and for other adjustments." We would consider any recovery of child support payments to be an "other adjustment."

Regulatory Procedures

Executive Order 12291

This regulation does not meet the criteria specified in Executive Order 12291 for a major regulation and no regulatory impact analysis is required.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511), the Quarterly Statement of Expenditures (SSA–41) in its present format—which is used by State to report their expenditures and the Federal share of all collections made—has been approved by the Office of Management and Budget under existing OMB No. 9060–0294. There is no further or new collection of information request being imposed on State agencies by this technical regulatory change.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only the transfer of funds between the Federal Government and States. Therefore, a regulatory flexibility analyses as provided in Pub. L. 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 13.808—Public Assistance Maintenance Assistance (State Aid))

List of Subjects in 45 CFR Part 201

Aid to families with dependent children, Family assistance, Grant programs—Social programs, Guam, Public assistance programs, Puerto Rico, Virgin Islands.

Dated: March 7, 1985.

Martha A. McSteen,

Acting Commissioner of Social Security.

Approved: May 6, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

PART 201—[AMENDED]

45 CFR Part 201 is amended as set forth below:

1. The authority citation for Part 201 is revised to read as follows:

Authority: Secs. 403 and 1102 of the Social Security Act, as amended; 49 Stat. 628, as amended; 49 Stat. 647, as amended; 42 U.S.C. 603, and 1302.

2. Section 201.5 is amended by revising the introductory text and paragraph (a)(3) to read as follows:

§ 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts, including for title IV–A the appropriate Federal share of child support collections made by the State, as may be found necessary.

Progressive reductions in Federal Medicaid payments to the States under sections 1903 (s) and (t) of the Act for fiscal years 1982–1984 are described in 42 CFR Part 433, Subpart E.

(a) *Form and manner of submittal.*

* * * * *

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, including for title IV–A the appropriate share of child support collections made by the State, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged

by the State agency or have been revealed in the course of an audit.

* * * * *

[FR Doc. 85-19880 Filed 8-20-85; 8:45 am]
BILLING CODE 4190-11-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[CC Docket No. 84-800]

Return Interstate Services of AT&T Communications and Exchange Telephone Carriers

AGENCY: Federal Communications Commission.

ACTION: Supplemental Notice of Proposed rulemaking.

SUMMARY: This supplemental notice (see also 49 FR 32871; August 17, 1984) proposes to establish a methodology and procedures for prescribing authorized rates of return for the interstate service of AT&T Communications, and exchange telephone carriers. The intent of the methodology and proceduresis to promote just and reasonable rates, and to avoid costly hearings before administrative law judges. The supplemental notice has two phases. Phase I addresses enforcement issues and Phase II addresses proposed methodologies and procedures.

DATES: Phase I comments are due September 3, 1985, and reply comments are due September 13, 1985. Phase II comments are due September 25, 1985, and reply comments are due October 10, 1985.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Goodman, Common Carrier Bureau, (202) 632-0745.

SUPPLEMENTARY INFORMATION:

Supplemental Notice of Proposed Rulemaking

In the matter of authorized rates of return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers; CC Docket No. 84-800.

Adopted: August 7, 1985.
Released: August 14, 1985.

By the Commission.

Table of Contents

I. Introduction

1. This Commission established a prescribed rate of return for the interstate telecommunications services of the American Telephone and Telegraph Company ("AT&T") in Docket 16258.[1] That prescription was revised in 1972,[2] 1976,[3] and 1981.[4] The *1981 Represcription Order* established an overall target return of 12.75% that AT&T is required to use for purposes of computing rates, and a maximum return of 13% that is to be used for purposes of remedying violations of the rate of return prescription.

2. When we adopted the Access Charge Rules (47 CFR Part 69) we concluded that the 12.75% return that had been prescribed for AT&T should be used for purposes of computing access charges for all exchange carriers until this Commission has an opportunity to represcribe a rate of return for that purpose.[5]

3. We have not prescribed a return for interstate interexchange or non-access services of exchange carriers, such as the "corridor services" of some of the Bell Operating Companies ("BOCs") and we have no present plans to do so. Those services presently represent a relatively small portion of interstate interexchange services and a relatively small portion of the total revenues of the carriers that provide such services. We may examine the reasonableness of such returns on an *ad hoc* basis in future proceedings instituted pursuant to sections 204, 208 and 403 of the Communications Act, 47 U.S.C. 204, 208 and 403. We also do not plan to prescribe a rate of return for Alascom at this time. We will be examining all questions relating to the provision of telecommunications services in the Alaska market in another proceeding.[6]

4. Although some of the methodologies and procedures that we will establish for purposes of represcribing rates of return for interstate access services and post-divestiture AT&T services may be useful in any represcription of the Comsat rate of return, we do not propose to address that question in this phase of the proceeding.[7]

5. We instituted this proceeding because we concluded that the methodologies and procedures that have been used in the past to represcribe an AT&T interstate rate of return may not be appropriate for either the post-divestitute AT&T services or the interstate access services of the exchange carriers. We accordingly concluded that we should establish new represcription procedures in a non-restricted notice and comment rulemaking before we instituted proceedings to revise any existing rate of return prescripion. We adopted an *Initial Notice*[8] on August 8, 1984 that

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[1] AT&T, 9 FCC 2d 30 (1976). See also Nader v. FCC, 520 F. 2d 182 (D.C.Cir. 1975). The *Nader* opinion interpreted prior FCC decisions as prescribing a rate of return for AT&T and held that the Communications Act of 1934 empowers this Commission to prescribe a rate of return.

[2] AT&T (Phase I of Docket No. 19129), 38 FCC 2d 213 (1972), affirmed, *Nader v FCC, SUPRA.*

[3] AT&T (Docket 20376), 57 FCC 2d 960 (1976).

[4] AT&T (CC Docket No. 79-63), 86 FCC 2d 221 (1981) (*"1981 Represcription Order"*).

[5] MTS and WATS Market Structure, CC Docket No. 78-72 (Phase I), 93 FCC 2d 241 (1983) at paras. 252-54.

[6] MTS and WATS Market Structure, CC Docket No. 78-72 (Phase II).

[7] *See*, para. 38, *infra.*

[8] Authorized Rates of Return for the Interstate Services of AT&T Communications and Exchange Telephone Carriers, CC Docket No. 84-800, FCC 84-395, 49 FR 32971 (August 17, 1984). Some 50 parties filed comments in response to the notice, and 32 parties filed reply comments. A complete list of commenting parties is set forth in Appendix A.

invited comment on a tentative plan for future represcriptions.

6. We have decided to issue a *Supplemental Notice* for two reasons. We have revised some of the tentative conclusions described in the *Initial Notice* and would like to have the benefit of comments on our revised tentative represcription plan before we adopt a final decision. We have also decided that the proceeding should be expanded to include procedures for detecting and remedying violations of a rate of return prescription. This subject was not expressly discussed in the *Initial Notice* and it is accordingly necessary to obtain comments before we adopt any decision to clarify or modify the existing enforcement procedures.

7. We intend to apply the enforcement procedures before we complete any proceedings to represcribe the target rates of return. We have accordingly decided to establish a shorter comment cycle for that phase of this proceeding. Comments, replies and other pleadings relating to the enforcement phase should be captioned "CC Docket 84-800, Phase I." The Phase I comments must be filed on or before September 3, 1985 and the Phase I replies must be filed on or before September 13, 1985.

8. The next round of comments with respect to procedures for represcribing the target rates of return for AT&T and for interstate access services should be captioned "CC Docket 84-800, Phase II." Phase II comments must be filed on or before September 25, 1985. Phase II reply comments must be filed on or before October 10, 1985.

9. It appears unlikely that the procedure we are considering for the represcription of a rate of return for interstate access services could be completed in sufficient time to be reflected in access charges that become effective on June 1, 1986. We expect that the represcription process will be completed by the fall of 1986. It would be undesirable to defer implementation of a represcribed rate of return until June of 1987. Therefore, we have tentatively decided to require the filing of new access charges with a January 1, 1987 effective date that can reflect the represcribed rate of return and any changes in Uniform System of Accounts that become effective at that time.

10. Excessive churning may result if access charges are revised in January and June of 1987. Therefore, it may be desirable to revise the Access Charge Rules to reinstate a calendar access year in 1987. Persons who wish to comment on the desirability of such a change should do so in their Phase I comments.

II. The Enforcement Phase

11. Our past decisions prescribing a rate of return for AT&T have usually established both an authorized or target rate of return that AT&T must use to compute new rates and a maximum return that is used to determine whether a rate of return prescription has been violated. Such a spread is necessary because variations in market conditions and measurements of achieved rates of return imply that the realized return will inevitably vary over time even if rates are correctly targeted for an initial period. We intend to continue that practice even though we expect to revise the target rate of return at two year intervals in the future.

12. We have tentatively concluded that it should not be necessary to revise the spread between the target and the maximum return every time we represcribe the target return. We intend to prescribe a formula in this proceeding that will automatically adjust the maximum return prescription whenever the target return prescription is revised.

13. Although the earlier prescription orders usually established a spread of ½ of 1% between the target and maximum returns, the *1981 Represcription Order* established a spread or interval of ¼ of 1% for the pre-divestitute AT&T and the Bell System Operating Companies. We believe that such a spread was reasonable at the time, but that it probably would not be reasonable to expect the post-divestiture AT&T to target its rates with the same degree of precision. The growth of interexchange competition, the reduction in the AT&T rate base and fluctuations in the access billings of the exchange carriers have made it more difficult for AT&T to target rates, and suggest that the risk that is associated with the provisions of interstate, interexchange services has increased. In view of these circumstances, we have tentatively concluded that we should increase the spread between the AT&T target return and the maximum return to one of two alternative differentials. As one alternative, we could increase the spread to ¾ of 1% and we could make the revised maximum return applicable to the next calendar year. In other words, AT&T would not be subject to a refund liability if its 1986 return for a relevant service category does not exceed 13.5%. As an alternative, we could utilize a ½ of 1% spread, but increase the period over which the return is average from one year to two years, and thus average the "peaks" with the "valleys." Parties are asked to address the merits of these alternative proposals. We also seek comments on methods to determine the appropriate spread between the target and maximum return for AT&T-Communications, on standards for selecting a time period for averaging the allowed earnings of AT&T-Communications, and upon the relationship between these two issues. We also seek comment on the relationship, if any, between the methods used to select a target rate-of-return and the appropriate spread between target and maximum.[9]

14. We do not have any reason to believe that exchange carriers have experienced the same variation in risk as AT&T, and therefore, propose to adopt and spread of ¼ of 1% for access services. Some factors that make it difficult for AT&T to target and achieve rates are not applicable to access services, and the respective cost of capital of each type of service provider. If we decide to change the access year, however, exchange carriers may experience somewhat greater difficulty (and risk) in targeting rates for a transitional period that is considerably less than 12 months. We would propose to use a spread of .35 rather than .25 to establish the maximum access returns for such a transitional period.

15. There are several reasons why we believe that 13% represents a reasonable interim ceiling for exchange carriers pending represcription. First, in our *Initial Notice* we sought information from the carriers to help us "in deciding on the reasonableness of the currently-effective prescription and whether the need for a new prescription is growing." *Initial Notice*, para. 17. Without prejudging the prescribed rates of return that will ultimately be adopted the current prescription does not appear to impose unreasonably low returns on exchange carriers. the lower end of the initial estimates filed by the RBOC's (after readjustment for flotation costs) [10] hover near the currently authorized rate of return.[11] Indeed, there is evidence in

[9] Although money market and stock market conditions have changed since 1981, a variety of other (and in some cases, possibly offsetting) changes have occured in the specific risks that are associated with AT&T.

[10] See paras. *87-96, infra*.

[11] After readjustment for a flotation cost of only 10 basis points, the lower end of the RBOCs' initial requests ranged from approximately 12.7% [NYNEX] to 13.3% (Ameritech and Pacific), with the average being roughly 13.0%. In addition, we note that interest rates declined subsequent to the carriers' initial filings. *See generally*, Rochester Reply Comments.

the record to suggest that the current return may be excessive.[12] Second, as SBS notes, the market performance of the RBOC's stocks in 1984 belies a claim that their 1984 earnings (including interstate earnings below the authorized return) were inadequate.[13] Third, a review of the rates of return recently granted by the states indicates that the currently authorized return is not unreasonable. The overall returns granted by the states range from 9.03% (Alaska) to 12.81% (Oregon), with a median of 11.75%.[14] Taken together, the record provides strong support for use of 13% as the interim ceiling on exchange carrier rates of return pending represcription.

16. We have used a calendar year for purposes of determining whether AT&T has complied with the maximum rate of return prescription.[15] We do not propose to change that requirement for the post-divestiture AT&T. Inasmuch as the exchange carriers and the National Exchange Carriers Association (NECA) are required to target rates for an access year, the access year or other applicable period should be used for purposes of measuring compliance. Thus, a maximum return of 13% for the June 1985–May 1986 period would be applicable to NECA and each exchange carrier that files separately if we adopt the tentative conclusions described in this *Supplemental Notice*.

17. Our decision to adopt the *Interim Cost Allocation Manual* [16] effectively required AT&T to equalize the returns for the three service categories that are described in that *Manual*. Although AT&T filed tariff revisions that were designed to achieve that result, the realized returns for the three categories have diverged somewhat in subsequent years. We have tentatively concluded that we should continue to require that rates for the private line category as a whole be targeted to earn the same return as AT&T switched services and that the private line category should be treated separately for purposes of verifying compliance with the maximum rate of return prescription and remedying any violations.[17] We have also tentatively concluded that we should suspend any requirement that MTS and WATS services be targeted to yield the same return. A decision to enforce that requirement at this time might enhance rather than alleviate discrimination or preferences among services because neither the present access charge rule nor the present *ICAM* reflects a peak and off-peak cost differential. Inasmuch as WATS is heavily used by peak period users and MTS is heavily used by off-peak users, an effort to equalize MTS and WATS returns as measured by the present *ICAM* would probably confer an undue advantage upon WATS customers. Therefore, we propose to treat MTS–WATS as a single category for purposes of the target and maximum return prescriptions until the *ICAM* is revised to resolve that problem. This suspension of *ICAM* requirements would not, however, apply to the annual Fully Distributed Cost (FDC) reports that AT&T is required to file.

18. A decision to suspend the equalization requirement for MTS and WATS should not be interpreted as giving AT&T unfettered discretion to implement changes in existing rate relationships between those services. Any proposed change that might disadvantage MTS customers would warrant very close scrutiny.

19. The Access Charge Rules require that each access element be targeted separately. We do not propose to modify that requirement.[18] We propose to apply the maximum return prescription to each access element. Thus, carriers that earn an excessive return on a particular element would not be permitted to use a shortfall from another element to offset the excess earnings.

20. We also propose to review the earnings of the companies at the same level of aggregation as the tarriff rates. Thus, for example, if Bellsouth files tariffs for its two subsidiaries with the same rates for each state in the subsidiaries' service areas (but different rates for the two subsidiaries), then we would review the earnings separately for Southern Bell and South Central Bell. If only a single tariff with uniform rates were filed, then we would review the earnings at the holding company level. similarly, if different rates were filed for each study area, we would examine earnings on a study area by study area basis. Thus, excess earnings from one entity, *i.e.*, study area, operating company, or holding company, would not be offset by shortfalls from another entity if separate rates or tariffs were in effect for the entities.

21. The *1981 Represcription Order* could be interpreted as imposing a minimum as well as a maximum return requirement. We doubt that a useful purpose would be served by *prescribing* a minimum return for any service or rate element of any carrier. Such a requirement would be difficult or perhaps impossible to enforce if a recession or other market conditions prevents carriers from establishing any combination of rates that will earn the authorized return. We will of course, consider any comments from persons who believe that a minimum return *prescrition* is feasible and desirable.

22. We also believe that no useful purpose would be served by prohibiting AT&T, NECA or exchange carriers from targeting services below the prescribed target rate. As long as the same target rate is chosen by a carrier to apply to each rate element, we will permit the carriers and NECA to use a target return that is less than the prescribed target return.

23. In the *1978 Refund Order*, we decided that we should remedy that violation of the maximum rate of return prescription by deducting the amount of the excess earnings plus interest from the revenue requirement that would be used to compute future rates. That decision was not intended to establish a rule for all future proceedings, but we have tentatively concluded that this would be the best remedy for any future violations by AT&T by carrier participation in NECA pools, and by individual exchange carriers. We would propose to apply the revenue requirement deduction to the service category or rate element in question and would require that interest be computed from the end of the calendar or access year in which excess earnings were relized to the middle of the initial annual period in which rates are expected to be in effect that reflect the refund. The prescribed maximum return that was in effect in the period in which the violation occurred would be used to compute interest, although parties may wish to comment upon the use of some other interest rate measurement (e.g.,

[12] According to Rochester, the RBOC's and medium risk independent exchange carriers require weighted average rates of return (WARRs) between 11.3% and 11.9%, while high-risk telephone companies require WARRs of 12.1% to 13%. Rochester Reply Comments, Table 1.

[13] SBS Reply Comments, pp. 6–7.

[14] NTIA, Summary of State Telephone Regulatory Data, Table C, Report 85–172 (March, 1985).

[15] AT&T Earnings on Interstate and Foreign Services During 1978, CC Docket No. 79–167, FCC 84–567 (December 11, 1984), 49 FR 49502 (December 20, 1984).

[16] American Telephone and Telegraph Co., 73 FCC 2d 629 (1979), 78 FCC 2d 1296 (1980), 84 FCC 2d 384 (1981), *recon.* 86 FCC 2d 667 (1981), *aff'd sub nom.* MCI Telecommunications Corp., v. FCC, 675 F. 2d 413 (D.C. Cir. 1982).

[17] Such a procedure differs somewhat from the remedy we devised for the 1978 violation of the maximum return prescription. The Interim Cost Allocation Manual ("ICAM") was not in effect in 1978.

[18] That requirement has, or course, been temporarily modified to the extent necessary to comply with requirment that certain OCC special access service be provided at discounted rates and the requirement that the BOC share of the 1978 refund be deducted from the Carrier Common Line revenue requirment.

the "prime rate", the US Treasury rate that is utilized by the Internal Revenue Service etc.) and compounding interval.

24. The exchange carriers may effect a refund in the next annual filing after the amount of excess earnings has been determined. This would normally result in a one year lag between the violation and the remedy. For example, if a carrier's realized return from the line termination element exceeded the prescribed maximum return in Access Year 2, that carrier's line termination charge in Access Year 4 would reflect a compensating deduction from the revenue requirement.

25. We have not imposed an automatic filing requirement upon AT&T because it appears possible that some future changes in access charges will not have sufficient impact to warrant changes in AT&T rates. Therefore, it will be necessary to specify a deadline for the filing of a tariff that includes a refund to remedy a rate of return violation. We have tentatively concluded that such a tariff should be filed within 60 days after the amount of excess earnings has been determined and that the tariff should be filed on 45 days notice. We solicit comments on how this should be implemented.

26. We would, however, expect that it will rarely, if ever, be necessary to invoke such refund remedies in the future. Carriers have a continuing obligation to monitor earnings in order to ensure that a rate of return prescription will not be violated. We expect them to make rate adjustments during the applicable period if it appears likely that earnings for the applicable period will be excessive.[19]

27. In any event, we believe that a monitoring program should be established that will enable us and the carriers to monitor actual results on a continuing basis. It will probably be necessary to require that AT&T, NECA, and each exchange carrier filing access tariffs certify to this Commission its earned interstate rate of return (and excess revenues, if any) for each service category or access element. We do not propose to adopt the monitoring and reporting requirements in the next order, but we do encourage interested persons to suggest reporting and monitoring requirements that might be desirable in their Phase I comments.

[19] NECA and the carriers are also free to propose upward adjustements if they discover that a NECA or carrier targeting error is likely to deprive investors of an adequate return. Although the Access Charge Rules require annual filings, those rules do not foreclose carrier-initiated revisions during the access year.

III. Carrier Grouping and Represcription Periods

28. Our effort to create a more streamlined procedure for represcription necessarily requires that we prescribe a methodology for future represcriptions or adopt a limited number of acceptable methodologies that we will premit carriers or other parties to use in order to support their claims. The choice of prescribed or acceptable methodologies depends to a considerable extent upon the carrier groupings and represcription periods we choose to establish. A methodology that might be appropriate for the prescription of a rate of return for a particular firm might be inappropriate for a group of carriers. The duration of the represcription period is also a relevant factor in selecting methodologies and procedures.

29. We have accordingly decided to discuss these questions first in the represcription portion of this *Supplemental Notice*. We encourage participants to follow the same course in their Phase II comments.

A. Carrier Groupings

30. The Initial Notice proposed that carriers by grouped for purposes of represcribing the target return and suggested that a possible grouping would consist of ATTCOM,[20] each BOC holding company, exchange carriers owned by GTE; and all other exchange carriers. The majority of carriers and other commenters either favored or did not challenge the reasonableness of this grouping of carriers, although several parties urged consolidation of all exchange carriers into a single group.[21]

31. Except for a few parties,[22] there was general agreement among commenters on the need for treating ATTCOM separately from exchange carriers. We agree that the risks confronting ATTCOM certainly are different in nature from those confronting exchange carriers. ATTCOM describes some of these differences when it notes that entry barriers in interexchange business are so low that competitors "already own intercity net plant equlling nearly one-half that of AT&T Commuications and they are adding substantially to their capacity."[23] Entry has been facilitated by the ability of carriers to lease and resell facilities and by the reduction in network costs due to technological advances.[24] Because exchange carriers are generally protected presently from intraLATA competition by state regulators,[25] the greatest risk confronting exchange carriers is the threat of bypass from large customers, not the threat of entry from other carriers. ATTCOM is further distinguished from exchange carriers by its high ratio of operating expenses to operating revenues, a ratio kept high by access charges.[26]

32. Some parties have raised the question of whether ATTCOM's rate of return should be prescribed over the long run. That question is being examined in another proceeding. For present purposes, we will assume that ATTCOM rate of return prescriptions will remain in effect at least through 1987 and that we will accordingly be obliged to represcribe a target return.[27] We reaffirm our tentative conclusion that an ATTCOM represcription warrants a proceeding that is separate from any proceeding or proceedings for exchange carriers.

33. While we initially proposed to subdivide the exchange carriers into several groups, our review of the record compels us to conclude now that a better approach, at least for the foreseeable future, would be to prescribe a single rate of return for all exchange carriers that provide interstate access service.

34. In addition, a unitary rate of return is warranted because all exchange carriers face the same risks in providing access.[28] All exchange carriers' interstate service is subject to the same regulator and is sold to the same interexchange carrier customers through a similar system of access charges.[29] For non-traffic sensitive interstate plant, there continues to be a pooling and sharing of risks among all exchange carriers through the NECA.[30] Moreover,

[20] At the time of the divestiture, AT&T placed its post-divestiture regulated interstate services in a new subsidiary known as AT&T Communications or ATTCOM.

[21] *E.G.*, AT&T Comments, pp. 29–31; Federal Executive Agencies Comments, pp. 7–9; Puerto Rico Comments, pp. 3–6.

[22] ATTCOM Comments, p. 19.

[23] ATTCOM Comments, p. 15. *Cf.*, ADAPSO Reply Comments (AT&T lacks competition for 800 Service and terrestrial private lines).

[24] ATTCOM Comments, p. 15.

[25] ATTCOM Comments, p. 19.

[26] AT&T Comments, pp. 26–27.

[27] The initiation of an ATTCOM represcription proceeding would not, of course, foreclose a decision to abolish ATTCOM rate of return prescriptions at some point. The development of represcription methods and procedures preserves the option to continue to enforce rate of return prescriptions for ATTCOM if we conclude that such a course is desirable.

[28] Texas Statewide Tel. Coop., Inc. Comments; Puerto Rico Comments; AT&T Comments. *Cf.* Bell Atlantic Comments (all RBOCs face similar risk).

[29] AT&T Comments.

[30] Western Rural Tel. Assn. Comments; Tel. Assn. of New England Comments.

interstate exchange access is not an independent service. Rather, it is useful only when provided as a necessary component of interstate toll service accomplished in conjunction with an interexchange carrier and another exchange carrier at the other end.[31]

35. The largest exchange carriers which together provide 80% of the nation's access lines, the RBOCs were purposely set up as seven companies that are quite similar. As Bell Atlantic points out, the RBOCs were divested with similar capital structures, have similar operating assets, and are all about the same size. Their credit ratings are similar. They share the same interstate regulatory environment, and their management shares a common heritage.[32] The comments of all of the RBOCs seem to agree that at present they all face similar risk and it would be reasonable to group them together, but the RBOCs other than Bell Atlantic believe the companies will diverge in the future.[33] Rather than speculating on future divergence, we find it better to focus on the current characteristics in determining groupings for rate of return prescriptions. We will, over time, review the situation and modify our methodologies and groupings to accommodate changed circumstances. At present, however, we believe that the similarities outweigh the differences and mandate a single group.

36. Risk is divided into two types: business risk and financial risk.[34] We recognize that for many exchange carriers, their composite risk is widely divergent. The differences among carriers in business risk for the company as a whole, however, are unrelated to interstate access, the service for which we will determine the appropriate rate of return.[35] Thus, for example, while GTE is preceived by investors to face a certain level of business risk that is different from the RBOCs', that perception is fueled largely by the diverse operations of GTE, which include not only interstate access, but also long distance operations (*e.g.*, GTE Sprint) and manufacturing operations (*e.g.* Sylvania Lamp). Similarly, the differences in business risk claimed by the RBOCs (differences due to state regulatory climate, future growth opportunities, management diversification strategies and intra-LATA toll competition) are irrelevant because they relate to services other than interstate access.[36] In light of the risk pooling and the interrelated nature of interstate access service, we believe that all exchange carriers face essentially identical business risks in their provision of interstate access.

37. While we recognize that the wide divergence in capital structures among the 1400 exchange carriers means they face differing financial risk, it is not clear that those differences are relevant. The mix of sources of capital selected by the company reflects the overall business risk of the company, not the level of risk of interstate access alone.[37] Moreover, the phone company's capital structure and financial risk are largely within management's control. Thus, there is "the possibility of a self-fulfilling regulatory process in which the carrier can directly influence its 'prescribed' rate of return by manipulating its capital structure to achieve a predetermined corporate objective."[38] Prescription of a single, overall rate of return for interstate access avoids the problems of accounting for business and financial risk differences of the companies unrelated to interstate access.[39]

38. An additional grouping might consist of international carriers or the international operations of common carriers with domestic and international regulated activities.[40] The record, unfortunately, is sparse with respect to the need for a separate group or sub-groups for international carriers. It would appear reasonable to apply the same six-month procedures to international carriers, although it is not clear that sufficient accounting information is available to segregate regulated international operations risk from other of the firms' activities in order to make use of firm-based methodologies for measuring equity cost (*e.g.*, DCF) practical. We thus intend in a *Second Supplemental Notice* to seek comment on use of firms with comparable risk as a primary determinant of cost of capital for regulated international carriers, or other appropriate approaches. We also seek comment upon the risks that are associated with international telecommunications common carriage, even though we do not propose to set at this time, separate rates of return for the international operations of AT&T and GTE, pending development of rules for allocation of costs and expenses between their domestic and international regulated interstate activities.

B. Waivers From Group Treatment

39. In the present regulatory environment, precription of individual carrier rates of return threatens a complete breakdown of the administrative process, and would be tantamount to denial of relief to the carriers or to customers. Wide discretion to prescribe multi-carrier rates of return for nationwide, regional or other logical carrier groups in such circumstances has been long recongnized.[41] No objection arises from imposition of group rates of return becase high cost operators may be more seriously affected than others. Regulation may "limit stringently the return recovered on investment, for investors' interests provide only one variable in the constitutional calculas of reasonableness" as long as the rates selected are within the broad zone of reasonableness. *Permian Basin Area Rate Case*, supra, 390 U.S. at 769–770.

40. The sheer magnitude of the task we face, the variety of difficult issues of first impression and the public interest in determining rates of return without undue delay require a workable degree of simplification in selecting carrier groups. The carrier groups we propose provide a reasonable and effective

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[31] Texas Statewide Tel. Coop., Inc. Comments, pp. 1–2.

[32] Bell Atlantic Comments, pp. 6–7

[33] Bell Atlantic Reply Comments, pp. 8–9; AT&T Reply Comments, pp. 21–22.

[34] "Financial risk" is used here to refer to the variation in subjective probability distributions of projected payments that arises from the adoption of a particular financial structure by a firm, while business risk" is used to refer to the non-financial risks that are associated with firm's operations.

[35] Puerto Rico Comments, pp. 6–7; AT&T Reply Comments, pp. 23–27.

[36] AT&T Reply Comments.

[37] AT&T Reply Comments, Appendix B, p. 23. In some instances, the capital structure of a telephone company may be driven not by overall company risk, but rather by corporate form or the availability of subsidized debt. A single, overall rate of return may result in some carriers earning excessive returns on equity or windfalls due to their capital structures. We intend in the future to issue a *Second Supplemental Notice* to seek further data on the number of such windfalls and to address, *inter alia*, whether different treatment is necessary for cooperatives, government owned telephone companies and REA-financed carriers.

[38] Puerto Rico Reply Comments, p. 6

[39] *New England Division Case* supra, 261, U.S. at 199. Railroad Commission of Wisconsin v. Chicago Burlington and Quincy RR Co. 257 U.S. 563, 579, (1922). Washington Utilities and Transportation Commission v FCC, 513, F. 2d 1142, 1164–1165 (9th Cir. 1975) Cert. den. 523 US 836 (1975). Rio Grande Family Radio Fellowship, Inc. v. FCC 406 F. 2d 664 (D.C. Cir. 1968).

[40] In a supplemental phase we may address whether AT&T or GTE should receive rates of return for their international operations that are separate from their domestic operations. In addition, we will seek comments on the need for a cost allocation manual to enable carriers to allocate their interstate costs between domestic and international operations.

[41] Permian Basin Area Rate Case, 390 U.S. 747, 769, 774–777 (1968). United States v. Louisiana, 290 U.S. 70, 75–77 (1933). New England Divisions Case, 261 U.S. 184, 197–199 (1923).

procedure to determine rates of return and thus are within the Commission's discretion even though significant economic consequences may result. *Permian Basin Area Rate Case*, supra 390 U.S. at 788–789. The proposed single exchange carrier group is based upon decisionally significant shared financial and risk characteristics in providing interstate access service. Absolute mathametical precision in ratemaking is not possible. A search for the best can become the enemy of the good. *MCI Telecommunications Corp. v. FCC*, 267 F. 2d 322, 340–342 (D.C. Cir. 1980). The totality of the circumstances determines whether the end result is just and reasonable, not that there may be undesirable side effects for some carriers.[42]

41. Serious injustice to any individual carrier can be prevented by requesting a waiver from group treatment, pleading with particularity the exceptional facts and circumstances in the provison of interstate access which justify individual treatment and/or exclusion from the carrier group.[43] The carrier has the burden of demonstrating that waiver is required. The showing shall include a demonstration that the circumstances are not of transitory effect. The exceptional circumstances must justify exclusion form the carrier group for a period of a least four years (*e.g.*, two represcription cycles). Additonally, petitioner shall file with its petition for waiver an individual rate of return submission conforming to the methods and procedures required herein. The petition and rate of return submission shall be filed on the date established for the carrier's group filing.

C. Represcription Period

42. In the *Initial Notice*, we proposed a regular two-year interval between prescriptions (NPRM at para. 16). We noted that under the current procedure, rate of return changes occur at irregular intervals while capital costs vary during the prescription period. However, we expressed our concern that frequent adjustments might lead to churning of the tariffed rates, accompanied by a disruption of planning and the imposition of costs on consumers, carriers and investors. *Ibid.* We proposed that the carriers file the data required for a new prescription five months before the prescription was to become effective. During this five-month period, the Commission would entertain pleadings and replies addressing the prescription data.

43. Many parties responded to our proposal in this regard. Some commentors favored our two-year prescription period.[44] However, these parties emphasized that if the two-year interval is prescribed, we should, as we proposed, allow a party to petition for a revision during that period based on changed circumstances. AT&T takes the position that the two-year interval is needed to provide "stability and certainty for carriers and customers." (AT&T at 72). It would allow for a represcription during the period only if a "material change" is shown. GTE also favors a two-year interval, but urges that only if we adopt a prospective capital structure (GTE at 30–31). Other parties suggested a one-year interval.[45] As Bell Atlantic observes, a one-year interval will not lead to an unnecessary chruning of rates because the charges for interstate access are already filed annually. It might also be argued that the rapidly changing telecommunications enviroment warrant a one-year period, so that rates accurately reflect the carrier's current earnings requirement.

44. Several parties recommended that we not establish any specific prescription interval.[46] Given the fact that we have acknowledged the possible need for a carrier to file a revision during the interval, it is thought unnecessary to have a specific period. This approach would, in essence, allow the current procedure to continue. Other parties state that the prescription interval depends upon the rate of return methodology which we select.[47] Finally, USTA suggests that the equity return be prescribed for two years, but that the overall rate of return be recalculated every year to reflect changes in capital structure and embedded debt costs.

45. We have carefully considered the comments in this regard, and we continue to prefer our original proposal that a rate of return be prescribed for a two-year period. We believe that it would not be in the public interest to continue a procedure that does not require the filing of relevant information at regular intervals. If no period is prescribed, there is no incentive for a carrier to seek a change until it has convincing evidence that the rate of return should be increased. In the meantime, it would presumably be incumbent upon the Commission to monitor earnings requirements and then to identify those carriers whose authorizations should be changed.[48] Given the potential number of carriers which might seek individualized rate of return authorization, this procedure could impose administrative burdens on the Commission of the type which we seek to avoid by conducting this rulemaking. It may be possible to use a one-year interval after we have begun this process and experienced the degree of staff effort required to ensure that the rate of return can be prescribed in a six-month period. For now, however, we believe that a one-year period would require such staff effort that our limited resources would be unduly consumed with the review of extensive financial data which might, in the end, reveal no compelling requirement that the rate of return established the previous year be changed. Moreover, we are willing to look at material changes in earnings requirements during the prescription period, so long as the carrier provides compelling evidence that the fluctuation (presumably upward) is not simply the result of short term swings or similar events. Finally, we acknowledge the attractiveness of the USTA proposal insofar as the exchange carrier group's rate of return will hinge in part on the return of individual "pure play" telephone companies,[49] and we urge the parties to comment further on that approach. While a two-year prescription of the required return on equity would lessen the burden on the Commission's staff and allow the annual changes to deal more with uncontroverted items, we question whether it is proper to isolate those elements and then represcribe an overall rate of return. The changes in one element may not properly be considered without analysis of the others. Nevertheless, the USTA proposal has the advantage of providing

[42] FPC v. Natural Gas Pipeline Co., 315 U.S. 575, 586 (1942). Telocator Network of America v. FCC, 691 F. 2d 525, 542 (D.C. Cir. 1982).

[43] New England Division Cases supra, 261 U.S. at 199; Railroad Commission of Wisconsin v. Chicago Burlington and Quincy RR Co. 257 U.S. 563, 579 (1922); Washington Utilities and Transportation Commission v. FCC, 513 F.2d 1142, 1164–1165 (9th Cir. 1975), cert. denied 423 U.S. 836 (1975); Rio Grande Family Radio Fellowship, Inc. v. FCC, 406 F. 2d 664 (D.C. Cir. 1968).

[44] *E.g.*, Anchoage Telephone, Utility at 4; Contel at 20 (but allow for optional mid-period update); SNET at 31; AT&T at 72.

[45] United at 22; Bell Atlantic at 12; Rochester Telephone at 4; Kentucky PSC at 4; Illinois CC at pp. 1–1.

[46] NYNEX at 34; BellSouth at 37; Ameritech at 35; Rural Telephone Coalition at 12–14.

[47] *E.g.*, Southwestern Bell at 45; TANE at 23.

[48] Although money market and stock market conditions have changed since 1981, a variety of other (in some cases, possibly offsetting) changes have occurred in the specific risks that are associated with AT&T.

[49] By "pure play" phone companies, we are referring to telephone companies that obtain a substantial portion (e.g., 90% or more) of their revenues from regulated telephone activities. In contrast, several of the independent phone companies engage in unregulated manufacturing or other activities.

a middle ground in this area in which the carriers have divergent positions.

IV. The Overall Return

46. In the past, we have determined and overall return for AT&T by weighting each of the components to reflect the actual capital structure. The embedded cost of debt has been used for the debt component and a cost of equity that has been determined in each proceeding has been used for common stock. The *1981 Represcriptions Order* also established costs for preferred stock and some miscellaneous sources of funds.

47. That method for determining an overall rate of return may not work very well if we prescribe a return for a group of carriers rather than a particular firm. This would be particularly true of an exchange carrier category that is composed of carriers with radically different capital structures.

48. It would, however, be possible to apply the traditional method to each RBOC separately and to compute a weighted average return for the seven RBOCs and other "pure play" telephone companies as one way of determining the authorized return for the exchange carrier group. We have tentatively concluded that we should rely in part upon the results of such an approach to determine a composite rate of return. We have concluded that we should also use one and possibly two methods for determining a composite overall return directly.

49. This Commission's prior AT&T prescription decisions, prior decisions of state commissions with respect to authorized returns, and the comments that have been filed in this proceeding appear to be based upon an unarticulated premise that a fair return for interstate services is analagous to, or is the same as, a fair return for intrastate services. The methodologies that have been used or advocated would at best identify a return for regulated services as a whole. That premise may not have been accurate in the past. Interstate service revenues and profits have tended to grow more rapidly than intrastate service revenues and profits. That pattern might have caused investors to accept a lower return for interstate services if they could have invested separately in the interstate service business of the pre-divestiture AT&T. The assumption that all regulated services should earn about the same return may, however, be valid for the exchange carriers at this time. Access services are more vuinerable to bypass then local exchange and shorthaul toll services. That factor could cause investors to conclude that there is a substantial change that exchange carriers' interestate services will not grow more rapidly than exchange carriers' intrastate services in the future. It may, therefore, not be inappropriate to base our choice of methodologies with respect to a composite overall return on the assumption that a fair return for interstate access is the same as a fair return for all regulated services.

50. Inasmuch as state commissions have generally attempted to determine a fair return for regulated services, their determinations are clearly relevant. The state commissions are endeavoring to resolve the same question that this Commission would determine in an exchange carrier represcription proceeding. Although we would be reluctant to adopt the conclusion of any particular state commission, it would be reasonable to afford considerable deference to the collective judgment of state commissions. Accordingly, we would propose to ascertain the authorized overall intrastate rate of return for each exchange carrier that is in effect at a particular time and to compute a weighted average of such authorized returns. The relative telephone plant investment in each such state and the District of Columbia would be used to determine the weighting.

51. Although we would not propose to give conclusive effect to such a weighted average, we have tentatively concluded that there should be a presumption that this is the correct return. Commenters may seek to rebut that presumption if they were to conclude that this weighted average return was too low or too high.

52. In this regard, a possible approach is to use the overall costs of capital of publicly traded firms (not limited to telephone companies) that exhibit risk that is comparable to interstate access service. Indicia of risk could include coefficients of variation [50] for revenues, expenses, earnings and/or cash flow; liquidity of asset structures; etc. Comments should specifically address relevant risk criteria. In addition, we encourage the submission of comments that address the use of a Discounted Cash Flow ("DCF") analysis, current debt costs and the financial structure of firms with risks comparable to that experienced in the provision of interstate access.[51] It may also be advisable to utilize returns of comparable firms to establish a range of reasonableness, and allow carriers to target a point within that range. Thus, while we may not be able to identify firm with precisely the same risk, we could, for example, conclude that the cost of capital range was bounded by costs of capital determined for low risk utilities and for off-shore oil exploration firms (or some other groupings of comparable risk firms).

53. We have tentatively decided to require the submission of at least one study for each RBOC based upon the capital structure and embedded cost of debt principles that were utilized in CC Docket No. 79-63 in addition to the submission of data to enable us to determine the weighted state average return.[52] We may, however, require or permit the submission of "comparable risk" studies of BOCs in addition to or in lieu of actual capital structure submissions.

54. It may be very difficult to adopt the traditional capital structure and total firm cost of equity approach to the post-divestiture AT&T because that company now derives a substantial portion of its revenues and profits from unregulated activities. See AT&T Co. (CC Docket 79-63), 86 FCC 2d 221, 226-29 (1981). It would probably be necessary to adjust each component to avoid distortions that would result from the existence of unregulated activities that present investors with risks and opportunities that are very different from the risk they would incur or the opportunities they would enjoy if they could invest directly in ATTCOM. It should theoretically be possible to make such adjustments, but there doe not yet appear to be any readily available methodology for making such adjustments.[53]

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[50] For this purpose, the coefficient or variation would consist of the square root of the variable's time series standard deviation, divided by the means value of the variable's time series values.

[51] A "Comparable firm" would be a firm that exhibited financial, business, and composite risk characteristics that approximated the risk that is associated with the provision of interstate, interexchange access services. From the set of firms thus determined, costs of captial for each of the firms within that set would be determined with the DCF approach being used for cost of common equity, the composite financial structure of the set being used for cost of capital weighting purposes, and the composite (or current), costs of each of the non-common stock source of financing being used for each non-common stock sources of funds. In this regard, a "source of funds" would be any value appearing on the "right hand" or "credit" side of the firm's position statement.

[52] We selected the ROBCs because they are widely held and traded, and because almost all of their activities are subject to regulation. Parties may also submit cost of capital studies upon any other widely held and traded companies that receive over 90% of their revenues from regulated telephone activities. With respect to the use of "zero cost" sources of funds in this context, see paras. *102-104, infra*.

[53] We intend in future phases to explore developing such methodologies. One approach is to use accounting data to measure the variances in revenue, costs and income for the company's

Continued

55. A weighted state return approach probably should not be used for AT&T. Although AT&T does provide some intrastate services, it does not provide such services in numerous single LATA states. A state composite would accordingly be a less complete or representative sample. Moreover the growth prospects for interstate and intrastate interLATA services may be different.

56. In these circumstances it appears that the overall comparable risk approach (e.g., determining the cost of capital of those firms that have risks that are comparable to AT&T's interstate interexchange operations) probably be the best alternative for represcribing an AT&T return. It will, however, be necessary to specify additional details in order to make that methodology work. We hope that participants in Phase II will be able to provide useful insights to enable us to develop a more complete plan.

V. Estimating Costs of Capital for the RBOCs

57. At an earlier point, we discussed the possibility of considering the costs of capital of the RBOCs in the context of rebutting the presumption that the composite of state prescribed rates of return was correct. In order to create a streamlined represcription procedure, it will be necessary to prescribe methodologies for determining the component costs for an RBOC rate of return with some particularity. This section will describe our present assessment of the merits of alternative methodologies that might be used to determine an RBOC cost of equity, express our tentative conclusions with respect to a flotation adjustment, and address questions relating to the cost of debt, preferred stock and zero-cost sources of capital.

A. Estimating the Cost of Equity Capital

1. The Discounted Cash Flow Model (DCF)

58. The method most favored in the comments seems to have been the DCF approach. Commenters recommended the simplest formulation—dividend over share price, plus a single growth rate (*e.g.*, the Gordon model). The advantages to this proposed method appear to us to be significant. The derivation of the DCF model is relatively easy to explain and its applicability to the regulatory situation is straight forward. Adjustments for the frequency of dividend payments and issuance expenses are readily made. Of the three variables that must be estimated, the long term expected growth rate for dividends (G) requires the most judgment. An attractive approach suggested by commenters was to use investment analysts' estimate of the five year future earnings growth rate as a proxy.[54] The use of analysts' forecasts avoids the problems of relying totally on historical data and the experts of interested parties—problems that are particularly acute at this time given the short history of the Bell regional holding companies. There is evidence, cited in several comments, that analysts' forecasts of earnings are an improvement over most historic projections. Of the other two variables, the expected next dividend (D_1) would be estimated by applying the anticipated dividend growth rate to the most recent past dividend. The share price (P_0) can be readily obtained for all companies with actively traded common stock.

a. *The Anticipated Long-Term Dividend Growth Rate (G)*

59. The most straight forward way of estimating a growth rate is to extrapolate from accounting data, using either the historic trend growth rate in the dividend itself, or combining the trend in earnings per share with the historic earnings retention rate to calculate the maximum sustainable growth rate. If earnings per share is too volatile a data series, then the historic growth rate of book value per share could be used.

60. Historical data, while containing valuable information produces inefficient estimates in the sense that it does not incorporate all the information known about the future of the company.

61. The comments we have received in this proceeding have not, however, concluded that the only solution to the problem of estimating the long run expected growth rate of dividends is to continue the FCC's traditional approach of relying on the testimony of company experts who submit estimates that have been developed just for the occasion. A large number of comments recommended that we adopt an "consensus analyst" approach instead.[55]

62. This method relies on collecting the earnings and/or dividend growth estimates of a substantial number of security analysts. By a substantial number, Southwestern Bell's recommendation was at least 25 analysts. Candidate analysts would be those employed by the independent financing publishing services, such as Value Line and the Dow Jones News Retrieval Service, and by large and well known investment services. NYNEX listed eight prominent analysts who have made earnings-per-share (EPS) growth estimates on a regular basis for all the regional holding companies since direct trading in the regionals began. These analysts were Sanford Bernstein, Goldman Sachs, Value Line, Merrill Lynch, Prudential Bache, Salomon Brothers, Smith Barney and First Boston. They include six investment banking/brokerage firms, a manager of corporate pension fund assets, and an investment advisory service.

63. Several comments, including those of Bell Atlantic, AT&T, NYNEX, Centel, Pacific Bell and Nevada Bell, SNET, United BellSouth, and GTE, suggested the *Institutional Brokers Estimate System* (IBES) service, which publishes the earnings estimates of analysts from the research department of well-known Wall Street and regional brokerages. The comments point out that by using the growth estimates of established and widely read analysts, the derived "consensus" G will be more forward-looking and market-based than a historically derived G.

64. The single growth DCF model requires a long term estimate of G, and the comments recommended the use of analysts' five year growth estimates. The DCF method is silent, however, on how the consensus estimate should be calculated, and several comments

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different lines of business. It is possible that these variances, similar to Capital Asset Pricing Model ("CAPM") betas, would allow us to segregate overall company risk into the risk of regulated interstate operations and the risk in the company's other activities. In order to work effectively, the accounting data would have to be adjusted to reflect the "ture" underlying revenue and expense streams. Accounting volatility due to extraordinary events such as divestiture "true ups," 14 month old access bills or retroactive changes in depreciation rates should not be factored into a determination of the relative risk of the firm's operations. Parties may wish to address use of this methodology in conjunction with a traditional submission as a supplement to a comparable earnings methodology for its rate of return represcription.

[54] The use of analysts' estimates of growth in earnings, however, does not resolve the obvious circularity of reasoning that arises from analysts basing their assessments upon what this Commission will do in light of their previous assessments. We seek comments that would assist us in avoiding the incongruity if we were to utilize such estimates.

[55] Comments using or recommending this approach included those submitted by: Southwestern Bell, NYNEX, Ameritech, Michigan PSC, AT&T, SNET, Illinois Commerce Commission, United Telephone, US West, Central Telephone, Bell Atlantic, Pacific Bell and Nevada Bell, BellSouth, and GTE.

warned against using a simple average of all the estimates submitted. Because the determination of G is so important to the DCF approach, we do not envision depending solely on IBES's or other services' estimates. We intended to have analysts' reports submitted to the Commission for our analysis. The list of acceptable analysts, if such an approach were to be used, would have to be carefully developed, [56] taking into account each analyst's professional position, the currency of the forecast, and the apparent reasonableness of the estimate compared to others.

65. Nor are we eliminating historic growth rates from consideration. Historic trend rates that are submitted will be examined to determine that the data series are appropriate, the time period is relevant, and the estimation technique if valid. Historic trends will be considered as an important check on the "analyst consensus" estimates.

66. We seek comment upon our tentative conclusions.

b. *The Expected Next Period Divided (D_1)*

67. The anticipated growth rate of dividends, once established, would be used to determine D_1, the anticipated next period dividend. The DCF model is sensitive to the assumed D_1, and the accuracy of the DCF estimate requires that D_1 be consistent with the anticipated long run growth rate in dividends, even if recent dividends have grown at significantly different rates.

68. We do not wish to suggest that we are inflexible in our approach to the formulation of the DCF model. Dividends are typically paid on a quarterly basis. In recognition of that we propose to follow the lead of various comments in putting our annual DCF model on a quarterly basis. There are special circumstances when the company's dividend policy or financial circumstances render a simple extrapolation unacceptably unrealistic. We recognize that under some extreme circumstances the two-growth DCF model (as proposed by NYNEX) may be required, but we believe that the single growth Gordon model, adjusted for quarterly dividend payments, will be an acceptable valuation approach in the cases envisioned in this proceeding.

c. *The Current Market Price of a Common Share (P_0)*

69. Although in theory P_0 should be the most recent trading price available at the time a cost of equity determination is made, most of the DCF comments aid not recommend the use of a "spot" price.[57] GTE suggested a thirty day average price in order to smooth out the effects of daily price fluctuations. Central used the average of the high and low prices for two months, as reported in the *S&P Stock Guide*. NYNEX suggested a ten day average of the daily high and low prices. Pacific and Nevada Bell recommend a three month average price because it relates the stock price to any lag in the growth forecasts by security analysts. Southwestern Bell also recommends a 90 day average, but of the closing price. AT&T suggests the spot price for the last trading day of the month of the most recently released IBES data base. Bell Atlantic believes that average data is best and recommends using a twelve month average if there are to be annual cost of capital reviews.

70. Our preliminary impression is that a ten day average of high and low prices would be sufficient, and that the days yielding the most reliable price data would seem to be the five preceding and following the release date of the IBES report filed with the FCC. This assessment is based upon the need to obtain a P_0 that is temporally consistent with the analysts' reports. On the other hand, while we are aware that there is a substantial lag between updates in the analysts' reports, it is not clear that it is necessary to average together prices taken over a period as long as 90 days. However, we seek further comment upon these preliminary conclusions.

2. The Capital Asset Pricing Model

71. Most of the comments recommending the DCF method indicated that some other method should be adopted as a check on the reasonableness of the DCF estimates.[58] The comments were not as helpful, though, in specifying the method that should be adopted. Ideally, we would choose an approach that would have the academic acceptability of the DCF, and would produce estimates with the same forward looking, market oriented properties as the "analyst consensus" DCF, but would be entirely independent.

72. The Capital Asset Pricing Model (CAPM) is relatively new to regulatory proceedings, but has been very influential in the academic community since its appearance in the late 1960's. It is our understanding that the CAPM is routinely employed in the financial community. We are inclined at this point to conclude that some version of the CAPM, perhaps the Sharpe-Lintner version, would provide a desirable independent measure for assessing the reasonableness of DCF measurements.

73. Compared to the DCF, the CAPM is, however, considerably more difficult to explain and the statistical procedures required are more complex and sophisticated. This Commission has never relied upon a CAPM estimate to set cost of equity capital, and the next round of comments will have to show a substantial improvement in CAPM estimation techniques before we could adopt it as an alternative estimate of equivalent weight.

74. The CAPM requires the estimation of three quantities: the beta of the firm, the current risk-free rate of return; and the market risk premium. We will discuss our preliminary impressions upon each of these in turn.

a. *Beta*

75. Given the wide acceptance the CAPM has won in the literature, it was surprising that the comments submitted in the first round of this proceeding did not recommend this approach more often.[59] One reason is the problem of developing estimates of the betas for the RBOCs.

76. Betas calculated on the basis of historical data must make a trade-off between the statistical strength of the estimate—the further back the data go, the greater the nominal statistical significance; and the current relevance of the estimate—the further back the data go the more the firm and the economy have changed. Normally a beta is based on several years of return data. Value Line's betas are computed on weekly returns over five years using the New York Stock Exchange Index. Merrill Lynch's betas are computed with monthly data over five years using the Standard and Poor's 500 Industrial Index. Since divestiture created the RBOCs much more recently, most comments resorted to ad hoc approaches, or used daily data to expand the number of data points in the estimate. As the reply comments made clear, none of these approaches are without problems. There are a number of commercial services which use elaborate analyses to develop "fundamental" estimates of beta. Four were mentioned in the comments: Barr

[56] It would obviously be inappropriate for any such analyst to be compensated, directly or indirectly, by any entity having a direct or indirect interest in outcon e of this proceeding.

[57] Michigan PUC, for one, did recommend the use of the current price.

[58] These included the comments of AT&T, Ameritech, BellSouth, Pacific Telesis, Pennsylvania, Central, Alltel, Michigan, and Florida. In addition, Bell Atlantic, NYNEX, Southwestern Bell, US West, GTE, Cincinnati, Rochester, SNET, NECA, USTA, Kentucky, and FEA also recommended multiple approaches be used.

[59] Only AT&T, Ameritech, Contel, Rochester, Minnesota, NYNEX, and US West supplied CAPM proposals.

Rosenberg Associates, Wells Fargo, Vestek, and Prudential Bache. While no one of these estimates is definitive, as a group those estimates would provide the Commission with a range of beta values reflecting historical and fundamental analyses, and would indicate what estimates are being presented to the investment community. Further comments from the parties are invited on these sources and on the advisability of using estimates that are derived therefrom.

b. *The Risk-Free Rates*

77. From the standpoint of theory, the ideal risk-free rate of return would be the yield on a 90-day Treasury bill. The T-bill is the closest approximation of any financial asset to zero variance in return (i.e., it is devoid of both non-systematic and systematic risk.) The problem is that T-bill returns are quite volatile.

78. The comments that addressed this problem took the compromise position that a longer term government rate should be used as a proxy for the risk free rate. One suggestion was to use the one year rate, but there were also suggestions to use even longer term rates: two or three year yields. Our inclination is to use the one-year T-bill rate. This shouldn't be a difficult issue to resolve, but as part of any further comments on the implementation of the CAPM approach, commenters should discuss the selection of a maturity. Of course, whatever debt instrument is chosen, it would have to be recently issued, widely held, and selling to yield a return close to its face yield.

c. *The Market Risk Premium*

79. The Commission will have to rely on a mixture of historical and current data to estimate the extent to which common stocks may be expected to provide returns that are in excess of that provided by a riskless security. The Ibbotson and Sinquefield market risk studies[60] have achieved wide-spread circulation. Ameritech calculated Ibbotson and Sinquefield based market risk premiums using both 58 and 38 years of data. There can not be, of course, a definitive specification of a time period for empirical work, but it seems to us that the question of the appropriate time period requires further comment.

d. *Alternatives to the Sharpe-Lintner Model*

80. Two commenters offered, instead of the Sharpe-Lintner CAPM formulation, the zero-beta or empirical version of the CAPM.[61] Unfortunately the record does not allow us to evalulate the relative merits of these alternatives, or any advantages of using an empirical CAPM rather than the Sharpe-Lintner version. We hope the advocates of these alternative CAPM methodologies and other parties will supplement the record so that we can select the best CAPM approach.

e. *CAPM Conclusions*

81. We are inclined to conclude that the CAPM could provide a useful check upon results that are derived from the DCF approach. Although the CAPM does not have the history of successful use in a regulatory setting of the DCF, it is theoretically consistent with our current understanding of the way financial markets work, and its data requirements do not appear significantly greater than that of the DCF. We intend to utilize the Sharpe-Lintner CAPM over the empirical form because the empirical form does not appear mature enough to be adopted by a regulatory commission. Parties should address the relative merits of the various formulations, however.

3. Bond Yield Plus Risk Premium Approaches

82. In our *Initial Notice* we suggested that the cost of equity capital could be estimated by adding a risk premium to a current bond yield, and most of the comments we received offered advice on this approach. The CDF and CAPM approaches are associated with specific methodologies, but the risk premium approach is much less well-defined. The comments demonstrated that a wide variety of methods can be used to estimate a risk premium. GTE recommends an historic approach, proposing that the FCC use the most recent 20 to 40 years of bond and equity returns to calculate the bond premium. The practical results, according to GTE, would be a range of acceptable equity prescription rates running 300 to 750 basis points above the six month average of yields on long term utility bonds.

83. AT&T, adopting a DCF based risk premium methodology, suggested that a firm's risk premium be estimated by: (1) Calculating the firm's single-growth rate DCF cost of equity capital for each of the most recent six months; (2) substracting these estimates from the contemporaneous monthly yield-to-maturity of a 20-year constant maturity Treasury bond series (AT&T recommends the series published in the *Federal Reserve Bulletin);* (3) averaging the six monthly differences; and, (4) adding the average to the current 20-year Treasury bond yield.

84. AT&T's methodology has the appeal of being a balanced attempt to find a trade-off between the problems of historic and spot estimates. Historic risk premiums assume that the difference in the expected yields of equity and debt are not subject to significant and meaningful variations over the short run. The comments, however, have not provided support for that assumption. Ameritech cites a recent study by Brigham, Shome, and Vinson that concludes a DCF based risk premium does not full reflect investors' expectations, nor is the premium stable over time.

85. Several comments noted that spot estimates tend to be volatile and to promote filings aimed to catch peak rates. Comsat notes that the determination of a carrier's risk premium is a matter of judgment, requiring extensive knowledge of the carrier and industry. It argues that the judgmental nature of the determination of risk premium may make a "paper" proceding inadequate. Comsat also observes that the use of a carrier's debt, or an industrial bond index, complicates the analysis by introducing into the determination of bond-yield company and industry risk factors that are considered in determining the risk premium, and by reducing the carrier's incentive to seek the least expensive source of debt. The Pennsylvania PUC also stresses that the judgment that must be exercised in the use of the bond-risk premium approach. SBS's comments emphasized the judgmental nature of establishing the premium: it gave a page of risk considerations to be factored into the premium, and

[60] Ibbotson, R. and Sinquefield, *Stocks, Bonds, Bills and Inflation: The Past and the Future,* (1982, ed. Financial Analyst's Research Foundation.)

[61] Rochester's formulation simply assumes that a portfolio constructed to have a beta of zero will have an expected return (r_z) equal to the risk free rate plus half the market risk premium: $r_z = r_f + .5(r_m - r_f)$. The slope of the trade-off between risk and return is redefined as the differences between the expected market return (r_m) and the expected return on the zero beta portfolio (r_z). That equals one-half the differences between the market return minus the risk-free return: $(r_m - r_z) = .5(r_m - r_f)$. Rochester estimated the market risk primium ($r_m - r_f$) from a standard long base line historical study (Ibbotson, R. and Sinquefield, *Stocks, Bonds, Bills and Inflation: The Past and the Future,* 1982, ed., Financial Analyst's Research Foundation.) It used the one year Treasury bill rate as the current measure of the risk free rate (r_f). The full Rochester zero-beta CAPM formulation is: $K = r_f + .5(r_m - r_f) + .5(r_m - r_f)$ beta.

NYNEX, in its reply comments proposed a somewhat different formulation of the zero-beta CAPM: $K = r_f + .66(r_m - r_f) + .33(r_m - r_f)$ beta. This two thirds—one third form of NYNEX, according to US West's expert, Dr. R.H. Litzenberger, is based on the empirical study he submitted as part of US West's comments. Dr. Litzenberger's methodology seems acceptable but we do have reservations over the use of data dating from 1926.

recommended that the FCC adopt a "variable-rate" bond yield (based on one-year Treasury notes) to cope with the volatility of the bond market.

86. Volatility is a potential problem with every method of determining the cost of equity capital and we agree that we need to examine more than tjust the most recent month's spot estimate of the cost of equity. To that end we propose that the record for an equity determination should include sufficient data to allow estimates that are based upon the most recent six months' data. We do not believe that averaging the most recent estimates is necessarily the best methodology. Ultimately the Commission must apply its judgment and this seems to us to be the point for us to express the judgment of DCF approach is to be preferred as being a more reliable estimation than the risk premium approach.[63]

B. Flotation Costs

87. In our *Initial Notice*, we tentatively concluded that the "estimated cost of equity should take into account the cost of financing equity issues,"[64] citing the *1981 Represcription Order*. In the previous rate of return prescription, the Commission found the record to be insufficient to compute a flotation cost allowance with precision, but did find "a slight upward adjustment to AT&T's market cost of common stock" to be justified.[64] The record in this proceeding, too, falls short of establishing precisely whether, or how much of, an allowance for flotation costs should be awarded.

88. Equity flotation costs consist of two components—the out-of-pocket costs associated with issuing new stock, or underwriters spread;[65] and "market pressure" costs. To the extent a carrier is allowed to recover those flotation costs, there are several possible alternatives. Flotation costs can be expensed and recovered in the year incurred; flotation costs can be treated as an intangible asset and amortized over some period; or flotation costs can be recovered by making an upward adjustment to the return on equity component of the rate of return.[66] Most of the Commenting parties favored an adjustment to the return on equity.[67]

89. While the commenting parties agree that the Commission should reimburse the exchange carriers for flotation costs, they do not agree on the amount of that reimbursement or the bases for awarding flotation costs. Two different policies are asserted to provide the rationale for allowing recovery of flotation costs. First, some commenters claim that the Commission must award flotation costs so as to maintain the carrier's stock at a market value in excess of its book value [68] so that the carrier can issue additional shares without further dilution.[69] Second, some comments assert that the value of assets in the rate base is less than the amount the shareholder invested because of flotation costs, and that an upward adjustment to the "required return" is necessary to enable the investor to earn the required return on the full amount of his or her investment.[70]

90. The two grounds for flotation costs do not appear to be entirely consistent, however. If stocks are issued at a time when the market price is below the book value, then there would be a problem with "dilution" of the current shareholders' value, but at the same time the investors would be receiving more than the "required return" on the amount of their investment since it was less than the average amount per share in the rate base. Conversely, when the market value exceeds the book value, issuing new shares does not result in "dilution," but the investors' level of investment exceeds the average per share in the rate base.

91. The comments also suggested several different formulae and methodologies for calculating a flotation cost adjustment. OCCO's expert witness advocates a formula that allows recovery of the costs only during the year incurred.[71] Other carriers advocate methodologies to increase the return on equity regardless of new issues.[72] Ameritech's expert derived a flotation cost adjustment based on maintaining a market to book ratio of 1.1 to 1.[73] Most of the estimates of the fractional flotation costs, a critical figure in the various formulae, ranged between 5 and 7 percent, but the sources for the figures varied.[74] In light of the disagreement on determining the amount of flotation costs, the formula for recovery those costs, and even on why those costs should be awarded, we approach an allowance for flotation costs with some skepticism.

92. The arguments proffered in the comments do not support the level of flotation cost adjustments sought by the carriers. Several commenters analogize to the treatment accorded issuance expenses for debt and preferrer stock to support an award of flotation costs for common stock.[75] Commenters use the analogy and simplified examples of asset purchases and income streams to demonstrate the need for a flotation adjustment.[76] The analogy and simple examples break down in several respects, however. A major difference between debt and common stock is the contractual obligation to pay a specified amount of interest on the debt, which is absent in the case of equity. The simplified illustrations assume the stockholder has an unqualified right to a fixed percentage return—the "required return"—on the market value of his or her shares. However, there is no such right under either contract law or the Commission's obligation to allow a reasonable return.

93. More important, we believe that the "required return" as derived from a market based methodology, such as DCF, already accounts for flotation costs. Alltel argues that if the Commission does not make these flotation cost adjustments, the investors will adjust the price they are willing to

[63] There were some comments in favor of the Commission's original risk premium proposal. Kerrville, for example, believes this methodology is not unduly complicated, would be subject to less argument and more readily estimated than any other method. On balance, however, we have concluded that while risk premium estimates can be useful, the estimate of the direct DCF approach we outlined previsiously are the most relevant evidence for the Commission's decision.

[64] *Initian Notice* at fn. 18.

[64] 86 FCC 2d at 244–45.

[65] BellSouth identified twelve such out of pocket expenditures (as well as the opportunity cost of employees' time). Affidavit of Vanderweide and Carleton at pp. 70–71.

[66] See generally, BellSouth Affidavit of VanderWeide and Carleton at pp. 75–77. The IRS, however, does not allow such costs to be expensed or amortized, or even recovered upon dissolution of the company.

[67] SNETCO; Alltel; U.S. West; GTE; Pacific; NYNEX; Bell Atlantic; *cf.* BellSouth-Affidavit of VanderWeide and Carleton, pp. 88–90 (expensing or adding to rate base and amortizing are both superior to modifying the return on equity).

[68] The term "book value" is not used uniformly or precisely by the parties. At times, the term is used to refer to rate base assets or to accounting entries, as distinguished from the price the stock sells at the marketplace. We will assume the parties are referring to regulatory accounting books, since different sets of accounting books may legitimately be maintained for the FCC, SEC and IRS.

[69] *E.g.*, Alltel; Ameritech; Southwestern Bell; Bell Atlantic.

[70] *E.g.*, SNETCO; U.S. West; Pacific; NYNEX.

[71] OCCO, Affidavit of M. Marcus.

[72] SNET ($r = K/(1-f+fb)$, where r is the adjusted return on equity, K is the cost of equity, f is the fractional flotation cost and b is the retention ratio); U.S. West, Bell Atlantic and NYNEX ($K = D_1/Po(1-f)+g$, where K is the adjusted cost of equity, D_1 is the anticipated dividend, Po is the market price, f is the fractional flotation cost and g is anticipated growth); *cf.*, BellSouth (reviews the literature and sets forth three different formula).

[73] Sefton Affid., p. D–17.

[74] *E.g.*, GTE (5% based on academic studies); Pacific (5%, but no source); Southwestern (5% based on discount for dividend reinvestment program); NYNEX (7% based on review of 1983 issues in excess of $25 million; 5% based on review of 10 years of utility issues).

[75] GTE; U.S. West; NYNEX; Bell Atlantic.

[76] *E.g.*, Bell Atlantic.

pay for the stock.[77] The Commission did not explicitly allow recovery of flotation costs in its last rate of return proceeding, however, and thus the market price (as well as the sophisticated analysts' estimate of dividend growth) should already reflect the absence of a 50 to 90 basis point flotation cost adjustment.

94. The simple illustrations of asset purchases and income streams also fail to reflect the fact that the market price of the company's stock will diverge from the rate base or book value by varying amounts for differing reasons. The assumption that market value will precisely reflect initial investment less flotation costs plus retained earnings is not a very solid foundation for "proof" of the need for an adjustment for flotation costs. The market value of the stock will reflect, *inter alia*, non-jurisdictional activities, estimates of risk, evaluations of management and beliefs about future economic conditions. Indeed, this Commission explicitly recognized the effects of outside factors in rejecting the claim that it has an obligation to set a rate of return that will ensure a carrier's market to book ratio in excess of one.[78]

95. We are also troubled by requests for reimbursement of "market pressure" costs, which comprise half of the flotation costs the carriers seek to recover. It is not at all clear why the shareholders must be reimbursed for what is at most a temporary decline in the market price of the stock. Apparently market pressure is intended to reflect the difference between the "real market value" of the stock and the depressed value that comes with announcement of a new offering due to the anticipated earnings dilution. Various studies purport to calculate the market pressure effect, and the results range from less than one percent to over 11 percent.[79] The record does not support the need for, or level of, an adjustment to the return on equity component to compensate for market pressure.

96. The carriers seek a flotation cost adjustment in the range of 50 to 90 basis points.[80] We do not believe the record supports such an award. As we noted previously, we believe the market determined DCF methodology already takes into account flotation costs.[81] This Commission did make a slight upward adjustment to the return on equity component in its most recent rate of return prescription. We therefore assume that the market determined required return on equity anticipates a similar adjustment from this Commission. To account for that expectation, we propose to adjust the return on equity upward 10 basis points for the initial prescription. Thereafter, we will provide no adjustment, as assume that the market price and analysts' forecasts will take into account the Commission's policy of not making flotation cost adjustments.

C. Debt

97. We received comments both agreeing with our initial proposal for computing the cost of long term debt based on the most recently available test period, and arguing for a projected debt cost. We proposed to follow the procedure adopted in the *1981 Represcription Order* and divide the total of actual interest payments plus the booked amortization of issuance and premium or discount expenses by the weighted average outstanding net proceeds amount of debt. The amortization of issue expenses and premium or discount was done on a straight line basis in the *1981 Represcription Order*.[82]

98. Proposals for using projected debt cost generally involved the Commission adopting projections of the debt, interest and amortization expenses and the amount of debt that will be outstanding during the prescription period. None of the commenters elaborated upon how the Commission should make such projections, nor did any propose a refund or surcharge procedure for the inevitable discrepancies between the projected and realized debt figures.

99. We are uncomfortable with the need, under the projected debt proposals, to make interest rate forecasts, to make predictions about the timing of the refinancing of callable debt, and to make companies disclose their future financing schedules. It is our intention to make the cost of capital determinations on a frequent basis (two years, with the possibility of annual updates for changes in debt-equity ratios and costs of embedded debt) so that the potential for difference between prescription and actual debt costs will be much less than it has been in the past. These reasons are sufficient to make us conclude that our original proposal, to use actual debt cost as the basis of our prescription, was sound and should be adopted.

D. Treatment of Preferred Stock

100. In the *Initial Notice*, we sought comment on the treatment to be accorded preferred stock, after noting that our prior finding that the costs of common and convertible preferred were the same was based on the relatively small amount of preferred stock and the occurrence of conversion. *Initial Notice*, para. 14. Very little comment was received with regard to this issue, probably because the largest companies apparently do not have much, if any, convertible preferred stock outstanding. All parties agreed that the cost of non-convertible preferred should be treated similarly to debt. The cost should be calculated by dividing the interest or dividend expense by the book value of the preferred stock.[83] With regard to the treatment of convertible preferred, some parties assert all convertible preferred should be treated as equity;[84] some parties argue it should be treated differently depending on the likelihood of conversion;[85] while at least one party advocated it simply be treated like debt.[86]

101. It is our intention to treat both convertible and non-convertible preferred in the same manner as debt. The costs will be calculated by dividing the dividend amount by the book value. We believe this approach will most accurately determine the costs, particularly in light of the relatively short prescription period of two years (with the possibility of allowing annual updates on capital structure and embedded debt costs).

E. Zero-Cost Sources of Financing

102. In our *Initial Notice*, we sought comment on the appropriate categories and treatment of zero-cost sources of capital. In the *1981 Represcription Order* AT&T's capital structure included several items with zero-cost—capital stock subscribed and related premium and capitalized stock installments, unmatured interest, unmatured

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[77] Alltel, pp. 22-24.

[78] 86 FCC 2d 221, 245 at fn. 44.

[79] NYNEX; BellSouth. It is not clear whether market pressure exists to the same extent under the new SEC shelf registration program. Presumably the ability of companies to take advantage quickly of favorable windows would eliminate or mitigate market pressure effects.

[80] *E.g.*, Ameritech, 90 basic points; U.S. West, 70 basis points; NYNEX, 50-70 basis points; Pacific, 50 basis points; SNET, 60 basis points; Southwestern, 46 basis points; BellSouth, 20-50 basis points.

[81] See paragraph *93, supra*.

[82] Parties should address, however, utilization of the GAAP method of amortizing on a different basis.

[83] *Cf.* Ameritech Comments, which argues that current rather than embedded costs should be used.

[84] *E.g.*, Ameritech Comments; AT&T Comments; Contel Comments.

[85] *E.g.*, Cincinnati Comments (treat as equity unless conversion unlikely); Contel Comments (treat like equity if any appreciable conversion is occurring).

[86] Rochester Comments.

dividends, and matured interest and dividends.[87] We proposed to employ the most recent twelve-month average amounts of these sources from balance sheet entries and treat them as part of the capital structure at zero cost. *Initial Notice* at para. 12. We also recognized, however, that it would penalize the carriers by "double counting" if the zero-cost sources of financing were both deducted from the rate base and counted as part of the capital structure. *Ibid.*

103. While some parties argued that there are no zero cost sources of capital because the funds have economic or opportunity costs associated with them,[88] the majority of comments focused on the Commission's desire to avoid "double counting."[89] Attempts to use zero-cost sources of financing in calculating the rate of return complicate the represcription proceeding and some comments suggest that they may not be effective.[90]

104. After reviewing the comments, we are inclined to conclude, with the exception of those firms that are used for comparable risk measurements, that it would be better in this instance (given the constraints and objectives of this rulemaking) to treat these zero-cost sources of financing as deductions from the rate base rather than as part of the capital structure.[91] Because the effect on the ratepayer is similar, treatment as a ratebase issue avoids complicating, and thus potentially delaying, the prescription of rates of return. If we adopt that approach, we will delegate to the Chief, Common Carrier Bureau authority to prescribe the classification and treatment to be accorded "zero-cost" sources of financing to ensure such items are properly excluded from the rate base. Interested parties are encouraged to comment on that alternatve.

VI. Hearing Procedures

105. We would propose to initiate the actual represcription proceedings for AT&T and the exchange carriers as soon as possible after we adopt a final decision in Phase II of this rulemaking. If our effort to establish prescribed or acceptable methodologies is successful, it should be possible to implement the methodology in a subsequent represcription proceeding in about six months. The tentative plan for such a proceeding that we describe in this section is based upon the assumption that such methodology will have been established.

A. Introduction

106. Review of the Comments and Reply Comments regarding written procedures has prompted us to request further comment upon specific written procedures with streamlined oral evidentiary hearings upon an appropriate showing. The commenters' contentions are varied. Some argue that in order to apply a rate of return or cost of equity method to carrier groups or to individual carriers, oral evidentiary proceedings are required by sections 553(c), 556, and 557 of the Administrative Procedure Act,[92] by section 205 of the Communications Act,[93] by due process,[94] or generally.[95] Others contend that certain issues, such as investor perception of risk, the risk premium in the risk premium cost of equity method, the Discount Cash Flow method, elements of growth and stock flotation costs, or cost of equity inherently require oral evidentiary procedures.[96] Other commenters claim that oral hearings are not legally required or not useful,[97] or that they are too expensive.[98] Some find written procedures acceptable.[99] Others contend that at least oral cross-examination, or formal discovery, or oral argument is legally required in rate of return proceedings.[100] One commenter proposed on oral evidentiary proceeding if all exchange access carriers are treated as one group.[101] Others contend that oral hearings would be useful to the Commission,[102] or that oral hearings cannot be entirely precluded.[103] A few commenters suggest that discovery and limited oral evidentiary procedures be permitted on limited issues after an appropriate showing.[104]

B. Expedited Hearing Procedures

107. It is neither fruitful nor necessary to resolve here whether section 205 of the Communication's Act requires application of notice and comment procedures or formal rulemaking procedures under the Administrative Procedure Act to prescribe rates of return, whether rate of return issues are legislative or adjudicative facts, or whether rate prescriptions under section 205 are "required by statute to be made on the record after opportunity for an agency hearing." Oral evidentiary procedures could be required in a section 553 notice and comment rulemaking, even though this is a hypothetical and remote possibility.[105] In section 556 formal rulemakings oral evidentiary procedures are neither a matter of right nor automatically required. All that section 556 or due process requires is that oral procedures be employed if a party would be prejudiced by the use of written

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[87] 86 FCC 2d at 228–32.

[88] *E.g.*, Ameritech Comments; AT&T Comments.

[89] *E.g.*, Centel Comments; NYNEX Comments.

[90] *E.g.*, NYNEX Comments, Southwestern Comments.

[91] In the case of a cost of capital that was derived through the use of firms of comparable risk (including the financial structures of the firms thus chosen), it would, of course, be necessary to make offsetting rate base adjustment that were equitable.

[92] Southwestern Bell Telephone Company Comments, pp. 40–42. American Bar Association Administrative Law Section Reply Comments, pp. 2–7. The ABA filed a "Motion to Accept Late-Filed Comments", dated March 12, 1985, with its Reply Comments. In view of the lack of opposition to the ABA Motion, the significance of the issue, and the lack of prejudice to other commenters, the motion is granted. For the same reasons, we are granting US West's and Arkansas' request for acceptance of late-filed comments.

[93] NARUC Comments, pp. 2–4. Rural Telephone Coalation Comments, pp. 14–16. Office of Consumer Counsel, State of Ohio Comments, pp. 1–2. GTE Reply Comments, pp. 8–9. Reply Comments of Citizens of State of Florida and National Association of State Utility Consumer Advocates, pp. 1–2.

[94] Ameritech Operating Companies Comments, pp. 24–26. GTE Reply Comments, pp. 8–9.

[95] U.S. West reserves comment on paper procedures until the Commission selects a rate of return formula, without waiving any rights to an oral hearing. U.S. West Comments, p. 7, n.8.

[96] AT&T Comments, pp. 63–64. Bell Atlantic Comments, pp. 3–6 and Reply Comments, pp. 9–11. Communications Satellite Corporation Comments, pp. 5–7. Florida Public Service Commission Comments, pp. 8–9. Pennsylvania PUC Comments, p. 5. Southwestern Bell Reply Comments, p. 31. NYNEX Comments, pp. 25–27. United Telephone System alleges that the dividend growth element of the DCF method will be contended. Comments, pp. 19–20.

[97] Federal Executive Agencies (DOD/GSA) Comments, pp. 9–10. Rochester Telephone Company Reply Comments, p. 6 (if a nonpredjudicial rate of return formula is adopted). Satellite Business System Comments, p. 15, and Reply Comments, pp. 7–8. Southern New England Telephone Company Comments, p. 34, and Reply Comments, pp. 26–27 (although not averse to oral hearings on cost of equity). United Telephone System Comments, p. 20.

[98] Interior Telephone Co., Inc. and Bristol Telephone Company, Inc. Comments, pp. 3–4.

[99] Continental Telecom Inc. Comments, pp. 17–18. Southwestern Bell Comments, pp. 40–43, and Reply Comments, pp. 30–31. However, Southwestern Bell questions whether written procedures are legally sustainable.

[100] Ameritech Operating Companies Comments, pp. 24–26. AT&T Comments, pp. 65–67, and Reply Comments, p. 36. GTE Comments, pp. 8–9. Office of Consumer Counsel, State of Ohio Reply Comments, pp. 1–2. BellSouth Comments, p. 11.

[101] Western Rural Telephone Association Comments, p. 15.

[102] Central Telephone Company Comments, p. 12. Pacific Bell and Nevada Bell Comments, pp. 38–39.

[103] American Bar Association Administrative Law Section Reply Comments, pp. 2–7. Pacific Bell and Nevada Bell Reply Comments, pp. 57–58.

[104] American Bar Association Administrative Law Section Reply Comments, pp. 7–8. BellSouth Comments, pp. 10–11. Continental Telecom Comments, p. 16, and Reply Comments, p. 38.

[105] Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, 435 U.S. 519, 523–524, 548 (1978).

procedures.[106] Whether and what kind of oral procedures are required depends upon the facts at issue, the context of the particular case, and the demonstrated necessity for oral procedures in the particular proceeding.[107]

108. The streamlined hearing procedures we now propose will not only satisfy the most stringent statutory and constitutional requirements that are arguably applicable, but will also provide the flexibility necessary to timely execution of the Commission's duties. Carriers and the public will be accorded full and fair opportunity for hearing, and the Commission will be supplied with substantial, complete records permitting sound and reasoned decisions. Our proposal will permit limited oral evidentiary proceedings upon an appropriate showing, while allowing the Commission to render rate of return decisions within six months.

C. Discovery

109. Much of the discovery which formerly took place in the traditional oral evidentiary ratemaking proceedings will be eliminated if we adopt defined rate of return methodologies and prescribe carrier-submitted data to support rate of return requests. The former wide-ranging searches for underlyling assumptions and supporting data would no longer be necessary, making focused requests possible. We propose to continue the use of informal discovery or information requests in ratemaking.[108]

110. We intend to limit the exercise of our discretion to provide for discovery[109] to grant of those requests which demonstrably will lead to the production of material, relevant, decisionally significant evidence. Information requests shall be filed with the Commission, and acted upon by the Common Carrier Bureau under delegated authority. Requests shall be filed and also served upon the carrier or participant questioned within 14 calendar days after the carrier's or participant's submission. Responses to any request shall be provided within 14 calendar days after release of the Bureau's decision granting the request. These procedures do not preclude the Commission or the Common Carrier Bureau, of course, from initiating inquiries when called for by the circumstances.

D. Cross-Examination

111. Much of the cross-examination which took place in the traditional oral evidentiary ratemaking proceeding was directed toward explanation of the methodology used to estimate rate of return, assumptions underlying application of the methodology, and the data used to estimate rate of return. Our adoption of a defined methodology and our prescription of carrier-submitted data eliminate the need for most if not all of this type of cross-examination. We anticipate that the instances in which oral procedures shall be fruitful or necessary shall be infrequent. However, we shall entertain requests for cross-examination upon an appropriate showing.

112. A person requesting cross-examination would be required to make a substantial showing that the use of written procedures would result in prejudice to a party, and that cross-examination is necessary to achieve a full and fail record. It must be demonstrated that written information requests are inadequate to, and that only cross-examination can, decisively resolve[110] genuine, substantial, material questions of fact.[111] Additionally, requests for cross-examination must be specific as to the witness and the facts that are expected to developed. Requests must be supported by an appropriate proffer of the evidence expected to be adduced and a demonstration of the lines of examination which require exploration.[112]

113. If the requisite showing has been made, specific factual issues and witnesses would be designated for hearing before an Administrative Law Judge.[113] Requests for cross-examination would be acted upon by the Common Carrier Bureau purusant to delegated authority. Each request would be filed with the Commission and served upon all participants within 14 calendar days after filing of the carrier's or other participants submission to which the request is directed. Hearings would be limited to specified issues and witnesses for cross-examination, which shall be completed within a maximum of five hearing days absent extraordinary circumstances, and no later than the date specified in the designation order, in the absence of extraordinary circumstances. The participants would be encouraged to combine resources and representation in order to achieve efficiency and expendition during oral hearings.[114] Scheduling of the witnesses and allocation of the time allowed to each cross-examination are matters within the discretion of the Administrative Law Judge.

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[106] 5 U.S.C. 556(d); United States v. Florida East Coast Railway, 410 U.S. 224, 241 (1973); Shell Oil Co. v. FPC, 520 F. 2d 1061, 1074–76 (5th Cir. 1975); American Public Gas Assn. v. FPC, 498 F.2d 718, 723 (D.C. Cir. 1974). Nathaniel Nathanson, "Probing the Mind of the Administrator: Hearing Variations and Standards of Judicial Review under the Administrative Procedure Act and Other Federal Statutes", 75 Columbia Law Review 721, 727–728 (1975).

[107] RCA Global Communications, Inc. v. FCC, 559 F.2d 881, 885–87 (2d Cir. 1977), *Rehearing*, 563 F.2d 1 (2d Cir. 1977); American Public Gas Association, *supra*, 498 F.2d at 722–723; Mobil Oil Corporation v. FPC, 483 F.2d 1238, 1257 (D.C. Cir. 1973); National Air Carriers Association v. CAB, 436 F.2d 185, 191–194 (D.C. Cir. 1970); Long Island Railroad Co. v. United States, 318 F. Supp. 490, 497–500 (E.D.N.Y. 1970). Lionel Kestenbaum, "Rulemaking Beyond APA: Criteria for Trial Type Procedures and the FTC Improvement Act", 44 George Washington University Law Review 679, 692, 708–709 (1976). Nathanson, supra at 727–728, 734–746.

[108] Report and Order, Amendment of Part 1 of the Rules of Practice and Procedure to Provide for Discovery Procedures, 11 FCC 2d 185, 186 (1968); AT&T, 73 FCC 2d 688, 694 (1979); Multischedule Private Line-MPL, 62 FCC 2d 35, 37 (1976). Formal discovery was advocated by Office of Consumers Counsel, State of Ohio Reply Comments, pp. 1–2. Informal discovery was suggested by NYNEX Comments, pp. 27–28. Most parties did not specify formal or informal discovery. Bell South Corp. Comments, p. 11. Bell Atlantic Companies Comments, p. 5. Southwestern Bell Telephone Reply Comments, pp. 30–31. No reason to revise our rules or our usual practice of informal discovery in ratemaking has been advanced, nor would formal discovery be reasonable in view of the necessity for expedition.

[109] See generally, Kenneth Culp Davis, Administrative Law Treatise (2d Ed. 1980), § 14.8.

[110] AT&T v. FCC, 572 F. 2d 17, 22–23 (2d Cir. 1978), *cert. denied* 439 U.S. 875 (1975); Mobil Oil Corporation v. EPC, supra, 483 F. 2d at 1262–1263; Virgin Islands Hotel Association (US), Inc. v. Virgin Islands Water and Power Authority, 476 F 2d 1263, 1268–1269 (3d Cir. 1973); *cert. denied* 414 U.S. 1067 (1963). Nathanson, supra, at 737–738.

[111] American Bancrop, Inc. v. Board of Governors of Federal Reserve System, 509 F. 2d 29, 38–39 (8th Cir. 1974); Bell Telephone Co. of Pennsylvania v. FCC, 503 F. 2d 1250, 1267–1268, n. 25 (3d Cir. 1974); *cert. denied*, 422 U.S. 1026 (1975); *rehearing denied* 423 U.S. 886 (1975); Cooper Laboratories, Inc. v. FDA 501 F. 2d 772, 785–786 (D.C. Cir. 1974); Henderson Trumbull Supply Corp. v. NLRB, 501 F. 2d 1224, 1228–1229 (2d Cir. 1974); Upjohn Co. v. Finch, 472 F. 2d 944, 953 (6th Cir. 1970); Long Island Railroad Co. v. United States, *supra*, 318 F. Supp. at 498–500. One commenter notes that cross-examination is not required in the absence of material questions of fact. Continental Telecom Reply Comments, p. 38. Ameritech proposes cross-examination where material questions of fact arise. Comments, pp. 27–28.

[112] American Public Gas Association v. FPC, *supra*, 498 F. 2d at 723; Virgin Islands Hotel Association (US), Inc. v. Virgin Islands Water and Power Authority, *supra*, 476 F. 2d at 1268–1269; American Airlines, Inc. v. CAB, 359 F. 2d 624, 633–633 and n. 24 (D.C. Cir. 19660 *cert. denied* 385 U.S. 843 (1966).

[113] Requests for cross-examination which are denied will be processed as requests for discovery. These procedures do not preclude the Commission from designating issues for cross-examiation on its own motion where called for by the circumstances.

[114] See AT&T Communications Comments, p. 69. NYNEX Reply Comments, p. 47.

E. Proposed Findings of Fact, Conclusions, and Replies

114. The proposed procedures would accord participants the opportunity to submit proposed findings of fact and conclusions after the submission of the evidence and before issuance of the Commission's decision. Proposed findings and conclusions shall be limited to 70 pages and reply findings and conclusions to 35 pages. Many of the former matters of controversy regarding rate of return would be eliminated by our specification of methodologies and by our prescription of carrier-submitted data, and thus also the need for extensive and intricate proposed findings. Additionally, the participants will provide the greatest assistance to reasoned and expeditious decision making by submitting focused, concise findings and conclusions.

F. Oral Argument

115. Oral argument will be granted upon showing that it is necessary for a full and fair record and that the use of written argument is prejudicial to a party. The Commission in each case exercises its discretion to determine whether the due and full consideration of all matters of fact and law require oral argument. *FCC v. WJR, the Goodwill Station*, 337 U.S. 265, 275–277 (1949). Any participant who requests oral argument must persuasively demonstrate benefits from oral argument which could not obtained from written procedures. *CATV Syndicated Program Exclusively Rules*, 79 FCC 2d 652, 661 (1980). Requests for oral argument shall be filed within 7 calendar days after the filing of reply findings and conclusions.

G. Procedure for Decision

116. We conclude that due and timely execution of our functions imperatively and unavoidably require that the Common Carrier Bureau prepare a draft decision for the Commission in rate of return proceedings. If cross-examination has been conducted an Administrative Law Judge, the record shall be certified to the Commission at the close of hearing and no Initial Decision shall be issued. An Initial Decision and resolution of exceptions would impose unjustifiable delay and burden upon carriers and the public without concomitant benefit. Neither the Communications Act nor the Administrative Procedure Act requires an Initial Decision under such circumstances.[115]

117. Contrary to the contentions of several commenters, the Commission is not required to issue for public comment staff proposals or a recommended decision, in effect a tentative decision.[116] Inapposite authority is relied upon by AT&T Communications.[117] For the Commission to give a preview of, or to publish for comment its rate of return conclusions in a tentative decision "would result in an absurd and endless process." *Independent U.S. Tanker Owners Committee v. Lewis*, 790 F. 2d 908, 925–926 (D.C. Cir. 1982). In view of our provision for proposed findings and conclusions after the participants will have had full opportunity to submit evidence and to test the evidence, and in view of our practice of reaching rate of return decisions upon the record, participants will have been accorded all rights to make an effective presentation.

H. Schedule for Use of Procedures

118. Several commenters have proposed a six months or an unspecified expedited schedule.[118] We have tentatively concluded that a six month schedule will supply ample time to permit direct and rebuttal evidentiary submissions by the carriers, a responsive evidentiary submission by interested members of the public, informal discovery, limited oral procedures, proposed findings and conclusions, and adequate time to reach a sound and reasoned decision. The proposed schedule of procedures is set forth in Appendix B.

I. Other Procedural Matters

119. Traditional rate of return evidentiary proceedings have generated massive records exceeding 10,000 and sometimes 20,000 pages of evidentiary exhibits and transcript.[119] The enormous records have been one major source of delay in concluding rate of return proceedings. The adoption of rules defining and prescribing one or more acceptable rate of return methodologies, and the prescription of carrier-submitted data to support rate filings would eliminate some of the disputed matters responsible for such vast records. However, because of the greater number of carriers which we must examine, and because we are likely to provide for consideration of rate of return methodologies such as discounted cash flow and alternative methodologies which involve a certain amount of subjectivity and judgment, there is no guarantee that the best-intentioned participants will not generate records of unmanageable size. Accordingly, we propose to adopt page limitations on the carriers' and other participants' rate of return submissions. While the carriers and other participants must be permitted to make an effective presentation, neither can we continue the practice of admitting all testimony and evidence of however little value. The proposed limitations will provide ample opportunity to submit evidence that is material to the participants' cases:

(1) Carrier rate of return filings: A carrier's submission for the acceptable methodologies filing will be limited to 70 pages, inclusive of all argument, testimony, data, documents, attachments appendices and supplements.[120]

(2) Response by any interested person to a carrier rate of return filing shall be limited to 50 pages total, including all argument, testimony, data, documents, attachments, appendices, and supplements.

(3) Each carrier rebuttal to all responsive rate of return submissions filed shall be limited to 35 pages total, inclusive of all arguments, testimony, data documents, attachments, appendices and supplements.

(4) If we prescribe rate of return methodologies, requests for waiver of and/or consideration of alternatives to the prescribed rate of return methodologies shall be limited to 75 pages, total, inclusive of the petition, the alternative methodology and all supporting materials such as testimony, data, documents, attachments.

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[115] This is so whether rate of return proceedings are characterized as notice and comment or as restricted rulemaking. 5 U.S.C. 553(c), 557(b). 47 U.S.C. 409(a). Communications Satellite Corporation v. FCC, 611 F. 2d 883, 886–888 (D.C. Cir. 1977). *Settlement approved*, 68 FCC 2d 941 (1978).

[116] BellSouth Corp. Comments, pp. 11–12. AT&T Communications Comments, pp. 63–64, 69, and Reply Comments, pp. 36–37.

[117] See Comments, p. 64. NARUC V FCC, 737 F. 2d 1095, 1121 (D.C. Cir. 1984), quoting Independent U.S. Tanker Owners Committee v. Lewis, 690 F. 2d 908, 925–926 (D.C. Cir. 1982); United States Lines, Inc. v. Federal Maritime Commission, 584 F. 2d 519, 534 (D.C. Cir. 1978); Home Box Office, Inc. v. FCC, 567 F. 2d 9, 34–35 (D.C. Cir. 1977). Those cases concern an agency's obligation to make information relied upon in reaching a decision publicly available, or to disclose the thinking and the data upon which a rule is based, but do not address publication for comment of a recommended or tentative decision.

[118] NYNEX COMMENTS, pp. 29–30. Southwestern Bell Reply Comments, pp. 30–31. AT&T Communications Reply Comments, pp. 37–38.

[119] See, for example, the records of Communications Satellite Corporation (FCC Docket 16070), American Telephone and Telegraph Company (FCC Docket 19129, Phase I), American Telephone and Telegraph Company (FCC Docket 20376), and American Telephone and Telegraph Company (CC Docket 79-63).

[120] Any data submissions to establish a weighted average state authorized return will, of course, be quite short.

appendices and supplements. Oppositions shall be limited to 50 pages total.

J. Ex Parte Communications and the Role of Separated Staff

120. We do intend to designate a separated trial staff in any proceeding that is designated for oral cross-examination. Such a separated staff would not participate in the preparation of a draft Commission opinion and would be subject to the same restraints as other parties with respect to communications with an Administrative Law Judge, the Commissioners, their assistants and unseparated staff that participates in the preparation of a draft opinion. The separated staff would not, of course, be subject to any restrictions in communications with the carrier or other parties in the proceeding.[121]

121. The proceedings to represcribe a rate of return appear to have a sufficiently adjudicatory character to warrant classifying such proceedings as restricted for purposes of our *ex parte* rules even though the present proceeding to establish procedures, adopt prescribed or acceptable methodologies and to modify or clarify procedures to enforce rate of return prescriptions is a "non-restricted" rulemaking proceeding. We propose to preclude *ex parte* communications in the represcription proceedings. We would also expect that untimely written submissions will not be accepted even if such submissions are served upon all parties.

122. The role of separated trial staff may be expanded in at least some proceedings to include serving interrogatories, preparing proposed findings and conclusions, and possibly submitting responses. Such decisions will have to be made upon a case by case basis in light of the nature of the proceeding and the resources that are available to us.

K. Legal Authority for Procedures

123. The emergence of competition, the imposition of access charges, and the consequences of the AT&T divestiture require less costly and more expeditious rate of return proceedings. We have not before faced ratemaking responsibilities involving such large numbers of carriers or serious consequences of delay, in addition to other heavy demands upon our resources. Delay can deprive regulated entities, their competitors and the public of rights and economic opportunity without the due process the Constitution requires. *MCI Telecommunications Corp. v FCC*, 627 F.2d 322, 340–342 (D.C. Cir. 1980). The Commission has wide discretion to develop more expeditious administrative procedures if the ultimate achievement of the Commission's regulatory purposes demands such innovation. *Permian Basin Area Rate Case*, 390 U.S. 747, 776–777 (1968). Our proposal for expedited hearings permits timely execution of our duties and yet preserves all procedural rights of the participants. The carrier groups we have selected would in most, if not all, cases permit the exclusive use of written procedures. *United States v Florida East Coast Railway*, 410 U.S. 224 (1973). However, we have proposed written hearing procedures with oral evidentiary procedures upon an appropriate showing in order to ensure full consideration of all pertinent evidence.

124. Several commenters contend that our previous use of formal oral evidentiary ratemaking procedures requires their continued use [122] or that the difficulty and complexity or great importance and controversial nature of rate of return issues precludes written procedures.[123] The use of oral evidentiary procedures in the past to determine rate of return issues does not obligate us to continue doing so. *United States* v *Florida East Coast Railway*, supra, 410 U.S. at 236, n. 6. Nor does a break with past procedures invalidate the new procedures. *Bell Telephone Co. of Pa.* v *FCC*, 503 F.2d 1250, 1265 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975), *reh'g. denied* 423 U.S. 886 (1975); *Phillips Petroleum Co.* v *FPC*, 475 F.2d 842, 852 (10th Cir. 1973), *cert. denied*, 414 U.S. 1146 (1974). Oral procedures are not required by either the difficulty and complexity of the issues, *Bell Telephone Co. of Pa.* v *FCC*, *supra*, 503 F.2d at 1267, or the importance and controversial nature of the issues. *Vermont Yankee Nuclear Power Corp.* v *Natural Resources Defense Council*, 435 U.S. 519, 545–547 (1978).

125. The proposed procedures are a further step in our continuing efforts to develop efficient hearing procedures. When we were faced with less extensive and infrequent ratemaking obligations, lengthy full-scale oral evidentiary proceedings were conducted. *AT&T*, 2 FCC 2d 142 (1965); *AT&T*, & FCC 2d 151 (1971). However, we have for many years increasingly experimented with written and/or expedited procedures. *AT&T*, 45 FCC 2d 88 (1974); AT&T 50 FCC 2d 501, 515–517 (1974); 62 FCC 2d 774, 776, n. 4. (1977); *AT&T*, 73 FCC 2d 689, 694–695 (1979). *Cellular Communications Systems*,, 86 FCC 2d 469, 499–501 (1981), *reconsideration*, 89 FCC 2d 58, 92–94 (1982). Our proposed procedures are not a drastic deviation from longstanding, well-established practice which could raise meritorious questions of validity. *Vermont Yankee Nuclear Power Corp.* v *Natural Resources Defense Council*, *supra*, U.S. at 542, n. 17.

126. The hearing procedures we propose represent the type of pragmatic adjustments to procedural practices which regulatory agencies are permitted and obligated to adopt in order to meet the administrative constraints and changing industry conditions we now confront. *Permian Basin Area Rate Case*, *supra*, 390 U.S. at 776–777, 784; *RCA Global Communications, Inc.* v *FCC*, *supra*, 559 F.2d at 885, 887.

VII. Conclusion

127. The proposed rate of return methodologies, carrier groupings, and hearing procedures represent the type of pragmatic adjustments required by significantly changed conditions. We believe the beneftis will outweigh any disadvantages. Our proposals balance the carriers' financial requirements, the public interest in just and reasonable rates, and the administrative exigencies. Congress gave the Commission authority adequate to satisfy and permit ultimate achievement of the regulatory purposes for which the Commission was created. *FPC* v *Natural Gas Pipeline Co.*, 315 U.S. at 586; *Permian Basin Area Rate Case*, supra, 390 U.S. at 776–777, 784; *NARUC* v *FCC*, 737 F. 2d 1095, 1140–1141 (D.C. Cir. 1984), appeal filed, D.C. Cir. Dk. DC 83–1984. Our proposals are subject to reexamination and adjustment in light of experience and to the public's general right to petition for change, amendment, or repeal of rules adopted by this Commission. 5 U.S.C. 553(e). Accordingly, these proposals constitute a reasonable exercise of our discretion. *Permian Basin Area Rate Case*, *supra*, 390 U.S. at 771–773, 789; *NBC* v *United States*, 319 U.S. 190, 225 (1943); *Washington Utilities and Transportation Commission* v. FCC, 513 F 2d at 1164–1165 (9th Cir. 1975); *WAIT Radio* v *FCC*, 418 F. 2d 1153, 1157 (D.C. Cir 1969), *aff'd on remand*, 459 F. 2d 1203 (D.C. Cir. 1972), cert. denied, 409 U.S. 1027 (1972), *WBEN* v *United States*, 396 F. 2d 601, 618 (2d cir. 1968), *cert. denied*, 393 U.S. 914 (1968).

VIII. Ordering Clauses

128. Pursuant to our authority under sections 4 (i) and (j), 205, and 403 of the

[121] See § 1.209(d) of the Commission's Rules, 47 CFR 1.209(d) (1984).

[122] Communications Satellite Company Comments, pp. 5–6. AT&T Comments, pp. 65–67.

[123] Pennsylvania PUC Comments, p. 5. AT&T Comments pp. 63–64, and Reply Comments, p. 36.

Communications Act of 1934, as amended, 47 U.S.C. 154 (i) and (j), 205 and 403, it is ordered that comments on factors for our examination of authorized rates of return for AT&T and exchange telephone carriers shall be due for the Phase I issues on September 3, 1985, with reply comments due on September 13, 1985, and for the Phase II issues comments are due on September 25, 1985, with reply comments due on October 10, 1985. Where comments are based on the analyses of experts, those analyses should be submitted under oath for the record. The Common Carrier Bureau is delegated authority to convene meetings or use other procedures for gathering information for this proceeding.

129. For purposes of this non-restricted notice and comment rulemaking proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rulemaking until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arguments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding. Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding must prepare a written summary of that presentation; on the day of oral presentation, that written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. *See generally* Section 1.1231 of the Commission's Rules 47 CFR 1.1231. All relevant and timely comments and reply comments will be considered by the Commission. In reaching its decision, the Commission may take into account information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

130. In accordance with the provisions of 47 CFR 1.419(b), an original and six copies of all comments, replies, pleading, briefs and other documents filed in this proceeding shall be furnished to the Commission. Members of the public who wish to express their views by participating informally may do so by submitting one or more copies of their comments, without regard to form (as long as the docket number is clearly stated in the heading). Copies of all filings will be available for public inspection during regular business hours in the Commission's Docket Reference Room (Room 239) at its headquarters in Washington, DC, 1919 M Street, NW.

131. Pursuant to the Regulatory Flexibility Act of 1980, it is certified that the rules proposed in this proceeding are exempt from application of the statute because they will not have a significant economic impact on a substantial number of small entities. Although some local exchange carriers are small, local telephone companies do not appear to fall within the Regulatory Flexibility Act's definition of a "small entity," which incorporates the definition of a "small business" in section 3 of the Small Business Act. The latter definition excludes any business that is dominant in its field of operation. Exchange carriers, even small ones, enjoy a dominant monopoly position in their local service area. This Commission has found all exchange carriers to be dominant in the *Competitive Carriers Rulemaking*, 85 FCC 2d 1, 23–24 (1980). This certification shall be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to Section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605.

132. It is further ordered, that the Secretary shall transmit a copy of this Supplemental Notice of Proposed Rulemaking to each state regulatory Commission.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Initial Comments

1. Alltel Corporation (Alltel)
2. Ameritech Operating Companies (Ameritech)
3. Anchorage Telephone Utility (Anchorage)
4. Arkansas Public Service Commission (Arkansas PSC)
5. American Telephone and Telegraph Company (AT&T)
6. Bell Atlantic Companies (Bell Atlantic)
7. BellSouth Companies (BellSouth)
8. C P National Corporation (C P National)
9. Central Telephone Company (Centel)
10. Cincinnati Bell Telephone Company (Cincinnati)
11. Citizens of the State of Florida and the National Association of State Utility Consumer Advocates (Citizens/NASUCA)
12. Communications Satellite Corporation (Comsat)
13. Continental Telecom Inc. (Contel)
14. Crown Zellerbach
15. Federal Executive Agencies (FEA)
16. Fidelity Telephone Company and Elkhart Telephone Company (Fidelity and Elkhart)
17. Florida Public Service Commission (Florida PSC)
18. GTE Sprint
19. GTE Telephone Companies (GTE)
20. State of Hawaii (Hawaii)
21. Illinois Commerce Commission (Illinois)
22. Independent Telephone Task Force (ITTF)
23. Interior Telephone Company and Bristol Bay Telegraph Cooperative (Interior and Bristol Bay)
24. International Communications Association (ICA)
25. Kentucky Public Service Commission (Kentucky PSC)
26. Kerrville Telephone Company (Kerrville)
27. MCI Telecommunications Corporation (MCI)
28. Michigan Public Service Commission (Michigan PSC)
29. Minnesota Department of Public Service (Minnesota DPS)
30. Mountain States Telephone and Telephone Company, Northwestern Bell Telephone Co. and Pacific Northwest Bell Telephone Co. (US West)
31. National Association of Regulatory Utility Commission.(NARUC)
32. National Exchange Carrier Association, Inc. (NECA)
33. National Telecommunications and Information Administration (NTIA)
34. NYNEX Telephone Companies (NYNEX)
35. Office of the Consumers' Counsel, State of Ohio (OCCO)
36. Pacific Bell and Nevada Bell (Pacific)
37. Pennsylvania Public Utility Commission (Pennsylvania PUC)
38. Pine Tree Telephone and Telegraph Company (Pine Tree)

39. Puerto Rico Telephone Company (Puerto Rico)
40. Rochester Telephone Corporation (Rochester)
41. Rural Telephone Coalition (RTC)
42. Satellite Business Systems (SBS)
43. Southern New England Telephone Company (SNET)
44. Southwestern Bell Telephone Company (Southwestern)
45. State Independent Telephone Association of Kansas (SITA)
46. Telephone Association of New England (TANE)
47. Texas Statewide Telephone Cooperative, Inc. (Texas Statewide)
48. United States Telephone Association (USTA)
49. United Telephone Systems, Inc. (United)
50. Western Rural Telephone Association (Western RTA)

Reply Comments

1. American Bar Association (ABA) *
2. American Telephone and Telegraph Company
3. Ameritech Operating Companies
4. Anchorage Telephone Utility
5. Arkansas Public Service Commission *
6. Association of Data Processing Service Organizations, Inc. (ADAPSO)
7. Bell Atlantic Companies
8. BellSouth Companies
9. Cincinnatti Bell Telephone Company
10. Continental Telecom, Inc.
11. Florida Public Service Commission
12. Citizens of the State of Florida and the National Association of State Utility Consumer Advocates
13. Federal Executive Agencies
14. Fidelity Telephone Company and Elkhart Telephone Company
15. GTE Sprint
16. GTE Telephone Companies
17. State of Hawaii
18. International Communications Association
19. Kentucky Public Service Commission
20. MCI Telecommunications Corporation
21. Mountain States Telephone and Telegraph Company, Northwestern Bell Telephone Co. and Pacific Northwest Bell Telephone Co.*
22. NYNEX Companies
23. Office of the Consumer Counsel, State of Ohio
24. Pacific Bell and Nevada Bell
25. Puerto Rico Telephone Company
26. Rochester Telephone Corporation
27. Rural Telephone Coalition
28. Satellite Business Systems
29. Southern New England Telephone Company
30. Southwestern Bell Telephone Company
31. Tele-Communications Association (TCA)
32. United States Telephone Association

* The comments of ABA, Arkansas PSC and US West were late filed, accompanied by motions for acceptance. In light of the importance of this proceeding and the lack of prejudice, we are accepting these three sets of reply comments.

Appendix B. Schedule for Procedures

Event	Day
Carrier submission filed	1
Requests for discovery and cross	15
Decision on discovery request issued	29
Responsive cases filed	36
Requests for discovery and cross	50
Decision on discovery request issued	64
Rebuttal case of carrier filed	57
Requests for discovery and cross	71
Decision on discovery requests issued	85
Decision on all requests for cross and hearing order issued	85
Maximum 5 days of hearing end	113
Proposed findings and conclusions	134
Reply findings and conclusions	148
Oral argument	155
Commission decision issued	180

[FR Doc. 85-19850 Filed 8-20-85; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Bruneau Hot Spring Snail

AGENCY: Fish and Wildlife Serivce, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine endangered status for the Bruneau hot spring snail (family Hydrobiidae). This species occurs only in two small hot springs and their immediate outflows in Owyhee County, Idaho. The major threat to this species is the drastic and continuing reduction in spring flows. This proposal, if made final, would implement the protection of the Endangered Species Act of 1973, as amended, for this species. The Service seeks relevant data and comments from the public.

DATES: Comments from all interested parties must be received by October 21, 1985. Public hearing requests must be received by October 7, 1985.

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

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

SUPPLEMENTARY INFORMATION:

Background

The first known collections of this species were made in 1952 and 1953. Dr. Dwight W. Taylor of Tiburon, California, has studied the anatomy of the species and determined that it represents a previously unknown genus and species of the snail family Hydrobiidae. Dr. Taylor has prepared a diagnosis of the species' anatomy and suggested the common name of Bruneau hot spring snail, but has not yet published a formal scientific name and description for the species.

The adults of this species reach only about 5 millimeters in length of the shell. The species occurs in only two small thermal springs or seep areas and their immediate outflows. The snails have been found in these habitats on rocks, gravel, mud, and algal film. The springs and proximal outflows, which constitute the most important habitat, are on land administered by the Bureau of Land Management (BLM). Downstream habitat is on private land.

The major threat to this species is the reduction of its habitat by reduced spring flows caused by drawdown of the water table by ground water pumping for agricultural and other uses. The extent of seepage at spring sources has been greatly reduced in recent years, as has the rate of flow from the remaining sources.

Dr. Dwight W. Taylor carried out a field survey of the status of the Bruneau Hot Spring snail in 1981 and 1982. His final report was received by the Service's Boise Endangered Species Field Office on November 3, 1982, and was the basis for the placement of this species in category 1 (data on hand support the appropriateness of a proposal of endangered or theatened status) on the Services's comprehensive notice of review on invertebrate candidate species published in the **Federal Register** (49 FR 21664-21675) on May 22, 1984. Dr. Taylor's findings are the sources of the data summarized in the present document and are the major bases of the Service's decision to

propose endangered status for the species. This report, which includes a biological characterization of the species, is available for inspection as described in the **ADDRESSES** section of this proposed rule.

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 or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Bruneau Hot Spring snail are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* An essential portion of this species' habitat is spring flow from a vertical rock face. This face provided habitat for most of the species at the times of Dr. Taylor's visits to the site in 1959, 1963, and 1975. In 1981 and 1982, Dr. Taylor found the sources of water flow to be greatly reduced so that relatively more snails were found in stream outflows, where they are more vulnerable to flash floods (see E below). Makeshift dams are sometimes constructed by bathers to form a pool and improve conditions for bathing. If a pool were created that raised the water level even with the level at which the spring emerges from the rock face, the algal habitat of the snail would then be under water and could be destroyed. The likelihood of this event occurring increases as the water table drops.

Flows at these springs are now less than 10 percent of 1954 levels (Littleton and Crosthwaite, 1957; Young *et al.*, 1979) and at times are much lower than these reduced levels. Further lowering of the water table could eliminate these flows altogether and cause the extinction of the species. The outlows occupied by this species constitute 400 feet of stream for one source of spring flow and 1,000 feet for the second source.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* There are no commercial uses for this species. Recreational use of the springs and outflows, except as described in A above, for bathing is not a threat at present snail population levels, which are also large enough that collection for scientific or educational purposes would not be a significant threat. The habitat, however, is limited in size to an extent that vandalism is a significant potential threat to the species and its habitat (see section or critical habitat).

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

D. *The inadequacy of existing regulatory mechanisms.* Although removing ground water at a greater rate than it is naturally replaced is illegal in Idaho, the water table continues to fall. There are no other official protections for this species or its habitat.

E. *Other natural or manmade factors affecting its continued existence.* Flash floods are a serious threat to this species. Snails on the vertical rock face are probably in the only habitat that is safe from the scouring effect of flash floods that would eliminate snails from the outflows below.

The Service has carefully assessed the best scientific 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 the Bruneau hot spring snail as endangered. The extremely precarious position of this species requires that this species receive the fullest possible protection provided by the Endangered Species Act. Threatened status would not provide that maximum protection. The decision to not propose critical habitat for this species is explained in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. The habitat of this species consists of no more than 1,500 feet of aquatic habitat. A single episode of vandalism could irrevocably alter the entire habitat or otherwise result in the species' extinction. Publication of critical habitat descriptions would make this species even more vulnerable to such acts and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for the Bruneau hot spring snail at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Such action are inititated 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. 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 informally confer with the Service on any action that is likely to jeopardize the continued existence of a proposed species. 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 likey to jeopardize the continued existence of such a species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. Issuance of permits to drill wells by BLM may be the subject of consultation. At this time, however, BLM is not issuing or receiving applications to issue such permits.

The BLM is the Federal agency that is most likely to be affected by any final action that might be taken on this proposal. Present BLM management of the habitat is consistent with the conservation of this species. Changes in BLM management of this habitat would be subject to consultation with the Service.

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, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that had been taken illegally.

Certain exceptions would apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving

endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship 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, 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 the Bruneau hot spring snail.

(2) The location of any additional populations of the Bruneau hot spring snail 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 the Bruneau hot spring snail.

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

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director at the address given under **ADDRESSES.**

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** on October 25, 1983 (48 FR 49244).

Literature Cited

Littleton, R.T., and E.G. Crosthwaite. 1957. Ground-water geology of the Bruneau-Grandview area, Owyhee County, Idaho. U.S. Geological Survey Water-Supply Paper 1460-D:147-198.

Taylor, D.W. 1982. Status review on Bruneau hot spring snail. Unpublished report submitted to the U.S. Fish and Wildlife Service's Boise Endangered Species Field Office.

Young, H.W., R.E. Lewis, and R.L. Backsen. 1979. Thermal ground-water discharge and associated convective heat flux, Bruneau-Grand View area, southwest Idaho. U.S. Geological Survey Water-Resources Investigations 79-62, Open File Report.

Author

The primary author of this proposed rule is Dr. Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240 (703/235-1975).

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 Section 17.11(h) by adding the following, in alphabetical order, under SNAILS to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
SNAILS							
Snail, Brauneau hot spring	Family Hydrobiidae, genus and species undescribed	Idaho	NA	E		NA	NA

Dated: August 8, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-19910 Filed 8-20-85; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 50, No. 162
Wednesday, August 21, 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

[Docket No. 85-015N]

National Advisory Committee on Meat and Poultry Inspection; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the National Advisory Committee on Meat and Poultry Inspection will be held from 9:00 a.m. to 5:00 p.m. on Thursday, September 5, 1985, and Friday, September 6, 1985, in the Departmental Auditorium, Conference Room B, Constitution Avenue, Washington, DC.

The purpose of the Committee is to advise the Secretary of Agriculture regarding certain issues pertaining to the meat and poultry inspection program, pursuant to sections 7(c), 24, 205, and 301(a)(4) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, and 661(a)(4)) and sections 5(a)(4), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(4), 457(b), an 460(e)). The meeting will include a discussion of the following topics:

1. National Academy of Science Study;
2. Budget;
3. Food Technologists;
4. Legislation;
5. Thelarche;
6. Nitrite Docket;
7. Sulfa in Swine;
8. Trichinae Control;
9. Salmonella; and
10. Import Realignment.

The meeting is open to the public on a space available basis. Comments of interested persons may be filed with the Committee before or after the meeting, and should be sent to Catherine DeRoever, Director, Executive Secretariat, Room 335-E, Administration Building, U.S. Department of Agriculture, 14th Street and Independence Avenue, SW., Washington, DC 20250, (202) 447-3002.

Done at Washington, DC, on: August 19, 1985.

L.L. Gast,

Acting Vice Chairman.

[FR Doc. 85-20151 Filed 8-20-85; 9:15 am]

BILLING CODE 3410-DM-M

Forms Under Review by Office of Management and Budget

August 16, 1985.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, ATTN: Desk Office for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Reinstatement

Rural Electrification Administration
Electric Loan Applicant Packet
Forms 740a, c, and g; Bulletin 60-2.
On occasion
Small businesses or organizations; 3,605 responses; 9,090 hours; not applicable under 3504(h)
Charles R. Weaver (202) 382-1900.

Jane A. Benoit,

Departmental Clearance Officer.

[FR Doc. 95-19995 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-01-M

Cooperative State Research Service

Animal Health Science Research Advisory Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972, Pub. L. 92-463, Cooperative State Research Service announces the following meeting:

Name: Animal Health Science Research Advisory Board.

Date: September 18, 1985.

Time: 8:30 a.m.

Place: Room 024 J. S. Morrill (West Auditors) Building, U.S. Department of Agriculture, 15th and Independence Avenue, SW., Washington, DC 20251.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: The Board will consult with and advise the Secretary of Agriculture on implementing animal health and disease research programs. Recommendations will be made also on priorities of research in these programs.

Board Names and Agenda: Available from contact person below.

Contact Person: Earl J. Splitter, Executive Secretary, Animal Health Science Research Advisory Board, Cooperative State Research Service, U.S. Department of Agriculture, Washington, DC 20251, telephone (202) 447-5007.

Done at Washington, D.C. this 15th day of August, 1985.

John Patrick Jordan,

Administrator.

[FR Doc. 85-19995 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-22-M

Agricultural Stabilization and Conservation Service

Determination Regarding Producer Referendum for 1986 Wheat Marketing Quota program

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Notice of determination regarding the conduct of a producer referendum with respect to the 1986 Wheat Marketing Quota Program.

SUMMARY: The purpose of this notice is to announce that the producer referendum originally proposed to be conducted during the week of July 19–26, 1985, will be postponed until a later period between October 1, 1985, and thrity-one days after adjournment sine die of the first session of the Ninety-ninth Congress. This determination is made in accordance with the provisions of Pub. L. 99–63 effective July 11, 1985.

EFFECTIVE DATE: August 20, 1985.

ADDRESS: Everett Rank, Administrator, Agricultural Stabilization and Conservation Service (ASCS), USDA, Room 3086 South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Bruce R. Weber, Agricultural Marketing Specialist, USDA–ASCS, Room 3738 South Building, P.O. Box 2415, Washington, D.C. 20013 or call (202) 447–4146.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major". It has been determined that program provisions relating to the producer referendum will result in an annual effect on the economy of $100 millon or more.

The titles and numbers of the Federal assistance programs to which this notice applies are: Title-Wheat Production Stabilization; Number–10.058, and Title-Commodity Loans and Purchases; Number–10.051, as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act would be applicable to the provisions of the 1986 Wheat Marketing Quota Program. An initial Regulatory Flexibility Analysis has been completed and is available upon request.

It has been determined by an environmenatal evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Section 336 of the Agricultural Adjustment Act of 1938 (the "1938 Act") provides that, whenever a national marketing quota is proclaimed for wheat, the Secretary shall, not later than August 1 of the calendar year in which such quota is proclaimed, conduct a referendum of farmers to determine whether they favor or oppose marketing quotas. A notice of proposed determination was published in the **Federal Register** (50 FR 23744) on June 5, 1985, in which the Secretary proposed that a producer referendum for the marketing year beginning June 1, 1986, would be conducted during the week of July 19–26, 1985.

Section 336 of the 1938 Act was amended by Pub. L. 99–63, effective July 11, 1985, to provide that the referendum with respect to the national marketing quota for wheat for the marketing year beginning June 1, 1986, may be conducted not later than thirty-one days after adjournment sine die of the first session of the Ninety-ninth Congress. Since there has been recent progress by Congress in the consideration of omnibus farm legislation which may lead to the enactment of a new wheat program thereby making a referendum unnecessary, it has been determined that the marketing quota referendum for wheat for the 1986 Wheat Marketing Quota Program should be deferred.

Determination

Accordingly, notice is hereby given that the producer referendum to determine whether farmers favor or oppose marketing quotas for wheat for the marketing year beginning June 1, 1986, will be postponed until a later period between October 1, 1985, and thirty-one days after adjournment sine die of the Ninety-ninth Congress.

Signed at Washington, DC on August 13, 1985.

John R. Block,

Secretary.

[FR Doc. 85–19988 Filed 8–20–85; 8:45 am]

BILLING CODE 3410–05–M

Forest Service

Apache National Forest Grazing Advisory Board; Meeting

The Apache National Forest Grazing Advisory Board will meet at 10:30 a.m., September 13, 1985 at the Hannagan Administrative Site at Hannagan Meadows, 23 miles south of Alpine, Arizona. There will be discussion concerning election of members for a new board. There will also be a field trip following the meeting to review the McKibbens Sale and effects of logging on grazing.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 640, Springerville, Arizona 85938, (602)–333–4301. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation: Any interested persons besides the Advisory Board Members are welcome to attend and will be afforded the opportunity to speak after being duly recognized by the Chairman of the Board.

Dated: August 9, 1985.

Nick W. McDonough,

Forest Supervisor.

[FR Doc. 85–19878 Filed 8–20–85; 8:45 am]

BILLING CODE 3410–11–M

Revised Notice of Intent To Prepare an Environmental Impact Statement for the Stevens Gulch Road Extension; Hubbard Creek, Dyke Creek, and Elk Creek Timber Sales; Grand Mesa, Uncompahgre, and Gunnison National Forests, Delta and Mesa Counties, CO

A Notice of Intent to prepare an environmental statement for the Stevens Gulch Road Extension and the Hubbard Creek, Dyke Creek and Elk Creek Timber Sales was published in the **Federal Register** on June 4, 1984 (Vol. 108, No. 49, Page 23092). In that Notice the estimated date for filing the draft Environmental Impact Statement was September 15, 1984.

On August 14, 1985, the Stevens Gulch Road and Related Timber Sales Draft Environmental Impact Statement was released for public review and filed with the Environmental Protection Agency. The comment period will close on October 28, 1985.

The date estimated for filing the final Environmental Impact Statement is changed to February 1986.

For further information or to request a copy of the draft Environmental Impact

Statement please contact: Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, 2250 Highway 50 South, Delta, Colorado 81416.

Dated: August 14, 1985.

Raymond J. Evans,

Forest Supervisor.

[FR Doc. 85-20022 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-11-M

Sitgreaves National Forest Grazing Advisory Board; Meeting

The Sitgreaves National Forest Grazing Advisory Board will meet at 10:30 a.m., September 16, 1985 at the Maxwell House in Show Low, Arizona. There will be a field trip following the meeting. There will also be discussion concerning election of members for a new board.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, P.O. Box 640, Springerville, Arizona 85938, (602)-333-4301. Written statements may be filed with the Board before or after the meeting.

The Board has established the following rules for public participation: Any interested persons besides the Advisory Board Members are welcome to attend and will be afforded the opportunity to speak after being duly recognized by the Chairman of the Board.

Dated: August 9, 1985.

Nick W. McDonough,

Forest Supervisor.

[FR Doc. 85-20027 Filed 8-20-85; 8:45 am]

BILLING CODE 3410-11-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: September 5 and 6, 1985.

Time: 9:00 a.m.

Place: State Department Building, Washington, D.C.

Type of meeting: Closed.

Contact person: Dr. Charles M. Kupperman, Executive Director of the General Advisory Committee, Room 5927, U.S. Arms Control and Disarmament Agency, Washington, D.C. 20451, telephone (202) 632-5176.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmanent, and world peace.

Agenda

Will include the following discussions and presentations:

September 5

A.M. and P.M.—Discuss status of the arms control negotiations

September 6

A.M.—Executive Session

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to close meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated July 24, 1985, made pursuant to the provisions of section 10(*d*) of the Federal Advisory Committee Act as amended.

John E. Grassle,

Committee Management Officer.

[FR Doc. 85-18575 Filed 8-20-85; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket No. 28-85]

Foreign-Trade Zone 30, Salt Lake City, UT; Application for Subzone; Hercules Graphite Materials Plant, Magna, UT

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Salt Lake City Corporation, grantee of Foreign-Trade Zone 30, requesting special-purpose subzone status for the graphite materials manufacturing plant of Hercules Aerospace Company in Magna, Utah, adjacent to the Salt Lake City Cusotms port of entry. The application was submitted prusuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 2, 1985.

Hercules Aeorspace is a division of Hercules, Inc., a producer of natural and synthetic materials used in the electronics, aerospace, and packaging industries. The company has 40 domestic plants and 40 plants abroad with annual sales of over $2.5 billion.

The proposed subzone would be at Hercules' Bacchus Works, Plant No. 3, covering 18 acres in Magna, some 5 miles south of Salt Lake City. The facility employs 700 persons and is used to produce carbon fiber (graphite) materials for aerospace uses, such as aircraft structural members and rocket motor housings. A special grade of polyacrylonitrile (PAN) fiber is imported and processed. Some products are exported.

Zone procedures will allow Hercules to avoid duties on foreign materials used in its reexports. On its domestic sales, the company would be able to take advantage of the same duty rate available to importers of carbon fiber materials, which is 5.6 percent compared with 10.2 percent for PAN fibers. It would also be able to avoid duty payments on wastage. The savings would improve the firm's international competitiveness.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: Dennis Puccinelli (Chairman), Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, D.C. 20230; Donald W. Myhra, District Director, U.S. Customs Service, North Central Region, 600 Central Ave., Great Falls, MT 59401; and Colonel Arthur E. Williams, District Engineer, U.S. Army Engineer District Sacramento, 650 Capitol Mall, Sacramento, CA 95814.

Comments concerning the proposed subzone are invited in writing from interested persons and organizations. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 23, 1985.

A copy of the application is available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 350 S. Main Street, Salt Lake City, UT 84101.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania NW., Washington, DC 20230.

Dated: August 14, 1985.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 85-19979 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[C-351-011]

Carbon Steel Wire Rod From Brazil; Final Results of Changed Circumstances Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances administrative review and termination of suspended countervailing duty investigation.

SUMMARY: On June 28, 1985, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on carbon steel wire rod from Brazil and announced its tentative determination to terminate the suspended investigation. The review covers the period from September 27, 1982.

We gave interested parties an opportunity to comment. We received no comments. We therefore determined that domestic interested parties are no longer interested in continuation of the suspended investigation, and we are terminating the suspended investigation. In accordance with petitioners' notification, the termination will apply to all carbon steel wire rod entered, or withdrawn from warehouse, for consumption on or after September 27, 1982.

EFFECTIVE DATE: September 27, 1982.

FOR FURTHER INFORMATION CONTACT: Richard C. Henderson or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 28, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 26816) the preliminary results of its changed circumstances administrative review of the suspended countervailing duty investigation on carbon steel wire rod from Brazil (47 FR 42399, September 27, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian carbon steel wire rod. Such merchandise is currently classifiable under item 607.1700 of the Tariff Schedules of the United States Annotated. The review covers the period form September 27, 1982.

Final Results of the Review and Termination

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to terminate. We received no comments.

As a result of our review, we determine that the domestic interested parties are no longer interested in continuation of the suspended countervailing duty investigation on carbon steel wire rod from Brazil and that the suspended investigation should be terminated on this basis. Therefore, we are terminating the suspended investigation on carbon steel wire rod from Brazil effective September 27, 1982.

This administrative review, termination, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 15, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85-19971 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[C-469-006]

Certain Steel Products from Spain; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of changed circumstances administrative review and revocation of countervailing duty order.

SUMMARY: On June 4, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain steel products from Spain and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. After considering all of the comments received, we determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the petitioners' notifications, the revocation will apply to all certain steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Barbara Williams, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 4, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 23488) the preliminary results of its changed circumstances administrative review of the countervailing duty order on certain steel products from Spain (49 FR 280, January 3, 1983). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Spanish carbon steel structural shapes, hot-rolled carbon steel plate, cold-rolled carbon steel sheet, galvanized carbon steel sheet, hot-rolled carbon steel bars, and cold-formed carbon steel bars. The products are fully described in the appendix to this notice. The review covers the period from October 1, 1984.

Analysis of Comment Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a written comment from Hansa-World Cargo Service, Inc., an importer.

Comment: Hansa argues that the revocation should be effective August 30, 1982, the publication date of the preliminary affirmative countervailing duty determination (47 FR 38161) and the date on which liquidation was suspended, rather than October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Spain and the United States ("the Arrangement") was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries. Further, since the petitioners' lack of interest in

continuation of the countervailing duty order is the basis of the revocation, and since the petitioners have stated their interest in revoking the order effective October 1, 1984, we are revoking this order with respect to shipments of Spanish certain steel products entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

Final Results of Review and Revocation

After review of the comment received, we determine that the domestic interested parties are no longer interested in continuation of the countervailing duty order on certain steel products from Spain and that the order should be revoked on this basis.

Therefore, we are revoking the order on certain steel products from Spain effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of certain steel products from Spain which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984 in a separate review, if one is requested.

The administrative review, revocation, and notice are in accordance with section 751(b) and (c) of the Tariff Act (19 U.S.C. 1675(b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 15, 1985.

Gilbert P. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

Appendix—Description of Products

For purposes of this review:

1. The term *"carbon steel structural shapes"* covers hot-rolled, forged, extruded or drawn, or cold-formed or cold-finished carbon steel angles, shapes, or sections, not drilled, not punched, and not otherwise advanced, and not conforming completely to the specifications given in the headnotes to Schedule 6, Part 2 of the Tariff Schedules of the United States Annotated ("TSUSA"), for blooms, billets, slabs, sheet bars, bars, wire rods, plates, sheets, strip, wire, rails, joint bars, tie plates, or any tubular products set forth in the TSUSA, having a maximum cross-sectional dimension of 3 inches or more, as currently provided for in items 609.8005, 609.8015, 609.8035, 609.8041, or 609.8045 of the TSUSA. Such products are generally referred to as structural shapes.

2. *The term "hot-rolled carbon steel plate"* covers hot-rolled carbon steel products, whether or not corrugated or crimped; not pickled; not cold-rolled; not in coils; not cut, not pressed, and not stamped to non-rectangular shape; 0.1875 inch or more in thickness and over 8 inches in width; as currently provided for in items 607.6620, 607.6625, or 607.9400 of the TSUSA; and hot- or cold-rolled carbon steel plate which has been coated or plated with zinc, including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710 or 608.1100 of the TSUSA. Semifinished products of solid rectangular cross section with a width at least four times the thickness in the "as cast" condition or processed only through primary mill hot rolling are not included.

3. The term *"cold-rolled carbon steel sheet"* covers the following old-rolled carbon steel products. Cold-rolled carbon steel sheet is a cold-rolled carbon steel product, whether or not corrugated or crimped and whether or not pickled; not cut, not pressed, and not stamped to non-rectangular shape; not coated or plated with metal; over 12 inches in width and in coils or, if not in coils, under 0.1875 inch in thickness; as currently provided for in items 607.8320 or 607.8350 through 607.8360 of the TSUSA. *PLEASE NOTE THAT THE DEFINITION OF COLD-ROLLED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEM 607.8320).*

4. The term *"galvanized carbon steel sheet"* covers hot- or cold-rolled carbon steel sheet which has been coated or plated with zinc including any material which has been painted or otherwise covered after having been coated or plated with zinc, as currently provided for in items 608.0710, 608.0730, 608.1100, 608.1310, 608.1320, or 608.1330 of the TSUSA. *NOTE THAT THE DEFINITION OF GALVANIZED CARBON STEEL SHEET INCLUDES SOME PRODUCTS CLASSIFIED AS "PLATE" IN THE TSUSA (ITEMS 608.0710 and 608.1100).* Hot- or cold-rolled carbon steel sheet which has been coated or plated with metal other than zinc is not included.

5. The term *"hot-rolled carbon steel bars"* covers hot-rolled carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, not cold-formed, and not coated or plated with metal, as currently provided for in items 606.8310, 606.8330, or 606.8350 of the TSUSA.

6. The term *"cold-formed carbon steel bars"* covers cold-formed carbon steel products of solid section which have cross sections in the shape of circles, segments of circles, ovals, triangles, rectangles, hexagons, or octagons, as currently provided for in items 606.8805 or 606.8815 of the TSUSA.

[FR Doc. 85-19973 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

Computer Systems Technical Advisory Committee

A meeting of the Computer Systems Technical Advisory Committee will be held September 9, 1985, 9:30 a.m. the Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC. The Committee will continue September 11, in Room 3407 in the Herbert C. Hoover building, 1:00 p.m. The Committee advises the Office of Export Administration with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

The will be the first meeting of the CSTAC since the enactment of the Export Administration Amendments Act of 1985. The Act provides for annual review of the list and prompt revisions as may be necessary after each review. Before beginning each annual Review, notice shall be made in the **Federal Register**, with opportunity during the review for comment and the submission of data by interested parties. This data is to include the availability from sources outside the United States of goods and technology comparable to those subject to export controls. This meeting will receive such comments, especially with a view to developing an annual plan by October, 1985. The controls affected will be for multilateral, unilateral, and for special (bulk) licensing.

September 9, 1985—Open CSTAC Meeting—9:30 a.m.

Presentation of papers or comments by the public regarding controls for computers, software, and technology therefore. Remarks are solicited from individuals, companies, representatives, or industry association representatives concerning recommended changes to the

current computer related controls or restructuring (simplification) of the control. Recommendations concerning technical content or control philosophy are desired rather than format changes. Suggested topics of comment are the following:

(1) Improvements to the descriptions of hardware, software, or technology.

(2) Improvements to the categorizing of hardware, software, or technology.

(3) Availability (and competition) for products/technology from sources not subject to U.S. reexport laws.

(4) Changes in the control parameters.

(5) Changes in the control levels.

CSTAC will work with the Industry Coalition on Technology Transfer to summarize inputs from public comments for presentation to the Director of the Office of Export Administration by December 1, 1985. Recommendations will be used for COCOM discussions scheduled for the fall of 1986. In providing comments, presenters should be aware that the United States is currently developing proposals for controls which will be discussed throughout 1986 and 1987 for implementation of a new computer control list which might be in effect until 1990. Comments therefore should consider present need for clarification and future trends.

Sept. 11—Executive Session:—1:00 p.m.

Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act; Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: August 15, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19975 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held September 10, 1985, 1:00 p.m., the Herbert C. Hoover Building, Room 1851, 14th Street and Constitution Avenue NW., Washington, DC. The Hardware Subcommittee was formed to focus on manufacturing and performance characteristics of main frames and other computer hardware.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Comments and recommendations on changes to the data processing rate.
4. Proposed break-up of CCL 1565.
5. Discussion of ITA 6031P Form.
6. Discussion on raising the PDR limits for the Distribution License.
7. Action items underway.
8. Action items due at next meeting.

Executive Session

9. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, purusant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minutes contact Margaret A. Cornejo 202–377–2583.

Dated: August 15, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19976 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held September 9, 1985, 3:30 p.m., Herbert C. Hoover Building, Room 3708, 14th Street and Constitution Avenue NW., Washington, DC. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. OEA report on the new Distribution License regulations.
4. Subcommittee report on their GLV recommendations to OEA.
5. Subcommittee report on spare and replacement parts policy and recommendations.
6. New Business: Consideration of task to simplify OEA regulations.
7. Action items underway.
8. Action items due at next meeting.

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes contact Margaret A. Cornejo (202) 377–2583.

Dated August 15, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19974 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DT-M

[C-351-403]

Oil Country Tubular Goods From Brazil; Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Countervailing Duty Order.

SUMMARY: On June 19, 1985, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on oil country tubular goods from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment. After considering the comment received, we determine that domestic interested parties are no longer interested in continuation of the order, and we are revoking the order. In accordance with the petitioners' notifications, the revocation will apply to all oil country tubular goods entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

EFFECTIVE DATE: October 1, 1984.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Al Jemmott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 19, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 25438) the preliminary results of its changed circumstances administrative review of the countervailing duty order on oil country tubular goods from Brazil (50 FR 5286, February 7, 1985). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian oil country tubular goods. Such merchandise is currently classifiable under items 610.3216, 610.3219, 610.3233, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4225, 610.4235, 610.4325, 610.4335, 610.4942, 610.4944, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5234, 610.5240, 610.5242, 610.5243, and 610.5244 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comment

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a written comment from Cicatrade USA, an importer.

Comment: Cicatrade argues that the revocation should be effective September 12, 1984, the publication date of the preliminary affirmative countervailing duty determination (49 FR 35827) and the date on which liquidation was suspended, not October 1, 1984. Cicatrade states that, given the domestic interested parties' affirmative statements of no interest in continuation of the countervailing duty order, the revocative should apply to all entries affected by the order. Failing that, the Department should conduct an administrative review of the prior period.

Department's Position: The basis of the affirmative statements of no interest by domestic interested parties was an import limitation agreement between the Governments of the United States and Brazil. Since the agreement was not in force prior to October 1, 1984, the no interest statements are limited to the period beginning on that date. Therefore, we made October 1, 1984 the effective date of the revocation. If requested at the proper time, we will review entries for the period before October 1, 1984.

Final Results of the Review and Revocation

After review of the comment received, we determine that the domestic interested parties are no longer interested in continuation of the countervailing duty order on oil country tubular goods from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on oil country tubular goods from Barzil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to those entries.

This notice does not cover unliquidated entries of oil country tubular goods from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption before October 1, 1984 in a separate review, if one is requested.

This administrative review, revocation, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 355.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 15, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–19972 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DS-M

[C-351-003]

Small Diameter Welded Carbon Steel Pipes and Tubes From Brazil; Final Results of Changed Circumstances, Administrative Review and Termination of Suspended Countervailing Duty Investigation

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances, Administrative Review and Termination of Suspended Countervailing Duty Investigation.

SUMMARY: On June 25, 1985, the Department of Commerce published the preliminary results of its administrative review of the suspended countervailing duty investigation on small diameter welded carbon steel pipes and tubes from Brazil and announced its tentative determination to terminate the suspended investigation. The review covers the period from December 27, 1982.

We gave interested parties an opportunity to comment. We received no comments. We therefore determine that domestic interested parties are no longer interested in continuation of the suspended investigation, and we are terminating the suspended investigation. In accordance with the petitioner's notification, the termination will apply to all small diameter welded carbon steel pipes and tubes entered, or withdrawn from warehouse, for consumption on or after December 27, 1982.

EFFECTIVE DATE: December 27, 1982.

FOR FURTHER INFORMATION CONTACT: Peggy Clarke or Al Jemott, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On June 25, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 26235) the preliminary results of its changed circumstances and administrative review of the suspended countervailing duty investigation on small diameter welded carbon steel pipes and tubes from Brazil (47 FR 57581, December 27, 1982). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of the Review

Imports covered by the review are shipments of Brazilian small diameter welded carbon steel pipes and tubes. The term "small diameter welded carbon steel pipes and tubes" covers welded carbon steel pipes and tubes with walls not thinner than 0.065 of an inch, of circular cross section and 0.375 of an inch or more in outside diameter but not more than 16 inches. Such merchandise is currently classifiable under items 610.3208, 610.3209, 610.3231, 610.3241, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, and 610.3258 of the Tariff Schedules of the United States Annotated. Pipes and tubes suitable for use in boilers, superheaters, heat exchangers, condensers, and feed water heaters, or conforming to A.P.I. specifications for oil well tubing with or without couplings, cold drawn pipes and tubes with wall thickness not exceeding 0.1 inch are not included. This review covers the period from December 27, 1982.

Final Results of the Review and Termination

We gave interested parties an opportunity to comment on the preliminary results and tentative determinations to terminate. We received no comments.

As a result of our review, we determine that the domestic interested parties are no longer interested in continuation of the suspended countervailing duty investigation on small diameter welded carbon steel pipes and tubes from Brazil and that the suspension of investigation should be terminated on this basis. Therefore, we are terminating the suspended investigation on small diameter welded carbon steel pipes and tubes from Brazil effective December 27, 1982.

This administrative review, termination, and notice are in accordance with sections 751 (b) and (c) of the Tariff Act (19 U.S.C. 1675 (b), (c)) and §§ 355.41 and 335.42 of the Commerce Regulations (19 CFR 355.41, 355.42).

Dated: August 15, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–19970 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DS-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held September 11, 1985, 9:00 a.m., the Herbert C. Hoover Building, Room 3407, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

General Session

1. Introduction of members and quests.
2. Opening remarks by the Chairman.
3. Presentation of papers or comments by the public.
4. Brief summary of San Francisco meeting.
5. Discussion of software areas:
   a. Software development systems;
   b. Cross compilers;
   c. Network software;
   d. Expert systems and artificial intelligence;
   e. Other topics including results of action items assigned at San Francisco and new assignments.
6. Discussion of software control under 15 CFR Part 379 to allow uniform treatment of all software.
7. Continued development of work plan.
8. Action items underway.
9. Action items due at next meeting.

Executive Session

10. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 6, 1984, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meeting and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, telephone: 202–377–4217. For further information or copies of the minuted contact Margaret A. Cornejo 202–377–2583.

Dated: August 16, 1985.

Milton M. Baltas,

Director, Technical Programs Staff, Office of Export Administration.

[FR Doc. 85–19977 Filed 8–20–85; 8:45 am]

BILLING CODE 3510-DT-M

[A-351-502]

Fuel Ethanol From Brazil; Postponement of Preliminary Antidumping Duty Determination

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The preliminary antidumping duty determination involving fuel ethanol from Brazil is being further postponed until not later the September 18, 1985.

EFFECTIVE DATE: August 21, 1985.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Shimabukuro or David Johnston, Office of Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-5332 or 377-2239.

SUPPLEMENTARY INFORMATION: On March 18, 1985, we announced the initiation of an antidumping duty investigation to determine whether fuel ethanol from Brazil is being, or is likely to be, sold in the United States at less than fair value (50 FR 11748). The notice stated that we would issue a preliminary determination by August 5, 1985.

As detailed in that notice, the petition alleged that imports from Brazil of fuel ethanol are being, or are likely to be, sold in the United States at less than fair value.

On July 3, 1985, counsel for petitioners, the Ad Hoc Committee of Domestic Fuel Ethanol Producers and the Oil Chemical and Atomic Workers International Union, requested that the Department extend the period for the preliminary determination until September 4, 1985. The request was granted and on July 12, 1985, the preliminary determination was postponed until not later than September 4, 1985 (50 FR 29494).

On August 9, 1985, counsel for petitioners requested a further extension to September 18, 1985. Accordingly, the period for the determination is hereby extended; we will issue a preliminary determination not later than September 18, 1985.

This notice is published pursuant to section 733(c)(2) of the Tariff Act of 1939, as amended.

August 14, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19990 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-025]

Hot Rolled Carbon Steel Sheet From Brazil; Final Result of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 7, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on hot rolled carbon steel sheet from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment from Hansa World Cargo Service, Inc., an importer, on merchandise entered prior to this review period. After our analysis of that comment, we determine that domestic interested parties are no longer interested in continuation of the order and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel sheet entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

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, DC 20230; telephone: (202) 377-5255/3601.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 24006) the preliminary results of its changed circumstances administrative review of the antidumping duty order on hot rolled carbon steel sheet from Brazil (49 FR 35536-37, September 10, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of hot rolled carbon steel sheet. Such merchandise is currently classifiable under items 607.8710, 607.8720, 607.8730, 607.8740, 607.8320, and 607.8342 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment on merchandise entered prior to October 1, 1984 from Hansa World Cargo Service, Inc., an importer.

Comment: Hansa argues that the revocation should include merchandise entered prior to October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement") was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries.

Final Results of the Review and Revocation

As a result of this review, we determine that the domestic interested parties are no longer interested in continuation of the antidumping duty order on hot rolled carbon steel from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on hot rolled carbon steel sheet from Brazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of hot rolled carbon steel sheet from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries

not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation 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 15, 1985.

[FR Doc. 85-19992 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-012]

Hot Rolled Carbon Steel Plate Cut to Length From Brazil; Final Results of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 7, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment from Hansa World Cargo Service, Inc., an importer, on merchandise entered prior to this review period. After our analysis of that comment we determine that domestic interested parties are no longer interested in continuation of the order and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel plate cut to length entered, or withdrawn from warehouse, for consumption on or after October 1, 1984.

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 June 7, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 24007-08) the preliminary results of its changed circumstances administrative review of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil (49 FR 10692-93, March 22, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of hot rolled carbon steel plate cut to length. Such merchandise is currently classifiable under items 607.6615, 607.9400, 608.0710, 608.1100 and 609.6610 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment on merchandise entered prior to October 1, 1984 from Hansa World Cargo Service, Inc., an importer.

Comment: Hansa augues that the revocation should include merchandise entered prior to October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement") was negotiated with the understanding that " . . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries.

Final Results of the Review and Revocation

As a result of this review, we determine that the domestic interested parties are no longer interested in continuation of the antidumping duty order on hot rolled carbon steel plate cut to length from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on hot rolled carbon steel plate cut to length from Brazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries on this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of hot rolled carbon steel plate cut to length from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation 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 15, 1985.

[FR Doc. 85-19993 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

[A-351-014]

Hot Rolled Carbon Steel Plate in Coil From Brazil; Final Results of Changed Circumstances, Administrative Review and Revocation of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration of Commerce.

ACTION: Notice of Final Results of Changed Circumstances Administrative Review and Revocation of Antidumping Duty Order.

SUMMARY: On June 7, 1985, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil and announced its tentative determination to revoke the order. The review covers the period from October 1, 1984.

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment from Hansa World Cargo Service, Inc., an importer, on merchandise entered prior to this review period. After our analysis of that comment, we determine that domestic interested parties are no longer interested in continuation of the order and we are revoking the order. In accordance with the petitioner's notification, the revocation will apply to all hot rolled carbon steel plate in coil entered, or withdrawn from warehouse,

for consumption on or after October 1, 1984.

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 June 7, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 24005) the preliminary results of its changed circumstances administrative review of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil (49 CFR 10692-93, March 22, 1984). The Department has now completed that administrative review, in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

Imports covered by the review are shipments of hot rolled carbon steel plate in coil. Such merchandise is currently classifiable under items 607.6615, 607.9400, 608.0710, 608.1100 and 609.6610 of the Tariff Schedules of the United States Annotated. The review covers the period from October 1, 1984.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results and tentative determination to revoke. We received a comment on merchandise entered prior to October 1, 1984 from Hansa World Cargo Service, Inc., an importer.

Comment: Hansa argues that the revocation should include merchandise entered prior to October 1, 1984. Hansa states its belief that the Arrangement Concerning Trade in Steel Products between Brazil and the United States ("the Arrangement") was negotiated with the understanding that ". . . all unliquidated, suspended entries would be liquidated at the normal tariff rate."

Department's Position: The Arrangement contains no provision requiring that revocation cover all suspended entries.

Final Results of the Review and Revocation

As a result of this review, we determine that the domestic interested parties are no longer interested in continuation of the antidumping duty order on hot rolled carbon steel plate in coil from Brazil and that the order should be revoked on this basis.

Therefore, we are revoking the order on hot rolled carbon steel plate in coil from Bazil effective October 1, 1984. We will instruct the Customs Service to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after October 1, 1984, without regard to antidumping duties and to refund any estimated antidumping duties collected with respect to those entries.

This notice does not cover unliquidated entries of hot rolled carbon steel plate in coil from Brazil which were entered, or withdrawn from warehouse, for consumption prior to October 1, 1984. The Department will cover any entries not covered in a prior administrative review and entered, or withdrawn from warehouse, for consumption prior to October 1, 1984, in a separate review, if one is requested.

This administrative review, revocation and notice are in accordance with section 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).

Dated: August 15, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 85-19991 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Marine Mammals; Application for Permit; NMFS, Southeast Fisheries Center

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant:

a. Name: NMFS, Southeast Fisheries Center (P77 #15), Mississippi Laboratories, Pascagoula Facility.

b. Address: P.O. Drawer 1207, Pascagoula, Mississippi 39567-1207.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus)* and other unspecified cetaceans:

4. Type of Take: Cetaceans taken incidentally to scientific sampling with bottom or midwater trawls.

5. Location of Activity: Gulf of Mexico in US waters from Key West, Florida to Brownsville, Texas.

6. Period of Activity: 5 years.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC; and

Regional Director, Southeast Region, National Marine Fisheries Service, 4950 Koger Blvd., St. Petersburg, Florida 33702.

Dated: August 15, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-19984 Filed 8-20-85; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency Scientific Advisory Committee; Closed Meetings

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that closed meetings of a panel of the DIA Scientific Advisory Committee have been scheduled as follows:

DATES: September 10-11, 1985, 9:00 a.m. to 5:00 p.m.; September 25-26, 1985, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Washington, DC (both meetings).

FOR FURTHER INFORMATION CONTACT: Lt. Col. Harold E. Linton, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington, DC 20301 (202/373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the

discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on nuclear test yield determination.

Dated: August 16, 1985.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 85-20016 Filed 8-20-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 14, 1985.

The USAF Scientific Advisory Board Aeronautical Systems Division Advisory Group meeting scheduled for August 28-29, 1985, at Wright-Patterson Air Force Base, Ohio (Notice published in the Federal Register on August 9, 1985 (50 FR 32254)), will be held at a later date to be announced.

For further information contact the Scientific Advisory Board Secretariat at 202-697-4648.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 85-19922 Filed 8-20-85; 8:45 am]

BILLING CODE 3910-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS); Proposed Flood Control Project for the Calumet, Des Plaines, and Mainstem System of the Chicagoland Underflow Plan in Will and Cook Counties, IL

AGENCY: Army Corps of Engineers, Chicago District, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY:

1. The study involves the potential construction of one or more of the following:

(a) Flood damage reduction reservoirs in existing quarries at McCook and Thornton,

(b) Improvements to the Sanitary & Ship Canal and Cal-Sag Channel,

(c) Diversion channels connecting the Sanitary & Ship Canal to the Des Plaines River, and

(d) Sewer system upgrades within the Calumet, Des Plaines, and Mainstem Systems of the Chicagoland Underflow Plan.

The reservoirs would be below ground level and could be wet or dry during non-flood periods. Each reservoir would include works for dewatering, operation, and maintenance of the reservoir in conjunction with an existing deep tunnel system for treatment and abatement of combined sewer overflow. The purpose of the proposed project is to reduce flood damages caused by combined sewer system backflow into basements, ponding of surface runoff, and overbank flooding.

2. Alternatives to be studied in detail are:

(a) No action.

(b) Reservoir alternatives consisting of a system of two reservoirs connected to deep tunnels by drop shafts, connecting structures, and pumping stations. The Thornton quarry reservoir would serve the Calumet system; the McCook quarry reservoir would serve the Mainstem and Des Plaines systems.

(c) Waterways improvement alternative, involving channel improvements to the Sanitary and Ship Canal between Chicago and the Dresden Island lock, and channel improvements to the Cal-Sag Channel between the Junction and the O'Brien lock.

(d) Watercourse diversion alternative, involving deepening the Des Plaines River in the vicinity of the Sanitary & Ship Canal, and excavation of two diversion channels connecting the Des Plaines with the Sanitary & Ship Canal.

(e) Other measures to be considered in combination with the reservoirs alternative may include combined sewer upgrading (separation, increased capacities, or bypass sewers), separation of sanitary and storm sewers small local detention reservoirs with pump stations, sewer inlet restrictors, downspout disconnection, floodproofing basements, evacuation, or flood warning systems.

3. The reservoir plans considered in this study are essentially similar to the Tunnel and Reservoir Plan (TARP) designs developed in 1972 by the Metropolitan Sanitary District of Greater Chicago (MSDGC). The Tunnel and Reservoir Plan has been divided into Phases 1 and 2. Phase I involves water quality enhancement; Phase 2 concerns flood damage reduction. The Corps of Engineers began a feasibility study of this plan (Chicagoland Underflow Plan or CUP) in 1979. The CUP evolved during the Corps' 1976 study to determine Federal interest in TARP. Public participation has included meetings and coordination with the State of Illinois, MSDGC, and interested Federal, State, and local agencies. Additional coordination has also been undertaken with the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and Northeastern Illinois Planning Commission.

4. Significant issues to be analyzed include destruction or disruption of terrestrial and aquatic habitat; mitigation for habitat losses; effects on water quality; disposal of excavated material; and aesthetic effects.

5. No formal scoping meeting will be held. A public meeting is tentatively scheduled for the comment period following release of the DEIS. No date has been set. Notice of the specific time and location will be issued to the appropriate media, and to parties expressing interest.

6. The DEIS is expected to be available in January 1986.

7. Questions about the proposed action and DEIS may be directed to: Keith Ryder, U.S. Army Corps of Engineers, NCCPD-S, 219 S. Dearborn St., Chicago, IL 60604 (312/353-7795).

Dated: August 12, 1985.

Frank R. Finch,

LTC, Corps of Engineers, District Engineer.

[FR Doc. 85-19945 Filed 8-20-85; 8:45 am]

BILLING CODE 3710-HN-M

Department of the Army

Meeting; Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of Meeting: 17-19 September 1985

Time: 0900-1700 hours (Open)

Place: The Pentagon, Washington, DC.

Agenda: The Chairperson and Subpanel Chairpersons of the 1985 Army Science Board Summer Study on Training and Training Technology—Applications for AirLand Battle and Future Concepts will meet to review Summer Study recommendations and implementation plan. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 85-19980 Filed 8-20-85; 8:45 am]

BILLING CODE 3710-08-M

Defense Communications Agency

Membership of the Defense Communications Agency SES Performance Review Board

AGENCY: Defense Communications Agency, DOD.

ACTION: Notice of Membership of the Defense Communications Agency SES Performance Review Board.

SUMMARY: This notice announces the appointment of the members of the SES Performance Review Board (PRB) of the Defense Communications Agency. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding the performance and performance awards to the Director, Defense Communications Agency.

EFFECTIVE DATE: August 1, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Pittman, Personnel Management Services Branch, Civilian Personnel Division, Personnel and Administration Directorate, Defense Communications Agency (202) 692-3794.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following are names and titles of the executives who have been appointed to serve as members of the SES Performance Review Board. They will serve a one-year renewable term, effective August 1, 1985.

PAULSON, A.G., Rear Admiral USN, Vice Director, Defense Communications Agency
SCHOTT, Joseph D., Brigadier General, USA, Director Defense Communication Systems Organization
HELMS, Robert W., Director, Resource Management
ISRAEL, David., Chief Engineer
MORRISS, Benham E., Deputy Manager, National Communications System
SIGNORI, David T., Jr., Director, Center for C³ Systems
STEVENER, Glenwood, M., Director, Systems Support Center

A.G. Paulson,

Rear Admiral, USN, Vice Director.

[FR Doc. 85-19953 Filed 8-20-85; 8:45 am]

BILLING CODE 3610-05-M

DEPARTMENT OF EDUCATION

National Advisory Council on Continuing Education; Meeting

AGENCY: National Advisory Council on Continuing Education.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an Executive Committee meeting of the National Advisory Council on Continuing Education. It also describes the functions of the Council. Notice of meetings is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: September 18-19, 1985.

ADDRESS: The Sheraton Grand Hotel, 525 New Jersey Ave., NW., Washington, DC. 20001-1527.

FOR FURTHER INFORMATION CONTACT: Dr. William G. Shannon, Executive Director, National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 500, Washington, DC 20036, Telephone: (202) 634-6077.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Continuing Education is established under section 117 of the Higher Education Act (20 U.S.C. 1109), as amended. The Council is established to advise the President, the Congress, and the Secretary of the Department of Education on the following subjects:

(a) An examination of all federally supported continuing education and training programs, and recommendations to eliminate duplication and encourage coordination among these programs;

(b) the preparation of general regulations and the development of policies and procedures related to the administration of Title I of the Higher Education Act; and

(c) activities that will lead to changes in the legislative provisions of this title and other federal laws affecting federal continuing education and training programs.

The meetings of the Council are open to the public. However, because of limited space, those interested in attending are asked to call the Council's office beforehand.

The Executive Committee will meet from 9:00 a.m. to 5:00 p.m. on September 18 and from 9:00 a.m. to 12:00 p.m. on September 19.

The proposed agenda includes:

—OECD Conference Plans
—Annual Report
—Council staff plans
—Other business

Records are kept of all Council proceedings and are available for public inspection at the office of the National Advisory Council on Continuing Education, 2000 L Street, NW., Suite 500, Washington, DC.

Signed at Washington, DC on August 16, 1985.

William G. Shannon,

Executive Director.

[FR Doc. 85-2000 Filed 8-20-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Establishment of Performance Review Board; Name of Board Members

Section 4314(c) of title 5, United States Code (as amended by the Civil Service Reform Act of 1978), requires that the Department of Energy establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more Performance Review Board(s) to review and evaluate the initial rating and make a final written recommendation on performance appraisals assigned to the Departmental members of the Senior Executive Service. The Performance Review Board established for the Department of Energy also makes written recommendations to the Executive Personnel Board or the Chairman, Federal Energy Regulatory Commission, regarding Senior Executive Service performance bonuses, awards and performance-related actions.

Section 4314(c) of title 5, United States Code requires that notice of appointment of Performance Review Board members be published in the **Federal Register.** The following persons have been appointed to serve on the performance review board standing register for the Department of Energy: William S. Heffelfinger, Harry L. Peebles, J. Merle Schulman, Geraldine P. Flowers, Helene S. Markoff, Dean Helms, Charles R. Tierney, Andrew D. Eppelmann, Howard A. Raiken, John R. Franklin, Robert R. Kemps, Cleo N. Mitchell, Gene K. Fleming, Tony C. Upchurch, Robert E. Greeves, John W. Polk, James R. O'Gwin, Nathaniel H. Pierson, William V. Vitale, Gail Young.

Elizabeth E. Smedley, Arthur E. Guyer, Lynwood H. Henderson, McKinley E. Bryant, Carl W. Guidance, Thomas J. Davin, Berton Roth, Jr., Edwin R. Itnyre, John W. Shepard, Sr., George R. Haymond, David G. Newman, Vincent E. Mason, II, Eric J. Fygi, William H. Mellor, III, Henry K. Garson, Robert G. Rabben, James K. White, Melinda L. Carmen, Craig S. Bamberger, Ralph D. Goldenberg.

Catherine C. Cook, Matthew T. Abruzzo, Wayne I. Tucker, James W. Swafford, William R. Partridge, James U. DeFrancis, Wolfgang C. Repke, Richard T. Tedrow, Thomas L. Wieker, George

Breznay, Thomas O. Mann, George J. Bradley, Jr., Richard H. Williamson, Harold Jaffe, Barton R. House, Edward J. Hanrahan, James S. Herod, Howard F. Perry, William J. Silvey, Glen E. Sweetnam.

Robert W. Barber, Robert W. Davies, Edward R. Williams, Donna Fitzpatrick, Frank M. Stewart, Jr., Allan J. Streb, Melvin H. Chiogioji, William B. Williams, Robert L. San Martin, Howard S. Coleman, Frederick Morse, Beverly Berger, John Mock, Robert H. Annan, Louis V. Divone, James F. Decker, Delmar D. Mayhew, James R. Young, Antoinette G. Joseph, George Y. Jordy.

Donald K. Stevens, Ryszard Gajewski, James S. Coleman, Louis C. Ianniello, Bernard Hildebrand, William Wallenmeyer, John F. Clarke, Nelia H. Davies, Jacob W. Thiessen, Martin L. Minthorn, Jr., Robert W. Wood, James W. Culpepper, Francis Gilbert, John L. Gilbert, Richard D. Hahn, Maurice J. Katz, Richard L. Schriever, Ronald W. Cochran, David B. Leclaire, Robert A. O'Brien, Jr.

Martin Dowd, Jill Ellman Lytle, George Withers, Franklin E. Coffman, James W. Vaughn, Jr., Neal Goldenberg, Kermit O. Laughon, Donald K. Gestson John R. Longenecker, Donald Bauer, Jeremiah E. Walsh, Richard E. Harrington, Augustine A. Pitrolo, Sien W. Chun, Carl A. Corrallo, James W. Workman, Milton C. Lorenz, Avrom Landesman, Albert H. Linden, Jr., Kenneth A. Vagts.

Jimmie L. Peterson, John C. Geidl, Yvonne M. Bishop, Frank E. Lalley, Charles C. Heath, William D. Montgomery, Raymond G. Romatowski, Jack R. Roeder, William R. Cooper, Charles E. Troell, Hilary J. Rauch, Donald L. Bray, Edward G. Cumesty, John P. Kennedy, Andrew E. Mravca, Troy E. Wade, II, Nick C. Aquilina, Jon P. Hamric, Joe B. Lagrone, John T. Milloway, Jr.

James C. Hall, William P. Snyder, Richard A. DuVal, Vito A. Magliano, Donald W. Pearman, Jr., Peter J. Johnson, James J. Jura, Robert E. Ratcliffe, Marvin Klinger, Edward W. Sienkiewicz, William H. Claggett, IV, Joe D. Hall, Michael J. Lawrence, Robert H. Bauer, Edward S. Goldberg, Melvin J. Sires, III, Robert L. Morgan, Barry M. Erickson, Richard C. Anick, Dorner T. Schueller, Jr.

Thomas R. Clark, Ray D. Duncan, Robert M. Nelson, Jr., Harry C. Geisinger, Joseph W. Lagler, Robert J. Cross, Scott P. Anger, Andrew W. Battese, Ernest Baynard, Raymond A. Beirne, Charles E. Bullock, Robert W. Cackowski, Bernard B. Chew, Lynne H. Church, William Connelly, Marilyn L. Doria, Quentin A. Edson, Philip L. Essley, Jr., Russell E. Faudree, Jr., Jerome M. Feit.

Morris R. Fitzgerald, Lynn H. Hargis, Howard Kilchrist, Randolph E. Mathura, William G. McDonald, Louis W. Mendonsa, Gordon E. Murdock, Kristina K. Nygaard, Kenneth M. Pusateri, William Satterfield, Michael Schope, Leon J. Slavin, Joseph J. Softers, Robert J. Szekely, Anthony F. Toronto, Charles Teclaw, Maynard Ugol, Barbara J. Weller, Bernard Wexler, Kenneth A. Williams.

Issued in Washington, D.C. on August 12, 1985.

William S. Heffelfinger,

Director, Directorate of Administration.

[FR Doc. 85-19956 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Procurement and Assistance Management Directorate Restriction of Eligibility for Grant Award

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b), it intends to award, on a restricted eligibility basis, grants to higher education institutions from among Historically Black Colleges and Universities (HBCU's) in support of research associated with storage and disposal of commercial high level radioactive waste and spent nuclear fuel. The grants will be awarded to a limited number of proposals selected on the basis of scientific merit. Each grant will be for a 12-month period and will range from $20,000 to $50,000. Renewals will depend on the availability of funds and satisfactory performance of the first year of research.

Procurement Request No. 05-850R21581.000.

Project Scope

The Radioactive Waste Management Research Program was created to fulfill the following two primary objectives: (1) Assist in carrying out the provisions of the Nuclear Waste Policy Act (P.L. 97-425) of 1982, and (2) serve as a response to the President's Executive Order Number 12320 of September 15, 1981, which directs federal agencies to increase the participation of HBCU's in federally-funded research and to strengthen their capabilities to provide quality education. To achieve these objectives, the program supports relevant, mission-oriented R&D supportive of DOE's Office of Civilian Radioactive Waste Management mission goals.

Full-time faculty members working at Historically Black Colleges and Universities are eligible for participation as the principal investigator. Students, adjunct or part-time faculty, staff, and other qualified researchers (including consultants) may provide assistance to the research proposed.

All research must relate to problems associated with commercial high level waste or spent nuclear fuel. Typical areas of interest include:

Packaging and transportation of spent fuel;

Shielding and burial of waste packages for spent fuel and high level waste;

Repository siting activities, including geochemical, geohydrological and geophysical studies;

Monitored retrievable storage systems;

Advanced concepts in disposal and isolation systems, including sub-seabed disposal; and

Socioeconomic aspects of waste management.

Eligibility for participation in this research program is, therefore, restricted to Historically Black Colleges and Universities.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Burleson, Contracting Officer, Procurement and Contracts Division, U.S. Department of Energy, Oak Ridge Operations Office, Post Office Box E, Oak Ridge, Tennessee 37831, Telephone Number: (615) 576-0794.

Issued in Oak Ridge, Tennessee, August 8, 1985.

Peter D. Dayton,

Director, Procurement & Contracts Division.

[FR Doc. 85-20026 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

ENSTAR Corp.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed consent order and opportunity for comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order for $3,000,000 with ENSTAR Corporation and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATED: Comments by September 20, 1985.

ADDRESS: Send comments to: ENSTAR Consent Order Comments, Office of Special Counsel, Economic Regulatory

Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Edward P. Levy, Office of Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office (202/252-8900).

SUPPLEMENTARY INFORMATION: On July 10, 1985, the ERA executed a proposed Consent Order with ENSTAR Corporation. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the **Federal Register** requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed.

I. Background

In January 1983, ENSTAR Petroleum, Inc. was merged into McAlester Fuel Company (McAlester) and the name McAlester Fuel Company was changed to ENSTAR Petroleum, Inc. In December 1983, ENSTAR Petroleum, Inc. was merged into ENSTAR Corporation (ENSTAR) and became a division of ENSTAR.

On February 8, 1985, ERA issued a Proposed Remedial Order (PRO) to McAlester and ENSTAR Petroleum Company. The PRO alleged that during the period January 1978, through December 1980 (audit period), McAlester was engaged in the production and sale of crude oil as the operator of the Louviere ±1 lease, Brand ±1 lease and Bonin ±1 lease all in Louisiana, the Vice Shivers ±2 lease in Texas, the C.M. Wesson "B" lease in Arkansas, and the Karman 7-2 lease in Montana, and that McAlester had sold crude oil in excess of the price allowed by the Mandatory Petroleum Price Regulations, 10 CFR Part 212, Subpart D. Specifically, the PRO alleged that McAlester improperly classified and sold the oil from each of these leases as exempt "newly discovered crude oil," 10 CFR 212.79, when the oil should have been price controlled. In the PRO, ERA determined that during the audit period, McAlester had overcharged its customers by $2,012,677.05 exclusive of interest. The PRO contemplated that McAlester refund the overcharges, plus interest.

II. The Consent Order

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to McAlester's compliance with the federal petroleum price and allocation regulations during the period June 1979 through December 1980. Although ENSTAR contends that in all respects McAlester correctly construed and applied the applicable regulations, ENSTAR has entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the proposed Consent Order is in the public interest and provides a satisfactory resolution of the issue raised by the audit.

III. Refunds

Under the terms of the proposed Consent Order, ENSTAR shall pay to DOE the sum of $3,000,000. The refund will be deposited in a suitable account for appropriate distribution by DOE.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of this proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 p.m., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C. on the 6th day of August 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-19941 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-07-NG]

Natural Gas Imports; Texas Eastern Transmission Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Amendment to Application to Import Natural Gas From Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 15, 1985, of a second amendment to the application filed by the Texas Eastern Transmission Corporation (Texas Eastern) for authorization to import Canadian natural gas from TransCanada PipeLines Limited (TransCanada). Under this amendment, Texas Eastern seeks to import up to 50,000 Mcf per day of Canadian natural gas over a 15-year term term beginning on November 1, 1987, or the date of first delivery and ending on October 31, 2002. The initial delivered price of the gas would be $3.97 (U.S.) per MMBtu, which is subject to monthly adjustment and annual renegotiation.

The gas would be delivered via the proposed Niagara Interstate Pipeline System (NIPS).

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed not later than 4:30 p.m., September 20, 1985.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9492

Diana J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667.

SUPPLEMENTARY INFORMATION: On July 16, 1982, Texas Eastern filed an application with the ERA for authorization to import up to 100,000 Mcf per day of Canadian natural gas and additional daily volumes on a best efforts basis not to exceed ten percent of the maximum daily volumes. As more fully described in the notice issued by the ERA of Texas Eastern's original application (47 FR 39715, September 9, 1982), the imported volumes were to be purchased from TransCanada beginning on November 1, 1985, or as soon thereafter as possible, over a 14-year term from the date of first delivery pursuant to a proposed gas purchase contract between Texas Eastern and TransCanada. Under the gas purchase contract, Texas Eastern was required to take or pay for 75 percent of the daily contract quantity which TransCanada was obligated to deliver to Texas Eastern. In support of its application, Texas Eastern asserted that the proposed import of natural gas would be used to maintain its capability to meet system supply requirements at its

current level and to offset declining supplies of gas from existing sources. The price was proposed to be the Canadian border price then in effect, $4.94 (U.S.) per MMBtu.

On May 17, 1983, Texas Eastern filed an amendment to its application reducing the proposed term and volumes of the authorization to 12 years at a daily rate of up to 50,000 Mcf per day for nine years with declining volumes over the remaining three years. As more fully described in the notice of the amendment issued by the ERA (48 FR 26525, June 8, 1983), the primary term of the amended authorization requested was to begin November 1, 1985, or on the date of first delivery, and run in accordance with the following schedule which corresponds to the volumes which the Canadian National Energy Board (NEB) on January 27, 1983, authorized TransCanada to export to Texas Eastern:

	Daily[1] (Mcf)	Annual[1] (Mmcf)
Nov. 1, 1985 to Oct. 31, 1994	50,000	18,300
Nov. 1, 1994 to Oct. 31, 1995	37,500	13,725
Nov. 1, 1995 to Oct. 31, 1996	25,000	9,150
Nov. 1, 1996 to Oct. 31, 1997	12,500	4,575

[1] Approximate equivalent volumes. The actual volumes which TransCanada is authorized to export are stated in metaric standards.

Further, under the amendment, Texas Eastern asserted that the reduced volumes of imported gas would be transported from the import point near Niagara Falls, Ontario, to its pipeline facilities near Tamarack, Pennsylvania, via NIPS instead of through the proposed Trans-Niagara Pipeline as stated in its original application.[1] The price for the imported gas was to be the reduced border price of $4.40 (U.S.) per MMBtu.

On July 15, 1985, Texas Eastern filed a second amendment to its application requesting authorization to import up to 50,000 Mcf per day of Canadian natural gas commencing November 1, 1987, or the date of first delivery, with no decline in volumes and to extend the term of 15 years ending October 21, 2002. In addition, Texas Eastern seeks authorization to continue to import up to 50,000 Mcf per day during a one-year make-up period ending Ocober 31, 2003, to receive gas paid for but not taken during the primary term of the authorization.

The natural gas would be imported pursuant to a proposed gas purchase contract between TransCanada and Texas Eastern, which will establish a two-part demand/commodity price struture and an initial base border price for the gas of $3.50 (U.S.) per MMBtu. The initial base commodity price will be $2.55 per MMBtu and the initial base demand charge will be $.95 per MMBtu. Under the price determination formula in the proposed gas purchase contract, the initial delivered price of the natural gas in east coast markets will be $3.97 (U.S.) per MMBtu at a 100 percent load factor, which will be adjusted monthly to take into account changes in the average price of No. 2 heating oil and No. 6 fuel oil (New York Harbor) and several specific city gas prices for natural gas. The demand charge will change with changes in the fixed transportation and processing costs. However, when the demand charge is adjusted, an offsetting adjustment will be made in the commodity charge so that the 100 percent load factor price does not change.

The new contract will reduce Texas Eastern's take-or-pay obligation from 75 to 60 percent of daily contract quantity. Further, under the new arrangement, Texas Eastern will agree to purchase natural gas from TransCanada on an equitable basis with other long-term sources of natural gas. The price structure, take-or-pay obligations, and equitable purchase requirements may be renegotiated annually to take into account the price of competing fuels in fuels in Texas Eastern's markets.

Texas Eastern asserts that its import projects as amended provides adequate flexibility to permit pricing and volume adjustments so that the imported gas will remain competitive in Texas Eastern's markets over the life of the gas purchase contract. Based upon the historical reliability of Canadian import supplies, Texas Eastern also asserts that the gas supplies to be imported will be a secure, reliable source of gas supply. Texas Eastern therefore maintains that the importation will be in the public interest and urges expeditious issuance of the requested authorization.

The decision on this application will be made consistent with the Department of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should addess in their comments the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determinig the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., September 20, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

[1] Use of the NIPS system as modified to transport the reduced volumes of natural gas is the subject of an amended application which Texas Eastern filed with the Federal Energy Regulatory Commission (FERC), Docket No. CP83-170-000, on January 25, 1983. The proceedings at the FERC on Texas Eastern's application have been consolidated into an overall northeast market facilities proceeding entitled *Boundary, et al.* Docket No. CP81-107-000, *et al.*

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Texas Eastern's application and amendments is available for inspection and copying in the Natural Gas Division Docket Room GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 13, 1985.

Paula A. Daigneault,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-19958 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 82-05-NG]

Natural Gas Imports; Texas Eastern Transmission Corp.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Amendment to Application to Import Natural Gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on July 15, 1985, of a second amendment to the application filed by the Texas Eastern Transmission Corporation (Texas Eastern) for authorization to import Canadian natural gas from ProGas Limited (ProGas). Under this amendment, Texas Eastern seeks to import up to 50,000 Mcf per day of Canadian natural gas over a 15-year term beginning November 1, 1987, or the date of first delivery and ending on October 31, 2002. The initial delivered price of the gas would be $3.97 (U.S.) per MMBtu, which is subject to quarterly adjustment, renegotiation annually, and renegotiation whenever Texas Eastern makes a new purchased gas adjustment (PGA) filing with the Federal Energy Regulatory Commission (FERC) whereby its average gas purchase cost varies upward or downward by more than five percent. The gas would be delivered via the proposed Niagara Interstate Pipeline System (NIPS)

The application was filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204-111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATES: Protests, motions to intervene or notices of intervention, as applicable, and written comments are to be filed no later than 4:30 p.m., September 20, 1985.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass (Natural Gas Division, Office of Fuels Programs), Economic Regulatory Administration, Forrestal Building, Room GA-007, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9482

Diane J. Stubbs (Office of General Counsel, Natural Gas and Mineral Leasing), Forrestal Building, Room 6E-042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-6667

SUPPLEMENTARY INFORMATION: On May 14, 1982, Texas Eastern filed an application with the ERA to import up to 100,000 Mcf per day of Canadian natural gas from ProGas, and additional unspecified volumes to be delivered, upon request, on a best efforts basis. As more fully described in the notice issued by the ERA of Texas Eastern's original application (47 FR 30279, July 13, 1982), the natural gas was to be purchased from ProGas beginning November 1, 1982, or as soon thereafter as possible, over a 20-year period ending on October 31, 2002. Under the terms of the gas sales agreement between Texas Eastern and ProGas, Texas Eastern was required to take or pay for 75 percent of the daily contract quantity which ProGas is obligated to deliver to Texas Eastern. The price was proposed to be the Canadian border price then in effect, $4.94 (U.S.) per MMBtu. Texas Eastern stated that the additional natural gas would be used to supplement its existing sources of gas supplies in order to continue to meet system requirements at current levels.

On May 17, 1983, Texas Eastern filed an amendment to its application reflecting a shorter term of 12 years, a later starting date of November 1, 1984, or such later date as deliveries commence, and a reduction in the volumes of Canadian natural gas applied for to 50,126 Mcf per day for nine years with declining volumes over the remaining three years of the authorization requested. The quantities of natural gas to be purchased from ProGas conformed to the volumes which the Canadian National Energy Board (NEB) on January 27, 1983, authorized ProGas to export to Texas Eastern. As more fully described in the notice of the amendment issued by the ERA (48 FR 28534, June 22, 1983), the NEB decision authorized ProGas to export to Texas Eastern a total quantity of 192,112 MMcf in accordance with the following schedule:

	Daily [1] (Mcf)	Annual [1] (Mmcf)
Nov. 1, 1984 to Oct. 31, 1993	50,126	18,297
Nov. 1, 1993 to Oct. 31, 1994	37,596	13,721
Nov. 1, 1994 to Oct. 31, 1995	25,064	9,146
Nov. 1, 1995 to Oct. 31, 1996	12,532	4,575

[1] Approximate equivalent volumes. The actual volumes which ProGas is authorized to export are stated in metric standards.

Texas Eastern asserted that the reduced volumes of natural gas would be transported from the import point near Niagara Falls, Ontario, to its pipeline facilities near Tamarack, Pennsylvania, via NIPS.[1] The price of imported natural gas was to be the reduced border price of $4.40 (U.S.) per MMBtu.

On July 15, 1985, Texas Eastern filed a second amendment to its application requesting authorization to import up to 50,000 Mcf per day of Canadian natural gas with no decline in volumes over a term extended to 15 years commencing on November 1, 1987, or the date of first delivery and ending October 31, 2002. In addition, Texas Eastern seeks authorization to continue to import up to 50,000 Mcf per day of natural gas during a one-year make-up period ending October 31, 2003, to receive gas paid for but not taken during the primary term of the authorization.

The natural gas is proposed to be imported pursuant to an amended gas sales agreement between ProGas and Texas Eastern which establishes a two-part demand/commodity price structure and an initial base price at the border of $3.50 (U.S.) MMBtu. The initial base commodity charge will be $2.55 per MMBtu and the initial base demand charge will be $.95 per MMBtu. The price of the gas will be adjusted quarterly to reflect changes in the average price of No. 2 heating oil, No. 6 fuel oil, and several specific field prices for natural gas pursuant to a price determination formula in the amended gas sales agreement. The demand charge will charge with changes in the fixed transportation and processing costs. However, when the demand charge is adjusted, the commodity charge is adjusted in an equivalent amount in the opposite direction. The initial delivered price for the imported

[1] Use of the NIPS system as modified to transport the reduced volumes of natural gas is the subject of an amended application which Texas Easten filed with the FERC, Docket No. CP83-170-001 on March 25, 1983. The proceedings at FERC on Texas Eastern's application have been consolidated into an overall northeast market facilities proceeding entitield *Boundary, et al.* Docket No. CP81-107-000, *et al.*

gas in east coast markets will be $3.97 (U.S.) per MMBtu, at a 100 percent load factor.

The new agreement reduces Texas Eastern's take-or-pay obligation from 75 percent to 60 percent of daily contract quantity. Further, Texas Eastern is required to purchase gas from ProGas on an equitable basis with comparably priced gas from other long-term sources. The price and the pricing provisions in the amended gas sales agreement may be renegotiated annually or whenever Texas Eastern makes a new purchased gas adjustment (PGA) filing with the FERC whereby its average gas purchase cost varies by more than five percent from the PGA filing in effect as of February 1, 1985, or the PGA filing in effect at the time of the last contract renegotiation. Under the amended agreement, the redetermined price must be comparable to the price of competing energy sources in Texas Eastern's markets.

Texas Eastern asserts that its import project as amended provides adequate flexibility to permit pricing and volume adjustments so that the imported gas will remain competitive in Texas Eastern's markets over the life of the amended gas sales agreement. Based upon the historical reliability of Canadian import supplies, Texas Eastern also asserts that the gas supplies to be imported will be a secure, reliable source of gas supply. Texas Eastern therefore maintains that the importation will be in the public interest and urges expeditious issuance of the authorization requested.

The decision on this application will be made consistent with the Department of Energy's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest. Parties that may oppose this application should address in their comments the issue of competitiveness as set forth in the policy guidelines. The applicant has asserted that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion.

Other Information

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA-033-B, RG-23, Forrestal Building, 10000 Independence Avenue, SW., Washington, DC 20585. They must be filed no later than 4:30 p.m., September 20, 1985.

A decisional record on the application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

In an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Texas Eastern's application and amendments is available for inspection and copying in the Natural Gas Division Docket Room GA-033-B, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on August 13, 1985.

Paula A. Daigneault,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-19959 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-016; OFP Case No. 55034-9279-01, 02-33]

Acceptance of Petition for Exemption and Availability of Certification; Boise Cascade Corp.

AGENCY: Economic Regulatory Admininstration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Boise Cascade Corporation for its DeRidder, Louisiana Facility.

SUMMARY: On June 28, 1985, Boise Cascade Corporation compeleted filing of a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent emergency purposes exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act") for two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana. Title II of FUA prohibits both the use of petroleum and natural gas as primary energy source in any new major fuel burning installation (MFBI) consisting of a boiler. Final rules setting forth Criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the emergency purposes exemption are found at 10 CFR 503.39.

The project for which the exemption is requsted consists of two proposed gas-fired boilers that would be operated only as standby units on an emergency basis when one of the paper mill waste wood boilers or the recovery boiler would have to be shut down and the remaining boilers wuld be incapable of producing the required process steam to mainain process heating needed for mill production. The proposed boilers, with a combined rate capacity of 330,000 1b/hr would operate a potential 409 hours per year.

ERA has determined that the petition is sufficient to support an ERA determination, and it is therefore accepted pursuant to 10 CFR 501.3 and 501.63. ERA retains the right, however, to request additional relevant

information from Boise Cascade Corporation at any time during the proceeding, a circumstances may require. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701 (c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and amy interested person may submit a written request that ERA convene a public hearing. The public file containing a copy of this Notice of Acceptance and Availability of Certification, as well as other documents and supporting materials on this proceeding, is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E-190, Washington, DC 20585, from 9:00 a.m. to 4:00 p.m., Monday through Friday, except Federal holidays.

ERA will issue a final order granting or denying the peatition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before October 7, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Office of Fuels Programs, Room GA-007, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA-FC-85-018 should be printed on the outside of the envolope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202)252-4708

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6D-033, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202)252-6947

SUPPLEMENTARY INFORMATION: Title II of FUA prohibits the use of natural gas or petroleum in new MFBI's that consist of a boiler unless an exemption for such use has been granted by ERA. Boise Cascade Corporation has filed a petition with ERA requesting a permanent emergency purposes exemption to permit the use of two proposed standby gas-fired package steam boilers to be located at its DeRidder paper mill plant in DeRidder, Louisiana.

The proposed gas-fired units are rated at 165,000 pounds per hour (lb/hr) of steam each at 900 psig. Because the heat input into each unit, about 228 million Btu's per hour (MMBtu/hr), would exceed 100 MMBtu/hr each proposed boiler would be a major MFBI subject to FUA regulation. The proposed boilers are to be operated only as standby units on an emergency basis when one of the paper mill waste wood boilers or the recovery boiler would have to be shut down. The proposed boilers would operate a potential 409 hours per year. Their required fuel would be natural gas. It is economically nonfeasible to install coal or other mixtures boilers for standby emergency purposes.

Section 212(e) of the Act and 10 CFR 503.39 provide for a permanent emergency purposes exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.39(a), Boise Cascade Corporation has certified to ERA that:

1. It will operate and maintain the proposed unit for emergency purposes only; and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the proposed boiler for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of 503.39(c) (and in addition to the certifications discussed above), Boise Cascade Corporation has included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. Environmental certifications, as required under 10 CFR 503.13(b).

On February 23, 1982, DOE published in the **Federal Register** (47 FR 7976) a notice of the amendment to its guidelines for compliance with the National Environmental Policy Act of 1969 (NEPA). Pursuant to the amended guidelines, the grant or denial of certain FUA permanent exemptions, including the permanent exemption for emergency purposes, is among the classes of actions that DOE has categorically excluded from the requirement to prepare an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA (categorical exclusion).

This classification raises a rebuttable presumption that the grant or denial of the exemption will not significantly affect the quality of the human environment. Boise Cascade Corporation has certified that it will secure all applicable permits and approvals prior to commencement of operation of the new unit under exemption. ERA will review the completed environmental checklist submitted by Boise Cascade Corporation pursuant to 10 CFR 503.13(b), together with other relevant information.

Unless it appears during the proceeding on Boise Cascade Corporation's exemption request that the grant or denial of the exemption will significantly affect the quality of the human environment, it is expected that no additional environmental review will be required.

As provided in 10 CFR 501.3(b)(4), the acceptance of the petition by ERA does not constitute a determination that Boise Cascade Corporation is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC on August 14, 1985

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-19960 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-013; OFP Case No. 67042-9269-20-24]

Powerplant and Industrial Fuel Use; United Cogen, Inc. (UCI); Exemption

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting to United Cogen, Inc. (UCI), Exemption from the Prohibitions of the Powerplant and Industrial Fuel Use Act of 1978.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it has granted a permanent cogeneration exemption from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. 8301 *et seq.* ("FUA" or "the Act"), to United Cogen, Inc. (UCI). The permanent cogeneration exemption permits the use of natural gas as the primary energy source for a proposed electric powerplant to be located at the United Airlines Maintenance Operations Center (UALMOC), San Francisco International Airport in San Francisco, California. The final exemption order and detailed information on the proceeding are provided in the

SUPPLEMENTARY INFORMATION section, below.

DATES: The order shall take effect on October 20, 1985.

The public file containing a copy of the order, other documents, and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Xavier Puslowski, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-4708

Steven E. Ferguson, Esq., Office of the General Counsel, Department of Energy, Forrestal Building—Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947

SUPPLEMENTARY INFORMATION: On March 21, 1985, UCI petitioned ERA under section 212(c) of FUA and 10 CFR 503.37 for a permanent cogeneration exemption to permit the use of natural gas in a cogeneration facility consisting of a combustion turbine generator system, a supplementary-fired waste heat recovery boiler and a steam turbine generator system. The proposed powerplant is to be located at the UALMOC, San Francisco International Airport in San Francisco, California.

The UALMOC maintains an existing steam boiler plant to service its present steam demand. All current plant electrical requirements (approximately 9 MW) are presently supplied through Pacific Gas and Electric Company (PG&E) power grid. The cogeneration facility would eliminate the need for the UALMOC steam powerplant and the power from the new plant would be sold to PG&E.

The proposed facility would be fired primarily on natural gas, but would also be designed to burn a Jet A fuel for emergency standby in the event of a natural gas supply disruption. The supplementary-fired system (duct burner) will be exclusively fired on natural gas.

The project will exceed the heat input threshold and is expected to sell more than 50 percent of the net annual electrical power to PG&E causing the new cogeneration facility to be classified as a powerplant under FUA.

Basis For Permanent Exemption Order

The permanent exemption order is based upon evidence in the record including UCI's certification to ERA, in accordance with 10 CFR 503.37(a)(1), that:

1. The oil or natural gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of such cogeneration facility, in accordance with 10 CFR 503.37(a)(1)(i); and

2. The use of a mixture of natural gas and coal or oil and coal in the cogeneration facility, will not be technically feasible, in accordance with 10 CFR 503.37(a)(1)(ii).

Procedural Requirements

In accordance with the procedural requirements of section 701(c) of FUA and 10 CFR 501.3(b), ERA published its Notice of Acceptance of Petition and Availability of certification in the **Federal Register** on May 8, 1985 (50 FR 16124), commencing a 45-day public comment period.

A copy of the petition was provided to the Environmental Protection agency for comments as required by section 701(f) of the Act. During the comment period, interested persons were afforded an opportunity to request a public hearing. The comment period closed on June 24, 1985; no comments were received and no hearing was requested.

NEPA Compliance

After review of the petitioner's environmental impact analysis, together with other relevant information, ERA has determined that the granting of the requested exemption does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA).

Order Granting Permanent Cogeneration Exemption

Based upon the entire record of this proceeding, ERA has determined that United Cogen, Inc., of San Francisco, California, has satisified the eligibility requirements for the requested permanent cogeneration exemption, as set forth in 10 CFR 503.37. Therefore, pursuant to section 212(c) of FUA, ERA hereby grants a permanent cogeneration exemption to United Cogen, Inc., of San Francisco, California, to permit the use of natural gas as the primary energy source for its cogeneration facility at the United Airlines Maintenance Operations Center, San Francisco, California.

Pursuant to section 702(c) of the Act and 10 CFR 501.69, any person aggrieved by this order may petition for judicial review thereof at any time before the 60th day following the publication of this order in the **Federal Register**.

Issued in Washington, DC on August 14, 1985.

Robert L. Davies,

Director, Coal and Electricity Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 85-19961 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket PP-76EA]

Order Authorizing the Exportation of Electric Energy to Canada; New England Power Pool

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Insurance of an Order in docket PP-76EA authorizing new exports of electricity to Canada by the New England Power Pool.

SUMMARY: The Administrator of the Economic Regulatory Administration (ERA) is authorizing the New England Power Pool (NEPOOL) to export electric energy to Canada at the maximum rate of 725 megawatts (MW). The transmission facilities to be used to export this energy consist of a proposed ± 450 kV direct current (DC) transmission line extending from a converter terminal in Monroe, New Hampshire, through Vermont, to the U.S. international border near the town of Norton, Vermont. The construction and operation of these facilities have been authorized by Presidential permit PP-76.

FOR FURTHER INFORMATION CONTACT:

Anthony J. Como, Economic Regulatory Administration (RG-22), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-5935

Lise Courtney M. Howe, Office of General Counsel (GC), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202)252-2900

SUPPLEMENTARY INFORMATION:

Order Authorizing the Export of Electric Energy to Canada

On September 11, 1984, the New England Power Pool filed an application with the Economic Regulatory Administration in Docket PP-76 EA, pursuant to section 202(e) of the Federal Power Act, to transmit electric energy from the United States to Canada. In its application, NEPOOL requested authorization to export electric energy at the maximum rate of 725 MW. Electricity exports will be made in accordance with the terms and at the

rates set forth in the Interconnection Agreement and the Energy Banking Agreement between NEPOOL and Hydro-Quebec, both dated March 21, 1983. Copies of the agreements were filed with the application.

Under the Interconnection Agreement, NEPOOL may be called upon to supply emergency assistance and economy emergy to Hydro-Quebec on an "as available" basis. Under the Energy Banking Agreement, NEPOOL may (at its option) export low-cost nuclear and coal-fired energy to Hydro-Quebec during light load periods on the NEPOOL system. This energy would be stored in Hydro-Quebec reservoirs and returned to NEPOOL during peak load periods on the NEPOOL system, thereby displacing some of NEPOOL's high-cost oil-fired generation which is used to meet peak load requirements.

Notice of this application was given on October 29, 1984 (49 FR 43494) stating that any person desiring to be heard or to make any protest with reference to this application should on or before November 15, 1984, file with ERA a Petition to Intervene or protests in accordance with the Rules of Practice and Procedure (18 CFR 1.8 and 1.10).

On November 15, 1984, the Pennsylvania-New Jersey-Maryland Interconnection (PJM) filed a Petition to Intevene in this proceeding. PJM cited concern over the reliability impact of the proposed export. PJM and NEPOOL spent several months discussing PJM's concerns and on April 9, 1985, jointly filed with ERA a Stipulation which stated the terms under which PJM would withdraw its Petition to Intervene. These terms have been included as conditions of the authorization.

Finding

The Administrator finds that the proposed transmission of electric energy from the United States to Canada as limited herein and as hereinafter authorized will not impair the sufficiency of electric supply within the United States and will not impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the Department of Energy. A staff analysis and recommendation in support of this finding have been made a part of the docket and are available upon request.

Order

(A) NEPOOL hereby is authorized to transmit electric energy from the United States to Canada in accordance with the terms and conditions set forth in the Interconnection Agreement and the Energy Banking Agreement between NEPOOL and Hydro-Quebec, both dated March 21, 1983.

(B) The electric energy which NEPOOL hereby is authorized to transmit from the United States to Canada shall be transmitted over facilities specified in the Presidential permit in ERA Docket PP-76, issued by the Administrator on April 6, 1984.

(C) The authorization herein granted may be modified from time to tme or terminated by further order of the Administrator, but in no event shall such authorization extend beyond the date of termination or expiration of the Presidential permit referred to in Paragraph (B) above.

(D) NEPOOL shall conduct all operations pursuant to the authorization herein granted in accordance with the provisions of the Federal Power Act and pertinent rules, regulations or orders adopted or issued by the Department of Energy.

(E) NEPOOL shall make and preserve full and complete records with respect to the sale of electrical energy to Canada. NEPOOL shall furnish a report to the ERA annually, on or before February 15, showing the gross amount of electricity delivered and the consideration received during each month of the calendar year.

(F) The following conditions apply to the export of electricity by NEPOOL utilizing the facilities authorized by Presidential permit PP-76:

(1) The export of electricity from NEPOOL to Canada shall not cause the spinning reserve on the NEPOOL system to fall below the Northeast Power Coordinating Council's spinning reserve criteria that is applicable at the time of the export.

(2) If all or part of NEPOOL's spinning reserve is being provided by other utilities, sufficient transmission tie line capability must be maintained so that NEPOOL may avail itself of those reserves if needed.

(3) NEPOOL shall interrupt or curtail the export of energy whenever and to whatever extent such energy is necessary to supply load to a requesting U.S. utility with which NEPOOL has an existing interconnection agreement and which is unable to obtain adequate supply elsewhere.

(4) The export of electric energy to Canada over the facilities permitted in Docket PP-76 nominally shall be limited to a rate of 650 MW during summer heavy load periods, 660 MW during winter heavy loand periods, and 690 MW during both summer and winter light load periods, unless higher limits are indicated by system operating conditions. However, at no time shall the export of electric energy to Canada exceed a rate of 725 MW.

(5) NEPOOL shall carry out its expressed commitment to the members of PJM to:

(a) Cooperate with the New York Power Pool (NYPP) and PJM in conducting joint studies to analyze the operation of their combined electrical system during the late 1980's under both normal and outage conditions with a view toward coordinated operation between pools. A major consideration should be the impact of deliveries from Hydro-Quebec at the five Northeast Power Coordinating Council locations scheduled to be in service at that time.

(b) Work with NYPP and PJM to develop operating procedures which will assure reliable operation of the interconnection and be equitable to all parties.

(c) Establish monitoring and communication facilities to implement the procedures in Subparagraph (b) above.

(d) Interrupt energy banking exports when necessary for reliability purposes on the northeast interconnected system.

Issued in Washington, DC, August 9, 1985.

Rayburn Hanzlik,

Administrator, Economic Regulatory Administration.

[FR Doc. 85-20010 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration

Changes to DOE Energy Information Reporting and Record-Keeping Requirements

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of changes to the inventory of energy information reporting and record-keeping requirements.

SUMMARY: The Energy Information Administration (EIA) of the Department of Energy (DOE) hereby gives notice to respondents and other interested parties of changes to the inventory of current information collections as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511), for which EIA is responsible. DOE management and procurement assistance collections, which are the responsibility of the Office of Management and Administration, are no longer included in these notices.

The listing that follows this notice indicates changes made during the quarter from April 1, 1985, through June 30, 1985, to the October 1, 1984, inventory of DOE information

collections originally published in the **Federal Register**, 49 FR 48792 (December 14, 1984). Previous updates were published in the **Federal Register**, see 50 FR 7104 (February 20, 1985), 50 FR 21927 (May 29, 1985) and 50 FR 24814 (June 13, 1985).

The listing includes new information collections approved by the Office of Management and Budget (OMB), collections extended, reinstated, discontinued or allowed to expire, and changes to continuing information collections. For each new requirement, requirement extension, or requirement reinstatement, the current DOE control or form number, the title, the OMB control number, and the OMB approval expiration date are listed by DOE sponsoring office. For the list of discontinued requirements, the discontinued date is shown instead of the expiration date. If applicable, the appropriate Code of Federal Regulations citation is also listed. Information collections not utilizing structured forms are designated by an asterisk (*) placed to the right of the control or form number.

FOR FURTHER INFORMATION CONTACT: Joyce Beattie, EI-73, Energy Information Administration, Mail Stop 1H-023, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252-2313.

Information on the availability of single, blank information copies of those collections utilizing structured forms may be obtained by contacting the National Energy Information Center, EI-22, Forrestal Building, U.S. Department of Energy, Washington, D.C. 20585, (202) 252-8800.

Issued in Washington, DC August 15, 1985.

Dr. H. A. Merklein,

Administrator, Energy Information Administration.

NEW DOE ENERGY INFORMATION COLLECTIONS APPROVED BY OMB

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Energy Information Administration			
EIA-714	Annual Electric Power System Report	19050161	Dec. 31, 1987	
EIA-758A	Natural Gas Well Producer/Purchaser Contract Report	19050164	Sept. 30, 1986	
EIA-758B	Natural Gas Purchaser Contract Report	19050169	do	
EIA-825	Petroleum Facility Operator Identification Survey	19050121	July 31, 1985	
	Federal Energy Regulatory Commission			
EIA-714(1)	Annual Electric Power System Report	19020140	Dec. 31, 1987	
FERC-16AT *	Federal Energy Regulatory Commission Natural Gas Monitoring Program	19020139	Nov. 30 1987	

*Indicates that no structured form is used in this collection.

DOE ENERGY INFORMATION COLLECTIONS EXTENDED

DOE No.	Title	OMB control No.	Expiration date	CFR citation
	Conservation and Renewable Energy			
CE-189C	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Corporate REporting Form.	19040044	Apr. 30, 1986	10 CFR 445.21, 22, 26
CE-189P	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Plant Reporting Form.	19040044		10 CFR 445.21, 22, 26
CE-189S	Industrial Energy Conservation Program for Energy Efficiency Improvement and Recovered Materials Utilization—Sponsor Reporting Form.	19040044		10 CFR 445.21, 22, 26
	Energy Information Administration			
EIA-142	International Energy Agency Imports/Stocks-at-Sea Report	19050067	Sept. 30, 1985	10 CFR 209.34
EIA-182	Domestic Crude Oil First Purchase Report	19050143	do	
EIA-412	Annual Report of Public Electric Utilities	19050136	July 31, 1985	
EIA-739	Crude Watch Weekly Telephone Report	19050132	Aug. 31, 1985	
	Federal Energy Regulatory Commission			
EIA-194	Monthly Alternate Fuel/Incremental Price Monitoring Report	19050083	Apr. 30, 1988	
FERC-500*	Applications For License For Water Power Projects With More Than 5MW Capacity	19020058	Mar. 31, 1988	18 CFR 4.40-4.41, 4.50, 4.200-4.202
FERC-510*	Application for Surrender of License	19020068	May 31, 1988	18 CFR 6.1, 6.3
FERC-537*	Gas Pipeline Certificates	19020060	Apr. 30, 1988	18 CFR 2.79; 157.1, 157.5-157.22, 157.100, 157.201-157.218; 159.1, 284.107, 284.127
FERC-537*	Gas Pipeline Certificates	19020060	do	18 CFR 2.79; 157.1, 157.5-157.22, 157.100, 157.201-157.218; 159.1, 284.107, 284.127
FERC-539*	Gas Pipeline Certificate: Import/Export Related	19020062	do	18 CFR 153.2-153.4, 153.11-153.12
FERC-576*	Report By Certain Natural Gas Companies On Service Interruptions	19020004	Mar. 31, 1986	8 CFR 260.9
FERC-580	General Interrogatory Fuel Purchase Practices	19020137	Sept. 30, 1985	

*Indicates that no structured form is used in this collection.

REINSTATED DOE ENERGY INFORMATION COLLECTIONS

DOE No.	Title	OMB control No.	Expiration date	CFR citation
None.				

DOE ENERGY INFORMATION COLLECTIONS DISCONTINUED OR ALLOWED TO EXPIRE

DOE No.	Title	OMB control No.	Discontinued date	CFR citation
	Energy Information Administration			
EIA-768C	Nonresidential Building Energy Consumption Survey-Energy Supplier Forms	19050145	Apr. 30, 1985	

CHANGES IN CONTINUING DOE ENERGY INFORMATION COLLECTIONS

DOE Nos. as previously listed	Changes
EIA-23P	New OMB # 1905-0067 and expiration date of 12/31/85.
EIA-64A	New OMB # 1905-0067 and expiration date of 12/31/85.
EIA-254	New OMB # 1905-0160.
EIA851	New OMB # 1905-0160 and new expiration date of 12/31/87.
FERC-1	Revisions to form and now cleared through 9/30/85.
FERC-541 *	Revision to rule and new expiration date of 3/31/88.
FERC-542I *	Combined into FERC-542 clearance.
FERC-542-PGA *	
FERC-542-RC *	
FERC-549 *	Revision to rule and new expiration date of 5/31/88.
FERC-556 *	Revision to rule and new expiration date of 5/31/88.

* Indicates that no structured form is used in this collection.

[FR Doc 85-19855 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of July 1 Through July 5, 1985

During the week of July 1 through July 5, 1985, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Government Sales Consultants, Inc., 07/01/85, HFA-0296

Government Sales Consultants, Inc. filed an Appeal from a denial by the Bonneville Power Administration of a Request for Information which the firm had submitted under the Freedom of Information Act. The firm sought information concerning a request for contract proposals. In considering the Appeal, the DOE found that the initial determination was inadequate because it did not explain the basis for withholding the documents pursuant to Exemption 4. Accordingly, the case was remanded to the Bonneville office for a new determination.

David Rodriquez Soler, 07/01/85, HFA-0294

David Rodriquez Soler filed an Appeal from a partial denial by the Area Manager of the Princeton Area Office (PAO) of a Request for Information which Mr. Soler had submitted under the Freedom of Information Act (FOIA). In considering the Appeal, the DOE found that documents generated by a DOE contractor were not agency records and, therefore, were not subject to disclosure under the FOIA. The DOE further determined that the search conducted by the PAO for responsive documents was adequate. Accordingly, the Appeal was denied.

Remedial Orders

Hudson Oil Company, Hudson Refining Company, Inc., 07/01/85, HRO-0141

Hudson Oil Company objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on May 23, 1983. In the PRO, the ERA found that Hudson had miscertified crude oil in order to avoid entitlements purchase obligations under the Entitlements Program.

On August 15, 1984, in response to a motion by the ERA, the Office of Hearings and Appeals joined Hudson Refining Company, Inc., a subsidiary of Hudson, as a respondent to the PRO. Hudson Refining adopted the Statement of Objections filed by Hudson. Hudson Refining also individually objected to its joinder in the proceeding, contending that as a bankrupt entity it could not be held liable for violations committed prior to its filing for bankruptcy.

In considering the firms' Statements of Objections, the DOE found that the firms' unsupported objections to the PRO did not satisfy the firms' burden of proof pursuant to 10 CFR § 205.192A. As a result, the DOE found that neither firm had presented sufficient evidence to successfully rebut the prima facie case of a violation presented by the ERA in the PRO. With respect to the liability issue, the DOE found that both firms had demonstrated involvement in the matters that were the subject of the PRO and that a firm is not relieved of liability for violations committed prior to its filing for bankruptcy. Accordingly, the DOE found that Hudson Refining was properly joined in the proceeding. The DOE therefore concluded that the PRO, as amended, should be issued as a final order.

P & R Trading Company, 07/01/85, HRO-0091

P & R Trading Company objected to a Proposed Remedial Order which the Economic Regulatory Administration (ERA) issued to the firm on September 9, 1982. In the PRO, the ERA found that P & R's crude oil reselling activities had violated the layering rule, 10 CFR 212.186, which prohibited crude oil resellers from applying a markup in any crude oil sales transaction in which they did not perform any service or function that was historically and traditionally performed by crude oil resellers. The DOE found no merit to P & R's arguments that the layering regulation was not validly promulgated and that DOE enforcement actions against crude oil resellers were discriminatory. In addition, the DOE found that the layering rule required crude oil resellers to provide some tangible service which facilitated the movement of crude oil from the producer to the refiner or which provided some other function of economic benefit to the crude oil market, and that P & R had not provided such a service or function. Accordingly, the DOE found that P & R's crude oil reselling activities had violated the layering rule. The DOE, however, reduced the amount of P & R's resulting refund obligation to the amount of P & R's net markup on all of its transactions because the ERA had not convincingly traced each transaction from the seller of the crude oil to

P & R to its purchaser. As so modified, the PRO was issued as a final Order.

Interlocutory Order

Texaco Inc./Economic Regulatory Administration, 07/02/85, HRD-0282, HRH-0035, HRZ-0256

Texaco Inc. and the Economic Regulatory Administration filed several motions in connection with an enforcement proceeding concerning a Proposed Remedial Order issued to Texaco on May 1, 1979. First, Texaco filed a motion seeking an evidentiary hearing on 16 specified issues. Texaco also requested an evidentiary hearing regarding its historic and consistent accounting for its regulatory properties in the event that the DOE grants a pending ERA motion to accord no weight to affidavits submitted by Texaco to support its historic and consistent accounting practices. The DOE granted a hearing regarding certain of the 16 specified issues and denied a hearing regarding the remainder of those issues. The DOE held that it would not decide ERA's pending motion regarding Texaco's affidavits until it reached the merits of this proceeding, and determined to hold Texaco's request for an evidentiary hearing regarding its accounting practices in abeyance to permit Texaco to conform that request to the DOE procedural regulations. In addition, the DOE denied a motion in which ERA sought to strike from the record seven documents that Texaco submitted with its motion for evidentiary hearing. The DOE also denied a motion for discovery filed by Texaco that sought information from ERA and OHA regarding the extent to which Texaco had proven its historic and consistent accounting practices for purposes of this enforcement proceeding.

Implementation of Special Refund Procedures

Good Hope Refineries, 07/03/85, HEF-0211

The DOE issued a final Decision and Order setting forth procedures to be used in filing applications for refund from settlement funds obtained under a consent order with Good Hope Refineries, and its subsidiary, Gasland, Inc. The funds will be available to customers who purchased covered petroleum products from Good Hope during the period August 1973 through July 1976. As of May 31, 1985, the funds plus interest equalled $2,281,788. The specific information required in applications for refund, which may now be filed, are set forth in the Decision and Order.

Red Triangle Oil Co., 07/05/85, HEF-0162

The DOE issued a Decision and Order implementing a plan for the distribution of $45,354.78 ultimately to be received as a result of a consent order entered into by Red Triangle Oil Co. and the DOE on February 24, 1981. The DOE determined that the Red Triangle settlement funds should be distributed to injured customers who purchased motor gasoline from Red Triangle during the November 1, 1973, through December 31, 1978 consent order period. The DOE audit identified 46 customers who purchased motor gasoline during that period. Those purchasers may file applications for refund. In addition, firms not identified by the DOE audit may submit claims. If Red Triangle has not paid the full amount due when refund applications are approved, successful claimants will receive a pro rata share of the refunds due them and will receive the remainder when additional funds are received by the DOE. More specific information about applications for refund, which may now be filed, is provided in the Decision and Order.

Refund Applications

Union Texas Petroleum Corporation/ Enterprise Products Company, et al., 07/03/85, RF140-1, et. al.

The DOE issued a Decision and Order approving 17 Applications for Refund filed by purchasers of Union Texas Petroleum Corporation (UTP) petroleum products in a special refund proceeding (Case No. HEF-0009) established pursuant to 10 CFR Part 205, Subpart V, in connection with a 1982 consent order entered into by UTP and the DOE. All of the applications in the proceeding were resellers of UTP products and elected to apply under both the volumetric and threshold presumptions set forth in the Decision and Order establishing the UTP special refund proceeding. *Union Texas Petroleum Corp.*, 12 DOE ¶ 85,166 (1985). In considering the applications, the DOE concluded that the applicants should receive refunds based upon the total volume of their eligible UTP purchases. The refunds granted in this proceeding total $35,993.

Warren Holding Company/Johnson's Garage, 07/01/85, RF169-1

The DOE issued a Decision and Order approving an Application for Refund filed by Johnson's Garage in connection with settlement funds obtained as a result of the consent order entered into by Warren Holding Company and DOE. After analyzing the Johnson's Garage claim, the DOE found that the firm qualified for a refund under the procedures for small claims set forth in *Warren Holding Co.*, 13 DOE ¶ 85,061 (1985). The refund granted was $1,667.

Dismissals

The following submissions were dismissed:

Name and Case No.

Atlantic Richfield Company, HRO-0027, HRD-0082, BRO-1322, HRO-0217, HRO-0219, HRD-0258, HRD-0259, HRO-0223, HRD-0264, HRZ-0049, BRO-1243, BRD-1322, HRD-0252, HRD-0266, HRO-0220, HRO-0221, HRO-0224, HRH-0264, HRD-0065, BRH-1243, BRH-1322, HRO-0218, HRH-0219, HRD-0240, HRO-0222, HRO-0225, HRX-0104, HRD-0223, HRH-0223, HRD-0233
Gary V. Burrows, Inc., HEE-0148
I-65 Gulf, RF40-2274
James Lee Gulf Service, RF40-2442
Jerry's Biltmore Gulf, RF40-2406
Joubert's Gulf, RF40-2403
Kenny Larson Oil Company, HEF-0104
Maxwell Oil Company, HEF-0125
Northern Oil/Bray Company, HEF-0140
Ozone Oil Company, RF40-2785
Ranchers Oil Company, HEF-0160

Copies of the full text of these decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: August 12, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-20011 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals; DOE.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding an $83,646.27 consent order fund to members of the public. This money is being held in escrow following the settlement of an enforcement proceeding involving Hicks Oil and Hicks Gas Company, Inc. of Roberts, Illinois (Case No. HEF-0091).

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to Hicks Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should conspicuously display a reference to Case No. HEF-0091.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of Hearings and Appeals, 100 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy, 10 CFR 205.282(b), notice is hereby given the issuance of the Proposed Decision and Order set out below. The Proposed Decision relates to a consent order entered into by Hicks Oil and Hicks Gas Company, Inc. (Hicks) of Roberts, Illinois and the DOE which settled possible regulatory violations in the firm's sales of propane during the consent order period, November 1, 1973 through December 31, 1975.

The Proposed Decision sets forth the procedures and standards that the DOE has tentatively formulated to distribute

the escrow account funded by Hicks pursuant to the consent order. The DOE has tentatively established procedures under which purchasers of Hicks propane during the consent order period may file claims for refunds. Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Docket Room of the Office of Hearings and Appeals located in Room 1E-234, 1000 Independence Avenue, SW., Washington, DC 20585.

Dated: August 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

August 13, 1985.

Proposed Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Hicks Oil and Hicks Gas Company, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0091.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) of the DOE may request the Office of Hearings and Appeals (OHA) to formulate and implement special procedures to make refunds in order to remedy the effects of alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. The ERA filed such a petition on October 13, 1983 requesting that the OHA implement a proceeding to distribute funds received pursuant to a Consent Order entered into by the DOE and Hicks Oil and Hicks Gas Company, Inc. (Hicks) of Roberts, Illinois.

I. Background

Hicks is a "reseller-retailer" of refined petroleum products, as this term was defined in 10 CFR 212.31, and was therefore subject to the DOE Mandatory Petroleum Price Regulations. An ERA audit of Rocket Supply Company (Rocket), a wholly owned subsidiary of Hicks, was conducted for the period November 1, 1973 through December 31, 1975 (the audit period). Subsequently, the ERA issued a Notice of Probable Violation (NOPV) to Hicks on February 8, 1980. In the NOPV, the ERA alleged that, during the audit period, Rocket overcharged its wholesale customers by $369,029.40 in sales of propane. On October 16, 1981, Hicks entered into a Consent Order with the DOE in order to settle all disputes and claims between Hicks and the DOE regarding Rocket's compliance with the DOE price regulations in sales of propane during the audit period (hereinafter known as the consent order period). In the Consent Order, Hicks agreed to remit $69,028.58 to the DOE for deposit in an interest bearing escrow account. The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. Additionally, the Consent Order states that Hicks does not admit that it committed any such violations.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who may have been injured by alleged or adjudicated violations, or unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). After reviewing the record in the present case, we have concluded that a Subpart V proceeding is an appropriate mechanism for distributing the Hicks consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

Insofar as possible, the consent order fund should be distributed to those customers of Hicks who were injured by the alleged price violations.[1] In this case, the ERA audit file identifies twenty wholesale customers who were allegedly overcharged by Rocket in sales of propane and also lists the alleged overcharge amounts.[2] In our view, these identified customers are most likely the parties who were adversely affected, at least initially, by any overcharges by Hicks.[3] These firms are listed in the Appendix to this Decision and Order.

The Rocket customers identified in the ERA records fall into one of two categories: End-user or reseller, i.e., retailer or wholesaler. As in prior proceedings, we propose that resellers be required to demonstrate that they did not pass on to their customers the price increases implemented by Rocket. In order to qualify for a refund, resellers must show that, during the consent order period, they would have maintained their prices for propane at the same level had the alleged overcharges not occurred. While there are a variety of ways to make this showing, a reseller should generally demonstrate that, at the time it purchased propane from Rocket, market conditions would not permit it to increase its prices to pass through to its customers the additional costs associated with the alleged overcharges. In addition, the reseller must show that it maintained a "bank" of unrecovered costs in order to demonstrate that it did not subsequently recover these costs by increasing its prices. The maintenance of a bank will not, however, automatically establish injury. *See Tenneco Oil Co./Chevron U.S.A., Inc.*, 10 DOE ¶ 85,014 (1982); *Vickers Energy Corp./Standard Oil Co.*, 10 DOE ¶ 85,036 (1982); *Vickers Energy Corp./Koch Industries, Inc.*, 10 DOE ¶ 85,038 (1982).

As in many prior special refund cases, we propose to adopt a presumption of injury with respect to small claims by resellers. The use of presumptions in refund cases is specifically authorized

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[1] In past Decisions, this Office has made a finding that affiliates of a consent order firm, even though they may have made "purchases" from the firm during the consent order period, are not eligible for refunds because the refund would effectively inure to the consent order firm. *See, e.g., Aztex Energy Co.*, 12 DOE ¶ 85,116 at 88,359 n.2 (1984). We propose to adopt that finding in this Decision as well.

[2] Although the Hicks Consent Order does not mention Rocket by name, it expressly states that it is intended to settle the DOE's claims against Hicks with respect to the "specified transactions which allegedly resulted in the overcharges. Consent Order ¶¶ 4 and 5. On the basis of the language in the Consent Order and the allegations set forth in the NOPV, we have determined that the Consent Order is limited to settling the claims and disputes regarding Rocket's alleged overcharges to wholesale customers. Accordingly, this proposed refund proceeding will establish procedures for the disbursement of funds to this defined group only.

[3] Rocket's sales to another firm, Bumps LP Gas (Bumps), are documented in the ERA audit file. However, according to these records, Bumps was not overcharged. We therefore propose that Bumps not be eligible for a refund in this proceeding.

by applicable DOE procedural regulations. 10 CFR 205.282(e).

We propose to adopt a presumption in this case that reseller claimants seeking smaller refunds were injured by the Rocket pricing practices settled in the Hicks Consent Order. This presumption is based on a number of considerations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 (1982). As we have noted in many previous refund decisions, there may be considerable expenses involved in gathering the types of data needed to support a detailed claim of injury. In order to prove such a claim, an applicant must compile and submit detailed factual information regarding the impact of alleged overcharges which took place many years ago. This procedure is generally time-consuming and expensive, and in the case of small claims, the cost to the firm of gathering this factual information and the cost to the OHA of analyzing it may be many times the expected refund amount. Failure to allow simplified application procedures for small claims could therefore operate to deprive injured parties of the opportunity to obtain a refund. The use of presumptions for small claims is also desirable from an administrative standpoint, because it allows the OHA to process a large number of refund claims quickly, and use its limited resources more efficiently. Finally, we know that these smaller claimants did purchase propane from Rocket and were in the chain of distribution where the alleged overcharges occurred. Therefore, they bore some impact of the alleged overcharges, at least initially. The small claim presumption eliminates the need for a claimant to submit and the OHA to analyze detailed proof of what happened downstream of that initial impact.

Under the small claims presumption we are adopting, a reseller claimant will not be required to submit any additional evidence of injury beyond purchase volumes if its refund claim is based on purchases below a threshold level.[4]

Previous OHA refund decisions have expressed the threshold either in terms of a ceiling on purchases from the consent order firm, or a dollar refund amount. However, in *Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 (1984), we noted that describing the threshold in terms of a dollar amount rather than a purchase volume figure would better effectuate our goal of facilitating disbursements to applicants seeking relatively small refunds. *Id.* at 88,210. We propose to follow the same approach in this case. The adoption of a threshold level below which a claimant is not required to submit any further evidence of injury beyond volumes purchased is based on several factors. As noted above, we are especially concerned that the cost to the applicant and the government of compiling and analyzing information sufficient to show injury not exceed the amount of the refund to be gained. In this case where the proposed maximum refund amounts are fairly low, and the time period of the Consent Order is quite distant, we believe that the establishment of a presumption for injury for all claims of $5,000 or less is reasonable.[5] *See id; Marion Corp.*, 12 DOE ¶ 85,014 (1984).

IN addition to the presumption for small claims, we are making a finding that end-users or ultimate consumers, including businesses that are unrelated to the petroleum industry, were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and they were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office Of Enforcement*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE at 88,209 and cases cited therein. We have therefore concluded that end-users of Rocket propane need only document their purchase volumes from Rocket to make a sufficient showing that they were injured by the alleged overcharges. On the other hand, refund applicants whose business operations were subject to the DOE regulatory program and who purchased propane to be consumed as fuel will not be considered as consumers for purposes of the showing of injury. *See Seminole Refining, Inc.*, 12 DOE ¶ 85,188 (1985).

IV. Calculation of Refund Amounts

We must further determine the proper method for dividing the consent order fund among successful applicants. We propose that the maximum refund for the firms listed in the Appendix be based on the amounts they were allegedly overcharged, as indicated in the Hicks NOPV. Although we recognize that the NOPV and ERA audit files do not provide conclusive evidence as to the identity of all allegedly overcharged parties or the amount of money they should receive in a Subpart V proceeding, we believe it is appropriate to use this information in the present case. Specifically, we note that the ERA audit was very narrow in scope, that an NOPV had been issued, that the Consent Order was limited to "specified transactions" which occurred during the same time period as the audit, and that Rocket had a relatively small number of customers. Because of these factors, the information contained in the NOPV can be used to fashion a refund plan which will correspond closely to the injuries experienced. *See, e.g., Marion.* To calculate the size of each applicant's potential refund, we propose to multiply the alleged overcharge amount for each eligible claimant by 0.22666, a pro rata factor representing the portion of the total alleged overcharges that Hicks has remitted to the DOE ($83,646.27 divided by $369,029.40).[6] The potential refunds for those customers listed in the Hicks NOPV are set forth in the Appendix to this Decision.[7] In addition, successful refund applicants will receive a pro rate share of the interest which has accrued since the deposit of the funds into the escrow account.

We further propose to establish a minimum amount of $15 for refund claims. We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

Refund applications in this proceeding should not be filed until issuance of a final Decision and Order. Detailed

[4] Resellers that made spot purchases from Rocket will be ineligible to receive a refund, even a refund below the threshold level, unless they can make a showing that rebuts the presumption that they were not injured. As we have previously noted, spot purchasers would not have made spot market purchases of a firm's product at increased prices unless they were able to pass through to their customers the full amount of the firm's selling price. *See Vickers*, 8 DOE at 85,396-97. In order to overcome the rebuttable presumption that it was not injured, a spot purchaser must show that it absorbed the alleged overcharges and should submit additional evidence to establish that it would be inappropriate to presume that it had discretion as to where and when to make the purchase(s) upon which the refund claim is based.

[5] In the present case, only five of the twenty Rocket customers listed in the Appendix are eligible to apply for refunds over $5,000. If these claimants choose to apply for a refund based on the threshold level, they will not be required to make a showing of injury beyond volumes purchased.

[6] Hicks remitted the consent order amount to the DOE in installment payments beginning April 14, 1982 and ending December 3, 1984. The total amount that Hicks remitted to the DOE ($83,646.27) reflects the interest paid on these installment payments.

[7] The amounts set forth in Appendix A provide only an approximation of the refund each claimant would receive, exclusive of interest.

procedures for filing applications will be provided in the final Decision and Order. Before disposing of any of the funds received, we intend to publicize the distribution process and to provide an opportunity for any affected party to file a claim. In addition to publishing copies of the proposed and final decisions in the **Federal Register**, copies will be provided to the Rocket customers whose names and addresses we have obtained from the ERA audit files.

In the event that money remains after all first stage claims have been disposed of, these funds could be distributed in various ways. We will not be in a position to decide what should be done with any remaining funds until the first stage of this refund proceeding is completed.

It is therefore ordered that:

The refund amount remitted to the Department of Energy by Hicks Oil and Hicks Gas Company pursuant to the Consent Order executed on October 16, 1981 will be distributed in accordance with the foregoing Decision.

APPENDIX

Customer	Potential Refund
Allerton Supply co	$8,384.00
Bloomfield LP Gas	51.00
Boente Bros. Propane	20,051.00
Bryant & Son LP Gas Co	1,971.00
Cender Gas Co	20,309.00
Fiessner & Duitsman	405.00
Hicks Grain Terminal	336.00
Hi Lo Gas Co	2,769.00
Hook Bros. LP Gas Co	36.00
Lake Fork Grain Co	53.00
Mt. Pulaski Products	359.00
Mainline Petroleum	569.00
Patterson Bros. Propane	16,667.00
C.T. Rees & Son	557.00
Scranton Industries	226.00
Southern States Co-op	1,849.00
W.E. Stoll Coal & Gas Co	6,665.00
Tate's Blue Flame Gas	27.00
Wescove School	18.00
Zinala Farms	322.00
Total	83,644.00

[FR Doc. 85-20012 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE

ACTION: Notice Implementation of Special Refund Procedures.

SUMMARY: The office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $82,500 (plus accrued interest) obtained as a result of a Consent Order which the DOE entered into with Appalachian Flying Service, Inc. of Blountville, Tennessee. The funds will be available to customers who purchased aviation gasoline or aviation jet fuel from Appalachian during the period November 1, 1973 through April 30, 1977.

DATE AND ADDRESS: Applications for refund of a portion of the consent order fund must be postmarked within 90 days of publication of this notice in the **Federal Register** and should be addressed to: Appalachian Consent Order Proceeding, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All applications should conspicuously display a reference to Case Number HEF-0028.

FOR FURTHER INFORMATION CONTACT: Richard W. Dugan, Associate Director, Office of hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-2860.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(c) of the procedural regulations of the Department of Energy, 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision and Order relates to a Consent Order entered into by Appalachian Flying Service, Inc. of Blountville, Tennessee. This Consent Order settled possible pricing violations with respect to Appalachian's sales of aviation gasoline and aviation jet fuel during the period November 1, 1973 through April 30, 1977. The consent order fund is being held in an interest-bearing escrow account pending determination of its proper distribution.

The Office of Hearings and Appeals previously issued a Proposed Decision and Order which tentatively established a two-stage refund procedure and solicited comments from interested parties concerning the proper disposition of the consent order fund. The Proposed Decision and Order discussing the distribution of the consent order fund was issued on May 10, 1985. 50 FR 20838 (May 20, 1985).

As the Decision and Order indicates, applications for refunds from the consent order fund may now be filed. Applications will be accepted provided they are postmarked no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Applications will be accepted from customers who purchased avitation gasoline or aviation jet fuel from Appalachian during the period November 1, 1973 through April 30, 1977. The specified information required in an application for refund is set forth in the Decision and Order. The Decision and Order reserves the question of the proper distribution of any remaining consent order funds until the first-stage claims procedure is completed.

Dated: August 13, 1985.

George B. Brezany,

Director, Office of Hearings and Appeals.

August 13, 1985.

Decision and Order of the Department of Energy

Special Refund Procedures

Name of Firm: Appalachian Flying Service, Inc.

Date of Filing: October 13, 1983.

Case Number: HEF-0028.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR Part 205, Subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 13, 1983. The petition requests that the OHA formulate and implement procedures for the distribution of funds received pursuant to a Consent Order entered into by the DOE and Appalachian Flying Service, Inc. (Appalachian) of Blountville, Tennessee.

I. Background

Appalachian is a "retailer" of "aviation gasoline" and "aviation jet fuel," as these terms were defined in 10 CFR § 212.31. An ERA audit of Appalachian's operations during the period November 1, 1973 through April 30, 1977 (the audit period) revealed possible violations of the Mandatory Petroleum Price Regulations. In a Proposed Remedial Order (PRO) issued to Appalachian on March 1, 1982, the ERA alleged that during the audit period Appalachian overcharged its customers by $153,569.79 in sales of aviation gasoline and aviation jet fuel. In order to settle all claims and disputes between Appalachian and the DOE regarding Appalachian's compliance with the DOE price regulations in sales of aviation gasoline and aviation jet fuel during the audit period, Appalachian entered into a Consent Order with the DOE on July 6, 1983.[1]

Under the terms of the Consent Order, Appalachian agreed to remit $82,500 to the DOE for deposit in an interest-bearing escrow account pending

[1] Although the Consent Order states that the audit period ended on April 20, 1977, the ERA audit files and the PRO cover the period November 1, 1973 through April 30, 1977. It therefore appears that the date stated in the Consent Order (April 20, 1977) is a typographical error. Accordingly, we will treat the consent order period as cotermious with the audit period set forth in the ERA audit files and the PRO.

distribution by the DOE.[2] The Consent Order refers to the ERA allegations of overcharges, but notes that no findings of violation were made. In addition, the Consent Order states that Appalachian does not admit that it committed any such violations.

On May 10, 1985, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the distribution of the consent order fund. 50 FR 20838 (May 20, 1985). We stated in the PD&O that the basic purpose of a special refund proceeding is to make restitution for injuries that were suffered as a result of alleged or actual violations of the DOE regulations. In order to effect restitution in this proceeding, we proposed to establish a claims procedure whereby applications for refund would be accepted from customers who can demonstrate that they were injured as a result of any alleged overcharges made by Appalachian during the consent order period.

A copy of the PD&O was published in the **Federal Register**, and comments were solicited regarding the proposed refund procedures. While none of Appalachian's customers filed comments on the proposed procedures, comments were filed on behalf of the States of Arkansas, Delaware, Iowa, Louisiana, North Dakota, Rhode Island, and West Virginia. These comments, however, discuss the distribution of any residual funds in a subsequent stage of the proceeding. The purpose of this Decision and Order is limited to establishing procedures to be used for filing and processing claims in the first stage of the refund proceeding. This Decision sets forth the information that a purchaser of aviation gasoline or aviation jet fuel from Appalachian should submit in an Application for Refund in order to establish eligibility for a portion of the consent order fund. The formulation of procedures for the final disposition of any remaining funds will necessarily depend on the size of the fund. *See Office of Enforcement*, 9 DOE ¶ 82,508 (1981). Therefore, it would be premature for us to address at this time the issues raised by the States' comments concerning the disposition of any funds remaining after all the meritorious first stage claims have been paid. Since we have received no other comments regarding the issues raised in the PD&O, we will adopt the proposed refund procedures set forth below.

[2] As of June 30, 1985, Appalachian had paid $24,958.32 to the DOE escrow account.

II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan for distribution of funds received as a result of an enforcement proceeding. 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily persons who were injured by alleged or adjudicated violations, or is unable to ascertain the amounts of such persons' injuries. For a more detailed discussion of Subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of settlement agreements, *see Office of Enforcement*, 9 DOE ¶ 82,553 (1982); *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); *Office of Enforcement*, 8 DOE ¶ 82,597 (1981) (hereinafter cited as *Vickers*). As we stated in the PD&O, we have determined that a Subpart V proceeding is an appropriate mechanism for distributing the Appalachian consent order fund. We will therefore grant the ERA's petition and assume jurisdiction over distribution of the fund.

III. Proposed Refund Procedures

As in many prior special refund cases, we will adopt a volumetric refund presumption. As we stated in the PD&O, presumptions in refund cases are specifically authorized by applicable DOE procedural regulations. Section 205.282(e) of those regulations states that:

> In establishing standards and procedures for implementing refund distributions, the Office of Hearings and Appeals shall take into account the desirability of distributing the refunds in an efficient, effective and equitable manner and resolving to the maximum extent practicable all outstanding claims. In order to do so, the standards for evaluation of individual claims may be based upon appropriate presumptions.

10 CFR § 205.282(e). The volumetric refund presumption is designed to permit claimants to participate in the refund process without incurring disproportionate expenses, and to enable the OHA to consider the refund applications in the most efficient way possible in view of the limited resources available.

The volumetric refund presumption assumes that alleged overcharges were spread equally over all gallons of product marketed by a particular firm. In the absence of better information, this assumption is sound because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices. In the present case, the audit records do not identify any purchasers of petroleum products from Appalachian or list any alleged overcharge amounts by customer. The information available is therefore insufficient to base refunds on the amount each individual applicant was allegedly overcharged. As proposed in the PD&O, we will therefore use the volumetric method to allocate the consent order fund.[3] To determine the volumetric factor, the consent order fund ($82,500) will be divided by the total volume of aviation gasoline and aviation jet fuel sold by Appalachian during the consent order period (2,257,275 gallons), resulting in a per gallon refund amount of $0.03655.[4] The interest which has accrued on the money since the deposit of the funds into the escrow account will be added to the refund of each successful claimant in proportion to the size of its refund.

In addition to the volumetric refund presumption, we are making a finding that Appalachian's customers, all of whom were end-users or ultimate consumers of aviation gasoline or aviation jet fuel, were injured by the alleged overcharges settled in the Consent Order. Unlike regulated firms in the petroleum industry, members of this group, including businesses that are unrelated to the petroleum industry, generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. For these reasons, an analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services would be beyond the scope of a special refund proceeding. *See Office of Enforcement, Economic Regulatory Administration: In the Matter of PVM Oil Associates, Inc.*, 10 DOE ¶ 85,072 (1983); *see also Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984), and cases cited therein. We have therefore concluded that purchasers of aviation

[3] We recognize, however, that the impact of a firm's pricing practices on an individual purchaser could have been greater, and any purchaser will be allowed to file a refund application based on a claim that it suffered a disproportionate injury as a result of Appalachian's pricing practices during the consent order period. A refund application for an amount greater than the amount calculated using the volumetric presumption must document the disproportionate impact of the alleged overcharges. *See, e.g., Amtel, Inc.*, 12 DOE ¶ 85,073 at 88,233–34 (1984); *Richardson Carbon and Gasoline Co./ Siouxland Propane Co.*, 12 DOE ¶ 85,054 at 88,161 (1984).

[4] In the event that insufficient funds are in the escrow account to pay all successful claimants, we will reduce the volumetric refund amount accordingly.

gasoline and aviation jet fuel from Appalachian need only document their purchase volumes from the firm to make a sufficient showing that they were injured by the alleged overcharges.

We will also adopt our proposal to establish a minimum amount of $15 for refund claims.[5] We have found through our experience in prior refund cases that the cost of processing claims in which refunds are sought for amounts less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Uban Oil Co.*, 9 DOE ¶ 82,541 at 85,225 (1982). *See also* 10 CFR 205.286(b).

We have determined that the procedures described in the PD&O are the most equitable and efficacious means of distributing the Appalachian consent order fund. Accordingly, we shall now accept applications for refunds from customers who purchased aviation gasoline or aviation jet fuel from Appalachian during the consent order period.

In order to receive a refund, each applicant will be required to report the monthly volume of aviation gasoline or aviation jet fuel purchased from Appalachian for which it is claiming a refund. In addition, each applicant must state whether there has been a change in ownership of the firm since the audit period and must provide the names and addresses of any other owners. If there has been a change in ownership, the applicant should either state the reasons why the refund should be paid to the applicant rather than the other owners or provide a signed statement from the other owners indicating that they do not claim a refund. All applications must be filed in duplicate and must be received within 90 days after publication of this Decision and Order in the **Federal Register.** Each application must be in writing, signed by the applicant, and specify that it pertains to the Appalachian Consent Order Fund, Case No. HEF-0028. A copy of each application will be available for public inspection in the Public Docket Room of the Office of Hearings and Appeals. Any applicant who believes that its application contains confidential information must so indicate and submit two additional copies of its application from which the information that the applicant claims is confidential has been deleted. Each application must also include the following statement: "I swear (or affirm) that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c); 18 U.S.C. § 1001. In addition, the applicant should furnish us with the name and telephone number of a person who may be contacted by this Office for additional information concerning the application. All applications should be sent to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

It is therefore ordered that:

(1) Applications for refunds from the consent order fund remitted to the Department of Energy by Appalachian Flying Service, Inc. pursuant to a Consent Order executed on July 6, 1983 may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Dated: August 13, 1985.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 85-20013 Filed 8-20-85; 8:45 am]

BILLING CODE 6450-01-M

[5] Under the volumetric refund level set forth in this Decision, an applicant must have purchased at least 410 gallons of aviation gasoline and/or aviation jet fuel during the consent order period in order to be eligible for a refund above the minimum amount of $15.

ENVIRONMENTAL PROTECTION AGENCY

[OPP-00211; FRL-2884-6]

Administrator's Pesticide Advisory Committee; Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Meeting.

SUMMARY: The Administrator's Pesticide Advisory Committee (APAC) will hold a meeting to discuss the recommendations of the EPA State FIFRA Issues Research and Evaluation Group (SFIREG) Applicators Certification and Training Task Force and the Labeling Subcommittee of the APAC. General activities of the Office of Pesticide Programs (OPP) may also be discussed. The meeting will be open to the public.

DATE: The meeting will take place on Wednesday, September 18, 1985, at 9:00 a.m. and will adjourn by 4:30 p.m.

ADDRESS: The meeting will be held in: Rm. M-3906-08, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Betty Winter, Executive Secretary, Administrator's Pesticide Advisory Committee (TS-788), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-639A, 401 M St., SW., Washington, DC 20460 (202-382-2916).

SUPPLEMENTARY INFORMATION: The APAC will begin with opening remarks by Dr. Dale L. Stansbury, the Chairperson for the APAC, and Dr. John A. Moore, Assistant Administrator for Pesticides and Toxic Substances. The Agency will seek the APAC's comments on a report developed by the EPA SFIREG Applicator's Certification and Training Task Force. The report contains recommendations for improving the certification and training programs for applicators/users of restricted use pesticides. Dr. Moore established this task force in response to APAC recommendations and concerns about current certification and training programs. The task force was made up of representatives from EPA headquarters and regions, state lead agencies, state cooperative extension services, and the U.S. Department of Agriculture.

The APAC Subcommittee on Labeling will also present to the full Committee a report it prepared for the Agency on pesticide communication networks and recommendations for improving the effectiveness of existing networks.

Copies of the reports and an agenda will be available at the meeting.

The meeting will be open to the public, and time will be set aside for public comments on issues relevant to topics of discussion. Any member of the public wishing to present an oral or written statement relating to the Committee's topics of discussion for this meeting should contact the APAC Executive Secretary at the address or telephone number listed above.

Dated: August 9, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 85-19743 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-416; FRL-2861-2]

Certain Companies; Pesticide Tolerance Petitions

Correction

In FR Doc. 85-17880 appearing on page 31026 in the issue of Wednesday, July 31, 1985, make the following correction: In the third column, in the second paragraph, in the third line, "016 ppm" should read "0.16 ppm".

BILLING CODE 1505-01-M

[OPP-30000/8D FRL 2873-3]

Intent To Cancel Registration of Certain Pesticide Products Containing Sodium Fluoroacetate ("1080"); Availability of Position Document 4

Correction

In FR Doc. 85-18136 beginning on page 31012 in the issue of Wednesday, July 31, 1985, make the following corrections:

1. On page 31013, in the first column, in the sixth line, "40935" should read "50935".

2. On page 31017, in the second column, in paragraph 2, in the last line, "statement" should read "statements".

BILLING CODE 1505-01-M

[FRL-2885-5]

Proposed Determination To Prohibit or Restrict the Specification of an Area for Use as a Disposal Site; Notice of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Section 404(c) of the Clean Water Act authorizes the Environmental Protection Agency (EPA) to prohibit or restrict the discharge of dredged or fill material at defined sites in the waters of the United States (including wetlands) if it determines, after notice and opportunity for hearing, that use of the site for disposal would have an unacceptable adverse impact on various resources, including wildlife. EPA's Regional Administrator, Region I, has concluded that he has reason to believe that a proposal by The Pyramid Companies ("Pyramid") to fill portions of Sweedens Swamp in Attleboro, Massachusetts, for the purpose of building a shopping mall, may have unacceptable adverse impacts on wildlife and possibly other resources. Accordingly, EPA is announcing the Regional Administrator's proposed determination to prohibit or restrict the filling of Sweedens Swamp and is seeking public comment on his proposal.

Purpose of Public Notice

EPA would like to obtain comments on this proposed determination to prohibit or restrict the disposal of dredged or fill material into Sweedens Swamp, and on whether of not the impacts of such disposal would represent an unaccepable adverse effect as described in section 404(c) of the Clean Water Act.

DATES: All comments should be submitted by 60 days from publication of this notice to the person listed under **ADDRESSES.** A public hearing will be held on September 26, 1985, from 7:00 to 11:00 p.m.

Public Hearing

A public hearing will be conducted on September 26, 1985, from 7:00 to 11:00 p.m., in the Attleboro High School Auditorium, located on Rathbun Willard Drive, in Attleboro, Massachusetts.

Written comments may be submitted prior to the hearing. Both written and oral comments may be presented during the hearing. The hearing record will remain open for the submittal of written comments until the close of the sixtieth day after publication of this notice, or possibly a later date announced at the hearing.

The Regional Administrator's designee will be the Presiding Officer at the hearing. Any person may appear at th hearing and present oral or written statements, and may be represented by counsel or other authorized representative. The Presiding Officer will establish reasonable limits on the nature and length of the oral presentations. No cross examination of any hearing participant will be permitted, although the Presiding Officer may make appropriate inquiries of any such participant.

ADDRESSES: Comments should be sent to Linda M. Connolly, U.S. Environmental Protection Agency, WOB-2103, J.F.K. Federal Building, Boston, MA 02203. Copies of comments submitted to EPA may be reviewed at the same address. EPA regulations provide that a reasonable charge may be made for copying.

The public hearing will be held in the Attleboro High School Auditorium, located on Rathbun Willard Drive, in Attleboro, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Douglas Thompson, U.S. EPA, Region I, J.F. Kennedy Federal Building, Boston MA 02203; (617) 223-5600.

SUPPLEMENTAL INFORMATION:

I. Description of the Section 404(c) Process

The Clean Water Act, 33 USC 1251 *et seq.*, prohibits the discharge of pollutants, including dredged and fill material, into the waters of the United States (including wetlands) except in compliance with, among other things, section 404. Section 404 authorizes the Secretary of the Army, acting through the Chief of Engineers, to authorize the discharge of dredged or fill material at specified sites, through the application of environmental guidelines developed by EPA in conjunction with the Secretary [1] or where warranted by the economics of anchorage and navigation, except as provided in section 404(c). Section 404(c) authorizes the Administrator of EPA, after notice and opportunity for hearing, to prohibit or restrict the use of a defined site for disposal of dredged or fill material, where he determines that such use would have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife or recreational areas.

Regulations published at 40 CFR Part 231 establish the procedures to be followed by EPA in exercising its section 404(c) authority. Whenever the Regional Administrator has reason to believe that use of a site may have an unacceptable adverse effect on the pertinent resorces, he may begin the process by notifying the Corps of Engineers and the applicant, if any, that he intends to issue a proposed determination under section 404(c). Unless the applicant or the Corps persuades the Regional Administrator that there will not be unacceptable adverse impacts or identifies corrective measures satisfactory to the Regional Administrator within 15 days, he then publishes a notice in the **Federal Register** of his proposed determination soliciting public comment and offering an opportunity for a public hearing. Today's notice represents this step in the process.

Following the public hearing and the close of the comment period, the Regional Administrator decides whether to withdraw his proposed determination or prepare a recommended determination. If he prepares a recommended determination, he then forwards it and the complete administrative record compiled in the Region to the Assistant Administrator for External Affairs at EPA's headquarters for a final decision affirming, modifying, or rescinding the recommended determination. The Corps of Engineers and the applicant are provided with another opportunity for consultation before this final decision is made.

II. Description of the Site

The 80 acre project site involved in this action includes a 50 acre wetland, known as Sweedens Swamp, located near the intersection of Routes 95 and 1A in Attleboro, Massachusetts. Largely a red maple wetland adjacent to a

[1] The pertinent regulations are set forth at 40 CFR Part 230 and are often referred to as the section 404(b)(1) guidelines.

headwater tributary of the Seven Mile River in southeastern Massachusetts. Sweedens Swamp is located roughly one-quarter mile from the Rhode Island border. The predominant habitat type is deciduous forested wetland (45 acreas) although pockets of emergent and shrub wetlands exist on-site. Several shallow streams wind through the wetland and there is some seasonal ponding of water on the southern portion of the wetland. Upland habitat types include oak dominated forest and disturbed field. Human disturbance is evidenced by sporadic dumping of refuse and debris, primarily at the wetland's perimeter, and by the existence of several foot trails (with occasional use by dirtbikes) through the site.

Wetlands, to varying degrees, have hydrologic, biological, and social values. Sweedens Swamp provides flood storage but its role in this regard may be limited since it is located high in a small watershed (625 acres). The wetland also may function to improve or maintain water quality in the Seven Mile River by the adsorption and uptake of contaiminants. Pyramid states that most of the water entering the site does not contact the vegetation and that the wetland therefore functions "inefficiently" for water quality renovation. It is not clear, however, whether Sweedens Swamp is less functional for water quality renovation than other wooded swamps in New England. Sweedens Swamp, which overlies a large regional aquifer, functions primarily as a groundwater discharge (rather than recharge) area.

EPA, the U.S. Fish and Wildlife Service, and the New England Division of the Army Corps of Engineers have concluded that the site provides excellent habitat for small mammals, songbirds, reptiles, and amphibians. This view is based on the diversity, density, and structural heterogeneity of the vegetation in the swamp. Waterfowl, including black ducks and mallards, are known to utilize the site; red shouldered hawks, a predatory bird species, have been observed in the wetland. In addition to these wildlife values, the wetland may have social value as open space and provide some opportunities for passive recreation (such as bird watching).

The proposed shopping mall would alter all but 4 acres of the site. Pyramid proposes to place 885,000 cubic yards in 32 acres of the wetland to construct the buildings, parking areas, and roads assocociated with the development. The company also proposes to excavate 9.0 acres of upland to create wetland onsite and alter 13.3 acres of the existing swamp in an attempt to increase its value for fisheries, wildlife, and water quality maintenance. In addition, Pyramid proposes to mitigate the impacts by attempting to build another wetland, consisting of marsh, open water, and shrub swamp at an off-site location.

III. Proceedings to Date

In 1982, the DeBartolo Corporation, Pyramid's predecessor, failed in its attempt to obtain a state permit to fill the wetlands for the purpose of building a shopping mall. Pyramid, however, in March 1985 received a permit from the State for its proposed development. The issuance of the state permit is currently being challenged in Massachusetts Superior Court.

Pyramid applied for a section 404 permit from the Corps of Engineers in July 1984. In October 1984, February 1985, and April 1985, EPA objected to issuance of the permit on various grounds. In particular, EPA expressed concern that this non-water dependent project did not comply with the section 404(b)(1) guidelines because there were other practicable, less environmentally damaging alternatives available to accomplish the basic project purpose. Attention has primarily focused on an alternate site in North Attleboro which contains few wetlands and which the Corps and EPA believe is a feasible location to develop a shopping mall. The U.S. Fish and Wildlife Service also objected to permit issuance for the same reasons.

New England Division of the Corps of Engineers initially agreed that the permit should be denied, but was instructed by the then Deputy Director of Civil Works, General Wall, to forward its files and recommended decision to him for review. In May 1985, General Wall concluded that the project did comply with the section 404 f(b)(1) guidelines because there was no practicable, less environmentally damaging alternative. His conclusion was based on a finding that (1) the North Attleboro site is not available to Pyramid because it is now controlled by another developer and that from Pyramid's point of view the site would not fulfill the purposes of its proposed project; and (2) from the public interest perspective, Pyramid's proposed mitigation (i.e., on-site and off-site wetland enhancement and creation) would reduce the adverse impacts of the discharge to a point where no other site could offer a less environmentally damaging practicable alternative. In his view, such mitigation can be used to satisfy the guidelines even when there may be a practicable upland site available. General Wall therefore directed the Division to revise its decision documents and issue the permit with appropriate conditions. Accordingly, on June 28, 1985, the Division sent EPA its Notice of Intent to Issue the permit.

On July 23, 1985, the Regional Administrator of EPA notified the Division and Pyramid of his intention to issue a proposed determination to prohibit or restrict the use of Sweedens Swamp as a disposal site, based on the belief that the proposed project may have unacceptable adverse effects—specifically, the avoidable loss of wildlife habitat. A 15 day consultation period ended on August 8, 1985. Following another review of Pyramid's proposal, the Regional Administrator was not persuaded that there would be no unacceptable adverse effects from the proposed discharge.

IV. Basis for Proposed Determination

A. Section 404(c) Criteria

As mentioned above, the Act requires that exercise of final section 404(c) authority be based on a determiniation of "unacceptable adverse effect" on municipal water supplies, shellfish beds, fisheries, wildlife, or recreational areas. The regulations define this term at 40 CFR 231.2(e) as:

> Impact on an aquatic or wetland ecosystem, which is likely to result in significant degradation of municipal water supplies (including surface or ground water) or significant loss of or damage to fisheries, shellfishing, or wildlife habitat or recreation areas. In evaluating the unacceptability of such impacts, consideration should be given to the relevant portions of the section 404(b)(1) guidelines (40 CFR Part 230).

The preamble explains that since one of the basic functions of section 404(c) is to police the application of the section 404(b)(1) guidelines, those portions of the guidelines relating to alternative sites may be considered in evaluating the unacceptability of environmental impacts. 44 F.R. 58078 (Oct. 9, 1979). Thus, it is appropriate under section 404(c) to take into account whether the loss of the resource is avoidable.

B. Impacts of Filling Sweedens Swamp

Construction of the shopping mall would result in the initial, direct loss of 32 acres of wetland habitat. If the on-site wetland creation plan were successful, there would be a net loss of 23 acres of wetland at the site. Approximately 9 acres of upland would be converted to wetland; The remaining 20 acres of upland habitat would be replaced by the mall. This proposal, if permitted, would be the largest single loss of wetland authorized in

Massachusetts in the past five years, and one of the largest fill projects in New England during the last few years.

The hydrologic regime of the site would be altered by the project. On one hand, the remaining wetlands would, according to the developer, function better to maintain water quality. Since the mall, however, would be a source of various contaminants to surface waters it is unclear what the net effect upon water quality would be. Flood storage capacity would be reduced by the project but the developer intends to provide adequate compensatory storage.

Adverse impacts to wildlife will result from the reduction of wetland acreage. The native vegetation and the less mobile animal species will perish under the fill. Other species (e.g., birds) may escape from the site and attempt to relocate to other nearby habitats; relocation may not be successful, however, for highly territorial species or if the adjacent areas are already at carrying capacity.

If the on-site and off-site created and enhanced wetlands function as described by Pyramid, they would provide wildlife habitat. The replacement wetlands, however, would not be of the same type as these destroyed and would be utilized by different wildlife species. The developer has stated that the replacement wetlands, although different from Sweedens Swamp, represent less common habitat types and should be more attractive to waterfowl. Neither the on-site nor off-site replacement wetlands would be immediately available for wildlife use and the extent of utilization would depend upon the ultimate success of the wetland creation effort.

Construction of the shopping mall and the replacement wetlands will involve considerable dredging, filling and earthmoving which will result in a temporary increase in sedimentation and turbidity or surface water in the vicinity.

C. Avoidability of the Impacts on Sweedens Swamp

As mentioned above, whether an impact is avoidable can affect its acceptability under section 404(c). This is consistent with 40 CFR 230.10(a) of the guidelines, which requires that (except for the navigation override), "no discharge of dredged or fill material shall be permitted if there is a practicable alternative to the proposed discharge which would have less adverse impact on the aquatic ecosystem, so long as the alternative does not have other significant adverse environmental consequences." The preamble to the guidelines explains that the particular alternatives approach adopted by EPA reflects the view that the waters of the United States "from a priceless mosaic. Thus, if destruction of an area of waters of the United States may reasonably be avoided, it should be avoided." 45 F.R. 85340 (Dec. 24, 1980).[2] To reinforce this point, the guidelines establish a rebuttable presumption that practicable, environmentally preferable alternatives exist for "non-water dependent activities," such as shopping centers, proposed to take place in "special aquatic sites," such as wetlands. 40 CFR 230.10(a)(3).

Pyramid states that the alternative sites identified during the permit process are not "practicable" sites for shopping centers, citing factors such as access from major highways, visibility, size, lack of parking, distance from its preferred market area, and other matters. However, this contention has been disputed. A consultant hired by the Corps concluded that at least one other site three miles away in North Attleboro (at the intersection of Routes 1 and I-295) was also suitable for a shopping mall of the general type proposed by Pyramid. Moreover, another shopping center developer has concluded that the North Attleboro site is suitable and is in the process of obtaining the necessary permits to build. It also appears that this site was available to Pyramid at the time it made its site selection. This site is an upland one (less than an acre of wetlands), the use of which would apparently have significantly less impact on the environment than the use of Sweedens Swamp, although some similar questions have been raised about both sites (e.g., questions about impacts to water supplies).

Therefore, based on the present record, it does not appear to EPA Region I that Pyramid has clearly demonstrated that there is no practicable, environmentally preferable site for a shopping center. We are particularly interested in comments and information from the public on all aspects of this issue.

D. Off-Side Mitigation

As described above, Pyramid has proposed to create a new wetland at another location in order to compensate for values which would be lost at Sweedens Swamp. While the off-site mitigation was not part of its original permit application, Pyramid now suggests that this proposal means that there could be no alternative site which is "environmentally preferable."

The specific location and details of the to-be-created wetland have not yet been determined. The current leading candidate is an abandoned gravel pit located near Tiffany Street in Attleboro, near the Ten Mile River. However, questions remain about its availability, its suitability for creation of a self-sustaining, functioning wetland, and the extent to which it could replicate the values to be lost at Sweedens Swamp. In addition, the art of creating wetlands is not yet fully understood, especially in fresh water environments and particularly on the scale involved here. EPA is interested in any comments and information on wetlands creation in general; on the substitution of one kind of wetland for another; and on what would be required to establish a suitable wetland at the Tiffany Street site, the likelihood of its long-term success, and the performance measures necessary to determine long-term success, including the length of time it would take to be confident of such success.

EPA has traditionally not considered wetlands creation to be an appropriate factor to consider in weighing the environmental comparability of two practicable project sites under § 230.10(a) of the Guidelines. In other words EPA normally does not evaluate or accept mitigation (in the sense of wetland creation or enhancement) plans until after the alternatives test is satisfied. Therefore, even if the factual problems with the mitigation proposal described above are resolved, there still remain the questions (1) whether the proposed mitigation plan can be found to satisfy the practicable alternatives test in § 230.10(a); and (2) if the mitigation proposal does not strictly satisfy the guidelines, is that noncompliance sufficient to render the adverse impacts at Sweedens Swamp unacceptable within the meaning of section 404(c).

IV. Solicitation of Comments

EPA solicits comments on all issues raised by its proposed determination in this case, including, in particular, whether there is a practicable alternative to locating a shopping center in Sweedens Swamp, the relative environmental impacts (to wildlife, water supply and/or recreation) at the various potential sites, the proposal for off-site mitigation, and the acceptability or unacceptability of the impacts likely to occur if Sweedens Swamp is filled as proposed. Comments should be sent by

[2] The preamble goes on to note that where a category of discharges is so minimal in impact that it has been placed under a general permit, a case-by-case analysis of alternatives is not necessary. The current proposal was removed from coverage from the general permit at 33 CFR 330.5(a)(26) because its impacts were not minimal.

60 days from the date of publication of this **Federal Register** notice to the person listed above under ADDRESSES and may also be provided at the public hearing announced above.

All comments received, as well as the hearing record will be fully considered by the Regional Administrator in making his decision to prepare a recommended determination to prohibit or restrict filling Sweedens Swamp or to withdraw today's proposed determination.

Dated: August 13, 1985.

Michael R. Deland,

Regional Administrator.

[FR Doc. 85-19934 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[FRL-2885-2]

Science Advisory Board, Subcommittee on Dioxins; Open Meeting—September 4-6, 1985

Under Pub. L. 92-463, notice is hereby given that a meeting of the Science Advisory Board's Dioxins Subcommittee will meet September 4-6, 1985, at the main auditorium of the Environmental Protection Agency's Environmental Monitoring Systems Laboratory, 944 East Harmon Avenue, Las Vegas, Nevada. The meeting will begin at 8:00 a.m. on September 4 and adjourn at approximately 4:00 p.m. on September 6.

The purpose of the meeting is to provide the Subcommittee with the opporutnity to review the quality, relevance an direction of the Agency's dioxins' research program. The program has four major research components including (1) engineering, (2) monitoring, (3) environmental effects, and (4) health effects and assessment. The program is discussed in a document prepared by EPA's Office of Research and Development entitled: Status of Dioxin Research in the U.S. Environmental Protection Agency. Individual copies of the document may be obtained by writing or calling Dr. Rizwanul Haque, Office of Environmental Processes and Effects Research, Office of Research and Development (RD-682), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460 (202) 382-5967.

The meeting is open to the public. Any member of the public wishing to attend, obtain information, or submit written comments to the Subcommittee should notify Dr. Terry F. Yosie, Director, Science Advisory Board at (202) 382-4126 or Ms. Patti Howard, Staff Secretary (A-101F), 401 M Street SW., Washington, D.C. 20460 or call (202) 382-2552 by close of business August 29, 1985.

Dated: August 15, 1985.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 85-19929 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30253; FRL-2883-3]

Idacon, Inc.; Application To Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register a pesticide product containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATE: Comment by September 20, 1985.

ADDRESS: By mail submit comments identified by the document control number [OPP-30253] and the file number (10413-RU) to:

Information Services Section (TS-757C), Program Management and Support Division, Attn: Product Manager (PM) 16, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

In person, bring comments to: Rm. 236, CM#2, Attn: PM 16, Registration Division (TS-767C), Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be clained confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: William Miller, PM 16, (703-557-2600).

SUPPLEMENTARY INFORMATION: Idacon, Inc., 10611 Harwin Drive, Suite 400, Houston, TX 77036, has submitted an application to EPA to register the woodpecker repellent, ST-138(R), EPA File Symbol 10413-RU, containing the active ingredient 3,5,5-trimethyl-2-cyclohexene-1-one at 50 percent. The application proposes that the product be classified for general use in wood treatment facilities, utility poles, and crossarms. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Program Management and Support Division (PMSD) office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the PMSD office (703-557-3262), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

Dated: August 7, 1985.

Douglas D. Campt,

Office of Pesticide Programs.

[FR Doc. 85-19714 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50640; PH-FRL 2885-8]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits to the following applicants. These permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect fo the use of pesticides for experimental purposes.

FOR FURTHER INFORMATION CONTACT: By mail, the product manager cited in each experimental use permit at the address below: Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person or by telephone: Contact the product manager at the following address at the office location or telephone number cited in each

experimental use permit: 1921 Jefferson Davis Highway, Arlington, VA.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permits:

1471-EUP-82. Renewal. Elanco Products Company, 740 South Alabama St., Indianapolis, IN 46285. This experimental use permit allows the use of 3,800 pounds of the herbicide alpha-(1-methylethyl)-alpha-[4-trifluoromethoxy)phenyl]-5-pyrimidinemethanol on turfgrasses to evaluate the control of various weeds. A total of 4,999 acres are involved; the program is authorized in all 50 States except the States of Alaska and Hawaii. The experimental use permit is effective from May 10, 1985 to October 10, 1987. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

53219-EUP-1. Issuance. Mycogen Corporation, 5451 Oberlin Drive, San Diego, CA 92121. This experimental use permit allows the use of 1,960 pounds of the fungicide alternaria cassiae on cotton, peanuts, and soybeans to evaluate the control of various weeds. A total of 1,960 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina, and Tennessee. The experimental use permit is effective from May 10, 1985 to May 10, 1986. A temporary exemption from the requirement of a tolerance for residues of the active ingredient in or on cotton, peanuts, and soybeans has been established. (Richard Mountfort, PM 23, Rm. 253, CM#2, (703-557-1830))

45639-EUP-22. Extension. Nor-Am Chemical Company, 3509 Silverside Rd., P.O. Box 7495, Wilmington, DE 19803. This experimental use permit allows the use of 962.5 pounds of the insecticide bendiocarb on non-cropland to evaluate the control of adult mosquitoes. A total of 11,000 acres are involved; the program is authorized only in the States of California and Louisiana. The experimental use permit is effective from May 13, 1985 to May 13, 1986. (Jay Ellenberger, PM 12, Rm. 202, CM#2, (703-557-2386))

201-EUP-77. Issuance. Shell Oil Company, Suite 200, 1025 Connecticut Ave., NW., Washington, D.C. 20036. This experimental use permit allows the use of 763 pounds of the herbicide 1-methyl-4-(1-methylethyl)-2-Exo[(2-methylphenyl)-methoxy]-7-oxabicyclo[2.2.1] heptane on soybeans to evaluate the control of annual grasses, broadleaved weeds, and perennial weeds. A total of 763 acres are involved; the program is authorized only in the States of Alabama, Arkansas, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, Ohio, South Carolina, South Dakota, Tennessee, and Virginia. The experimental use permit is effective from May 15, 1985 to May 15, 1986. This permit is issued with the limitation that all treated crops are destroyed or used for research purposes only. (Robert Taylor, PM 25, Rm. 245, CM#2, (703-557-1800))

Persons wishing to review these experimental use permits are referred to the designated product managers. Inquiries concerning these permits should be directed to the persons cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136c.

Dated: August 9, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-19926 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-418; PH-FRI 2885-7]

Pesticide Tolerance Petitions

AGENCY: Environment Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a pesticide petition relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-418] and the petition number, attention Product Manager (PM-25), at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Robert Taylor, (PM-25), Registration Division Division (TS-767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 245, CM#2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703-557-1800).

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition (PP), from Rhone-Poulenc Inc., P.O. Box 125, Monmouth Junction, NJ 08852, relating to the establishment of tolerances for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) in or on certain agricultural commodities.

Initial Filing

PP 5F3228. Proposes amending 40 CFR 180.324 by establishing tolerances for residues of the herbicide in or on the commodities as follows:

Commodities	Parts per million (ppm)
Barley, grain	0.1
Barley, green forage and straw	1
Cattle (meat, fat, meat by-products (mbyp)	.1
Corn, fodder, dry	.1
Corn, forage, green	1
Corn, grain	.1
Flaxseed	.1
Flax straw	.1
Garlic	.1
Goats (meat, fat, and mbyp)	.1
Grass, canary, annual, seed	.1
Grass, canary, annual, straw	.1
Hogs (meat, fat, and mbyp)	.1
Horses (meat, fat, and mbyp)	.1
Mint hay	.1
Oats, grain	.1
Oats, green forage and straw	.1
Rye, grain	.1
Rye, green forage and straw	.1
Sheep (meat, fat and mbyp)	.1
Sorghum, fodder and forage	.1
Sorghum, grain	.1
Wheat, grain	.1
Wheat, green forage and straw	1

The proposed analytical method for determining residues is gas chromatography.

Authority: 21 U.S.C. 346a.

Dated: August 12, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-19927 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[PF-417; PH-FRI 2885-9]

Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received pesticide petitions relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

ADDRESS: By mail, submit comments identified by the document control number [PF-417] and the petition number, attention Product Manager, at the following address:

Information Services Section (TS-757C), Program Management and Support Division, Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to:

Information Services Section (TS-757C), Environmental Protection Agency, Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed in response to this notice will be available for public inspection in the Information Services Section office at the address given above, from 8 a.m., to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (TS-767C), Attn: (Product Manager (PM) named in each petition), Environmental Protection Agency, Office of Pesticide Programs, 401 M St., SW., Washington, D.C. 20460.

In person: Contact the PM named in each petition at the following office location/telephone number:

Product manager	Office location/ telephone No.	Address
PM-15 George LaRocca	Rm 204, CM#2 (703-557-2400)	EPA, 1921 Jefferson Davis Hwy., Arlington, VA 22202
PM-25 Robert Taylor	Rm 245, CM#2 (703-557-1800)	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions (PP) relating to the establishment of tolerances for certain pesticide chemicals in or on certain agricultural commodities.

Initial Filings

1. *PP 5F3271.* FMC Corporation, Agricultural Chemical Group, 2000 Market St., Philadelphia, PA 19103. Proposes amending 40 CFR 180.378 by establishing tolerances for residues of the insecticide permethrin [3-phenoxyphenyl)methyl (±) *cis-trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate, and its metabolites, dichlorovinyl acid and *m*-phenoxybenzyl alcohol in or on the commodities cherries at 3.0 parts per million (ppm) and plums at 1.0 ppm. The proposed analytical method for determining residues is gas chromatography. PM-15

2. *PP 5F3252.* E.I. Du Pont de Nemours Co., Inc., Agricultural Chemicals Department, Burley Mill Plaza, Wilmington, DE 19898. Proposes amending 40 CFR Part 180 by establishing tolerances for the residues of the herbicide ethyl 2-[4-(6-chloroquinoxalin-2-yl oxy)phenoxy] propanoate and its acid metabolite, 2-[4-(6-chloroquinoxalin-2-yl oxy) phenoxy] propanoic acid in or on the commodities cotton and soybeans at 0.05 ppm. The proposed analytical method for determining residues is high pressure liquid chromatography (HPLC) using either an ultra violet (UV) or fluorescence detector. PM-25

3. *PP 5F3239.* Union Carbide Agricultural Products Co., P.O. Box 12014, TW Alexander Dr., Research Triangle Park, NC 27709. Proposes amending 40 CFR 180.300 by establishing a tolerance for the plant growth regulator ethephon [(2-chloroethyl) phosphonic acid] in or on the commodity popcorn at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with a flame photometric detector in the phosphorus mode. PM-25

4. *PP 5F3253.* Union Carbide Agricultural Products Co. Proposes amendment 40 CFR 180.324 by establishing tolerances for residues of the herbicide bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) resulting from application of its octanoic acid ester and/or butyric acid ester in or on the commodities corn fodder and forage and sweet corn at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with Ni electron capture detector. PM-25

5. *PP 5F3272.* Monsanto Co., 1101 17th St., NW., Washington, D.C. 20036. Proposes amendment 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for the residues of the inert ingredient 4-(dichloroacetyl)-1-oxa-4-azaspiro [4.5] decane when used in formulations of the herbicide, 2-chloro-*N*-ethoxymethyl-*N*-(2-ethyl-6-methylphenyl] acetamide applied to corn fields either before the corn plants emerge from the soil or until the corn reaches 5 inches in height with a maximum of 0.4 pound of inert ingredient per acre.

The proposed analytical methods for determining residues are HPLC with radioactivity detector and gas chromatogrpahy with a flame ionization detector. PM-25

6. *PP 5F3273.* American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide 2-[4,5-dihydro-4-methyl-4-(1-methylethyl)-5-oxo-1*H*-imidazol-2-yl]-3-quinolinecarboxylic acid in or on the commodity soybeans at .05 ppm. The proposed analytical method for determining residues is gas chromatography using a nitrogen-sensitive detector. PM-25

7. *PP 5F3265.* American Cyanamid Co. Proposes amending 40 CFR Part 180 by establishing tolerances for residues of the herbicide methyl 2-(4-isoprophyl-4-methyl-5-oxo-2-imidazoline-2-yl)-*p*-toluate and methyl 6-(4-isoprophy-4-methyl-5-oxo-2-imidazolin-2-yl)-*m*-toluate) in or on the commodities as follows:

Commodities	Parts per million (ppm)
Barley grain	0.10
Barley straw	1.50
Sunflower seeds	0.05
Wheat grain	0.10
Wheat straw	1.50

The proposed analytical method for determining residues is gas chromatograph nitrogen-phosphorus detector. PM-25

Authority: (21 U.S.C. 346a.)

Dated: August 9, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-19928 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

[OPP-50645; PH-FRI 2885-6]

Receipt of Applications for Experimental Use Permits; Genetically Engineered Microbial Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications from Advanced Genetic Sciences, Inc., for EPA Experimental Use Permits (EUPs) for two genetically engineered microbial pesticides. These are the first genetically engineered biological agents to be proposed for EUPs under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136c. The Agency has determined that these applications may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on these applications.

DATES: Written comments must be received on or before September 20, 1985.

ADDRESS: Comments, in triplicate, should bear the docket control number OPP-50645 and be submitted to:

Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By Mail: Henry M. Jacoby, Product Manager (PM) 21, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1900).

SUPPLEMENTARY INFORMATION: Two applications have been received from Advanced Genetic Sciences, Inc. of 6701 San Pablo Ave., Oakland, CA 94608. One of the applications was assigned EPA File Symbol 54306-EUP-R and proposed the application of the genetically engineered product AGS 3001.1 (*Pseudomonas syringae*, Strain RGP36 N1 in an aqueous solution) to strawberry blossoms for the control of frost damage by replacement of naturally occurring ice nucleating bacteria. A total of 4×10^{12} colony forming units (CFU) will be applied. The second application was assigned EPA File Symbol 54306-EUP-E and proposed the application of the genetically engineered product AGS 3001.2 (*Pseudomonas fluorescens*, Strain GJP17B R2 in an aqueous solution) also to strawberry blossoms for the control of frost damage by replacement of naturally occurring ice nucleating bacteria. A total of 4×10^{12} CFU will be applied. The field testing will take place at a single test site in the central coast area of California. The tested areas for both EUPs will not exceed 0.2 acres and the fruit and treated plants will be destroyed or used for research purposes during or following the field trial. Applications will begin in late December 1985 and early January 1986. The applications propose that the permits be issued for 1 year, beginning December 1, 1985 and ending November 30, 1986.

The labeling proposed by AGS states:

> Toxicological properties not fully investigated, applicators should wear full protective clothing including goggles and respirator, apply only during calm weather to avoid drift, do not enter treated areas unprotected for 12 hours after application, dispose of unused material and rinse water by autoclaving, and for use only in accordance with the terms and conditions of the Experimental Use Permit.

The proposed EUP programs include collection of data on the dissemination and survival of the bacteria in the environment and monitoring of bacterial populations on plants, in the soil and in or on bees and other insects associated with the treated strawberry blossoms during the proposed field trails.

Following review of the AGS applications and any comments received in response to this notice, EPA will decide whether to issue or deny the EUPs and, if issued, under what conditions the experiments are to be conducted. Any issuance of an EUP by the Agency will be announced in the **Federal Register**.

Dated: August 13, 1985.

Douglas D. Campt,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 85-19923 Filed 8-20-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[FCC 85-342]

Common Carrier Services; Prescription of Revised Depreciation Rates for AT&T Communications—Interstate Division

AGENCY: Federal Communications Commission.

ACTION: Depreciation Rate Prescription Order.

SUMMARY: Pursuant to section 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 220(b), Federal Communications Commission has ordered the American Telephone and Telegraph Communications' Interstate Division (AT&T-ISD) to apply the percentages of depreciation and amortization amounts which are set forth in the Appendix to the Order. AT&T-ISD filed for revised depreciation rates for various accounts and submitted studies and data to substantiate its requests. The intended effect of this action is to charge, as accurately as circumstances will allow, the cost of consumption of depreciable assets to the periods in which the assets are useful in the production of revenues.

EFFECTIVE DATE: AT&T-ISD is to apply the depreciation rates as of January 1, 1985.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Moran, Chief, Depreciation Rates and Cost Accounting Branch, (202 632-7500.

Memorandum Opinion and Order

In the matter of The prescription of revised depreciation rates for T&T Communications-Interstate Division.

Adopted: July 1, 1985.

Released: July 9, 1985.

By the Commission.

Introduction

1. The American Telephone and Telegraph Company (AT&T) filed a petition on May 11, 1984, requesting that the Commission prescribe revised depreciation percentages for all depreciable accounts of AT&T Communication-Interstate Division (ISD) and for each of its twenty-two interexchange subsidiaries (IXCs)[1] effective January 1, 1985. AT&T proposes depreciation rates based upon revisions in the life and salvage estimates and the methods used to compute its currently prescribed rates. In this order we consider only the rates proposed for the ISD. The rates proposed for the IXCs will be considered in a subsequent order.

II. Discussion of Issues

2. The Common Carrier Bureau issued a public notice on September 28, 1984, which outlined AT&T's petition and invited comments thereon by November 27, 1984, and reply comments by January 11, 1985. Comments were submitted by AT&T and all seven of the Regional Bell Operating Companies (RBOCs), GTE, United States Telephone Association (USTA), MCI, fourteen state regulatory commissions, and two state consumer counsel agencies. Reply comments were submitted by AT&T, three of the RBOCs, GTE, USTA, the International Communications Association, the Ad Hoc Telecommunications Users Committee, and three state commissions. In general the telephone carriers support the depreciation methods proposed in AT&T's petition and request that the use of these methods be authorized for all telecommunications common carriers. In general, the state commissions, consumer counsel agencies, and telecommunications user committees oppose the adoption of the methods proposed by AT&T.[2]

3. The commenting parties raised many issues. In this order, however, we deal only with the following issues which specifically relate to the prescription of ISD's depreciation rates: (1) Do current methods used to compute the ISD's depreciation rates provide it a reasonable opportunity to recover its reserve deficiencies? (2) If current methods are inadequate, what alternative methods should be adopted? (3) What life and net salvage factors should be used to compute the depreciation rates at issue? (4) What should be the effective date of any revised depreciation rates?

A. AT&T's Proposed Methods

4. In our final decision in *Property Depreciation*, Docket No. 20188, 83 FCC 2d 267 (1980), *reconsideration*, 87 FCC 2d 916 (1981), we approved the use of equal life group (ELG) depreciation methods for plant placed in service after January 1, 1981. We did not approve the use of ELG for embedded (i.e., pre-1981 vintage) plant because of the increased complexity and cost that would result and the unavailability of vintage records necessary to implement the method for embedded plant. Furthermore, we believed that the use of the remaining-life method (which was also approved in the decision) would permit 100% depreciation and, thus, make the use of ELG unnecessary for embedded plant.

5. In 1983 and 1984 many of the BOCs proposed a new set of depreciation procedures which they called the straight-line-age-life (SLAL) method. These procedures differ from those which the Commission uses to prescribe depreciation rates in the following ways:

(1) The ELG procedures is used for embedded plant as well as new additions, in contrast with the current policy of applying ELG to new plant additions only.

(2) Net plant weighting procedures are used with vintage reserves which are based upon allocations derived from current theoretical reserve studies. This is in contrast with the current Commission policy of using gross plant weighting procedures. In addition, in our *Supplemental Opinion and Order* in Docket No. 20188, 87 FCC 2d 1112 (1981), we found that it is inappropriate to allocate book reserves using theoretical reserve studies. In that order we stated that such an allocation must be based upon the actual debits and credits that have occurred over time.

After thorough consideration of an abundance of comments provided primarily by the carriers and the state commissions, we rejected the use of the SLAL method in our 1983 depreciation prescription orders.[3] We rejected the SLAL method for the same reasons we rejected ELG for embedded plant (See paragraph 4), and because we believed that the use of the SLAL method would result in too much volatility in the telephone carriers' revenue requirement patterns. As we stated in that order:

> . . . The use of the SLAL method would immediately raise depreciation rates for most of the BOCs by from two to three percent of their original costs. Nationwide, this amounts to approximately four billion dollars a year in increased depreciation expense. This large increase using the SLAL method would be followed by a rapid decrease in depreciation expense to less than that which would result from the existing methods by 1990.[4]

6. In its petition AT&T states that it has substantial depreciation reserve deficiencies and that if it is not allowed to use more liberal depreciation methods than those which the Commission has authorized in the past, it will not have a reasonable opportunity to fully recover its capital. AT&T proposes the following changes in the Commission's depreciation methods which it claims will enhance its chances recovering its reserve deficiencies:

(1) The use of the ELG procedure for embedded plant.

(2) The use of net plant weighting procedures using vintage reserves which were developed in conjunction with the divestiture.[5]

7. AT&T argues that its method is not SLAL because it applies the net plant weighting concept based on vintage reserves developed in conjunction with divestiture instead of vintage reserves developed from current theoretical reserve studies. However, the vintage reserves developed in conjunction with divestiture were, in fact, based upon allocations derived from the BOCs current theoretical reserve studies.[6] As a result AT&T's proposed changes, when taken together, are the same SLAL method which the Commission has already considered and rejected.

8. Neither AT&T nor the other carriers that responded to the public notice have

[1] The twenty-two interexchange carriers are as follows: AT&T Communications of California, Inc., AT&T Communications of Delaware, Inc., AT&T Communications of Illinois, Inc., AT&T Communications of Indiana, Inc., AT&T Communications of Maryland, Inc., AT&T Communications of Michigan, Inc., AT&T Communications of the Midwest, Inc., AT&T Communications of the Mountain States, Inc., AT&T Communications of Nevada, Inc., AT&T Communications of New England, Inc., AT&T Communications of New Jersey, Inc., AT&T Communications of New York, Inc., AT&T Communications of Ohio, Inc., AT&T Communications of the Pacific Northwest, Inc., AT&T Communications of Pennsylvania, Inc., AT&T Communications of the South Central States, Inc., AT&T Communications of the Southern States, Inc., AT&T Communications of the Southwest, Inc., AT&T Communications of Virginia, Inc., AT&T Communications of Washington, D.C., Inc., AT&T Communications of West Virginia, Inc., and AT&T Communications of Wisconsin, Inc.

[2] Copies of these comments and reply comments are available for inspection in the Commission's Common Carrier Bureau offices.

[3] *See, e.g.*, Depreciation Rates, 96 FCC 2d 257 (1983), *reconsideration*, FCC Order 84-505, released October 31, 1984.

[4] *Id.* at 266.

[5] Modification of Final Judgment in United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom.* Maryland v. United States, 460 U.S. 1001 (1983).

[6] AT&T Plan of Reorganization, pp. 143-161, approved in United States v. Western Electric, 569 F. Supp 1057 (D.D.C. 1983).

provided new or convincing arguments or new information that would justify a reversal of our prior orders and acceptance of the SLAL method. As a result, we reject AT&T's proposed method change. Nevertheless, because there is merit in AT&T's argument for relief, we adopt the depreciation changes described below.

B. Alternative Methods

9. We agree with several of AT&T's contentions, among them: (1) That there is a substantial shortfall in the ISD reserve;[7] (2) that competition in AT&T's interstate telecommunications markets is substantial and is increasing; and (3) that the use of current depreciation methods may not be adequate to allow AT&T a reasonable opportunity for 100% capital recovery.

10. In recent years this Commission has consistently pursued policies designed to open interstate, interexchange markets to competition.[8] The *Modification of Final Judgment (MJF), supra* note 5, was also designed to enhance competition in the interexchange service market, most particularly by the requirement that BOCs provide equal access to their local exchanges to all interexchange carriers.[9] There is evidence that AT&T is indeed experiencing growing competition. For example, in 1983, the other common carriers (OCCs) had an estimated net plant investment of some $5-6 billion as compared to AT&T's inter-city net plant Envestment of $11 billion, and in 1984, the OCC's projected construction budgets were expected to account for three-fourths of the industry's total additions for new capacity.[10] Implementation of equal access should intensify the competition faced by AT&T. The full impact of increased competition in interstate, interexchange services is likely to become evident within the next few years.

11. The continued application of the remaining-life method would not fully resolve the ISD's reserve deficiencies for from 10 to 20 years in certain accounts.[11] We anticipate that, well before that time, competition will have created an environment in which prices are largely market-driven rather than cost-driven. We cannot assume that, under such competitive conditions, AT&T could charge a market price for its services and still recover the costs represented by its deficiencies. Therefore, in order to allow AT&T a reasonable opportunity to recover its reserve deficiencies, we depart from current depreciation methods, at least for those accounts with relatively long remaining lives.

12. As an alternative to the current methods, we oppose to use an amortization procedure similar to that which we recently approved for Illinois Bell [12] to resolve the ISD's reserve deficiencies for accounts that have estimated remaining lives in excess of four years. For accounts with remaining lives of four years or less, the use of existing methods (i.e., remaining-life) should be adequate. Our selection of a four year amortization period for the reserve deficiency, rather than a longer period, is based upon our assumption that within a few years after equal access has been fully accomplished, competition in the interstate market will have developed to the point where the recovery of today's reserve deficiencies will be extremely unlikely. On the other hand, a period of less than four years would have an unjustifiable impact on rates for consumers given the current competitive environment.[13] We direct AT&T to provide the data necessary for our staff to closely monitor ISD's reserves and we direct our staff to recommend any changes in the amortization period that may be warranted by changing conditions.[14]

13. Most of the local exchange carriers (LECs) which submitted comments in this proceeding propose that they be allowed to use the same methods as AT&T. In this order, however, we have addressed only ISD. Our conclusion that ISD requires a revision in the methods used to resolve its reserve deficiencies is based on considerations peculiar to ISD and is without prejudice to any determinations we might make in the future regarding depreciation methods to be used by individual LECs and AT&T's 22 IXCs.[15]

C. Life and Salvage Factors

14. After reviewing AT&T's equipment life and net salvage proposals, the underlying data, and the comments in response to the public notice, our staff developed a set of life and salvage factors for the ISD plant. Accordingly, we concur in the life and salvage recommendations of our staff as reflected in the depreciation rates shown in the Appendix.

D. Effective Date

15. AT&T requested an effective date of January 1, 1985 in its petition. As AT&T's request is in accordance with our rules,[16] and there were no comments in opposition to the proposed effective date, we grant AT&T's effective date as proposed.

III. Ordering Clause

16. Accordingly, it is ordered, pursuant to sections 4(i) and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 220(b), That the revised depreciation percentages and amortization periods set forth in the Appendix to this Order are prescribed effective January 1, 1985.

Federal Communications Commission.

William J. Tricarico,

Secretary.

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[7] Our staff's studies show that the ISD's depreciation reserve has a shortfall of approximately 7% of its plant investment, or approximately $700 million. This is substantial by any measure.

[8] *See, e.g.*, Resale and Shared Use of Common Carrier Services, 60 FCC 2d 261 (1976), *reconsideration*, 62 FCC 2d 588 (1977), *aff'd sub nom.* AT&T v. FCC 572 F2d 17 (2d Cir.); *cert. denied*, 439 US 875 (1978).

[9] 552 F. Supp. at 188.

[10] Inquiry on Long-Run Regulation of AT&T's Basic Domestic Interstate Service, CC Docket No. 83-1147, 48 FR 51340 (November 8, 1983), Comments of AT&T at pg. 31.

[11] For example, our staff has estimated that the depreciation reserve deficiency for the COE-Electronic Account is approximately $110 million, and its estimated remaining life is 13 years.

[12] *See, e.g.*, Order FCC 84-620, released December 19, 1984.

[13] As we stated in *Depreciation Rates*, 98 FCC 2d at 273, our objective in establishing an amortization schedule is "to write off the investment in a timely manner while not overly distorting the income statement of any given period." For example, if a 2 year amortization period were used, the carrier's annual revenue requirement would increase by nearly $200 million.

[14] Competitive conditions in the interstate transmission market are, of course, among the matters in issue in our ongoing Long-Run Regulation proceeding, CC Docket No. 83-1147, *supra* note 9.

[15] We wish to make clear that our rationale for granting AT&T this relief does not necessarily apply to the exchange carriers. We recognize that the LECs also have reserve deficiency problems as indicated in their comments in this proceeding. While we have nothing before us to address this at this time, we have previously indicated that, on a case-by-case basis and with the concurrence of the appropriate state commission, we will entertain requests from the LECs for permission to use the amortization approach for the elimination of the LEC reserve deficits in embedded plant. *See* Order FCC 84-620, released December 19, 1984. Such an approach would take into account the regional differences in operating environment, plant modernization, and rate impact which exist for each LEC and in each state jurisdiction.

[16] See § 43.43(e) of our Rules.

APPENDIX.—SCHEDULE OF ANNUAL PERCENTAGES OF DEPRECIATION AND AMORTIZATION AMOUNTS FOR AT&T COMMUNICATIONS—INTERSTATE DIVISION

Account No.	Class or subclass of plant	Remaining life (years)	Percent			Annual amortization expense ($000)	First ELG year
			Future net salvage	Reserve	Remaining life rate		
A	B	C	D	E	F	G	H
212	Buildings	22.0	4	32.00	2.9	$2,278	1983
221.1	Manual	6.4	−11	62.11	7.8	2,717	
221.4	Crossbar	2.6	0	47.19	20.3	14,845	
221.5	Circuit other	7.8	−1	31.11	9.0	10,804	1983
221.51	DDS circuit	8.6	−4	31.89	8.4		1983
221.67	Radio	9.3	−10	39.93	7.5	48,751	1983
221.79	Electronic	13.1	1	23.65	5.8	28,351	1983
221.867	SAT radio	8.9	0	11.00	10.0	1,135	1983
234	Large PBX	6.2	−2	45.01	9.2	101	
241	Pole lines	7.9	−29	88.18	5.2		1982
242.1	Aerial cable	4.4	6	60.21	2.7	249	1985
242.2	UG cable	16.2	−2	47.25	3.4	5,134	1982
242.3	Buried cable	11.2	−4	62.40	3.7	36,243	1982
242.4	Submarine cable	14.7	−2	39.52	4.3	987	1982
243	Aerial wire	9.8	−73	92.22	8.2	189	
244	Conduit	36.0	−6	38.20	1.9	995	1985
261	Furniture and office equipment	16.2	4	16.05	4.9		1983
261.3	Computers	5.6	10	29.21	10.5		1983
262	Other communication equipment	7.1	0	11.84	12.4	756	
264.1	Motor vehicles	4.2	14	46.81	9.3		1983
264.3–5	Tools and OWE	10.2	3	39.07	5.7		1985

For accounts in which annual amortization expense figures are shown in Column (G), Column (E) contains the theoretical reserve percentage, for all other accounts, Column (E) contains the book reserve percentage.

[FR Doc. 85-19898 Filed 8-20-85; 8:45 am]
BILLING CODE 6712-01-M

[Gen. Docket No. 84-467; FCC 85-430]

Radio Broadcasting; Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the Planning of Broadcasting in the 1605–1705 kHz Band

AGENCY: Federal Communications Commission.

ACTION: First Report.

SUMMARY: This action sets forth the FCC's recommendations for United States proposals to be advanced at an upcoming Region 2 international conference on the expansion of the AM band to include the frequencies from 1605 kHz to 1705 kHz. Establishment of United States positions is a key aspect of preparations for the conference.

FOR FURTHER INFORMATION CONTACT:
Jonathan David, Mass Media Bureau, (202) 632-7792
or
Wilson La Follette, Mass Media Bureau, (202) 632-5414.

SUPPLEMENTARY INFORMATION:

First Report

In the matter of: Preparation for an International Telecommunication Union Region 2 Administrative Radio Conference for the planning of broadcasting in the 1605–1705 kHz Band (Gen. Docket No. 84-467).

Adopted: July 29, 1985.

Released: August 12, 1985.

By the Commission.

Introduction

1. The subject proceeding was instituted in order to develop a record to assist the Commission in its preparations for the international Conference on the use of the expanded AM band from 1605 kHz to 1705 kHz.[1] The *First Notice of Inquiry* ("*First NOI*") in this proceeding, adopted on May 10, 1984, and the *Second Notice of Inquiry* ("*Second NOI*") adopted December 20, 1984, invited comment on the various issues that were to be explored as part of the preparations for the Expanded Band Conference which is to plan the broadcast use of the band from 1605 to 1705 kHz.[2] The Conference itself is to be held in two sessions. The First Session is scheduled for three weeks in Geneva, beginning on April 14, 1986. During this session the necessary technical criteria and planning methods are to be developed for submission to the Second Session, which is scheduled for the third calendar quarter of 1988.

2. The *First NOI* pointed out the other preparatory efforts that would be pursued in anticipation of the Expanded Band Conference. These included the continuing efforts of Study Group 6 of the CCIR [3] and in particular IWP 6/4, (an Interim Working Party of Study Group 6) which is charged with the task of considering methods for calculating skywave field strength in the expanded band as well as the Joint Interim Working Party ("JIWP") of CCIR study groups 3, 8 & 10 that is examining several questions relating to the technical standards to be employed in the expanded band. Likewise, the Organization of American States' Inter-American Telecommunicatins Conference ("CITEL") was expected to deal with Conference preparatory matters through its Permanent Technical Committee II ("PTC II"). PTC II focuses on radio broadcasting and it was expected to meet periodically to consider matters related to the Conference. Also, meetings with other Administrations were anticipated, either on a bilateral or multilateral basis. Finally, comment was sought on the possible use of the Radio Advisory

[1] For simplicity, we shall refer to this Regional Administrative Radio Conference ("RARC") as the Expanded Band Conference.

[2] The Expanded Band Conference is an outgrowth of the 1979 World Administrative Radio Conference ("WARC") which was held to revise portions of the International Radio Regulations and to review the allocation of frequency bands to the various radio services within the three International Telecommunication Union ("ITU") regions. In Region 2 (the Western Hemisphere), the band 1605–1705 kHz was reallocated to radio broadcasting and the Expanded Band Conference was scheduled to plan the broadcasting use of this band. In particular, reference should be made to Recommendation No. 504 of the WARC Final Acts (Geneva 1979), Resolution No. 1, Nairobi, 1982 and to Resolution 913 of the 39th Session of the ITU Administrative Council meeting of April 2–19, 1984, which took the steps necessary to convene the Conference and to set forth its agenda. Pertinent portions of these documents, including the Conference agenda, are attached as Appendix 2.

[3] The International Radio Consultative Committee.

Committee to help develop material to assist the Conference preparations.[4]

3. During this same period, preparatory work for the conference was pursued by the Technical and Allocation Subgroups of the Radio Advisory Committee. Both Subgroups held a series of meetings during which all interested parties were able to participate in the development of data on the technical issues posed by the use of the expanded band and the requirements for its use. Both Subgroups made a vital contribution to the work of the Commission. Particularly, the Technical Subgroup has aided the Commission by helping to develop technical criteria which have been informally presented at CITEL meetings. The recent report of the Allocations Subgroup is expected to provide similar benefit as the Commission considers how best to respond to requirements for use of this band. This includes a number of important domestic issues such as the appropriate way to deal with Travelers Information Stations ("TIS") and Federal Governments agency requests for the use of a portion of the expanded band by these stations.

4. In addition, the *First NOI* raised a series of issues on which comments were invited. these included how best to use the new spectrum which is to become available for broadcasting as well as how to deal with current users of this band, including the TIS now conducted on 1610 kHz. In addition, comments were invited on how best to deal with inter-regional sharing in view of the fact that in both Regions 1 (Europe and Africa) and Region 3 (Asia and the Pacific) this band is used for other types of services. In putting these subjects forward for comment the Commission did not indicate any predisposition as to their resolution. Rather, each was accompanied by a narrative setting forth the context in which the questions arose so that the commenting parties would have a better basis for formulating their responses. There were many questions to consider, particularly in the area of how best to use the expanded band. These included the broadcasting requirements to be considered and the technical standards to be employed in conducting operations in the expanded band. Because of their importance, several of these subjects were highlighted, notably power limits, interference protection standards and signal propagation.

5. After review of the record developed in response to the *First NOI* and taking into account the information gained through its participation in other ongoing activities in this area, the Commission was able to further refine its views and it set them forth in the *Second NOI*. There was general agreement that the additional spectrum should be treated as an extension of the existing AM band rather than as a separate band with its own set of technical standards. As a result, in the Preliminary Views set forth in the *Second NOI*, we proposed that the protection ratios, class of emission and bandwidth of emission should remain the same. This was designed to facilitate prompt effectuation of the expanded band by enhancing the yearly availability of receivers capable of receiving the newly available frequencies. This in turn was seen as providing an important stimulus to early commencement of broadcasting in this band. No dispute as to these points was raised in the responses to the *Second NOI*.[5] In addition to responses to the Commission's specific proposals, further information was sought on several unresolved areas, notably planning methods for use of the band. Further comment was welcomed as a means for refining the recomendations the Commission would adopt for submission to the Department of State for forwarding to the First Session of the Conference.[6]

6. Based on the record which has been developed in this matter it has been possible for the Commission to develop recommended U.S. proposals on many of the issues included in the Conference Agenda for submission to the Department of State.[7] The one notable exception is the planning method to be used, on which the Commission has been benefitted by a wide range of submissions. The Commission is in the process of doing its own studies to determine whether assignment or allotment planning is preferable. Because of the interrelationship of planning to the issue of maximum power, the Commission also has reserved a final judgment in that regard. Both matters will be dealt with by the Commission in a future report when these studies have been completed.

Procedural Matters

7. Accordingly, pursuant to sections 4(i), 303 and 403 of the Communications Act of 1934, as amended, it is ordered, that the FCC Recommended Proposals are adopted for submission to the Department of State.

8. Further information on the matters discussed in this Report may be obtained from Wilson A. La Follette (202) 632-5414 or Jonathan David at (202) 632-7792, both of the Mass Media Bureau.

Federal Communications Commission.

William Tricarico,

Secretary.

Appendix 1.—Discussion of Proposals Recommended by the Federal Communications Commission for the Region 2 Administrative Radio Conference To Establish a Plan for the Broadcasting Service in the Band 1605–1705 KHZ in Region 2

FCC Recommendations

I. Introduction

The following summarizes the FCC recommendations for U.S. proposals to the Expanded Band Conference. It offers a brief overview of the basic principles embodied in these proposals and provides elaboration on some of the major technical areas to be considered at the Conference. We have followed the format and Agenda numbering scheme contained in the Administrative Council Resolution No. 913 wherever possible.[1] As appropriate, new subdivisions have been added under the various agenda items. The specific technical proposals themselves are contained in Appendix 2.

To meet the requirements for the most effective use of this band, the Commission has:

- Developed technical, operational, and planning principles, permitting the most expeditious implementation of the

[4] In fact, the Radio Advisory Committee's charter was specifically revised and extended so that it could play a role in developing material for use by the Commission in its preparations for the Conference.

[5] However, a question in this regard was raised before the Allocation Subgroup. Specifically, the National Black Media Coalition ("NBMC") raised the possibility of 9 kHz channel specing in lieu of the 10 kHz spacing used in the current AM band. However, it was noted that such an arrangement would introduce serious impediments to the prompt effectuation of service in the expanded band. Instead of the relatively simple and inexpensive redesign of receivers to include the new band, they would have to be more extensively redesigned resulting in significantly greater cost to accommodate two different sets of specifications. Thus, adopting NBMC's proposal could seriously delay inauguration of service in the new band and thereby run counter to the needs of all groups, including NBMC, in this regard.

[6] The Commission also pointed out that these Preliminary Views would play a part in upcoming international meetings.

[7] A summary of these recommended proposals is contained in Appendix 1. The proposals themselves are contained in Appendix 2.

[1] Resolution 913 as well as excerpts from the text of other documents pertinent to the convening of the Conference are contained in Appendix 2.

expanded band, while satisfying the requirements of all countries on an equitable basis.

• Developed proposals involving a minimum of regulatory constraints with a maximum of flexibility, both in the development and implementation of any planning method, and the adoption of procedures permitting the growth of the AM broadcasting service in this expanded band in our Hemisphere.

Specifically, we believe that to achieve these objectives the technical criteria contained in the Regional Agreement for the Medium Frequency Broadcasting Service in Region 2 (Rio Final Acts) for the existing AM band (535–1605 kHz) generally should be applied to the expanded band at 1605–1705 kHz to the maximum extent possible in recognition of the fact that the new frequency band is best considered as an extension of the existing band. Such an approach would promote the earlier availability of receivers capable of receiving the extended band, which in turn would foster the early commencement of service on these frequencies in Region 2. Moreover, it would be possible to use many of the existing planning tools and computer techniques that already have been successfully applied to AM planning activities in the Region.

II. FCC Proposals

2.1.1.1 *Definitions:*

2.1.1.1 The Commission recommends the use of definitions adopted in the Rio Final Acts wherever possible. However, these definitions include Class A stations, equivalent to clear channel stations, in that they are designed to provide secondary (skywave) as well as primary (groundwave) service. The Commission does not believe that establishment of Class A stations in the expanded band is appropriate, and as a result, the definition of such a station or of secondary service would not be required.

2.1.2 *Propagation Data:*

2.1.2.1 *Groundwave.* At the first session of the Region 2 AM Broadcasting Conference held in Buenos Aires in 1980, a set of groundwave field strength curves were tentatively adopted for use in Region 2. These curves were formally adopted at the second session of the conference in Rio de Janeiro in 1981. These curves were based on a computer program developed by the FCC Office of the Chief Engineer (now the Office of Science and Technology) and described in FCC/OCE Report No. RS79–01, "Investigation of Methods for Converting the FCC Ground Wave Field Intensity Curves to the Metric System," January 1979.

Since then, the Commission has amended its rules by adopting curves equivalent to the curves in the Rio Final Acts so that the same curves could be used for both domestic and international applications. The Commission was concluded that the model developed for this purpose can be used for calculating the curves for the expanded band and that one curve, based on the frequency of 1655 kHz, is apropriate.

2.1.2.2 *Skywave.* The importance of skywave propagation at these frequencies is two-fold. Because of the disadvantageous groundwave propagation characteristics of the expanded band, the distance to a given groundwave signal contour is reduced substantially. As a result, unrealistic nighttime limits imposed by skywave interference can inappropriately restrict a station's ability to provide adequate nighttime coverage. In addition, the skywave interference can extend beyond Region 2, an issue which needs to be considered when determining permissible power limits. It is important to recognize that this band is to be shared by different services in different regions of the ITU and that inter-regional sharing between different services requires an accurate skywave prediction method. Recognizing these points, the CCIR established in 1983 an interim working party—IWP 6/4. CITEL has also invited administrations to conduct necessary studies and to coordinate their views with IWP 6/4. As a result of these efforts, improved skywave curves have been developed by the Office of Science and Technology that take into account the effects of latitude. Reference to these curves (see Chapter 3 of the Technical Criteria) reveals how important latitude is in skywave propagation.

In addition to the selection of a field strength prediction method, two other issues are presented. They are:

(a) *Diurnal variation of skywave field strengths:* The Commission does not propose the inclusion of curves to depict the diurnal variation of skywave field strengths.

(b) *Calculations over short paths:* Occasionally there is a need to calculate skywave field strengths for a short path having a great circle distance of less than 100 km. Great circle distance is used for Region 2, but the current field strength curve for Region 2 stops at 100 km. On the other hand, the actual "slant" distance, earth-to-sky-to-earth, is being used in Region 1. This situation has been recognized and an appropriate methodology has been included in the curves which have been developed.

2.1.3 *Modulation Standards.* The Commission is of the view that the modulation standards to be applied to the band, 1605 kHz to 1705 kHz, should be consistent with those in the Rio Final Acts applied to the existing FM broadcasting band, 535 kHz to 1605 kHz. This view is predicted upon the belief that such consistency will facilitate the design of receiving equipment for use in the expanded band and expedite its availability to the public. Additionally, the location of the added broadcasting spectrum adjacent to the existing band provides the opportunity to treat both broadcasting segments in a similar manner, thereby expediting consolidation of the two bands into one. With this in mind, the Commission believes that the following standards should apply for international purposes:

2.1.3.1 *Class of Emission.* The standard class of emission should be A3E, double sideband amplitude modulation with full carrier. Classes of emission other than A3E should also be permitted on condition that the spectral distribution does not exceed that typical of an A3E emission and that there is no appreciable degradation of co-channel and adjacent channel protection. This latter provision is needed in order to provide for AM stereo in the expanded band as is now provided for in the existing 535–1605 kHz band.

2.1.3.2 *Channel Spacing.* The channel spacing in the expanded band should be maintained at 10 kHz. Use of the same 10 kHz channel spacing as is now used in the existing band, will ensure that new broadcasting services established in the expanded band will have the same opportunities for audio quality and stereophonic sound. Use of the same channel spacing will facilitiate the early commencement of service in the expanded band.

2.1.3.3 *Frequency Tolerance.* As indicated in the Radio Regulations, the frequency tolerance should be 20 parts of 10^6 for powers of 10 kW or less, and 10 Hz for powers greater than 10 kW. In the case of the existing band, we note, however, that countries covered by the North American Regional Broadcasting Agreement (NARBA) are permitted to operate with a frequency tolerance of 20 Hz. However, as this exception does not apply to the expanded band, any transmitting equipment which might be authorized in excess of 10 kW will have to meet the 10 Hz tolerance.

2.1.4 *The Effect of Receiver Characteristics Upon AM Broadcast Standards.* The addition of frequencies from 1605 to 1705 kHz will increase the AM broadcasting bank by approximately 10%. This small incremental increase should not require significant changes in the design in the

design of AM receivers of a nature that would affect broadcast standards. Thus, it is believed that the characteristics of receivers currently available for the existing band can be considered as representative of those that will ultimately be produced for the expanded band as well.

2.1.5 *Protection Ratios. Required Values for the Usable Field Strength and for the Nominal Usable Field Strength.* We are continuing to assess atmospheric noise information relating to the usable field strength and the nominal usable field strength. Preliminarily, we have concluded that the values of contours to be protected for planning purposes should be the same as those contained in the Rio Final Acts. The Commission also believes that the current boundaries of Noise Zones 1 and 2 can be used for this band as well.

2.1.5.1 *Co-channel Protection Ratio.* Co-channel protection ratios for stations not in a synchronized network should be 26 dB. The ratio has been successfully applied in the United States for many decades and also has been applied in various international agreements such as NARBA. It also was included in the Rio Final Acts. Such practical experience is also supported by subjective tests that have been performed within the United States in previous years to determine the optimum co-channel protection ratio. During the mid-1940's, such tests were performed using many types of programs and various combinations of music and speech. They revealed that, in the average, approximately 67% of the people tested considered a protection ratio of 26 dB to be satisfactory.

2.1.5.2 *Adjacent Channel Protection Ratios.* Predicated on the assumption that characteristics of receivers, produced to cover the expanded bank will not change significantly, the 1st and 2nd adjacent channel protection ratios should be 0 dB and −29.5 dB respectively. These are the ratios that were adopted Regionally in the Rio Final Acts, and their use will permit consistent application of protection criteria throughout both the existing as well as the added segment of the AM broadcasting band.

2.1.6 *Transmitting Antenna Characteristics and Transmitter Powers:*

2.1.6.1 *Transmitting Antenna Characteristics.* The same transmitting antenna characteristics that are applied to the existing band should also be applied to the expanded band.

2.1.6.2 *Transmitting Powers.* Most parties have urged the Commission to recommend maximum powers in the range of 1 kW to 10 kW, noting that powers in excess of 10 kW may introduce inefficient use of the spectrum in view of the poor groundwave propagational characteristics of this bank combined with the high potential for skywave interference. They also note that higher power could cause problems in inter-regional sharing and that lower powers of less than 1 kW are unlikely to provide effective overall service because of the poor groundwave propagation in the expanded band frequencies. The Commission will address its recommendations in this matter in a future Second Report.

2.1.7 *Planning Methods and Guidelines for the Agreement:* The Commission is continuing to explore this subject and within the next few months expects to offer specific proposals in this regard. As described in the *Second NOI*, the choice is between assignment and allotment planning, or a combination of the two. Rreference to that document should be made for a discussion of the characteristics of these two methods for planning use. However, in this regard, the Commission does consider it important that particular attention should be given to maintaining the maximum degree of flexibility in any broadcasting plan to be developed for the 1605–1705 kHz band. This would have to be consistent with the general need to satisfy demand and obtain adequate protection for future broadcasting services. The Commission will address its recommendations in this matter in the future Second Report.

2.1.7.5 *Guidelines for the Agreement:*

2.1.7.5.1 The decision on the form of the plan will determine the appropriate nature of the associated regulatory procedures (the agreement).

2.2 *To establish the Technical Criteria, As Appropriate, for the Sharing of the Band 1625–1705 kHz Between the Broadcasting Service and Other Services in Region 2 Taking into Account Nos. 419 and 481 of the Radio Regulations:*

2.2.1 After reviewing the CCIR and CITEL Reports that address sharing between the Region 2 primary service and permitted services allocated within the 1625–1705 kHz band, it is our view that sharing is not possible without putting excessive restrictions on the primary broadcasting service. Therefore, we are making no suggestion at this time on how the permitted services may share this band with the broadcasting service, as we believe that any proposal would too severely restrict that primary use.

2.3 *If Necessary, to Establish and Identify Specific Guidelines for Preparatory Work, Including Computer Software Development, to be Carried Out before the Second Session of the Conference and to Set Dates for the Completion of this work:*

2.3.1 Work is continuing in an effort to anticipate and identify the needs in this area, and specific proposals in these regards will be offered at an appropriate time prior to the 1986–RARC.

2.4 *To Specify the Manner in which Broadcasting Requirements for Inclusion in the Plan should be Submitted to the IFRB and to Fix the Date by which they should be Submitted.*

2.4.1 We are examining the issue of the manner of notification. It is not yet possible to recommend a date for such submissions.

2.5 *To Establish a Draft Agenda for the Second Session of the Conference, Relating to the Establishment of an Agreement and an Associated Plan, to be Submitted to the Administrative Council:*

2.5.1 Establishment of such a draft agenda must await further Regional consideration and coordination.

3. *That Administrations are Encouraged to Begin Considering their Broadcasting Requirements for the use of the 1605–1705 kHz Band in Order that they may be Prepared to Submit their Requirements to the IFRB by the Date Established by the First Session of the Conference:*

3.1 The Commission has been engaged in extensive efforts to identify broadcasting requirements for this band and expects to be in a position to provide these requirements in a timely fashion.

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BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[Docket Nos.: FEMA-REP-5-MN-3]

The Minnesota Radiological Emergency Response Plan Site-Specific for the LaCrosse Nuclear Power Plant, Certification of Findings

ACTION: Certification of FEMA findings and determination.

In accordance with the Federal Emergency Management Agency (FEMA) rule 44 CFR Part 350, the State of Minnesota submitted its plans relating to the LaCrosse Nuclear Power Plant to the Director of FEMA Region V on June 14, 1984, for FEMA review and approval. On March 14, 1985, the Regional Director forwarded his evaluation to the Associate Director for State and Local Programs and support in

accordance with § 350.11 of the FEMA rule. Included in this evaluation is a review of the State and local plans around the LaCrosse facility, and evaluations of the joint exercises conducted on October 21, 1981, August 3, 1982, and June 19, 1984, in accordance with § 350.9 of the FEMA rule, and a report of the public meeting held on October 22, 1981, to discuss the site-specific aspects of the State and local plans in accordance with § 350.10 of the FEMA rule.

Based on the evaluation by the Regional Director and the review by the FEMA Headquarters staff, I find and determine that the State and local plans and preparedness for the LaCrosse Nuclear Power Plant are adequate to protect the health and safety of the public living in the vicinity of the plant. The offsite plans and preparedness are assessed as adequate in that they provide reasonable assurance that appropriate protective actions can be taken offsite in the event of a radiological emergency and are capable of being implemented. However, while there is a public alerting and notification (A&N) system in place and operational, this approval is conditional on FEMA's verification to the A&N system in accordance with the joint Nuclear Regulatory Commission (NRC)/FEMA criteria in NUREG–0654/FEMA–REP–1, Rev. 1, Appendix 3 and FEMA–43, "Standard Guide for the Evaluation of Alert and Notification Systems for Nuclear Power Plants".

FEMA will continue to review the status of offsite plans and preparedness associated with the LaCrosse Nuclear Power Plant in accordance with § 350.13 of the FEMA rule.

For further details with respect to this action, refer to Docket File FEMA–REP–5–MN–3 maintained by the Regional Director, FEMA Region V, Federal Center, Battle Creek, Michigan 49016.

Dated: August 13, 1985.

For the Federal Emergency Management Agency.

Samuel W. Speck,

Associate Director.

[FR Doc. 85–19921 Filed 8–20–85; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL RESERVE SYSTEM

Allied Bankshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 12, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Allied Bankshares, Inc.*, Thomson, Georgia; to acquire 88.75 percent of the voting shares of Bank of Millen, Millen, Georgia.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Croesus Partners I, Inc.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of LaGrange Bank & Trust Company, LaGrange, Illinois, and First Burlington Bank, Willowbrook, Willowbrook, Illinois.

2. *First Channahon Bancorp, Inc.*, Channahon, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Channahon, Channahon, Illinois.

3. *1st Source Corporation*, South Bend, Indiana; to acquire 100 percent of the voting shares of Marco Capital Corporation, Plymouth, Indiana, thereby indirectly acquiring 1st Source Bank of Marshall County, Plymouth, Indiana.

4. *Hi-Bancorp, Inc.*, Highwood, Illinois; to acquire 9 percent of the voting shares of New Century Bank, Mundelein, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Kansas Bank Corporation*, Liberal, Kansas; to acquire 100 percent of the voting shares of Citizens Bank Services, Inc., Abilene, Kansas, thereby indirectly acquiring Citizens Bank and Trust Co., Abilene, Kansas.

D. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First Anderson Bancshares, Inc.*, Anderson, Texas; to acquire 100 percent of the voting shares of First State Bank, Cypress, Texas, thereby indirectly acquiring First State Bank of Magnolia, Magnolia, Texas.

2. *Rockdale Bancshares, Inc.*, Rockdale, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank and Trust, Rockdale, Texas.

Board of Governors of the Federal Reserve System, August 15, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85–19919 Filed 8–20–85; 8:45 am]

BILLING CODE 6210–01–M

First Citizens Bankshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organization listed in this notice have 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.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than September 12, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *First Citizens Bankshares, Inc.*, Glennville, Georgia; to acquire Sunbelt Finance Company, Inc., Glennville, Georgia, thereby engaging in making small loans in accordance with § 225.25(b)(1)(i) of Regulation Y. These activities would be performed in the city of Glennville and other surrounding communities.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Golden Bancorporation*, Golden, Colorado; to acquire First Golden Service Corp., Golden, Colorado, thereby engaging in acting as agent with respect 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 15, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19923 Filed 8-20-85; 8:45 am]

BILLING CODE 6210-01-M

PNC Financial Corp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1985.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *PNC Financial Corp*, Pittsburgh, Pennsylvania; to engage *de novo* through its subsidiary, PNC Trust Company of New York; New York, New York, in performing the fiduciary functions and activities that may be performed by trust companies generally as contemplated by § 225.25(b)(3) of Regulation Y and by applicable New York law. It will not have banking powers and will not make loans or investments or accept deposits except to the extent expressly permitted under 12 CFR 225.23(b)(3) as further limited by New York law.

Board of Governors of the Federal Reserve System, August 15, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-19924 Filed 8-20-85; 8:45 am]

BILLING CODE 6210-01-M

GENERAL SERVICES ADMINISTRATION

Office of Federal Supply and Services; Proposed Requirements for Future Metal Office Furniture Contracts; Metal Office Furniture Vendors Conference

ACTION: Notice.

SUMMARY: The Office of Federal Supply and Services is considering four proposed contract requirements for metal office furniture intended to reduce the number of damaged shipments received by customer agencies as well as the timeframe allowed for replacement/repair. These proposed contract requirements will be discussed at the GSA Metal Office Furniture Vendors Conference.

DATES: The GSA Metal Office Furniture Vendors Conference will be held Thursday, September 5, 1985, 10:00 a.m. until noon, GSA National Capitol Region Auditorium, 7th and D Streets, SW., Washington, DC 20407. Comments on the proposed changes should be submitted in writing by Friday, September 20, 1985.

ADDRESS: Written comments should be directed to: General Services Administration, Office of Federal Supply and Services, Office of Contract Management (FQ), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Charles Hulick, Director, Office of Contract Management, (703) 557-8675.

SUPPLEMENTARY INFORMATION: The proposed requirements in brief are:

I. Furniture pack test certifications. In addition to compliance with the Uniform Freight Classification and National Motor Freight Classification Codes all packed units will have to meet ASTM D4169 conditions or be certified acceptable by the National Safe Transit Association (NSTA).

II. Package performance specifications. (Alternative to Proposal I) In addition to compliance with accepted commercial practice suitable to the mode of transportation used, packages will be subjected to the vibration, drop or superimposed load tests described in Federal Test Method Standard No. 101 and be certified acceptable by NSTA.

III. Package markings. All shipping containers will be marked on four sides with specific information for use by customer agencies on the handling of concealed and visible damages.

IV. Replacement clause changes. Vendors will be required to replace/repair damaged furniture within 30 days after notification.

Dated: August 13, 1985.

Charles Hulick,

Director, Office of Contract Management.

[FR Doc. 85-19954 Filed 8-20-85; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration; Statement of Organization, Functions and Delegations of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA).

Notice is given that Chapter S, as published in the **Federal Register** on March 21, 1979 (44 FR 17218) and last amended on January 4, 1983 (48 FR 338) is amended to add the Office of Legislative and Regulatory Policy (OLRP). Notice is also given that Chapter SR, as published in the **Federal Register** on June 1, 1983 (48 FR 24465), is amended to delete all reference to the Office of Legislative and Regulatory Policy missions, organization and functions. A new Chapter (SY) Office of Legislative and Regulatory Policy is being established. The revisions and new material are as follows:

1. Chapter S, *Sec. S.10 The Social Security Administration—(Organization)*:

Add Subsection (v), The Office of Legislative and Regulatory Policy (SY).

2. Chapter SR, *Sec. SR.00 The Office of Policy—(Mission)*:

A. Delete—It directs legislative planning, analysis and formulation in SSA, and conducts the broad research and statistical program of the Agency.

Add—It conducts the broad research and statistical program of the Agency.

B. Delete—Its activities with the Congress are carried out in close consultation and coordination with the Office of the Assistant Secretary for Legislation.

3. Chapter SR, *Sec. SR.10 The Office of Policy—(Organization)*:

Delete—"D. The Office of Legislative and Regulatory Policy (SRP), which includes:

1. The Legislative Reference Staff (SRP1).

2. The Division of Disability, Coverage and Interprogram Relationships (SRP3).

3. The Division of Retirement and Survivors Benefits (SRP5).

4. The Division of Supplemental Security Studies (SRP7).

4. Chapter SR, Sec. SR.20.

Delete—All existing material under D. The Office of Legislative and Regulatory Policy (SRP):

5. Add the following new material:

Sec. SY.00—*The Office of Legislative and Regulatory Policy—(Mission)*:

The Office of Legislative and Regulatory Policy (OLRP) develops and conducts the legislative planning program of SSA and serves as the focal point for all legislative activity in SSA: analyzes legislative and regulatory initiatives and develops specific requirements and decisions. The Office evaluates the effectiveness of programs administered by SSA in terms of legislative needs and analyzes and develops recommendations on related income maintenance, social service and rehabilitation program proposals, particularly those which may involve coordination with SSA-administered programs, and on other methods of providing economic security. It provides advisory service to SSA and HHS officials on legislation of interest to SSA pending in Congress. It also provides legislative specification drafting service to officials within the Executive Branch, congressional committees, individual members of Congress and private organizations interested in Social Security legislation. Its activities with the Congress are carried out in close consultation and coordination with the Office of the Assistant Secretary for Legislation.

Sec. SY.10 Office of Legislative and Regulatory Policy—(Organization)

The Office of Legislative and Regulatory Policy under the leadership of the Director, Legislative and Regulatory Policy includes:

A. The Director, Legislative and Regulatory Policy (SY).

B. The Deputy Director, Legislative and Regulatory Policy (SY).

C. The Immediate Office of the Director, Legislative and Regulatory Policy (SY)

D. The Legislative Reference Staff ( )

E. The Division of Disability, Coverage and Interprogram Relation ( )

F. The Division of Retirement and Survivors Benefits ( )

G. The Division of Supplemental Security Income ( )

Sec. SY.20 The Office of Legislative and Regulatory Policy—(Functions)

A. The Director, Office of Legislative and Regulatory Policy (SY) is directly responsible to the Commissioner for carrying out the OLRP mission and providing general supervision to the major components of OLRP.

B. The Deputy Director, Office of Legislative and Regulatory Policy (SY) assists the Director in carrying out his/her responsibilities and performs other duties as the Director may prescribe.

C. The Immediate Office of the Director, Office of Legislative and Regulatory Policy (SY) provides the Director and Deputy Director with staff assistance on the full range of their responsibilities.

D. The Legislative Reference Staff ( ):

1. Tracks legislative bills, highlight items of interest from the Congressional Record, and other publications for OLRP and SSA's Executive Staff and provides support for other OLRP and SSA components at Congressional hearings.

2. Assists individual members of Congress and their staffs and Congressional committee staffs by responding for information on pending and proposed Social Security legislation, related legislative proposals and the legislative history of the Social Security program.

3. Reviews legislative proposals for consistency with existing program goals, philosophy and program requirements.

E. The Division of Disability Coverage and Interprogram Relationships ( ):

1. Studies and makes recommendations on proposals for providing economic security for the disabled and their dependents through the Social Security system.

2. Develops and evaluates legislative proposals for extending Social Security protection to groups not yet covered.

3. Evaluates proposals for program changes in light of their effect on special coverage groups.

4. Recommends methods for coordinating the protection afforded under Social Security with that afforded disability programs.

5. Reviews proposed regulations dealing with the disability insurance (DI) program, Social Security coverage, interprogram relationships and various other issues, including the Social Security retirement test, insured status and the definitions of employment and wages, to assure cross-program consistency with policy requirements and decisions.

6. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees and individual members of Congress, State officials and private organizations having an interest in the disability program, Social Security coverage or interprogram relationships.

F. The Division of Retirement and Survivors Benefits ( ):

1. Develops and explains program principles and philosophy.

2. Prepares and evaluates proposals for Social Security program legislative changes in the area of retirement and survivors benefits.

3. Conducts studies of broad programmatic issues, including the philosophy, tax rates, alternative methods of financing trust fund

operations, and management and eligibility requirements for dependents and survivors' benefits, the level of Social Security benefits, value of benefits in relation to contributions, benefit computation methods, which dependents should receive benefits and the establishment of priority among these dependents.

4. Review proposed regulations for the Retirement and Survivors Insurance (RSI) program to assure cross-program consistency and consistency with policy requirements and decisions.

5. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees, individual members of Congress, State officials and private organizations having an interest in retirement and survivors benefits.

G. The Division of Supplemental Security Income ( ):

1. Develops and evaluates legislative proposals for changes in the program of Supplemental Security Income (SSI) program for the aged, blind and disabled.

2. Reviews proposed SSI program regulations for consistency with policy requirements and decisions.

3. Studies SSI program interrelationships with social security income maintenance, child support enforcement, food stamps, employment and other Federal, State and local programs and recommends methods for coordinating these programs.

4. Provides technical and advisory services to other agencies within the Executive Branch, Congressional committees, individual members of Congress, State officials and private organizations having an interest in the SSI program.

Dated: August 14, 1985.

Margaret M. Heckler,

Secretary of Health and Human Services.

[FR Doc. 85-19983 Filed 8-20-85; 8:45 am]

BILLING CODE 4110-07-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Small Grants and Special Emphasis Research Career Award Grants Relating to Occupational Safety and Health; Submission Deadlines for Grant Applications

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) announces a change in the submission deadlines for Small Grant (R03) and Special Emphasis Research Career Award Grant (K01) applications. Effective immediately, applicants to NIOSH for R03 and K01 grants may submit by March 1, July 1, and November 1, which are the regular submission deadlines for other research grant applications. In addition, an expedited secondary review will be made for R03 and K01 grants so that awards can be made within 7 months of submission. The program requirements remain as follows:

Small Grants

A small grant application is intended to provide financial support to carry out exploratory or pilot studies, to develop or test new techniques or methods, or to analyze data previously collected. This small grant program is intended for predoctoral graduate students, post-doctoral researchers (within 3 years following completion of doctoral degree or completion of residency or public health training), and junior faculty members (no higher than assistant professor). If university policy requires that a more senior person be listed as principal investigator, the application should specify that the funds are for the use of a particular student or junior-level person and should include appropriate justification for this arrangement. Although biographical sketches are required only for the person actually doing the work, the application should indicate who would be supervising the research. Small grant applications should be identified as such on the application form.

The total small grant award may comprise direct costs of up to $15,000 per year and additional indirect costs, as appropriate. The grants may be awarded for up to 2 years and are thereafter continuable by competitive renewal as a regular research grant. Salary of the principal investigator as well as that of the junior investigator, if university policy requires a senior person to be listed as the principal investigator, will not be allowed on a small grant, although salaries can be requested for necessary support staff such as laboratory technicians, interviewers, etc.

Special Emphasis Research Career Award (SERCA) Grants

The SERCA is designed to enhance the research capability of individuals in the formative stages of their careers who have demonstrated outstanding potential for contributing as independent investigators to health-related research. Candidates must have had 2 or more years of relevant postdoctoral experience prior to the submission date. The application must document accomplishments in this period that demonstrate research potential; it must also present a plan for additional experience in a productive scientific environment at domestic institutions that will foster development of a career of independent research in the area of occupational safety and health. The SERCA is not intended for untried investigators, or for productive, independent investigators with significant numbers of publications of high quality, or for persons of senior academic rank (above associate professor or tenured). Moreover, the award is not intended to substitute one source of salary support for another for an individual who is already conducting full-time research, nor is it intended to be a mechanism for providing institutional support. The application must demonstrate that the award will make a difference in and enhance the candidate's development as an independent investigator.

Candidates must indicate a commitment of at least 60 percent time (not necessarily 60 percent salary) devoted to research under the SERCA grant, although full-time is desirable. Other work in the area of occupational safety and health will enhance the candidate's qualifications but is not a substitute for this requirement. While working closely with one or more advisers, the awardee is expected to develop capabilities in fundamental, applied, and/or clinical research in one of the areas listed under "Programmatic Interest." At the end of the award period, evidence of independent investigative capability should be present such that the individual is better able to compete in traditional NIOSH research grant activities.

The total grant award may comprise direct costs of up to $30,000 per year and up to 8 percent additional indirect costs. Direct costs may include salary plus fringe benefits, technical assistance, equipment, supplies, consultant costs, domestic travel, publication, and other costs. If the awardee already holds a small grant on the same research topic, the amount of the SERCA may be reduced up to the amount of the small grant. Awards may be up to 3 years and will not be renewable.

Progammatic Interest

Areas of work-related programmmatic interest to NIOSH are listed below. The examples given under each area are not comprehensive definitions of the area. It should be noted, therefore, that investigators may apply in any areas related to occupational safety and health.

1. Occupational lung disease: asbestosis, byssinosis, silicosis, coal workers' pneumoconiosis, lung cancer, and occupational asthma.

2. Musculoskeletal injuries: disorders of the back, trunk, upper extemity, neck, and lower extremity; and traumatically induced Raynaud's phenomenon.

3. Occupational cancers (other than lung): leukemia; mesothelioma; and cancers of the bladder, nose, and liver.

4. Amputations, fractures: eye loss, lacerations, and traumatic deaths.

5. Cardiovascular diseases: hypertension, coronary artery disease, and acute myocardial infarction.

6. Disorders of reproduction: infertility, spontaneous abortion, and teratogenesis.

7. Neurotoxic disorders: peripheral neuropathy, toxic encephalitis, psychoses and extreme personality changes (exposure-related).

8. Noise-induced loss of hearing.

9. Dermatologic conditions: dermatoses, burns (scalding), chemical burns, and contusions (abrasions).

10. Psychologic disorders: neuroses, personality disorders, alcoholism, drug dependency.

11. Control technology research: application of scientific principles to control strategies, preconstruction review, technology forcing/new source performance concepts, technology transfer, substitution, unit operations approaches.

12. Respirator research: new and innovative respiratory protective devices; techniques to predict performance; effectiveness of respirator programs; physiologic and ergonomic factors; medical surveillance strategies; psychological and motivational aspects; and physical properties.

FOR FURTHER INFORMATION CONTACT:

For technical information: Roy M. Fleming, Sc.D., Associate Director for Grants, NIOSH, Building 1, Room 3053, Centers for Disease Control, Atlanta, GA 30333, Telephone: 404/329-3343 or FTS 236-3343

For business information: Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 E. Paces Ferry Road, NE, Room 321, Atlanta, Georgia 30305, Telephone: (404) 262-6575 or FTS 236-6572.

(This program is described in the Catalog of Federal Domestic Assistance Program No. 13.262, Occupational Safety and Health Research Grants)

Dated: August 13, 1985.

Elliott S. Harris,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 85-19946 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

Advisory Committee Meeting; Filing of Annual Reports

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, as required by the Federal Advisory Committee Act, the agency has filed with the Library of Congress the annual reports of those FDA advisory committees that held closed meetings.

ADDRESS: Copies are available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1751.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md 20857, 301-443-2765.

SUPPLEMENTARY INFORMATION: Under section 13 of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), FDA has filed with the Library of Congress the annual reports for the following FDA advisory committees that held closed meetings during the period July 1, 1984, through June 30, 1985:

Center for Drugs and Biologics:
- Anesthetic and Life Support Drugs Advisory Committee,
- Anti-Infective Drugs Advisory Committee,
- Blood Product Advisory Committee
- Vaccines and Related Biological Products Advisory Committee.

Center For Devices and Radiological Health:
- Circulatory System Devices Panel,
- Immunology Devices Panel,
- Ophthalmic Devices Panel.

Annual reports are available for public inspection at (1) the Library of Congress, Newspaper and Current Periodical Reading Room, Rm. 1026, Thomas Jefferson Bldg., 2d and Independence Ave. SE., Washington, DC, (2) the Department of Health and Human Services Library, Rm. 1436, 330 Independence Avenue SW., Washington, DC, on weekdays between 9 a.m. and 4:30 p.m., and (3) the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4:30 p.m., Monday through Friday.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19937 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84D-0263]

Meningococcal Polysaccharide Vaccines; Availability of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guideline for the manufacture and release of Meningococcal Polysaccharide Vaccine and the bulk powders of each polysaccharide used for the manufacture of the vaccines.

ADDRESS: Written requests for a copy of the guideline or comments concerning the guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTRACT: Carl E. Frasch, Center for Drugs and Biologics (HFN-858), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-496-1920.

SUPPLEMENTARY INFORMATION: Meningococcal Polysaccharide Vaccine are biological products licensed under section 351 of the Public Health Service Act (42 U.S.C. 262).

FDA issued the first license for Meningococcal Polysaccharide Vaccine in 1974. FDA regulates production of these vaccines not only through standards in the license applications but also through requirements in the regulations on establishment and product licensing in 21 CFR Parts 600 and 601, the general biological standards in 21 CFR Part 610, the labeling requirements in 21 CFR Parts 201 and 202, and the current good manufacturing practice (CGMP) regulations in 21 CFR Part 211. FDA has not issued specific regulations for Meningococcal Polysaccharide Vaccines.

The Office of Biological Research and Review in FDA's Center for Drugs and Biologics has developed a guideline concerning the manufacture and release of Meningococcal Polysaccharide Vaccines and the polysaccharide bulk powders from which the individual polysaccharides used for making the

vaccines are derived. FDA is making the guideline available to provide guidance to the two currently licensed manufacturers and any possible new manufacturers concerning the production of safe and effective vaccines.

FDA is making the guideline available under 21 CFR 10.90(b). That regulation provides for FDA's use of guidelines to outline procedures or standards of general applicability that are acceptable to FDA for a subject matter that falls within the laws administered by FDA. Although guidelines are not legal requirements, a person may be assured that in following an agency guideline the procedures followed and standards used will be acceptable to FDA. A person may also choose to use alternative procedures or standards for which there is scientific rationale even though they are not provided for in a guideline. A person who chooses to use procedures or standards different from procedures or standards in a guideline may discuss the matter further with the agency to prevent an expenditure of resources for work that FDA may later determine to be unacceptable.

Interested persons may submit written comments on the guideline to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. FDA will consider the comments when determining whether amendments or revisions to the guideline are warranted. The comments will assist the agency in developing additional standards for Meningococcal Polysaccharide Vaccines. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 14, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-19936 Filed 8-20-85; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Privacy Act of 1974; System of Records

AGENCY: Department of Health and Human Services; Public Health Service.

ACTION: Notification of a new system of records: 09-25-0156: "Records of Participants in Programs and Respondents in Surveys used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD."

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is published notice of a proposal to establish a new system of records, 09-25-0156, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD." We are also proposing routine uses for this system.

The National Institutes of Health (NIH) will use the proposed system of records to support evaluation of the methods, materials, activities and services used by NIH in fulfilling its legislated mandate to conduct and support biomedical research into the causes, prevention and cure of diseases, to support training of research investigators, and to support communication of biomedical information.

PHS invites interested persons to submit comments on the proposed routine uses on or before September 20, 1985.

DATES: PHS has sent a Report of New System to the Congress and to the Office of Management and Budget (OMB) on August 12, 1985. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

ADDRESS: Comments should be addressed to the NIH Privacy Act Coordinator at the address listed below. Comments received will be available for inspection weekdays between 9 a.m. and 3 p.m. in Room 3B11, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Kenneth Thibodeau, NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20205, or call 301-496-2832. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: NIH was established to improve the health of the American people by conducting biomedical research, by funding such research through grants, contracts and other awards, and by promoting communication and dissemination of biomedical knowledge. NIH conducts reviews to determine how well these programs and projects achieve their goals.

The proposed system of records will cover cases where (1) NIH collects opinions, suggestions or other personal information concerning programs which do not use any system of records, or (2) program evaluation requires several categories of information which are not contained in any existing system.

Evaluation studies may take the form of surveys in which individuals who have or could participate in, contribute to, or benefit from NIH programs, provide opinions, suggestions or other information useful in evaluating the programs. For example, surveys of how much the public knows about certain methods for reducing the risk of disease may be used to evaluate dissemination of information about disease prevention. Other studies may use information from existing sources. For example, to evaluate research training programs, NIH may assemble information about publications by individuals who have received research training support, or from NIH grants files about research grants subsequently awarded to such individuals.

Evaluation studies may be conducted either by NIH staff or by other organizations under contract. Such contracts might be awarded when NIH staff is not available, when other organizations have better access to targeted populations, or when they can obtain or provide the desired information at lower cost or with less instrusion upon individuals.

The routine uses proposed for these systems are compatible with the purpose of evaluating NIH programs. The first two proposed routine uses are needed to accomplish the purpose of the system; that is, information would be disclosed under these routine uses to conduct, review, analyze or follow-up evaluation studies. The third proposed routine use for disclosure to a congressional office acting on behalf of an individual would not violate the privacy of an individual because such disclosure would be made only pursuant to a request initiated by the individual.

The proposed system will cover evaluation studies throughout NIH. Records in this system will be organized and maintained according to the particular evaluation study of which they are a part. NIH will not enter records into a general or comprehensive data base, nor create any overall index to the separate sets of records used in different evaluation projects; however, NIH is treating the separate sets of records as a single system under the Privacy Act (1) because all of the sets of records serve the same purpose, (2) in order to apply consistent policies and practices in the maintenance of such records, and (3) to make it easier for subject individuals to obtain notification of or access to their records.

When it becomes effective, the proposed system will subsume records currently covered by three existing systems: 09-25-0147, "Records of

Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Heart, Lung, and Blood Institute, HHS/NIH/NHLBI," 09-25-0149, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of General Medical Sciences, HHS/NIH/NIGMS," and 09-25-0150, "Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institute of Environmental Health Sciences, HHS/NIH/NIEHS." Each of these three systems covers activities within a single institute; the proposed system will cover the entire NIH; however, there are no substantial differences between the proposed system and the current systems in implementing requirements of the Privacy Act. The three existing systems will be deleted when the proposed system becomes effective.

The proposed system of records will not become effective until 60 days after the date it was reported to OMB, as discussed above. However, the following notice is written in the present tense, rather than futher tense, in order to avoid the unnecessary expenditure of public funds to republish the notice after the system has become effective.

Dated: August 14, 1985.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management, PHS.

09-25-0156

SYSTEM NAME:

Records of Participants in Programs and Respondents in Surveys Used to Evaluate Programs of the National Institutes of Health, HHS/NIH/OD.

Security classification:

None.

System location:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include National Institutes of Health (NIH) facilities in Bethesda, Maryland, or facilities of contractors of the NIH. Write to the appropriate System Manager below for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals covered by this system are those who provide information or opinions that are useful in evaluating programs or activities of the NIH, other persons who may participate in or benefit from NIH programs or activities; or other persons included in evaluation studies for purposes of comparison. Such individuals may include (1) participants in research studies; (2) applicants for and recipients of grants, fellowships, traineeships or other awards; (3) employees, experts and consultants; (4) members of advisory committees; (5) other researchers, health care professionals, or individuals who have or are at risk of developing disease or conditions studied by NIH; or (6) persons who provide feedback about the value or usefulness of information they receive about NIH programs, activities or research results.

CATEGORIES OF RECORDS IN THE SYSTEM:

This umbrella system of records covers a varying number of separate sets of records used in different evaluation studies. The categories of records in each set depend on the type of program being evaluated and the specific purpose of the evaluation. In general, the records contain two types of information: (1) Information identifying subject individuals, and (2) information which enables NIH to evaluate its programs and services.

(1) Identifying information usually consists of a name and address, but it might also include a patient indentification number, grant number, Social Security Number, or other identifying number as appropriate to the particular group included in an evaluation study.

(2) Information used for evaluation varies according to the program evaluated. Categories of evaluative information include personal and medical data on participants in clinical and research programs; publications, professional achievements and career history of researchers; and opinions and other information received directly from individuals in evaluation surveys and studies of NIH programs.

The system does not include any master list, index or other central means of identifying all individuals whose records are included in the various sets of records covered by the system.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for this system comes from the following general authorities regarding the establishment of the National Institutes of Health, its general authority to conduct and fund research and to provide training assistance, and its general authority to maintain records in connection with these and its other functions (42 U.S.C. 203, 241, 289*l*-1 and 44 U.S.C. 3101).

PURPOSE(S):

This system supports evaluation of the policies, programs, organization, methods, materials, activities or services used by NIH in fulfilling its legislated mandate for

(1) Conduct and support of biomedical research into the causes, prevention and cure of disease;

(2) Support for training of research investigators;

(3) Communication of biomedical information.

This system is not used to make any determination affecting the rights, benefits or privileges of any individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) Disclosure may be made to HHS contractors and collaborating researchers, organizations, and State and local officials for the purpose of conducting evaluation studies or collecting, aggregating, processing or analyzing records used in evaluation studies. The recipients are required to protect the confidentiality of such records.

(2) Disclosure may be made to organizations deemed qualified by the Secretary to carry out quality assessments, medical audits or utilization review.

(3) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data may be stored in file folders, bound notebooks, or computer-accessible media (e.g., magnetic tapes or discs).

RETRIEVABILITY:

Information is retrieved by name and/or participant identification number within each evaluation study. There is no central collection of records in this system, and no central means of identifying individuals whose records are included in the separate sets of records that are maintained for particular evaluation studies.

SAFEGUARDS:

A variety of safeguards is implemented for the various sets of records in this system according to the sensitivity of the data each set contains.

Information already in the public domain, such as titles and dates of publications, is not restricted. However, sensitive information, such as personal or medical history or individually identified opinions, is protected according to its level of sensitivity. Records derived from other systems of records will be safeguarded at a level at least as stringent as that required in the original systems. Minimal safeguards for the protection of information which is not available to the general public include the following:

Authorized Users: Regular access to information in a given set of records is limited to NIH or to contractor employees who are conducting, reviewing or contributing to a specific evaluation study. Other access is granted only on a case-by-case basis, consistent with the restrictions required by the Privacy Act (e.g., when disclosure is required by the Freedom of Information Act), as authorized by the system manager or designated responsible official.

Physical Safeguards: Records Records are stored in closed or locked containers, in areas which are not accessible to unauthorized users, and in facilities which are locked when not in use. Records collected in each evaluation project are maintained separately from those of other projects. Sensitive records are not left exposed to unauthorized persons at any time. Sensitive data in machine-readable form may be encrypted.

Procedural Safeguards: Access to records is controlled by responsible employees and is granted only to authorized individuals whose identities are properly verified. Data stored in computers is accessed only through the use of keywords known only to authorized personnel. Contracts for operation of this system of records require protection of the records in accordance with these safeguards; NIH project and contracting officers monitor contractor compliance.

These practices are in compliance with the standards of chapter 45–13 of the HHS General Administration Manual, supplementary chapter PHS hf: 45–13, and Part 6, Systems Security, or the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Studies, analyses, reports, and statistical compilations created or collected in evaluation of NIH mission-related activities are scheduled for permanent retention by the National Archives as part of the historical record of the NIH, as provided by the NIH Records Control Schedule, section 1100–C. Working papers, extra copies, or records not used in evaluations of major programs of the NIH or any of its Bureaus, Institutes or Divisions are destroyed no later than 5 years after completion of the evaluation study (NIH Records Control Schedule, items 1100–C–12d, 1100–C–14b, 1100–C–15b, 1900–A–4). Disposal methods include burning or shredding of hard copy and erasing magnetic media.

Policy Coordination for this system is provided by: Associate Director for Program Planning and Evaluation, National Institutes of Health, Building 1, Room 137, 9000 Rockville Pike, Bethesda, MD 20205.

SYSTEM MANAGERS AND ADDRESSES:

See Appendix 1.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the official of the organization responsible for the evaluation, as listed in Appendix 2, if you are not certain which component of NIH was responsible for the evaluation study, or if you believe there are records about you in several components of NIH, write to

NIH Privacy Act Coordinator, Building 31, Room 3B07, 9000 Rockville Pike, Bethesda, MD 20205

Requesters must provide the following information:

1. Full name;
2. Name and location of the evaluation study or other NIH program in which the requester participated;
3. Approximate dates of participation.

The requester must also verify his or her identity by providing either a notorization of the request or a written certification that the requester is who he or she claims to be and understands that the knowing and willful request for acquisition of a record pertaining to an individual under false pretenses is a criminal offense under the Act, subject to a five thousand dollar fine.

An individual who requests notification of or access to a medical record shall, at the time the request is made, designate in writing, a responsible representative, who may be a physician, other health professional, or other responsible individual, who will be willing to review the record and inform the subject individual of its contents at the representative's dicretion.

A parent or guardian who requests notification of, or access to, a child's or incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the child or incompetent person as well as his or her own identity.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORD PROCEDURES:

Write to the official specified under notification procedures above, and reasonably identify the record and specify the information being contested, the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely or irrelevant.

RECORD SOURCE CATEGORIES:

Information contained in these records is obtained directly from individual participants; from systems of records 09–25–0036, "Grants: IMPACT (Grants' Contract Information), HHS/NIH/DRG," 09–25–0112, "Grants: Research, Research Training, Fellowship and Construction Applications and Awards, HHS/NIH/OD"; other records maintained by the operating programs of NIH; the National Academy of Sciences and other contractors; grantees or collaborating researchers; or publicly available sources such as bibliographies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1: System Managers

NIH, Office of the Director: Chief, Program Evaluation Branch, OPPE, NIH, Building 1, Room 234, 9000 Rockville Pike, Bethesda, MD 20205

National Heart, Lung and Blood Institute (NHLBI): Director, Office of Program Planning & Evaluation, NHLBI, NIH, Building 31, Room 5A03, Bethesda, MD 20205

National Library of Medicine (NLM): Special Assistant for Operations Research, Office of the Director, NLM, NIH, Building 38, Room 2S18, Bethesda, MD 20205

National Eye Institute (NEI): Associate Director for Program Planning Analysis and Evaluation, NEI, NIH, Building 31, Room 6A25, Bethesda, MD 20205

National Institute on Aging (NIA): Evaluation Officer, NIA, NIH, Building 31, Room 5C11, Bethesda, MD 20205

National Institute of Allergy and Infectious Diseases (NIAID): Chief, Evaluation Section, Office of Program Planning and Evaluation, NIAID, NIH, Building 31, Room 7A19, Bethesda, MD 20205

National Institute of Child Health and Human Development (NICHD): Chief, Office of Planning and Evaluation, NICHD, NIH,

Building 31, Room 2A10, Bethesda, MD 20205
National Institute of Dental Research (NIDR): Chief, Office of Planning, Evaluation and Communications, NIDR, NIH, Building 31, Room 2C36, Bethesda, MD 20205
National Institute of Environmental Health Sciences (NIEHS): Program Analyst, Office of Program Planning and Evaluation, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, N.C. 27709
National Institute of General Medical Sciences (NIGMS): Associate Director for Evaluation, NIGMS, Westwood Building Room 9A18, 5333 Westbard Avenue, Bethesda, MD 20205
Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, FIC, NIH, Building 38A, Room 607, Bethesda, MD 20205
Division of Research Grants (DRG): Assistant Director for Special Projects, DRG, Westwood Building, Room 457, National Institutes of Health, Bethesda, MD 20205
Division of Research Resources (DRR): Program Analyst, Office of Program Planning and Evaluation, DRR, NIH, Building 31, Room 5B54, Bethesda, MD 20205

Appendix 2: Notification and Access Officials

NIH, Office of the Director: Chief, Program Evaluation Branch, OPPE, NIH, Building 1, Room 234, 9000 Rockville Pike, Bethesda, MD 20205
National Heart, Lung and Blood Institute (NHLBI): Privacy Act Coordinator, NHLBI, NIH, Building 31, Room 5A29, Bethesda, MD 20205
National Library of Medicine (NLM): Special Assistance for Operations Research, Office of the Director, NLM, NIH, Building 38, Room 2S18, Bethesda, MD 20205
National Eye Institute (NEI): Executive Officer, NEI, NIH, Building 31, Room 6A25, Bethesda, MD 20205
National Institute on Aging (NIA): Evaluation Officer, NIA, NIH, Building 31, Room 5C11, Bethesda, MD 20205
National Institute of Allergy and Infectious Diseases (NIAID): Chief, Evaluation Section, Office of Program Planning and Evaluation, NIAID, NIH, Building 31, Room 7A19, Bethesda, MD 20205
National Institute of Child Health and Human Development (NICHD): Chief, Office of Planning and Evaluation, NICHD, NIH, Building 31, Room 2A10, Bethesda, MD 20205
National Institute of Dental Research (NIDR): Chief, Office of Planning, Evaluation and Communications, NIDR, NIH, Building 31, Room 2C36, Bethesda, MD 20205
National Institute of Environmental Health Sciences (NIEHS): Program Analyst, Office of Program Planning and Evaluation, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, N.C. 27709
National Institute of General Medical Sciences (NIGMS): Privacy Act Coordinator, NIGMS, NIH, Building 31, Room 4A52, Bethesda, MD 20205
Fogarty International Center (FIC): Assistant Director for Planning and Evaluation, FIC, NIH, Building 38A, Room 607, Bethesda, MD 20205
Division of Research Grants (DRG): Assistant Director for Special Projects, DRG, Westwood Building, Room 457, National Institutes of Health, Bethesda, MD 20205
Division of Research Resources (DRR): Program Analyst, Office of Program Planning and Evaluation, DRR, NIH, Building 31, Room 5B54, Bethesda, MD 20205

[FR Doc. 85-19900 Filed 8-20-85; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Group 781]

California; Filing of Plat of Survey

August 7, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Humboldt Meridian, Humboldt County

T. 7 N., R. 5 E.

2. This plat, representing the survey of the subdivision of sections 8, 9, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29, 30, 33, 34, and 35, Township 7 North, Range 5 East, Humboldt Meridian, under Group No. 781, California, was accepted July 22, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat as executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records & Information Section.

[FR Doc. 85-19885 Filed 8-20-85; 8:45 am]
BILLING CODE 4310-40-M

[Group 507]

California; Filing of Plat of Survey

August 7, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Tehama County

T. 24 N., R. 9 W.

2. This plat, representing the corrective dependent resurvey of the north one-half mile between sections 19 and 20, the west one-half mile between sections 17 and 20 the line between sections 18 and 19, and the south one-half mile between sections 17 and 18, to correct the erroneously established section corner of sections 17, 18, 19, and 20, Township 24 North, Range, 9 West, Mount Diablo Meridian, under Group No. 507, California, was accepted July 17, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This supplemental plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management and the Department of Agriculture, U.S. Forest Service.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room E-2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records & Information Section.

[FR Doc. 85-19886 Filed 8-20-85; 8:45 am]
BILLING CODE 4310-40-M

Off-Road Vehicle Designation Decisions; Ridgecrest Resource Area, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Off-road vehicle route designation decisions to open, close, or limit use of routes of travel on public lands in the Ridgecrest Resource Area.

SUMMARY: Final off-road vehicle designation decisions have been made to protect the resources of the area, to promote safe use of the lands, and to minimize conflicts among users. The designations were prepared following the criteria defined in 43 CFR 8342.1 and with the authority of 43 CFR 8000.0-6, 8340, 8341, 8342 and 8364. Public comment for off-road vehicle route designations in the Ridgecrest Resource Area was received in November, 1984 and in April, 1985. The California Desert Conservation Area had been mapped using a series of 21 map called the Motorized Vehicle Interim Access Guides. These guides provided the interim vehicle designations made by the California Desert Conservation Area

Plan until such a time as vehicle routes in each map area could be more carefully inventoried.

This notice serves to inform the public that designation decisions have been completed for the five remaining maps of the Ridgecrest Area. This area encompasses approximately 2 million acres of BLM administered public land in the desert portions of Kern, Inyo, and San Bernardino Counties and includes such well known locations as the Rand Mountains, El Paso Mountains, Panamint Mountains, Panamint Valley, Inyo Mountains, Saline Valley, and Eureka Valley.

DATE: These designations are effective upon publication of this notice and will remain in effect until rescinded or modified by the authorized officer. Enforcement of these routes will be implemented as routes are signed or as maps are printed and become available to the public.

ADDRESSES: Send inquiries to District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507 or the Area Manager, Ridgecrest Resource Area, 112 East Dolphin Street, Ridgecrest, California 93555. Route designation decision records and maps showing vehicle designations are available for public review at the Ridgecrest Resource Area Office from 7:30 am to 4:00 pm on Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Dave Mensing, District Outdoor Recreation Planner at (714) 351-6402, or Steve Smith, Ridgecrest Resource Area Chief of Resource Protection and Visitor Management at (619) 375-7125.

SUPPLEMENTARY INFORMATION: These vehicle route designations are enforceable under the authority provided in the Federal Land Policy and Management Act (43 U.S.C. 1701 et seq.), the Endangered Species Act (16 U.S.C. 1701 et seq.), EO 11644 (Use of Off-Road Vehicle on the Public Lands), and 3 CFR 74.332 as amended by EO 11989, 42 FR 26959 (May 25, 1977). Any person who violates or fails to comply with the vehicle route designations as governed by 43 CFR Part 8341 is subject to arrest, conviction and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000.00 and/or imprisonment for not longer than twelve months.

Dated: August 9, 1985.

Wes Chambers,

Acting District Manager.

[FR Doc. 85-19947 Filed 8-20-85; 8:45 am]

BILLING CODE 4310-40-M

[W-86701]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

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-86701 for lands in Campbell 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-86701 effective 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. 85-19950 Filed 8-20-85; 8:45 am]

BILLING CODE 4310-22-M

[W-0248350]

Wyoming; Proposed Continuation of Reclamation Withdrawal

Correction

In FR Doc. 85-17637, appearing on page 30302 in the issue of Thursday, July 25, 1985, make the following correction: In the middle column, in the land description, the specifications for Section 22 should read:

Sec. 22, E½E½ of lot 1, E½NE¼, E½E½ NE¼SE¼.

BILLING CODE 1505-01-M

Albuquerque District Advisory Council; Meeting and Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of District Advisory Council meeting and tour.

SUMMARY: The BLM Albuquerque District Advisory Council will meet on September 16, 1985, at 8:00 a.m., in the conference room of the BLM's Rio Puerco Resource Area Office located at 3550 Pan American Highway in Albuquerque, New Mexico. The Council will receive information from the BLM on the Off-Road Vehicle designation decisions proposed by the BLM's Draft Rio Puerco Resource Management Plan (RMP) and public comments received in response to that draft document.

Public comments to the Council will be received at 9:00 a.m., prior to the Council leaving for a field trip to the affected areas. The public is invited to participate in the field trip, but transportation by the BLM will not be provided.

The District Advisory Council is managed in accordance with the Federal Advisory Committee Act of 1972, The Federal Land Policy and Management Act of 1976, and the Rangeland Improvement Act of 1976. Minutes of the meeting will be made available for review within 30 days following the meeting.

For additional information, contact R. Alan Hoffmeister, Public Affairs Specialist, P.O. Box 6770, Albuquerque, New Mexico 87197-6770.

L. Paul Applegate,

District Manager.

[FR Doc. 85-20023 Filed 8-20-85; 8:45 am]

BILLING CODE 4310-FB-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-181]

Certain Meat Deboning Machines; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation on the basis of a finding of no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337).

SUMMARY: The U.S. International Trade Commission hereby gives notice of its decision to terminate the above-captioned investigation. Termination was requested by the complainants by motion without opposition from any other party. The motion is granted on the basis of a Commission finding that the complainants failed to demonstrate a commitment to establish a domestic industry in the United States. The Commission did not address the other domestic industry issues presented in this investigation as they are unnecessary for the final disposition of this case.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of

General Counsel, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0421.

SUPPLEMENTARY INFORMATION: On February 28, 1985, the Commission conducted a hearing to review the domestic industry issues raised in this investigation. Following the hearing, the Commission remanded the investigation to the ALJ for the purpose of obtaining additional findings of fact and conclusions of law regarding the complainants' commitment to establish a domestic industry, one of three domestic industry isues raised in this case. During the remand proceedings, the complainants filed a motion to terminate the investigation. This motion was certified to the Commission by the ALJ with a recommendation that it be granted and that the investigation be terminated with a finding of no violation of section 337 on the basis of the complainants' lack of a commitment to establish a domestic industry.

Copies of the Commission's Action and Order and all the nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161.

Issued: August 16, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–20020 Filed 8–20–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–214, 216, and 226 (Final)]

Certain Carbon Steel Products From the German Democratic Republic and Poland

AGENCY: United States International Trade Commission.

ACTION: Termination of investigations.

SUMMARY: On August 6, 1985, the Commission received letters from petitioner in the subject investigations (United States Steel Corp.) which stated, with respect to each of the cited investigations, that" . . . U.S. Steel hereby withdraws its antidumping petition and requests termination of the proceeding. It is understood that withdrawal of the petition is without prejudice." Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the following investigations are terminated:

Carbon Steel Plates Whether or not in Coils From—
- The German Democratic Republic (investigation No. 731–TA–214 (Final)); and
- Poland (investigation No. 731–TA–216 (Final)); and

Cold-Rolled Carbon Steel Plates and Sheets From the German Democratic Republic (investigation No. 731–TA–226 (Final)).

EFFECTIVE DATE: August 12, 1985.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–523–1369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

Authority: These investigations are being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: August 14, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85–19963 Filed 8–20–85; 8:45 am]

BILLING CODE 7020–02–M

[Investigations Nos. 731–TA–236 and 237 (Final)]

Certain Castor Oil Products From Brazil

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731–TA–236 and 237 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of hydrogenated castor oil (investigation No. 731–TA–236 (Final)) and/or 12-hydroxystearic acid (investigation No. 731–TA–236 (Final)), provided for in items 178.20 and 490.26, respectively, of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigations are extended, Commerce will make its final LFTFV determinations on or before October 8, 1985, and the Commission will make its final injury determinations by November 26, 1985 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: July 30, 1985.

FOR FURTHER INFORMATION CONTACT: Lynn Featherstone (202–523–0242), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that there is a reasonable basis to believe or suspect that imports of hydrogenated castor oil and 12-hydroxystearic acid from Brazil are being sold in the United States at LTFV within the meaning of section 731 of th act (19 U.S.C. 1673). The investigations were requested in petitions filed on December 27, 1984, by Union Camp Corp., Wayne, NJ. In response to those petitions the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that industries in the United States were materially injured by reason of imports of the subject products (50 FR 7236, Feb. 21, 1985).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will

determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in these investigations will be placed in the public record on October 4, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 10:00 a.m. on October 21, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 1, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:00 a.m. on October 3, 1985, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 15, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on October 28, 1985. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before October 28, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: August 16, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19964 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-246 (Final)]

Low-Fuming Brazing Cooper Wire and Rod From New Zealand

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731-TA-246 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from new Zealand of low-fuming brazing copper wire and rod, provided for in items 612.6205 (rod), 612.7220 (wire), and 653.1500 (flux-coated wire or rod) of the Tariff Schedules of the United States, which have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before October 15, 1985 and the Commission will make its final injury determination November 29, 1985 (see sections 735(a) and 735(b) of the act (19 US.C.. 1673d(a) and 1673(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: August 13, 1985.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202-523-0165), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-imparied individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202'724-0002.

SUPPLEMENTARY INFORMATION:

Background.

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of low-fuming brazing copper wire and rod from New Zealand are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 19, 1985 by American Brass Co., Rolling Meadows, IL; Century Brass Products, Inc., Waterbury, CT; and Cerro Metal Products, Inc., Bellefonte, PA. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason

of imports of the subject merchandise (50 FR 14174, April 10, 1985).

Participation in the Investigation—

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's Rules of Practice and Procedure (19 CFR § 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list—

Pursuant to § 201.11(d) of the Commission's rules (19 CFR § 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § §201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report—

A public version of the prehearing staff report in this investigation will be placed in the public record on October 4, 1985, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing—

The Commission will hold a hearing in connection with this investigation beginning at 10:00 a.m. on October 17, 1985 at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on October 15, 1985. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on October 11, 1985 in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is October 15, 1985.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions—

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR § 207.22) Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on October 24, 1985. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before october 24, 1985.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the commission in accordance with § 201.8 of the Commission's rules (19 CFR § 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: August 13, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19965 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-228]

Certain Mass Spectrometers and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of Investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 16, 1985, under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), on behalf of Finnigan Corporation, 355 River Oaks Parkway, San Jose, California 95134. The complaint alleges unfair methods of competition and unfair acts in the importation into the United States of certain mass spectrometers and components thereof, or in their sale, by reason of alleged direct, contributory and induced infringement of the claims of U.S. Letters Patent 4,423,324. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests the Commission to institute an investigation and, after a full investigation, to issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Gary Rinkerman, Esq., or Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1273 or 202-523-0419, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 14, 1985, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation into the United States of certain mass spectrometers and components thereof, or in their sale, by reason of alleged direct, contributory and induced infringement of the claims of U.S. Letters Patent 4,423,324, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) For the purpose of the investigation so instituted, the following are hereby

named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Finnigan Corporation, 355 River Oaks Parkway, San Jose, California 95134.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Nermag/Delsi, 49, Quai du Halage, 92500 Rueil-Malmaison, Paris, France
Delsi/Nermag, 10 Kingsbridge Road, Fairfield, New Jersey 07006
VG Analytical, Ltd., Floats Road, Wythenshawe, Manchester, M 23 9LE, England
VG Instruments Inc., 300 Broad Street, Stamford, Connecticut 06901

(c) Gary Rinkerman, Esq., and Stephen L. Sulzer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128 and Room 124, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses must be submitted by the named respondents in accordance with § 210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of the rules (19 CFR 201.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting a response will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202-523-0471.

Issued: August 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19966 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-227]

Certain One Piece Cold Forged Bicycle Cranks; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and 19 U.S.C. 1337a.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on July 19, 1985, pursuant to section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and under 19 U.S.C. 1337a, on behalf of Thun, Inc., One Alfred Thun Road, Clarksville, Tennessee 37040. The complaint, as supplemented by staff exhibits, alleges unfair methods of competition and unfair acts in the importation of certain one piece cold forged bicycle cranks into the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent 3,608,184. The complaint further alleges that the effect or tendency of the unfair methods of competition and unfair acts is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

The complainant requests that the Commission institute an investigation, conduct temporary relief proceedings, and issue a temporary exclusion order prohibiting importation of the articles in question into the United States, except under bond. After a full investigation, the complainant requests that the Commission issue a permanent exclusion order and permanent cease and desist orders.

FOR FURTHER INFORMATION CONTACT: Juan Cockburn, Esq., or Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-523-1272 or 202-523-4877, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930 and in § 210.12 of the Commission's Rules of Practice and Procedure (19 CFR 210.12).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on August 14, 1985, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, an investigation be instituted to determine whether there is a violation of subsection (a) of section 337 in the unlawful importation of certain one piece cold forged bicycle cranks into the United States, or in their sale, by reason of alleged infringement of the claims of U.S. Letters Patent 3,608,184, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States.

(2) Pursuant to § 210.24(e) of the Commission's rules, the motion for temporary relief under subsections (e) and (f) of section 337 of the Tariff Act of 1930, which was filed on July 19, 1985, shall be forwarded to the presiding administrative law judge for an initial determination pursuant to § 210.53(b) of the rules.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Thun, Inc., One Alfred Thun Road, Clarksville, Tennessee 37040.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Sugino Cycle Industries Ltd., 10-7 Oimazato, 1-Chome Higashinari-Ku, Osaka 537, Japan
Sugino Cycle, Inc., 550 Commerce Street, Franklin Lakes, New Jersey 07417
Sakae-Ringyo Co., Ltd., 2-16 Aoi, Adachi-Ku, Tokyo 120, Japan
Sakae-Ringyo Co., Ltd., 303 East Ohio Street, Suite 2800, Chicago, Illinois 60611

(c) Juan Cockburn, Esq., and Steven H. Schwartz, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 701 E Street NW., Room 128 and Room 122, respectively, Washington, DC 20436, shall be the Commission investigative attorneys, party to this investigation; and

(4) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge. Pursuant to § 210.24(e) of the Commission's Rules of Practice and Procedure, the presiding administrative law judge shall determine as expeditiously as possible whether or not temporary relief proceedings should be instituted.

Responses must be submitted by the named respondents in accordance with §210.21 of the Commission's Rules of Practice and Procedure (19 CFR 210.21). Pursuant to §§ 201.16(d) and 210.21(a) of

the rules (19 CFR 210.16(d) and 210.21(a)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Responses to the motion for temporary relief may be submitted by the named respondents in accordance with § 210.24(e)(3) of the Commission's rules. Any such responses must be filed within 20 days after service of the motion. Extensions of time for submitting responses to the complaint and/or the motion for temporary relief will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings.

The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Room 156, Washington, DC 20436, telephone 202/523-0471.

Issued: August 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19967 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

Investigation No. 337-TA-219

Certain Porch, Patio, and Lawn Gliders; Commission Decision Not To Review Initial Determination Terminating Investigation as to One Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation as to respondent Sa'Di Brothers Company (Sa'Di).

SUMMARY: Notice is hereby given that the Commission has determined not to review an initial determination (ID) of the presiding administrative law judge (ALJ) terminating the investigation as to Sa'Di on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Jack Simmons, Esq., Office of the General Counsel, telephone 202-523-0493.

SUPPLEMENTARY INFORMATION: On July 16, 1985, the ALJ granted a joint motion by complainant Jack-Post Corp. and Sa'Di to terminate the investigation on the basis of a settlement agreement. The settlement agreement provides that Sa'Di shall cease and desist from importation of the accused lawn gliders and shall cease and desist from the use of the term "Glider-Lawn" in connection with the imported gliders. Respondent is permitted to liquidate its inventory. The ALJ found that there was nothing in the settlement agreement inconsistent with the public interest. No petition for review was filed, nor were comments on the ID received from the public or any government agency.

Issued: August 15, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19968 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-185]

Certain Rotary Wheel Printing Systems; Termination of Investigation Based on a Finding of No Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Termination of investigation upon a finding of no violation of section 337 of the Tariff Act of 1930.

SUMMARY: Notice is given that the U.S. International Trade Commission has determined that there is no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the above-captioned investigation and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: Charles H. Nalls, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 523-1626.

SUPPLEMENTARY INFORMATION: On February 27, 1984, the Commission instituted the investigation in response to a complaint filed on behalf of Qume Corporation, San Jose, California. The Commission published a notice in the **Federal Register** of April 18, 1984 (49 FR 8502), which instituted an investigation to determine whether there is a violation of section 337 in the unauthorized importation or sale of certain rotary wheel printing systems, by reason of the alleged (1) coverage of such devices by claims 1 or 8 of U.S. Letters Patent 4,118,129, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States. On July 19, 1985, the Commission determined that there was no violation of section 337 in the investigation in the importation or sale of the rotary wheel printing systems in question.

Copies of the Commission's Action and Order, the opinions issued in connection therewith, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street, NW., Washington, DC 20436, telephone 202-523-0161.

Issued: August 12, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-19969 Filed 8-20-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30638]

Illinois & Rock River Railroad Co.; Exemption From 49 U.S.C. 10901 and 11301

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission grants the Illinois and Rock River Railroad Company exemption (1) from 49 U.S.C. 10901 for its acquisition and operation of 121.18 miles of rail line between Freeport and El Paso, IL, and (2) from 49 U.S.C. 11301 for issuance of stock and securities to finance the transaction.

DATES: This exemption will be effective on August 22, 1985. Petitions to stay must be filed by September 3, 1985. Petitions to reopen must be filed by September 10, 1985.

ADDRESSES: Send pleadings referring to Finance Docket No. 30638 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioners' representative: Robert A. Burka, Suite 1000, 1155 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additonal information is contained in

the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289–4357 (DC Metropolitan area) or toll free (800) 424–5403.

Decided: August 9, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley and Strenio. Commissioner Simmons concurred in the result with a separate expression. Commissioner Lamboley dissented with a separate expression. Commissioner Sterrett did not participate. Chairman Taylor was absent and did not participate.

James H. Bayne,

Secretary.

[FR Doc. 85–19918 Filed 8–20–85; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–10; Sub-34X]

Norfolk & Western Railway Co.; Abandonment in Suffolk, VA; Exemption

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 5.20-mile line of railroad between milepost V–28.1 at Kenyon and milepost V–33.3 at Boaz, in the City of Suffolk, VA.

Applicant has certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 20, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by September 2, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 9, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Angelica D. Lloyd, 204 S. Jefferson St., Roanoke, VA 24042–0080.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 16, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85–19917 Filed 8–20–85; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Lodging of 1985 Amended Stipulation and Consent Decree Pursuant to the Clean Water Act, City of Twin Falls, ID and the State of Idaho

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on August 1, 1985 a proposed 1985 Amended Stipulation and Consent Decree in *United States* v. *City of Twin Falls and the State of Idaho*, Civil Action No. 1–76–181 was lodged with the United States District Court for the District of Idaho. The proposed 1985 Amended Consent Decree modifies the Stipulation and Consent Decree entered on October 21, 1980, as modified by an Amended Stipulation and Consent Decree entered on April 11, 1984. The proposed 1985 Amended Consent Decree extends the expiration date of the original Decree, as amended, to July 1, 1986, provides for more flexible staffing requirements and more specific maintenance requirements, requires full compliance with all effluent limitations and monitoring requirements and provides for payment to the United States of stipulated penalties of $50,000 for failure by the City to comply with provisions of the Decree, as amended.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed 1985 Amended Stipulation and Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Divison, Department of Justice, Washington, D.C. 20530 and should refer to *United States City of Twin Falls, et al.*, D.J. Ref. 90–5–1–1–629A.

The proposed 1985 Amended Stipulation and Consent Decree may be examined at the office of the United States Attorney, Federal Building, 550 West Fort Street, Boise, Idaho and at the Region X, Office of U.S. Environmental Protection Agency, 1200 6th Avenue, Seattle, Washington. Copies of the proposed 1985 Amended Stipluation and Consent Decree may be examined at the Environmental Enforcement Section, Land Natural Resources Division of the Department of Justice, 9th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed 1985 Amended Stipulation and Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $1.20 payable to the Treasurer of the United States.

F. Henry Habicht II,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 85–19952 Filed 8–20–85; 8:45 am]

BILLING CODE 4410–01–M

AAG/A Order No. 16–85

Privacy Act of 1974; Modified Systems of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Department of Justice, Civil Rights Division (CRT), proposed to modify certain CRT systems of records to add a new routine use, to clarify the descriptions of the systems as is necessary to reflect the internal reorganizations of CRT, and to make editorial corrections.

Specifically, the Civil Rights Division will modify certain systems by adding a routine use that will permit access to records by student volunteers working under 5 U.S.C. 3111, and by students working under a work-study program pursuant to 42 U.S.C. 2751, *et seq.*, in the Civil Rights Division. The routine use will be added to the following systems:

"Central Civil Rights Division Index File and Associated Records, JUSTICE/CRT–001;" "Civil Rights Case Load Evaluation System—Time Reporting System, JUSTICE/CRT–003;" "Registry of Names of Interested Persons Desiring Notification of Submissions under Section 5 of the Voting Rights Act, JUSTICE/CRT–004;" "Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission, JUSTICE/CRT–007;" "Files on Correspondence Relating to Civil Rights Matters from Persons Outside the Department of Justice, JUSTICE/CRT–008;" "Civil

Rights Division Travel Reports, JUSTICE/CRT-009;" and "Freedom of Information; Privacy Act Records, JUSTICE/CRT-010."

In addition, the Division is amending the "Central Civil Rights Division Index File and Associated Records" system by revising a portion of the description of the "Categories of Records * * * " to clarify the types of records maintained by the respective Civil Rights Division sections. Finally, various editorial changes are being made to the system entitled "Files of Applications for the Position of Attorney with the Civil Rights Division, JUSTICE/CRT-002," and to all the above-named systems to achieve greater clarity and accuracy. The record systems are reprinted below.* Changes are italicized for public convenience.

Title 5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment. Please address any comments to Thomas F. O'Leary, Assistant Director, General Services Staff, Justice Management Division, Department of Justice, Room 6314, 10th and Constitution Avenue, N.W., Washington, DC 20530.

Since the new routine use is compatible with the purposes for which the systems are maintained, no report to the Office of Management and Budget and the Congress is required.

Dated: August 8, 1985.

W. Lawrence Wallace,

Acting Assistant Attorney General for Administration.

JUSTICE/CRT-001

SYSTEM NAME:

Central Civil Rights Division Index File and Associated Records.

SYSTEM LOCATION:

United States Department of Justice, Civil Rights Division (CRT), 10th and Constitution Avenue, NW., Washington, D.C. 20530; HOLC Building, 320 First Street, NW., Washington, D.C. 20534; and Federal Records Center, Suitland, Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of investigation, victims, potential witnesses, correspondents on subjects directed or referred to CRT or other persons or organizations referred to in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices bearing the names of those individuals identified above and the associated record to which the indices relate containing the general and particular records of all CRT correspondence, cases, matters, and memoranda, including but not limited to investigative reports, correspondence to and from the Division, memoranda, legal papers, evidence, and exhibits. The names of some individuals, e.g., witnesses, may not yet be on the central indices. Records relating to such individuals may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal subject matter assigned to each CRT section. The delegated legal duties and responsibilities of each section are described as follows:

The records related to the duties of the Appellate Section of CRT include records generated by all Civil Rights Division cases that have entered the U.S. Supreme Court and the Courts of Appeal. Other records include those generated in the course of Appellate Section duties such as advising Members of Congress on legislative matters, providing legal counsel on civil rights issues to Federal agencies and providing counsel to the various components of the Department of Justice, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Coordination and Review Section include letters, studies, and reports concerning the implementation of Executive Orders 12250 and 12236. Under E.O. 12250, the Attorney General coordinates and monitors the enforcement of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, as amended, and the civil rights provisions of any Federal assistance grant which forbids discrimination in federally assisted programs on the basis of race, color, national origin, sex, handicap or religion. The Coordination and Review Section also works with Federal agencies under E.O. 12336 to monitor review of their enabling legislation on the basis of sex. Other records relate to litigation involving the civil rights statutes coordinated by the Department of Justice, and such other matters as may be required to fulfill the duties mandated by the President and Congress.

The records related to the duties of the Criminal Section of CRT include cases or matters arising under 18 U.S.C. 241 and 242 which prohibit persons acting under color of law or in conspiracy with others to interfere with or deny the exercise of Federal constitutional rights, cases involving criminal violations of the Voting Rights Act of 1965 (42 U.S.C. 1971 through 1974), cases or matters involving criminal interference with housing rights as is prohibited by 42 U.S.C. 3631 and criminal interference with other federally protected rights as is prohibited by 18 U.S.C. 245. Other Criminal Section records include cases or matters involving 18 U.S.C. 1581 through 1588 which prohibit involuntary servitude, some case involving maritime law, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Educational Opportunities Section of CRT include cases or matters arising under Federal laws requiring nondiscrimination in public education such as Titles IV and IX of the Civil Rights Act of 1964 (42 U.S.C. 2000c, 42 U.S.C. 2000h-2) which prohibit discrimination on the basis of race, color, religion, sex, or national origin; Title IX of the 1972 Education Amendments (20 U.S.C. 1681) which prohibits discrimination on the basis of sex in educational programs or activities receiving federal financial assistance; and Section 504 of the Rehabilitation Act of 1973 which grants rights to handicapped persons participating in educational programs receiving federal financial assistance. In addition, the records related to the duties of the Educational Opportunities Section include cases or matters arising under the Equal Educational Opportunities Act of 1974 (20 U.S.C. 1701), and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Employment Litigation Section include cases or matters arising under Federal laws prohibiting discriminatory employment practices by State and local governments such as the equal employment opportunity provisions contained within the Revenue Sharing Act of 1972, as amended. Other records include cases or matters arising under Title VII of the Civil Rights Act of 1964 and its amendment which is the Pregnancy Discrimination Act of 1978 (42 U.S.C. 2000e(k)). In addition, the

*While the systems are reprinted below in their entirety, the following information is provided for continuity purposes. JUSTICE/CRT-001 was last published on May 31, 1984 (49 FR 22726); JUSTICE/CRT-003, 007, and 009 were last published on September 2, 1983 (48 FR 40011-50015); JUSTICE/CRT-004 and 010 were last published on February 4, 1983 (48 FR 5334-5335); JUSTICE/CRT-008 was last published on November 17, 1980 (45 FR 75910); and JUSTICE/CRT-002 was last published on September 30, 1977 (42 FR 53327).

records related to the duties of the Employment Litigation Section include cases or matters arising under Executive Order No. 11246 involving equal opportunity laws applicable to public employers, Federal contractors and subcontractors involved in federally financed projects, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Housing and Civil Enforcement Section of CRT include cases or matters involving the fair housing laws such as Title VIII of the Fair Housing Act of 1968 (42 U.S.C. 3601 through 3619), and cases or matters involving fair credit laws such as the Equal Credit Opportunity Act (15 U.S.C. 1691 through 1691g) as well as its implementing regulations, Regulation B (12 CFR Part 202). Other records include cases or matters arising under Title II and Title III of the Civil Rights Act of 1964 which prohibit discrimination in public facilities (except those Title III matters that involve prison facilities) and cases or matters arising under the nondiscrimination provisions of the Revenue Sharing Act and the Housing and Community Development Act of 1974, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Special Litigation Section of CRT include cases or matters arising under Title III of the Civil Rights Act of 1964 as it applies to prison facilities, cases or matters arising under the Civil Rights of Institutionalized Persons Act of 1980 (42 U.S.C. 1997), cases or matters involving the constitutional rights of institutionalized juveniles, and the constitutional rights of mentally and physically handicapped persons of all ages, cases arising under section 504 of the Rehabilitation Act of 1973, as amended, and such other matters as may be required to fulfill the duties mandated by Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in the system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to the Civil Rights Division under the provisions of 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

A. Information in the system may be used by employees and officials of the Department to make decisions in the course of investigations and legal proceedings; to assist in preparing responses to correspondence from persons outside the Department to prepare budget requests, and various reports on the work product of the Civil Rights Divisions; and to carry out other authorized internal functions of the Department.

B. A record maintained in this system of records may be disseminated as a routine use of such records as follows: (1) A record relating to a possible or potential violation of law, whether civil, criminal, or regulatory in nature may be disseminated to the appropriate federal, state or local agency charged with the responsibility of enforcing or implementing such law; (2) in the course of investigation or litigation of a case or matter, a record may be disseminated to a federal, state or local agency, or to an individual or ogranization, if there is reason to believe that such agency, individual or organization possesses information or has the expertise in an official or technical capacity to analyze information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or expert analysis or to obtain the cooperation of a prospective witness or informant; (3) a record relating to a case or matter may be disseminated to an appropriate court, grand jury or administrative or regulatory proceeding in accordance with applicable law or practice; (4) a record relating to a case or matter may be disseminated to an actual or potential party to litigation or his attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in formal or informal discovery proceedings; (5) a record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made; (6) a record relating to a person held in custody or probation during a criminal proceeding or after conviction, may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person; (7) a record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d.; (8) a record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subject of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or tape.

RETRIEVABILITY:

Information is retrieved through either use of an index card system or logical queries to the computer-based system. Entries are arranged alphabetically by the names of individuals or organizations that have been involved in possible civil rights violations either as the subject of investigations by the Department or as victims or complainants, or by the name of the Division personnel handling the complaint. (Complaints received from individuals which have not been investigated by the Department have not been systematically indexed and information pertaining to such individuals may or may not be retrievable.) Information on such individuals may be retrievable from the file jackets by a number assigned and appearing on the index cards.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the paper files are transferred to the Federal Records Center, Suitland, Maryland and some records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition is in accordance with records retirement of destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief Civil Rights Division, United States Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a (j)(2) and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "Categories of records in the system," and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved, where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be any agency or person who has or offers information related to the law enforcement responsibilities of the Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3), (d), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (c) and (e) and have been published in the **Federal Register.**

JUSTICE/CRT-002

SYSTEM NAME:

Files of Applications for the Position of Attorney with the Civil Rights Division.

SYSTEM LOCATION:

U.S. Department of Justice; Civil Rights Division (CRT), 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have applied for a position as an attorney with CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain SF 171 forms, resumes, referral letters, letters of recommendation, writing samples, interview notes, internal notes or memoranda, and other correspondence and documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used by employees and officials of the Department in making employment decisions. If an individual is hired, the records may become part of his or her Official Personnel Folder.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are primarily original papers or reproductions or copies thereof. The system consists of files pertaining to individual applicants.

RETRIEVABILITY:

Information is retrieved by using an applicant's name.

SAFEGUARDS:

Information in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures governing access, production and disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

Information is retained in the system until a final employment decision is made or until such time as CRT is notified by the applicant that he or she is no longer interested in or available for the position. If an individual is hired, some or all of the records may become part of his or her Official Personnel Folder.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Attorney General; Civil Rights Division; U.S. Department of Justice; Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the Assistant Attorney General; Civil Rights Division; U.S. Department of Justice; Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked 'Privacy Access Request.' The request should include the name of the applicant and the position applied for. The requester will also provide a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system generally are the applicants, persons referring or recommending the applicant, and employees and officials of the Department.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-003

SYSTEM NAME:

Civil Rights Case Load Evaluation System—Time Reporting System.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and paralegals of the Civil Rights Division of the United States Department of Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of Division attorneys and paralegals and their assignments and allocation of work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Civil Rights Division personnel use this system of records to keep track of resources, i.e., to determine Civil Rights Division allocations of resources and professional time to individual assignments of cases and broad categories of cases (e.g., voting, criminal, enforcement), and to assist in preparing budget requests and other reports which may be submitted to the Attorney General or the Congress.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to Members of Congress: Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration. A record from the system of records may be disclosed to the National Archives and Records Administration for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks.

RETRIEVABILITY:

Information is retrieved by the names of attorneys or paralegals.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental security regulations for systems of records. Access to the records is limited to those employees whose official duties require such access.

RETENTION AND DISPOSAL:

Information contained in the record system remains on the computer disks indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief, Civil Rights Division, United States Department of Justice, 10th and Constitution Avenue, NW., Washington D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager listed above.

RECORDS ACCESS PROCEDURE:

A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual involved, his or her current address, date and place of birth, and notarized signature (28 CFR 16.42(b)), and any other information which is known and may be of assistance in locating the record. The requester should also provide a return address for transmitting the information. Access to requests should be directed to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend their records should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information on time allocation is provided by Civil Rights Division attorneys and paralegals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-004

SYSTEM NAME:

Registry of Names of Interested Persons Desiring Notification of Submissions under Section 5 of the Voting Rights Act.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division (CRT), *320 First Street*, NW., Washington, D.C. 20530 *and U.S. Department of Justice, 10th & Constitution, NW., Washington, DC 20530*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who have requested that the Attorney General send them notice of submissions under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. 1973c.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Registry contains the name, address and the telephone numbers of interested parties and, where appropriate, the area or areas with respect to which notification was requested by such persons.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

46 FR 877 (1981) codified in 28 CFR 51.30, 42 U.S.C. 1973c, 5 U.S.C. 301 and 28 U.S.C. 509.510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Registry is used to identify persons interested in receiving notice of Section 5 submissions and to comply with their requests. The Registry may be used to notify the persons listed therein of any proposed changes in the "Procedures for the Administration of Section 5 of the Voting Rights Act of 1965," *46 FR 870 (1981) codified in 28 CFR Part 1,* and to solicit their comments with respect to any such proposed changes.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Names are stored in a card file system, *and an automated addresser.*

RETRIEVABILITY:

Records in this system are retrievable by the names of interested persons or organizaitons.

SAFEGUARDS:

Information in the system is safeguarded in accordance with Departmental rules and procedures governing access, production and disclosure of any materials contained in its official files.

RETENTION AND DISPOSAL:

An individual or organizational name is retained in the Registry until such time as that person or organization request that the name be deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Voting Section, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to: Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

RECORD ACCESS PROCEDURES:

This system contains no information about any individual other than as described in Category of Record above. Persons whose names appear on the Registry may have access thereto or have their names and other information pertaining to them deleted or modified upon a request of the same nature as indicated in *46 FR 877 (1981) codified in 28 CFR 51.30.*

CONTESTING RECORD PROCEDURES:

Same as the above.

RECORD SOURCE CATEGORIES:

Sources of information in the Registry are those persons or organizations whose names appear therein by virtue of their having requested inclusion in the Registry pursuant to *46 FR 877 (1981) codified in 28 CFR 51.30.*

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-007

SYSTEM NAME:

Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission.

SYSTEM LOCATION:

U.S. Department of Justice: Civil Rights Division, 10th and Constitution Avenue NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons seeking employment or employed by a state or a political subdivision of a state who have filed charges alleging discrimination in employment with the Equal Employment Opportunity Commission (hereinafter EEOC) which have resulted in a determination by EEOC that there is probable cause to believe that such discrimination has occurred, and attempts by EEOC at conciliation have failed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain copies of charges filed with EEOC; copies of EEOC's "determination" letters, letters of transmittal from and to EEOC, analyses or evaluations summarizing the charge and other materials in the EEOC file, internal memoranda, attorney notes, and copies of "right to sue" letters issued by the Civil Rights Division (CRT). Charges relate to allegations of employment discrimination by public employers filed by individual complainants which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e-5(f)(1) or 5(f)(2), or to allegations of a pattern or practice of violations of the Equal Employment Opportunity Act by a public employer which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e-6.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under authority of 44 U.S.C. 3101 and in the ordinary course fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used by employees and officials of the Department to make decisions regarding prosecution of alleged instances of employment discrimination, to issue right to sue letters on behalf of individuals; to make policy and planning determinations; to prepare annual budget requests and justifications; to prepare statistical reports on the work product of the Employment Litigation Section and to carry out other authorized internal functions of the Department. If the Department has determined to initiate an investigation or litigate a matter referred by EEOC the records pertaining to that matter are not contained in the system. Such records and their routine uses are described under the notice for the system named: Central Civil Rights Division Index File and Associated Records.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of

the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the systems is stored on index cards, in file jackets, and in computer disks which are maintained by the Employment Litigation Section, Civil Rights Division. If the charge related to a public educational agency or institution and was filed before September 1977, such information may be maintained by the Educational Opportunities Section, Civil Rights Division.

RETRIEVABILITY:

Information is retrieved primarily by using the appropriate Department of Justice file number, or the name of the charging party, or the state in which the alleged discrimination occurred or through other logical queries to the computer based system.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

If the Department determines not to prosecute a matter referred by the EEOC, the records transmitted with the referral are returned to the EEOC. Other records in the system are kept for routine use by the Department and when no longer needed are sent to the Federal Records Center or are destroyed in accordance with records retention and disposal schedules as established by the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." The request should indicate the state where the alleged employment discrimination took place and the employer to which the charge was related. The requester should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Disclosure of part of the materials in this system may be prohibited by *42 U.S.C. 2000e–5(b)*, 42 U.S.C. 2000e–8(e) and 44 U.S.C. 3510(b). Part of this system is exempted from access and contest under 5 U.S.C. 552a(k)(2).

RECORD SOURCE CATEGORIES:

Sources of information in this system are charging parties, information compiled and maintained by EEOC, and employees and officials of the Department of Justice responsible for the disposition of the referral request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THIS ACT:

The Attorney General has exempted the system from subsection 9d) of the Privacy Act pursuant to 5 U.S.C. 552(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

JUSTICE/CRT–008

Files on Correspondence Relating to Civil Rights Matters from Persons Outside the Department of Justice.

SYSTEM LOCATION:

U.S. Department of Justice; Civil Rights Division (CRT); 10th and Constitution Avenue NW.; Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons communicating in written form in person or by telephone, including complaints, requests for information or action, or expressions of opinion regarding civil rights matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains original correspondence regarding civil rights matters from persons, cover letters or notes from persons referring original correspondence to the Department attorney or other employees notes regarding the correspondence, and copies of CRT responses to the original correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is maintained pursuant to 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibility assigned to CRT under the provisions of 28 CFR 0.50.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A. The system is used by employees and officials of the Department to respond to incoming correspondence, to compile statistics for use in preparation budget requests, to insure proper disposition of incoming mail, to determine the status and content of responses to correspondence, to respond to inquiries from Division personnel, Office of Legislative Affairs and Congressional offices regarding the status of correspondence, and to carry out other authorized functions of the Department.

B. Information in the system regarding individual pieces of correspondence may be provided to Members of Congress upon request in instances where the Members making the request referred the correspondence in question to the Department.

C. A record may be accessed by volunteer student workers and students working under a workstudy program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an

unwarranted invasion of personal privacy.

Release of information to Member of Congress. Information in the system may may be disclosed as is necessary to respond to inquiries by Members of inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration. A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are primarily index cards and original letters or copies thereof. They are stored manually *and by automated office equipment.*

RETRIEVABILITY:

Information may be retrieved through use of card index file system *and/or automated office equipment* which is subdivided into indexes (1) arranged according to the name of citizens that corresponded with the Department and (2) arranged according to the name of members of Congress or White House staff Members who have referred correspondence to the Department.

SAFEGUARDS:

Information in the system is unclassified. It is safeguarded and protected in accordance with Departmental rules and procedures.

RETENTION AND DISPOSAL:

Citizen correspondence unrelated to matters within the jurisdiction of the Civil Rights Division is destroyed ninety days from the date of correspondence. There are no provisions for disposal of the *other* records in this system although such procedures are currently under active consideration.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General: Civil Rights Division; U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURES:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." The request should include the name of the correspondent, his address or the name of the Member of Congress or White House staff member who referred the correspondence to the Department, if known, the Department of Justice file number, if known, and the date of the correspondence. The requester will also provide a return address for transmitting the information. Access requests will be directly to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and consisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the original correspondents, persons referring original correspondence to the Department, and employees and officials of the Department responsible for the disposition of the correspondence.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT–009

SYSTEM NAME:

Civil Rights Division Travel Reports.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have filed travel authorization forms or travel voucher forms for official travel on behalf of the Civil Rights Division (CRT).

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning travel expenditures which were recorded on travel authorization forms (Form OBD–1) and travel voucher forms (Forms OBD–157 and SF–1012) by CRT employees or other persons authorized to travel for CRT and submitted to the Budget and Finance Branch of CRT from Fiscal Year 1972 to the present. The computerized data covers fiscal years 1972 through 1981.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101 and in the ordinary course of fulfilling the responsibilities assigned to CRT under 28 CFR 0.50, 0.51.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used to make periodic and special reports to the Administrative Management Section, Civil Rights Division, and to the Budget and Finance Branch, Civil Rights Division, for use in controlling and reviewing CRT expenditures. Copies of individual's reports may be disclosed to the individual when appropriate forms are not submitted following a return from travel status.

A record may be accessed by volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

Release of information to the National Archives and Records Administration: A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are stored on magnetic tape and on computer punch cards, on monthly and periodic and special reports printed on computer. Individual vouchers and travel authorization forms are stored in file jackets.

RETRIEVABILITY:

Records in this system are retrieved by the names of those individuals identified under the caption "Categories of individuals covered by the system."

SAFEGUARDS:

Information in the system is unclassified. However, the records are protected in accordance with applicable Department security regulations for systems of records. Records are stored in locked cabinets and access to the computer is limited to those personnel who have a need for access to perform their official duties.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When not longer needed on an active basis, the records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition will be in accordance with records retirement or destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Management Section Chief Civil Rights Division, United States Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Requests by former employees for access to records in this system may be made in writing with the envelope and letter clearly marked "Privacy Act Request". The request should clearly state the dates on which official travel was taken. The requestor should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager. Present employees may request access by contacting the System Manager directly.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are the Civil Rights Division employees and other authorized persons who file travel authorization and travel voucher forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/CRT-010

SYSTEM NAME:

Freedom of Information; Privacy Act Records.

SYSTEM LOCATION:

U.S. Department of Justice, Civil Rights Division, 10th & Constitution Avenue, N.W., Washington, DC. 20530 *and Federal Record Center, Suitland, Maryland 20409.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of records pursuant to the Freedom of Information Act; persons who request access to or correction of records pertaining to themselves contained in Civil Rights Division systems of records pursuant to the Privacy Act; and where applicable, persons about whom records have been requested or about whom information is contained in requested records.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains copies of all Freedom of Information/Privacy Act requests received by the Civil Rights Division since January 1, 1975, copies of CRT responses to the requesters, internal memoranda and correspondence related to the requests, copies of the documents responsive to the requests, and records of appeals or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained pursuant to 44 U.S.C. 3101 and is maintained to implement the provisions of 5 U.S.C. 552 and 552a and the provisions of 28 CFR 16.1 et seq. and 28 CFR 16.40 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A record maintained in this system may be disseminated as a routine use of such record as follows: (1) A record may be disseminated to a Federal agency which furnished the record for the purpose of permitting a decision as to access or correction to be made by that agency, or for the purpose of consulting with that agency as to the propriety of access or correction; (2) a record may be disseminated to any appropriate Federal, State, local, or foreign agency for the purpose of verifying the accuracy of information submitted by an individual who has requested amendment or correction of records contained in systems of records maintained by the *Civil Rights* Division, and (3) A record may be disseminated to volunteer student workers and students working under a work-study program as is necessary to enable them to perform their assigned duties.

RELEASE OF INFORMATION TO THE NEWS MEDIA:

Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

RELEASE OF INFORMATION TO MEMBERS OF CONGRESS:

Information in the system may be disclosed as is necessary to respond to inquiries by Members of Congress on behalf of individual constituents that are subjects of CRT records.

RELEASE OF INFORMATION TO THE NATIONAL ARCHIVES AND RECORDS SERVICE:

A record from a system of records may be disclosed as a routine use to the National Archives and Records Administration (NARA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

A record contained in this system is stored manually in alphabetical order in file cabinets, *in chronological, cumulative notebooks,* and on disks in automated office equipment.

RETRIEVABILITY:

A record is retrieved by the name of the individual or person making a request for access or correction of records.

SAFEGUARDS:

Access to records is limited to personnel of the FOI/PA Branch of the Civil Rights Division and known Department of Justice personnel who have a need for the record in the performance of their duties. The records are safeguarded and protected in accordance with applicable Departmental rules.

RETENTION AND DISPOSAL:

Currently there are not provisions for disposal of records contained in this system.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Parts of this system are exempted from this requirement under 5 U.S.C. 552a (j)(2) or (k)(2). Address inquires to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Parts of this system are exempted from this requirement under 5 U.S.C. 552a (j)(2), or (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record contained in this system shall be made in writing, with the envelope and letter clearly marked 'Privacy Access Request'. Include in the request the name of the individual involved, his birth date and place, or any other information which is known and may be of assistance in locating the record. The requester shall also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system are the individuals and persons making requests, the systems of records searched in the process of responding to requests, and other agencies referring requests for access to or correction of records originating in the Civil Rights Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Records secured from other *Civil Rights Division* systems of records have been exempted from the provisions of the Privacy Act to the same extent as the systems of records from which they were obtained. The Attorney General has also exempted certain categories of records in the system *pursuant to the provisions of 5 U.S.C. 552a (j)(2) from subsections (c)(3), (d), and (g) of 5 U.S.C. 552a; in addition, certain categories of records are exempted pursuant to the provisions of 5 U.S.C. 552a (k)(2) from subsections (c)(3), and (d) of 5 U.S.C. 552a.* These exemptions apply to the extent the records contained in the system reflect investigatory law enforcement information. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(c), and (e) and have been published in the **Federal Register.**

[FR Doc. 85-19930 Filed 8-20-85; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted 30 days from date of this notice.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 202/786-0233 or Mr. Joseph Lackey, Office of Managment and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, D.C. 20506 202/395-7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 202/786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Guidelines and applications Forms for Directors in the Summer Seminars for College Teachers Programs.
Form Number: OMB 3136-0093
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines.
Respondents: College teachers/professors who are recognized scholars in their fields and are also well qualified by virtue of their interest and ability in undergraduate teaching or the pertinence of their work to the interests of undergraduate teachers.
Use: Application, evaluation, and award process for NEH Summer Seminars for College Teachers.
Estimated Number of Respondents: 240.
Estimated Hours for Respondents to Provide Information: 2.3.

Title: Guidelines and applications Forms for Directors in the Summer Seminars for Secondary School Teachers Program.
Form Number: OMB 3136-0095.
Frequency of Collection: Collection occur once yearly, according to individual program application deadlines.
Respondents: College professors.
Use: Application, evaluation, and award process for Directors in the Summer Seminars for Secondary School Teachers program.
Estimated Number of Respondents: 240.
Estimated Hours for Respondents to Provide Information: 2.3.

Title: Guidelines and Applications Forms for Participants in the Summer Seminars for Secondary School Teachers Program.
Form Number: OMB 3136-0097.
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines.
Respondents: Secondary School Teachers of grades 7 through 12.
Use: Application, evaluation, and award process for participants in the Summer Seminars for Secondary School Teachers program.
Estimated Number of Respondents: 4,500.
Estimated Hours for Respondents to Provide Information: 3.

Title: Guidelines and Applications Forms for Participants in the Summer

Stipends for College Teachers Program.
Form Number: OMB 3136–0096.
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines.
Respondents: Teachers in two-year, four-year, and five year colleges.
Use: Application, evaluation, and award process for participants in NEH Summer Seminars for College Teachers.
Estimated Number of Respondents: 3,000.
Estimated Hours for Respondents to Provide Information: 2.9.
Title: Guidelines and instructions, Younger Scholars Program.
Form Number: OMB 3136–1190.
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines.
Respondents: High school and college students.
Use: Application, evaluation, and award process for participants in the NEH Younger Scholars Program.
Estimated Number of Respondents: 1,680.
Estimated Hours for Respondents to Provide Information: 4.6.
Title: Payment Request for Individuals.
Form Number, if applicable: N/A
Frequency of Collection: Quarterly
Respondents: All individual (not institutional) NEH grantees.
Use: Required as payment request form individual grant recipients.
Estimated Number of Respondents: 100
Estimated Hours for Respondents to Provide Information: ½
Title: Financial Status Report and Instructions for Individuals.
Form Number, if applicable: N/A
Frequency of Collection: Quarterly and at end of grant.
Respondents: All individual (not institutional) NEH grantees.
Use: Required as quarterly and final report for expenditures of grant funds.
Estimated Number of Respondents: 100
Estimated Hours for Respondents to Provide Information: ½

Susan Metts,
Acting Director of Administration.
[FR Doc. 85–19978 Filed 8–20–85; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the full Committee, the following preliminary schedule is published to reflect the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published July 23, 1985 (50 FR 30038) Those meeting which are definitely scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the September 1985 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634/3265, ATTN: Barbara Jo White) between 8:15 a.m. and 5:00 p.m., Eastern Time.

ACRS Subcommittee Metings

Joint ECCS and Fluid Dynamics, August 27, 1985, Washington, DC. The Subcommittees will: (1) Review the status of hydrodynamic loads issue for plants with Mark I–III containments; (2) review AEOD report on Interfacing LOCAs; (3) review the USI A–13, "Containment Emergency Sump Performance" resolution proposal; (4) review the results of calculations of the Davis-Besse feed-and-bleed capability; and (5) review ECCS-related issues of ongoing concern to NRR.

State of Nuclear Power Safety, August 29, 1985, Los Angeles, CA, Cancelled.

Metal Components, September 4 and 5, 1985, Washington, DC. The subcommittee will Review Regulatory Guide 1.99, Revision 2 and other related concerns, and discuss the status of the NDT of piping program and the HSST program. The Subcommittee will also review steam generator girth weld cracks and the use of weld overlay repair as possible long-term resoluton of IGSCC concerns.

Reactor Operations, September 9, 1985, Washington, DC (1:00 P.M.). The Subcommittee will discuss recent operating experiences. *Long Range Plan for NRC,* September 11, 1985, Cancelled.

River Bend, September 11, 1985, Washington, DC (10:30 A.M.). The Subcommittee will continue its review of Gulf States Utilities Company's application for a full power operating license.

General Electric Standard Safety Analysis Report (Gessar II), September 11, 1985, Washington, DC. The Subcommittee will continue its review of GESSAR II for a final design approval applicable to future plants.

Joint Structural Engineering and Seismic Design of Piping, September 23 and 24, 1985, Washington, DC. The Subcommittees will review the status of research programs on containment integrity , seismic margins, piping reliability, and other related matters.

Advanced Reactors, September 25, 1985, Washington, DC. The Subcommittee will discuss the proposed policy for regulation of advanced nuclear power plants.

Waste Management, September 26, 1985, Washington, DC. The Subcommittee will review: (1) SECY–85–147A, Regulatory-Exempt Radiation Levels (de minimis values); (2) the proposed DOE position paper on Retrievability and Retrieval for Geologic Repository; and (3) the ACRS role in the High-Level Radioactive Waste Management Program.

Class 9 Accidents, September 27, 1985, Washington, DC. The Subcommittee will continue its discussion of draft NUREG-0956, "Source Term Reassessment," with the NRC Staff.

Millstone Nuclear Power Station Units 1–3, October 3 & 4, 1985, Waterford, CN. The Subcommittee will review the Northeast Nuclear Energy Company's application for conversion of the provisional Operating License (POL) for Millstone Unit 1 to a Full Term Operating License (FTOL).

Reliability Assurance (Valves), October 8, 1985, Washington, DC. The Subcommittee will continue discussions on valve reliability. A risk perspective on valve performance will be sought. Also to be studied is the importance of valves from a safety standpoint.

Regulatory Activities, October 8, 1985, Washington, DC. The Subcommittee will review: (1) Regulatory Guide 1.23, Revision 1, "Meteorological Measurement Programs for Nuclear Power Plants," (2) proposed Regulatory Guide (Task No. IC 609–5), "Criteria for Power, Instrumentation, and Control Portions of Safety Systems," and (3) Regulatory Guide 1.105, Revision 2, "Instrument Setpoints for Safety-Related Systems".

Joint Site Evaluation and Extreme External Phenomena, October 9, 1985,

Washington, DC. The Subcommittees will: (1) Evaluate, from a probabilistic approach, the relative importance of the full range of natural phenomena in terms of their potential impacts on Emergency Planning, (2) provide comments on the numerical values proposed in a July 5, 1985 memo from the EDO to the Commissioners on the subject, Consideration of Potential Complicating Effects of Earthquakes on Emergency Planning, and (3) develop an ACRS consensus view on this rulemaking, Final Amendments to 10 CFR Part 50, Paragraph 50.47 and Appendix E: Consideration of Earthquakes in Emergency Preparedness. The preceding were requested by Commissioners Bernthal, Asselstine, and Zech at the ACRS meeting with the Commissioners, July 11, 1985.

Safety Philosophy, Technology, and Criteria, October 9, 1985, Washington DC (1:00 P.M.). The Subcommittee will continue its review of the two-year trial use of proposed Safety Goal Policy and the future use of safety goals.

Nuclear Plant Chemistry, October 15, 1985, Washington, DC. The Subcommittee will discuss aerosol behavior in a radiation field.

Joint Reactor Radiological Effects and Fire Protection, October 18, Washington, DC. The Subcommittees will review the increased N-16 radioactivity and fire protection problems in using hydrogen addition to BWRs to reduce IGSCC.

Beaver Valley Power Station Unit 2, November 1, 1985, Pittsburgh, PA. The Subcommittee will review the application of the Duquesene Light Company for an operating license.

Qualification Program for Safety-Related Equipment, November 6, 1985 (tentative), Washington DC. The Subcommittee will discuss resolution and implementation of USI A-46.

Human Factors, Date to be determined (September/October), Washington DC. The Subcommittee will explore methods for deciding what actions should be automated in nuclear power plant operation.

Long Range Plan for NRC, Date to be determined (week of October 20, 1985), Washington DC. The Subcommittee will continue discussions on developing comments on a long range plan for the NRC. Topics to be discussed are primarily technical issues related to the regulation of nuclear power plant safety and safety regulation over the next 5 to 10 years.

Scram Systems Reliability (formerly ATWS), Date to be determined (October), Washington DC. The Subcommittee will continue the review of the status of ATWS Rule implementation effort and related issues.

Quality and Quality Assurance in Design and Construction, Date to be determined (October, tentative), Washington DC. The Subcommittee will: (1) Review the final Rule on the "Important to Safety Issue", and (2) be briefed on the "NRC Quality Assurance Program Implementation Plan."

Standard Plant Design, Date to be determined (October), Washington DC. The Subcommittee will be briefed by the NRC Staff on the status of standard plant design.

Decay Heat Removal Systems, Date to be determined (early November, tentative), Washington DC. The Subcommittee will continue the review of the NRR resolution position for USI A-45.

ECCS, Date to be determined (November), Palo Alto, CA. The Subcommittee will continue the review of the joint NRC/B&WOG/EPRI/B&W joint IST Program. A visit is planned to the EPRI Stanford Research Institute facilities supporting this Program.

Fort St. Vrain, Date to be determined (November/December), (near Longmont, CO). The Subcommittee will tour the facility, explore technical problems addressed during the recent extended outage, and discuss management changes made as a result of the licensee's independent assessment of management controls.

South Texas Units 1 and 2, Date to be determined (November/December), Washington DC. The Subcommittee will review Houston Lighting and Power Company's application for an operating license.

Reliability and Probabilistic Assessment, Date to be determined (Fall, tentative), Washington DC. The Subcommittee will review probabilistic risk assessment for Millstone 3.

ACRS Full Committee Meeting

September 12-14, 1985: Items are *tentatively* scheduled.

*A. *Emergency Core Cooling Systems*—hear and discuss reports from representatives of the NRC Staff regarding proposed changes in ECCS evaluation models and related systems.

*B. *Application of PRAs to Nuclear Power Plants*—discuss proposed ACRS comments regarding application of probabilistic risk assessments to nuclear power plants.

*C. *General Design Criteria*—hear and discuss reports from its subcommittee and representatives of the regulatory staff on proposed changes in GDC-4 regarding criteria for piping failures in nuclear power plants.

*D. *General Electric Company Standard Safety Analysis Report (GESSAR II)*—hear and discuss reports of the ACRS Subcommittee, the NRC Staff, and the Applicant regarding the request for an FDA for this type facility.

*E. *Testing and Certification of Reactor Operators*—hear presentations and discuss the use of natural ability evaluation in the selection of nuclear power plant personnel.

*F. *Regulatory Guide 1.99, Rev. 2, Effect of Residual Elements on Predicted Radiation Damage to Reactor Pressure Vessels*—hear a report on and discuss proposed changes in this regulatory guide.

*G. *State of Nuclear Industry*—hear a report of its Subcommittee on the most important safety issues applicable to the nuclear industry.

*H. *River Bend Station*—consider the proposal of the Applicant regarding hydrogen control following a serious accident. Members of the NRC Staff and representatives of the licensee will participate, as appropriate.

*I. *Meeting with NRC Commissioners*—meet with the NRC Commissioners to discuss the proposed ACRS role in DOE handling and disposal of highlevel radioactive waste from the civilian nuclear power program, implementation of the NRC Severe Accident Policy Statement, and research needs in the human factors area.

*J. *NRC Regulatory Guides*—will hear and discuss reports regarding proposed changes in NRC Regulatory Guides. Representatives of the NRC Staff will participate, as appropriate.

*K. *Physical Protection of High-Enrichment Uranium at NonpowerReactors*—hear and discuss the report of its Subcommittee Chairman on Safeguards and Security regarding a proposed NRC rule on security measures at nonpower reactors.

*L. *Recent Events at Operating Nuclear Plants*—hear and discuss reports from its Subcommittee on Reactor Operations and representatives of the NRC Staff.

*M. *NRC Reorganization*—brifing regarding proposed reorganizationa of the Office of Nuclear Reactor Regulation.

*N. *Future Activities*—discuss anticipated ACRS subcommittee activities and proposed items for consideration by the full Committee.

*O. *ACRS Subcommittee Activities*—hear reports of designated subcommittees regarding the status of current assignments and related activities, including proposed changes in ACRS procedures and practices.

including the scope of the ACRS annual report to the U.S. Congress on the NRC Safety Research program and budget.

*P. *ACRS Effectiveness*—hear and discuss the report of its panel on ACRS effectiveness.

October 10–12, 1985—Agenda to be announced.

November 7–9, 1985—Agenda to be announced.

Dated: August 15, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 20015 Filed 8–20–85; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on State of Nuclear Power Safety; Cancellation

The ACRS Subcommittee on State of Nuclear Power Safety scheduled for August 29, 1985, at the Best Western Airport Park Hotel, 600 South Prairie Street, Inglewood, CA, has been cancelled. Notice of this meeting was published August 9, 1985 (50 FR 32336).

Dated: August 15, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–20021 Filed 8–20–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 373]

Commonwealth Edison Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–11, issued to Commonwealth Edison Company (the licensee), for operation of the La Salle County Station, Unit 1 located in La Salle County, Illinois.

The amendment would revise the Technical Specifications (TS) to allow a one-time-only extension of time to satisfy a limited number of Technical Specification testing requirements which must be performed every 18 months and require shutdown. Under the amendment, the surveillances would be performed during the first refueling outage, which will occur a maximum of 36 days beyond the time otherwise designated by TS. The purpose of this amendment is to allow more use of the core since the reactor has been shutdown for various reasons over the past months. The Technical Specification requirements for testing every 18 months which are requested to be extended are as follows:

1. Logic/Functional Testing

Specification 4.3.1.2 (Reactor Protection System), Table 4.3.3.1–1 and 4.3.3.2 (Low Pressure Coolant Inspection), 4.3.4.1.2 (ATWS–RPT), Table 4.3.7.11–1 (Off-gas Post Treatment Monitor), 4.3.8.2 (Feedwater/Main Turbine High Level Trip), 4.6.1.4C (MSIV Leakage Control), and 4.8.3.3.1 Thermal Overload Bypass-RHR).

All of the above systems have had functional tests and/or calibrations within their TS surveillance frequency. These functional or calibration tests verify operability of the instrumentation and/or components of which this logic system is a part. In many cases these tests cover the majority of the logic system. (For example, all channels of the reactor protection system are half scram tested monthly except the mode switch in shutdown position scram). The testing performed to meet the above specifications generally entails verification that all portions work together. The result of this testing, however, requires actuation of systems in a mode which is not possible during normal power operation. Since the parts of the systems which are more likely to fail (valves, instruments, etc.) are verified to be operable by current surveillances during the extension period, no impact on plant safety will occur.

2. Pressure Isolation Valves

Specification 4.4.3.2-Table 3.4.3.2–1 (Valve Number 1E12–F042B, 1E12–F042C, 1E12–F053B, 1E21–F005).

A redundant valve in each line listed above will remain within the Tech Spec surveillance interval. No valves listed are check valves. Gate and globe valves have had a good history of meeting the leakage rate requirements. Alarms monitor the low pressure piping to ensure that any leakage is detected (the alarm function is tested every 31 days). All valves were last left with zero leakage. These valves cannot be tested with the reactor vessel at normal operating pressure. The test also requires access to the drywell which is inerted.

3. Calibrations

Specifications (a) Table 4.3.1.1–1–10 (Turbine Control Valve Pressure Switches) and (b) 4.4.3.1.b (Primary Containment Floor Drain Sump Flow Monitoring).

The items listed above receive periodic functional testing to ensure the ability of the system to operate if required. All devices were found within acceptable limits at the last surveillance. Item (a) requires that the turbine control oil system be shutdown and requires access to the main turbine control valves. The turbine control oil system cannot be secured if the turbine is operating or if the bypass valves are passing steam. Therefore, the unit would have to be shutdown with the Main Steam Isolation Valves shut to perform this test. To perform Item (b) calibration would require access to the drywell.

4. Electric Power Source

Specifications (a) 4.8.1.1.2.d (Diesel Tests) and (b) 4.8.2.3.2.d.2.c (Division III Battery Tests).

The testing required by item (a) is normally done during refueling. These diesel tests are included in the testing program to periodically ensure that certain functions have not degraded. These tests include logic testing and preventive maintenance. The diesel generators are verified to be operable while in operations by performing several surveillances required by specifications 4.8.1.1.2.a, b and c. This ensures that the diesel will start, will accept load and has available such auxiliaries as necessary. This applies to Divisions II and III only. All Division I testing will remain within the required interval.

The testing required by item (b) is for the Division III battery, and this test only verifies that the battery still has sufficient capacity by actual testing. However, verification that battery specific gravities and voltages are proper assures that the battery will be available if required. This slight delay does not affect battery availability. The Technical Specifications require the plant to shutdown to perform this surveillance.

5. Others

Specification Table 3.6.3–1 note (j) (Valves 1B33–F013A, B and 1B33–F017A, B).

The testing for this Specification is a water leak test to verify that these check valves are able to close. These lines are small (¾ in.) and provide seal injection water to the recirculation pumps from the Control Rod Drive System.

The leak test of the 1B33–F013A/B and 1B33–F017A/B valves cannot be performed during normal operation for the following reasons: (1) The line must be isolated inside the drywell which is inerted, (2) The line normally has flow from the CRD system to the reactor recirculation pump seal.

The ¾ inch recirculation pump seal water line extends from the

recirculation pump seal through the drywell and connects to the CRD supply line outside the drywell. The consequences of leakage through this small line are minimal since the line is always full of water. It has been evaluated that even if failure did occur, it would be bounded by the analysis for a failure of an instrument line. These four valves all had zero leakage during the last test.

The 18 months surveillance interval was selected to be consistent with the maximum anticipated interval between refueling outages. However, the Technical Specifications allow an extension of 25% to this 18 month frequency to accommodate operations scheduling. Therefore, the end of the most limiting surveillance interval, including the allowable 25% extension, for La Salle Unit 1 is September 22, 1985. The refueling is currently expected to start on or before October 27, 1985. This is a consequence of La Salle Unit 1 having gone through an extended startup program and having been shutdown several times because of equipment failures, feedwater check valve problems, and environmental qualification upgrades. The period of plant operation during the requested extensions, therefore, is a maximum of 36 days. This amendment is in accordance with the licensee's application for amendment dated July 15, 1985, as supplemented by letters dated August 9, 1985 and August 12, 1985.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee, in its letter of July 15, 1985, has determined and the NRC staff agrees that the proposed amendment will not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the operability of the equipment is tested and maintained by other TS requirements and based on the type of surveillances extended, no significant increase in the probability of equipment failure is postulated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated because this amendment neither removes nor adds any equipment nor does it eliminate tests required at refueling outage; and (3) involve a significant reduction in the margin of safety because the increased surveillance interval (36 days) does not significantly increase the possibility that an undetected failure will occur in any of the related equipment covered by these Technical Specifications. Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

By September 23, 1985, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set for the reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no

significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Lincoln, and Burke, Suite 840, 1120 Connecticut Avenue, N.W., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent as a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

Dated at Bethesda, Maryland, this 19th day of August 1985.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Chief, Licensing Branch No. 2, Division of Licensing.

[FR Doc. 85-20143 Filed 8-20-85; 8:45 am]

BILLING CODE 7590-01-M

POSTAL RATE COMMISSION

[Order No. 621; Docket No. A85-22]

Louvale, Georgia 31814 (Thelma R. Wilder, Petitioner); Order Accepting Appeal and Establishing Procedural Schedule

Issued: August 14, 1985.

Before Commissioners: Janet Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; James H. Duffy; Bonnie Guiton.

Docket Number: A85-22.

Name of affected Post Office: Louvale, Georgia 31814.

Name(s) of petitioner(s): Thelma R. Wilder.

Type of determination: Closing.

Date of filing of appeal papers: August 8, 1985.

Categories of issues apparently raised:

1. Procedural requirements [39 U.S.C. 404(b)(5)(B)].
2. Effect on the community [39 U.S.C. 404(b)(2)(A)].
3. Economic savings [39 U.S.C. 404(b)(2)(D)].

Other legal issues may be disclosed by the record when it is filed; or, conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition, in light of the 120-day decision schedule [39 U.S.C. 404(b)(5)], the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioner. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memoranda previously filed.

The Commission orders:

(A) The record in this appeal shall be filed on or before August 23, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

August 8, 1985—Filing of Petition.
August 14, 1985—Notice and Order of Filing of Appeal.
September 3, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)].
September 12, 1985—Petitioners' Participant Statement or Initial Brief [*see* 39 CFR 3001.115 (a) and (b)].
October 2, 1985—Postal Service Answering Brief [*see* 39 CFR 3001.115(c)].
October 17, 1985—(1) Petitioners' Reply Brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)].
October 24, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116].
December 6, 1985—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)].

[FR Doc. 85-19903 Filed 8-20-85; 8:45 am]

BILLING CODE 7715-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY:

Summary of Proposal(s):

(1) Collection title: Railroad Verification of Claimed Unemployment or Sickness.
(2) Form(s) submitted: ID-4K, ID-4L.
(3) Type of request: New collection.
(4) Frequency of use: On occasion.
(5) Respondents: Businesses or other for-profit, Small businesses or organizations.
(6) Annual responses: 825.
(7) Annual reporting hours: 137.
(8) Collection description: The notices provide the means whereby employers can advise the Board if there are conflicts as to whether an employee who applies for benefits is, in fact, off work because of unemployment or sickness.

Additional Information or Comments

Copies of the proposed forms and supporting documents may be obtained from Pauline Lohens, the agency clearance officer (312-751-4692).

Comments regarding the information collection should be addressed to Pauline Lohens, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Judy McIntosh (202-395-6880), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Pauline Lohens,

Director of Information and Data Management.

[FR Doc. 85-19951 Filed 8-20-85; 8:45 am]

BILLING CODE 7905-01-M

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning October 1, 1985, shall be at the rate of 20 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning October 1, 1985, 27.0 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 73.0 percent of the taxes collected under such sections 3211(b) and 3221(c) plus one hundred percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.
Dated: August 13, 1985.

Beatrice Ezerski

Secretary to the Board.

[FR Doc. 85-19944 Filed 8-20-85; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-14677; File No. 812-6094]

Christiania Capital Corp.; Application and Opportunity for Hearing

August 15, 1985.

Notice is hereby given that Christiania Capital Corporation ("Applicant"), c/o Andrew C. Quale, Jr., Esq., Sidley & Austin, 520 Madison Avenue, New York, NY 10022, filed an application on April 17, 1985, for an order of the Commission, pursuant to section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicant from all provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of the relevant provisions thereof.

Applicant, a Delaware corporation, states that it is a wholly-owned subsidiary of Christiania Bank og Kreditkasse ("CBK"), a bank organized and existing under the laws of Norway. Commercial paper issued by CBK is currently sold in the United States under an order granted to CBK by the Commission pursuant to section 6(c) of the Act exempting it from all provisions of the Act, *In the Matter of Christiania Bank og Kreditkasse*, Investment Company Act Release No. 12828 (November 18, 1982). CBK now proposes to convert its commercial paper program to one in which CBK would guarantee commercial paper to be issued by the Applicant.

Applicant states that CBK was established in 1848 and is one of the two largest commercial banks in Norway. applicant states that at December 31, 1983, CBK had total assets of $4,184,157,162 and total deposits (excluding deposits from banks) of $2,979,863,864. As of such date, Applicant further states that CBK's total loans amounted to $2,468,517,107, representing 58% of total assets and CBK's investment securities (including bearer bonds and securities but excluding shares in subsidiaries) amounted to $1,189,052,348 or 28% of its assets. Applicant also states that for the year ended December 31, 1983, net interest income and credit accounted for 70% of total operating income and securities underwriting brokering and trading activities have been 5% or less of total operating income.

Applicant represents that CBK is regulated by the Norwegian government, which includes supervision by the Inspectorate of Banks, the official body supervising Norwegian banks. Applicant states that CBK must regularly submit a number of statistical reports to the Inspectorate of Banks which also makes local inspections of each individual bank. In addition, Applicant states that Norwegian banking legislation contains certain liquidity and capital requirements and lending limits. Pursuant to Norwegian law, commercial banks must have a common security fund representing 1.5% of the bank's aggregate deposits from other than banks as of December 31, 1982. The contributions to the fund are proportionate to the total assets of the banks and are to be increased until the fund reaches 2% of such deposit base. The purpose of the fund is to support the activities of the member banks if they experience difficulties. Applicant states that the Bank Act of 1961 provides that insolvency proceedings cannot be commenced in respect of commercial banks. In addition, Applicant represents that in a report to the Norwegian Parliament, the Governor of the Norwegian Central Bank (Norges Bank) stated that under no circumstances would the Norges Bank allow a Norwegian commercial bank to default on its obligations.

According to the application, the Applicant proposes to issue and sell in the United States unsecured prime quality negotiable promissory notes of the type generally referred to as commercial paper. CBK shall unconditionally guarantee the payment of the principal, interest and premium, if any, on the notes. The Applicant also states that by reason of the notes being unconditionally guaranteed by CBK, holders of the notes will hold obligations of CBK. The guarantee by CBK will rank *pari passu* with all other unsecured and unsubordinated indebtedness of CBK (including its deposit liabilities) and prior to CBK's subordinated indebtedness and to the claims of holders of CBK's share capital. The Applicant states that the proceeds from sales of the notes will be made to CBK and other subsidiaries of CBK in the form of short-term loans or deposits. The funds received by CBK and its other subsidiaries shall be used to repay maturing CBK commercial paper and as a source of supply of U.S. dollars for use in funding their current transactions in currencies other than Norwegian Kroner, particularly short-term U.S. dollar-denominated credits.

The Applicant states that the notes will be issued and sold by the Applicant to a commercial paper dealer in the United States which, as principal, will reoffer them to investors in the United States. The Applicant undertakes to ensure that the notes will not be advertised or otherwise offered for sale to the general public, but instead will be sold to institutional investors and other entities and individuals who normally participate in the commercial paper market. The Applicant further undertakes to ensure that the commercial paper dealer will provide to each offeree, prior to any sale of notes to such offeree, an Offering

Memorandum which will be at least as comprehensive as those customarily used in commercial paper offerings in the United States. The Applicant states that the Offering Memorandum will briefly describe the business of both the Applicant and CBK and will contain the most recent publicly available fiscal year-end audited balance sheet and income statement of CBK, which shall have been audited in such manner as is customarily done for CBK by its Norwegian auditors. Applicant also states that the Offering Memorandum will describe the material differences, if any, between the accounting principles applied by CBK in the preparation of such financial statements and "generally accepted accounting principles" as employed by commercial banks in the United States. The Offering Memorandum and financial statements will be updated periodically to reflect material changes in the financial condition of CBK and its subsidiaries.

According to the application, the terms of the notes, including their negotiability, maturity and minimum denomination, the amount outstanding at any given time and their manner of offering to investors, will be such as to qualify the notes for exemption from registration under the Securities Act of 1933 ("Securities Act"), as amended, pursuant to section 3(a)(3) thereof. Applicant further represents that it will not issue and sell the notes until it has received an opinion of its United States legal counsel to the effect that, under the circumstances of the proposed offering, the notes would be entitled to exemption under section 3(a)(3). The Applicant does not request Commission review or approval of United States counsel's opinion letter regarding the availability of an exemption under section 3(a)(3) of the Securities Act, and the Commission expresses no opinion as to the availability of such exemption.

The Applicant represents that the presently proposed issue of notes and all future issues of notes will have received prior to issuance one of the three highest investment grades from at least one nationally recognized statistical rating organization and that its United States counsel will have certified that such rating has been received. The Applicant states that it will appoint a bank in the United States as its authorized agent to issue notes from time to time. Applicant further states that CBK will appoint CT Corporation System as agent in the United States to accept service of process in any action based on CBK's guarantees of the notes instituted in any state or federal court by a holder of any of the notes. CBK will expressly accept the jurisdiction of any state or federal court located in the city and state of New York in respect of any such action. Such appointment of an agent to accept service of process and such consent to jurisdiction will be irrevocable until all amounts due and to become due in respect of the notes have been paid.

Applicant represents that it does not presently intend to issue any securities other than the notes, but in the event that the Applicant does in the future offer other securities (other than shares of its capital stock) for sale in the United States, such offerings will be made only pursuant to a registration statement under the Securities Act or pursuant to an applicable exemption from registration under the Securities Act, the availability of which will be confirmed by an opinion of special United States counsel. The Applicant undertakes that any such offering will be made on the basis of disclosure documents appropriate for such registration or exemption, as the case may be, and at least as comprehensive as those customarily used by United States issuers in offering of this type of similar offerings. The Applicant also undertakes to ensure that each offeree of such securities will be provided with such disclosure documents, except that where an offering is made pursuant to a registration statement under the Securities Act, such disclosure documents will be provided to such persons and in such manner as may be required by the Securitites Act and the rules and regulations thereunder. Applicant states that any such future offerings will be made with due regard to the provisions of Rule 146 and the "integration" rules of the Commission. The Applicant consents to any order granting this application being expressly conditioned on the Applicant's compliance with the undertakings set forth above.

In support of its request, Applicant represents that it will conduct the normal business of a financing subsidiary of a foreign commercial bank and, consequently, does not believe that it should be considered an "investment company" within the meaning of the Act. Applicant states that the approval of an exemption under section 6(c) for the Applicant would be consistent with the 1982 Order granted by the Commission to CBK by virtue of the same reasoning as was set forth in CBK's application for the 1982 Order. Applicant further states that such reasoning is equally applicable here because the purchase of the notes would be the equivalent of the purchase of obligations of CBK, due to CBK's unconditional guarantee of the notes. Applicant concludes that granting an exemptive order pursuant to section 6(c) of the Act would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 9, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for this request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19913 Filed 8-20-85; 8:45]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension

File No. 270-132—Rule 20a-1
File No. 270-133—Rule 20a-2
File No. 270-134—Rule 20a-3
File No. 270-174—Rule 31a-2

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval the following Investment Company act of 1940 rules: Rule 20a-1, relating to solicitation of proxies, consents, and authorizations, Rule 20a-

2, requiring information in proxy statements pertaining to investment advisory contracts, Rule 20a–3, requiring information in proxy statements as to certain transactions, and Rule 31a–2, regarding records to be preserved by registered investment companies and certain majority-owned subsidiaries thereof.

Comments should be submitted to OMB Desk Officer: Katie Lewin, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

For the Commission.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19999 Filed 8–20–85; 8:45 am]

BILLING CODE 8010–01–M

[File No. 1–8545]

Issuer Delisting; Application To Withdraw From Listing and Registration; Scott Cable Communications, Inc.

August 16, 1985.

The above named issuer has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the Pacific Stock Exchange, Inc.

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Scott Cable Communications, Inc. no longer desires to be listed on the Pacific Stock Exchange, and that said delisting is necessary because of its desire to be listed on the National Market with NASDAQ.

Any interested person may, on or before September 6, 1985, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19996 Filed 8–20–85; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–22330; File No. SR–CSE–85–4]

Self-Regulatory Organizations; Proposed Rule Change by the Cincinnati Stock Exchange Relating to Small Order Execution Guarantee

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on August 2, 1985, The Cincinnati Stock Exchange (the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. The Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Effective August 2, 1985, the Board of Trustees of The Cincinnati Stock Exchange adopted certain stated policies, practices and interpretations pertaining to Exchange Rule 11.9 and amended Exchange Rule 11.9, which now reads in pertinent part as follows (new language italicized and deleted language bracketed):

Rule 11.9. National Securities Trading System

(a) When used in Rule 11.9, unless the context otherwise requires—

(1)[(7)] The term "System" means *the National Securities Trading System,* an electronic *securities* communication *and execution* facility designated by the Exchange's Board *of Trustees* through which bids and offers of competing dealers, as well as public *orders* [bids and offers], are consolidated for review and execution by Users. *The System combines the display of both the limit order file and current quotation/last sale information to Users with the matching and execution of like-priced orders, bids and offers according to programmed price/time and agency/principal priorities in order to give Users the ability to perform the brokerage and market-making functions performed on other exchanges. In addition, the System provides for the automatic execution of orders under predetermined conditions.*

(2)[(1)] The term "Approved Dealer" means * * *

(3) * * *

(4)[(2)] The term "Contributing Dealer" means * * *

(5)[(8)] The term "User" means a Member of the Exchange or an Approved Dealer. *Access Participant Members are considered to be Users in their limited capacity of executing transactions through the facilities of a Proprietary Member.*

(6)[(4)] The term "Designated Issue" means * * *

(7)[(6)] The term "public agency order" means * * *

(8) *The term "professional agency order" means an order entered by a User as agent for the account of a broker-dealer.*

(9) *The term "Floor" means the electronically integrated System marketplace consisting of the premises on which System terminals are located and the System supervisory center.*

(10)[(5)] The term "limit order guarantee" means * * *

(11) *The term "ITS BBO" means the best bid/ask quote among the Intermarket Trading System ("ITS") participants in those issues that are traded on ITS.*

(b) Any class of securities listed or admitted to unlisted trading privileges on the Exchange shall be eligible to become a Designated Issue. *All Designated Issues are eligible for odd-lot, round-lot and partial round-lot executions.*

(c) * * *

(i) * * *

(ii) * * *

(iii) * * *

(iv) Guarantee the execution of up to 1099 shares of public agency market orders in Designated Issues for which he is Designated Dealer. *If there exist two or more Designated Dealers in a Designated Issue, then the guarantee obligation shall rotate among such Designated Dealers on a daily basis. For the purposes of this subsection, market order shall include marketable limit order, which is a limit order that is immediately executable because the ITS BBO at the time the order is entered is equal to or better than the limit price on the order.*

(v) *Guarantee the execution at the opening price of opening public agency market orders and limit orders which are priced better than such opening price.*

(d) * * *

(e) * * *

(f) * * *

(g)[(j)] It shall be the responsibility of all Users when trading on the

Exchange for the account of another person to effect such transactions through the System. *Users may enter agency orders to buy and sell in Designated Issues through System terminals, which may have computer interfaces that have communications capability with the System and are directly linked to the System.*

(h) *The System shall display all current principal interest and agency orders of Users in Designated Issues, as well as the best bid/ask quotations of each ITS participant in, and the last sale price for, Designated Issues, to each User for purposes of trading.*

(i)[(k)] *The System shall automatically match and execute like-priced orders, bids and offers in accordance with the price-time and agency/principal priorities set forth in Rule 11.9(l) and (m).* [Any Approved Dealer or Proprietary Member in effecting an execution in a Designated Issue on the Exchange for his own account through the System, and any User effecting an execution in a Designated Issue on the Exchange for the account of another person through the System, shall do so by accepting bids and offers in the System in accordance with the priorities for bids and offers set forth in paragraph (i) of this Rule].

(j) *Limit orders to buy (sell) at a price inferior to the ITS BBO will be executed other than at the opening only after a regular way transaction in the Designated Issue is executed in another ITS participant market at a price which is equal to or less than (greater than) the limit price of the order.*

(k)[(g) A public agency order to buy or sell a specified amount of any Designated Issue at a specified price may be entered in the System by any User of the Exchange. Except as provided below, public agency orders in Designated Issues may not be executed on the Exchange otherwise than by entry in and execution through the System.] Public agency orders entered in the System which have not been executed may be removed * * *

(l)[(h)] Public agency orders to buy or sell * * *

(m)[(i)] It shall be the responsibility of [every] *each* Approved Dealer [and] *or other* Proprietary Member when trading on the Exchange for his own account *or as agent for professional agency orders* in round lots of Designated Issues to effect such transactions through the System and, in so doing, to yield priority to

(1) all public agency orders in the System at prices equal to, or better than, his [own] *order*, bid or offer; and

(2) all *orders*, bids and offers of Approved Dealers and *other* Proprietary Members for their own accounts *and as agents for professional agency orders* in the System at prices better than his [own] *order*, bid or offer or at the same price in the event any such *orders*, bids, or offers [was] *were* entered in the System at an earlier time than his [own], *order*, bid or offer.

(n) *Public Agency Guarantee.*

(1) *Public agency opening market orders and limit orders better than the opening price which are entered prior to the opening shall be executed at the opening price.*

(2) *Public agency market and marketable limit orders from 1 share up to and including 1099 shares in all Designated Issues which are entered after the opening are guaranteed execution pursuant to the following requirements.*

(3) *The Designated Dealer of the day must accept and guarantee execution on all public agency market and marketable limit orders from 1 share up to and including 1099 shares in accordance with this subparagraph (n).*

(4) *Subject to the requirements of the short sale rule, orders must be filled on the basis of the ITS BBO bid on a sell order or the ITS BBO offer on a buy order.*

(5) *The number of shares which the Designated Dealer of the day is obligated to execute is reduced by the number of shares executed in the System against any agency or principal interest, including interest of the Designated Dealer of the Day, priced at the ITS BBO when the order enters the System.*

(6) *In unusual trading situations, a Designated Dealer may seek relief from the requirements of 2 through 5 above from a CSE Floor Official or a member of the Exchange staff who would have authority to set execution prices.*

(o) *Prior to formatting any order, bid or offer into an ITS commitment to trade and issuing such a commitment to another ITS participant market, the System shall process such order, bid or offer as follows:*

(1) *if a principal bid or offer, the System shall first exhaust all interest at or better than such bid or offer which is resident in the System;*

(2) *if a public agency market or marketable limit order, the System shall first process the order pursuant to CSE Rule 11.9(i) and (n) and then expose for thirty seconds any remaining balance to all Approved Dealers, whether or not registered in the Designated Issue involved;*

(3) *if a professional agency order, the System shall exhaust all interest at or better than such order which is resident in the System and then, if the Board of Trustees has authorized the System generation of ITS commitments to trade, and such a procedure is in effect, shall expose the order for thirty seconds to all Approved Dealers, whether or not registered in the Designated Issue involved.*

(p) [(l)] * * *

(q) [(m)] * * *

(r) [(n)] * * *

(s) [(o)] * * *

General Description of the Services Provided to Member Organizations Though the System

The System is the electronic securities communcation and execution system designated by the Exchange's Board of Trustees which is avialable to all CSE members and through which bids and offers of competing dealers as well as public orders are consolidated for review and execution. The System combines a limit order file capable of being viewed by all Users, the display of current Exchange and naitonal quotation and last sale information, and the electronic matching and execution of like-priced System interest according to programmed price/time and agency/principal priorities in order to give Users the ability to perform electronically traditional brokerage and market-making functions. In addition, the System provides automatic, guaranteed executions for public agency market and marketable limit orders up to 1099 shares at the best available price represented by all Intermarket Trading System participants (the "ITS BBO").

System Operations

Only Designated Issues are eligible for trading in the System. Designated Issues consist of securities listed or admitted to unlisted trading privileges on the Exchange for which one or more Designated Dealers have been approved to provide continuous bids and offers through the System during Exchange trading hours.

Orders, bids and offers may be entered by Users through System terminals, which may have computer interfaces that have communications compatibility with the System and are directly linked to the System. Orders in Designated Issues are eligible for odd-lot, round-lot, and partial round-lot executions.

Orders, bids and offers entered into the System are exposed to Users through system terminals. The System aggregates, prioritizes and continually updates all agency and principal trading interest in each Designated Issue for

display to Users. The information displayed includes stock symbol, time of entry, price, and aggregate size by price; the name of the member firm entering an order is available only on the CSE supervisory terminal.

Users are given the opportunity to interact with System trading interest and to elicit additional trading interest via their ability to see current System trading interest and to enter, modify, and withdraw orders, bids and offers through their terminals. When like-priced orders or bids and offers meet, the System automatically causes an execution based on programmed agency/principal and price-time priorities consistent with the Rules of the Exchange. Execution reports are transmitted directly to the member firms involved, to CSE and to the consolidated tape; the interest held for display in the System is automatically adjusted to reflect the activity, and the System automatically records the information necessary to produce a tape for the national clearance and settlement organizations.

Approved Dealers, who are Designated Dealers, Contributing Dealers, or specialists or market makers registered as such with another exchange with respect to any Designated Issue, may trade either on a principal or an agency basis. Trading on an agency basis is conducted as described below for other Proprietary Members. An Approved Dealer typically trades on a principal basis by entering price and size quotations into his System terminal for Designated Issues in which the Approved Dealer is so registered. An Approved Dealer may also trade on a principal basis in Designated Issues for which he is not registered as long as he complies with section 11(a) of the Securities Exchange Act of 1934 (the Act) and the rules and regulations thereunder. In either event, the quotations entered by the Approved Dealer are automatically ranked according to the price-time and agency/principal priorities contained in Exchange Rule 11.9 and are either immediately matched with and fully or partially executed against contra System trading interest or are held for display to other System participants. Thus, for example, if an Approved Dealer wishes to trade against a bid currently being displayed by another System User, the Approved Dealer simply enters a like-priced offer into his System terminal. The System matches and executes the offer against the bid up to the size bid or offered, whichever is less, and automatically transmits reports to both the buyer and seller.

Proprietary members other than Approved Dealers may trade in the System either for their own account or in an agency capacity. Principal trading is conducted in the manner above prescribed for Approved Dealers and must comply with Section 11(a) of the Act and the rules and regulations thereunder. A Proprietary Member who wishes to enter an agency order for a particular Designated Issue typically inputs price, size and any special condition information into the System terminal. (The System presently accepts the follwing special condition types: market, limit, immediate or cancel, fill or kill, day, good 'til cancelled, do not reduce, and opening only.) The order is ranked according to price/time and agency/principal algorithms and is either immediately matched with an executed against contra System trading interest or is placed in the limit order file for display to other System participants.

If a Proprietary Member enters a public agency market or marketable limit order, then the System processes the order according to the procedures described below under "Public Agency Guarantee". A professional agency order, however, does not receive the benefit of a guaranteed execution, and such an order is not granted the special priority accorded to public agency orders under CSE Rule 11.9(m). For the purpose of priority in execution, a professional agency order will be treated as though it was a principal bid/offer.

Pre-Opening Activity

A User may enter pre-opening orders directly into the System. Orders designated as opening market orders which are received in any Designated Issue before trading in that security begins are displayed on all System terminals and are executed at the opening at a price which is equivalent to the opening price. In addition, opening limit orders received prior to the opening and limit orders entered previously into the System will receive executions at the opening price if such orders are priced better than the opening price on the primary market. In both instances, the contra side to the opening orders is the Designated Dealer of the day, i.e., the Designated Dealer obligated on the particular day to act pursuant to the guarantee obligation of CSE Rule 11.9(c)(iv) in the particular Designated Issue involved.

Access Participant Members

The CSE By-Laws permit Access Participant Members to execute transactions in the System "only through the facilities of a Proprietary Member". A Proprietary Member enters orders into the System for Access Participants and obtains executions in the same manner as other agency orders.

Public Agency Guarantee

Users who enter public agency market and marketable limit orders Designated Issue are guaranteed an execution of up to 1099 shares at the ITS BBO. For each Designated Issue, there is a Designated Dealer obligated to execute such orders. Where there are multiple Designated Dealers in a particular issue, the duty to provide a guaranteed execution is rotated daily among such Dealers.

The Designated Dealer of the day is required by CSE Rule 11.9(c)(iv) to provide an execution of up to an aggregate of 1099 shares of a eligible order to the ITS BBO. The number of shares which the Designated Dealer of the day is obligated to execute is reduced by the number of shares executed in the System against any agency or principal interest, including that of the Designated Dealer of the day, residing in the System which is priced at the ITS BBO. Thus, upon entry into the System by a User, a public agency market or marketable limit order is priced at the ITS BBO and is first matched against any existing contra agency interest at the ITS BBO, then against any similar principal interest. If any size remains after this matching process, up to 1,099 shares of the total order is automatically executed against the guaranteeing Dealer at the ITS BBO.

Any portion of a public agency market or marketable limit order still remaining unexecuted after the guarantee is flashed on the System terminals of all Approved Dealers for thirty seconds in order to give each Approved Dealer an opportunity to fill all of the balance of the order at the ITS BBO.

ITS Interface

An ITS commitment to trade may be formatted and entered into ITS on a manual basis or, if the Board of Trustees should choose to substitute new hardware for present ITS stations, on a more efficient basis in which the System would format and enter commitments to trade into ITS. The following is an example of the manner in which the System will process ITS activity if the hardware substitution is implemented.

Assume that a member firm of the NYSE receives from a customer an order to purchase 100 shares of a given NYSE listed stock that is also traded on the PSE and the CSE and sends that order to the NYSE for execution. There a NYSE member, acting as agent for the

customer, will receive the order and attempt to execute it. He may find that the best bid on the NYSE floor is 39⅞ and that the best offer is 40¼.

Assume that the stock in question is one of the stocks as to which continuous two-sided quotations are required to be furnished by the CSE. Assume also that the continuously updated quotation display at the appropriate NYSE trading post shows that the best offer from other Participant Markets is one of 40⅛ on the CSE. Having learned this formation, the NYSE member may decide to attempt to buy the 100 shares for his customer from the 40⅛ offer on the CSE. By using an ITS station located on the NYSE trading floor, the broker would send, or cause to be sent, the CSE a commitment to buy 100 shares of the stock at 40⅛.

When the commitment to buy is entered into ITS, ITS will send the commitment to CSE where it will enter the System. If the 40⅛ offer is still available when the commitment to buy reaches the System, or if a better offer is available in the System, and if the rules of the CSE permit an execution at that price, then the System would generate an acceptance of the commitment on behalf of the User responsible for the 40⅛ offer (or the better offer) and send it to ITS. The execution would occur at 40⅛ (or at the better price) if the applicable time period had not expired. The System would report the trade to the CTA Plan Processor for dissemination under the CTA Plan at 40⅛ (or at the better price) with the identifier assigned to the CSE.

If the example is reversed and a User seeks to purchase 2000 shares as agent, then the User would enter his buy interest into the System as either a limited priced order or a market order. The entry would be made through a System terminal. If the buy interest has a limit less than the ITS BBO offer, the System will place the buy interest in the System limit order file. If the limit of the buy interest equals or exceeds the ITS BBO offer, or if the buy interest is a market order, the System will append to the buy interest a price equal to the ITS BBO offer and will seek an execution with existing sell interest by searching the System limit order file. If there is sell interest within the System that equals the ITS BBO offer, the System will execute the buy interest up to the size of the sell interest.

If any portion of the buy interest remains (or if there is no sell interest within the System that equals the ITS BBO offer), the System will execute the remainder of the buy interest against the Designated Dealer of the day in minimum amount equal to 1099 shares minus the amount, if any, already executed against the existing sell interest in the System limit order file. If any of the buy interest still remains, the System will display the remainder on the System terminals of all Approved Dealers for thirty seconds to afford them an opportunity to supply all the stock.

If the Approved Dealer does not take all the remaining priced buy interest during the thirty seconds, the next step in processing depends on the price of the ITS BBO offer at that point.

The first possibility is that the price of the remaining buy interest equals or exceeds the ITS BBO offer. In that case, the System will format the balance of the buy interest into a commitment to buy at that price and, acting on behalf of the User who entered the buy interest into the System, send the commitment to the Participant Market then furnishing the ITS BBO offer. If such Participant Market does not execute the commitment in full, the System will route the priced buy interest that still remains to the System terminal in the System supervisory center. A CSE employee, acting on behalf of the User who entered the buy interest into the System, will then manually enter the buy interest into the ITS station as a commitment to buy (and reprice it as necessary) and send the commitment to the Participant Market then furnishing the ITS BBO offer. However, if the buy interest has a limit less than the ITS BBO offer, the employee will instead place the buy interest in the System limit order file or return it to the entering User, as specified by the entering User.

The second possibility is that the price of the remaining buy interest is less than the ITS BBO offer. In that case, the System will send the priced buy interest to the System terminal in the System supervisory center. The CSE employee thereupon handles the priced buy interest in the same way as he or she handles buy interest upon the cancellation, expiration or partial execution of System-generated commitments to trade.

If an Approved Dealer, whether or not registered in a particular System security, or other User entered the buy interest for his own account or for the account of another broker-dealer, the processing is the same except that the System does not provide the interest an execution pursuant to the guarantee obligation or the thirty-second display. The System, however, if and only if the Board of Trustees has authorized the System generation of commitments to trade and the necessary steps have been taken to implement such a procedure, prior to formatting a professional agency market or marketable limit order as an ITS commitment to trade, will display such an order on the System terminals of all Approved Dealers for thirty seconds.

The System presently operates in the manner described above except that commitments and acceptances are generated and sent manually and professional agency orders are not displayed on System terminals for thirty seconds after clearing the limit order file.

If the lines linking the System directly to ITS are not operating, the commitment to trade or response thereto destined for or being sent on behalf of Users will leave and enter ITS from the System supervisory center. Thus, in the example of the commitment sent to the CSE, ITS will route the commitment to the ITS station located in the System supervisory center. There a CSE employee will determine whether the 40⅛ offer is still the best offer then being furnished by Users. If the 40⅛ offer is still available, or if a better offer is available, and if the rules of the CSE permit an execution at that price, then the CSE employee shall enter appropriate acceptances in both the System and ITS during the applicable time peirod. Upon ITS's acceptance of the entry, an execution at 40⅛ (or at the better price) would take place. The CSE would then report the trade to the CTA Plan Processor for dissemination under the CTA Plan at 40⅛ (or at the better price) with the identifier assigned to the CSE. Similarly, a commitment generated by the System would be routed to the System terminal in the System supervisory center. The CSE employee would enter the commitment into the ITS station at the System supervisory center.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Purpose

The purpose of the Proposed Rule Change is for the Exchange to clarify and more fully set forth in its Rules the operation and basic characteristics of the System.

Statutory Basis

Section 6 and Section 11A of the Act provide the principal statutory basis for the Proposed Rule Change. The Proposed Rule Change codifies a more detailed description of the National Securities Trading System, a trading

system which is designated to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system, as called for by section 6(b)(5).

Certain enhancements to the current manner of linkage between the National Securities Trading System and the Intermarket Trading System will further the intentions of Congress as set forth in Section 11A with its statement that "[t]he linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition . . . and contribute to the best execution of such orders." In addition, a more efficient linkage will, consistent with Section 11A, promote the public interest and the protection of investors by assuring economically efficient executions of securities transactions and fair competition among exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the Proposed Rule Change will impose any burden on competition.

C. Self-Regulatory organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited not received comments on the Proposed Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Act

Within 35 days of the date of publication of this notice in the **FEDERAL REGISTER** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 5th Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by September 11, 1985.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

August 15, 1985.

[FR Doc. 85-19998 Filed 8-20-85; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Findings and Order Granting Applications for Unlisted Trading Privileges; Midwest Stock Exchange, Inc.

August 15, 1985.

The Midwest Stock Exchange, Incorporated ("MSE") has filed an application with the Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 ("Act") and Rule 12f-1 (17 CFR 240.12f-1) thereunder, for unlisted trading privileges in the following securities which are listed on one or more national securities exchange:[1]

Monarch Capital Corporation
Common Stock, $1.00 Par Value (File No. 7-8517)
Intelogic Trace, Inc.
Common Stock, No Par Value (File No. 7-8518)
Castle Industries, Inc.
Common Stock, $0.10 Par Value (File No. 7-8519)
Direct Action Marketing
Common Stock, $0.01 Par Value (File No. 7-8520)
Superior Surgical Manufacturing Company
Common Stock $1.00 Par Value (File No. 7-8521)

The Commission finds that approval of the MSE application for unlisted trading privileges in these securities is consistent with the maintenance of fair and orderly markets and the protection of investors. As a national securities exchange registered with the Commission pursuant to section 6 of the Act, the MSE is subject to the provisions of paragraph (b) of that section, and to the Commission's inspection authority and oversight responsibility under sections 17 and 19 of the Act and the rules and regulations thereunder. In addition, transactions in the subject securities, regardless of the market in which they occur, are reported in the consolidated transaction reporting system contemplated by Rule 11Aa3-1 under the Act (17 CFR 240.11Aa3-1). The availability of last sale information for the subject securities should contribute to pricing efficiency and to ensuring that transactions on the MSE are executed at prices which are reasonably related to those occurring in other markets. Finally, the Commission has received no comments indicating that the granting of this application would not be consistent with the maintenance of fair and orderly markets and the protection of investors. The Commission further finds that approval of the MSE application will provide increased opportunities for competition among brokers and dealers and among exchange markets consistent with the purposes of the Act and the objectives of the national market system.

Accordingly, it is ordered, pursuant to section 12(f)(1)(B) of the Act, that the application for unlisted trading privileges of the Midwest Stock Exchange in the above named securities is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-19914 Filed 8-20-85; 8:45 am]

BILLING CODE 8010-01-M

[1] Notice of this application was given by publication in the **Federal Register** (50 FR 30775, July 29, 1985). The Commission has received no comments with respect to this application.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

August 15, 1985.

The above named national security exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Interstate Securities, Inc.
Common Stock, $0.20 Par Value (File

No. 7–8546)
MI. Convertible Securities, Inc.
Capital Shares, $0.10 Par Value (File No. 7–8547)
Union Exploration Partners, Ltd.
Depositary Units (Representing Limited Partners Interests) (File No. 7–8548)
LAC Minerals Ltd.
Common Stock, $0.10 Par Value (File No. 7–8549)
UDC-Universal Development
Depositary Receipt (Evidencing Depository Units) (File No. 7–8550)
Sunshine Mining Compnay
new Cumulative Redeemable Preferred Stock, $11.94 Stated Value (File No. 7–8551)
Brown Forman, Inc.
Class B, $0.30 Par Value (File No. 7–8553)
Russell Corporation
Common Stock, $0.01 Par Value (File No. 7–8553)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before September 6, 1985, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–19915 Filed 8–20–85; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

[Docket No. 38978]

Braniff International Airways Employee Protection Program Investigation; Second Prehearing Conference

Notice is hereby given that a second prehearing conference in the above-entitled matter is assigned to be held on September 18, 1985, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, August 13, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85–19920 Filed 8–20–85; 8:45 am]

BILLING CODE 4910–62–M

Order Adjusting the Standard Foreign Fare Level Index

The International Air Transportation Competition Act (IATCA), Pub. L. 96–192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile. Order 80–2–69 established the first interim SFFL and Order 85–6–55 established the currently effective two-month SFFL applicable through July 31, 1985.

In establishing the SFFL for the two-month period starting August 1, 1985, we have projected nonfuel costs based on the year ended March 31, 1985 data, and have determined fuel prices on the basis of experienced monthly fuel cost levels as reported to the Department.

By Order 85–8–46 fares may be increased by the following adjustment factors over the October 1, 1979, level:

Atlantic—1.2094
Latin America—1.3462
Pacific—1.2628
Canada—1.1865

For further information contact: John D. Coakley, (202) 472–5492.

By the Department of Transportation: August 15, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85–20002 Filed 8–20–85; 8:45 am]

BILLING CODE 4910–62–M

[Docket 43006]

Pan Aviation Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to be held on September 4, 1985, at 10:00 a.m. (local time) in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC 20590, before the undersigned administrative law judge.

Dated at Washington, DC, August 14, 1985.

Ronnie A. Yoder,

Administrative Law Judge.

[FR Doc. 85–20001 Filed 8–20–85; 8:45 am]

BILLING CODE 4910–62–M

Urban Mass Transportation Administration

Section 15 Reporting System Advisory Committee; Meeting

AGENCY: Urban Mass Transportation, DOT.

ACTION: Notice of Section 15 Reporting System Advisory Committee Meeting.

SUMMARY: In this Notice, the Urban Mass Transportation Administration (UMTA) announces a meeting of the Section 15 Reporting System Advisory Committee. The Committee provides advice concerning the quality and usefulness of the Section 15 Reporting System.

DATE: September 5–6, 1985.

FOR FURTHER INFORMATION CONTACT: Ronald J. Fisher, Office of Information Services, Room 6419, 400 Seventh Street, SW., Washington, DC 20590, (202) 426–9157.

SUPPLEMENTARY INFORMATION:

Background

Section 15 of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1611), requires the development of a national reporting system for public mass transportation financial and operating data. On August 27, 1981, UMTA issued a Notice in the **Federal Register** (46 FR 43352) announcing the establishment of the Section 15 Reporting System Advisory Committee. The Committee enhances the quality and usefulness of the Section 15 Reporting System to assure that it provides meaningful information for the analysis of the transit industry.

All Committee meetings are open to the public. With the Chairman's approval, members of the public may speak at meetings in accordance with procedures established by the Committee. A written statement may be filed with the Committee at any time.

Meeting Information

Dates: Thursday, September 5, 1985;
Friday, September 6, 1985
Time: 9:00 p.m.–5:00 p.m.
Place: Department of Transportation, 400 Seventh Street, SW., Room 4234, Washington, D.C. 20590

Issued on: August 14, 1985.

Ralph L. Stanley,

Administrator, Urban Mass Transportation Administration.

[FR Doc. 85–20024 Filed 8–20–85; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular—Public Debt Series—No. 26-85]

Treasury Notes of August 31, 1987, Series Y-1987

August 15, 1985.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of Chapter 31 of Title 31, United States Code, invites tenders for approximately $9,250,000,000 of United States securities, designated Treasury Notes of August 31, 1987, Series Y-1987 (CUSIP No. 912827 SQ 6), hereafter referred to as Notes. The Notes will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the yield of each accepted bid. The interest rate on the Notes and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the Notes may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the Notes may also be issued at the average price to Federal Reseve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The Notes will be dated September 3, 1985, and will accrue interest from that date, payable on a semiannual basis on February 28, 1986, and each subsequent 6 months on August 31 and February 28 through the date that the principal becomes payable. They will mature August 31, 1987, and will not be subject to call for redemption prior to maturity. In the event any payment date is a Saturday, Sunday, or other nonbusiness day, the amount due will be payable (without additional interest) on the next-succeeding business day.

2.2. The notes are subject to all taxes imposed under the Internal Revenue Code of 1954. The Notes are exempt from all taxation now or hereafter imposed on the obligation or interest thereof by an State, any possession of the United States, or any local taxing authority, except as provided in 31 U.S.C. 3124.

2.3. The Notes will be acceptable to secure deposits of Federal public monies. They will not be acceptable in payment of Federal taxes.

2.4. Notes in registered definitive form will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Notes in book-entry form will be issued in multiples of those amounts. Notes will not be issued in bearer form.

2.5. Denominational exchanges of registered definitive Notes, exchanges of Notes between registered definitive and book-entry forms, and transfers will be permitted.

2.6. The Department of the Treasury's general regulations governing United States securities apply to the Notes offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20239, prior to 1:00 p.m., Eastern Daylight Saving time, Wednesday, August 21, 1985. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, August 20, 1985, and received no later than Tuesday, September 3, 1985.

3.2. The par amount of Notes bid for must be stated on each tender. The minimum bid is $5,000, and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.10%. Fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield.

3.3. A single bidder, as defined in Treasury's single bidder guidelines, shall not submit noncompetitive tenders totaling more than $1,000,000. A noncompetitive bidder may not have entered into an agreement, nor make an agreement to purchase or sell or otherwise dispose of any noncompetitive awards of this issue prior to the deadline for receipt of tenders.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and are on the list of reporting dealers published by the Federal Reserve Bank of New York, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are permitted to submit tenders only for their own account.

3.5. Tenders for their own account will be received without deposit from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from all others must be accompanied by full payment for the amount of Notes applied for, or by a guarantee from a commecial bank or a primary dealer of 5 percent of the par amount applied for.

3.6. Immediately after the deadline for receipt of tenders, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expresed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, an interest rate will be established, at a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.750. That stated rate of interest will be paid on all of the Notes. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance of their bids. Those submitting noncompetitive tenders will be notified only if the tender is not accepted in full, or when the price at the average yield is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of Notes specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for the Notes allotted must be made at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Settlement on Notes allotted to institutional investors and to others whose tenders are accompanied by a guarantee as provided in Section 3.5. must be made or completed on or before Tuesday, September 3, 1985. Payment in full must accompany tenders submitted by all other investors. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes, or bonds maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received from institutional investors no later than Thursday, August 29, 1985. In addition, Treasury Tax and Loan Note Option Depositaries may make payment for the Notes allotted for their own accounts and for accounts of customers by credit to their Treasury Tax and Loan Note Accounts on or before Tuesday, September 3, 1985. When payment has been submitted with the tender and the purchase price of the Notes allotted is over par, settlement for the premium must be completed timely, as specified above. When payment has been submitted with the tender and the purchase price is under par, the discount will be remitted to the bidder.

5.2. In every case where full payment has not been completed on time, an amount of up to 5 percent of the par amount of Notes allotted shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered definitive securities tendered in payment for the Notes allotted are not required to be assigned if the new Notes are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new Notes are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (Notes offered by this circular) in the name of (name and taxpayer identifying nunber)". Specific instructions for the issuance and delivery of the new Notes, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment must be delivered at the expense and risk of the holder.

5.4. Registered definitive Notes will not be issued if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (e.g., an individual's social security number or an employer identification number) is not furnished. Delivery of the Notes in registered definitive form will be made after the requested form of registration has been validated, the registered interest account has been established, and the Notes have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized, as directed by the Secretary of the Treasury, to receive tenders, to make allotments, to issue such notices as may be necessary, to receive payment for, to issue and deliver the Notes on full-paid allotments, and to maintain, service, and make payment on the Notes.

6.2. The Secretary of the Treasury may at any time supplement or amend provisions of this circular if such supplements or amendments do not adversely affect existing rights of holders of the Notes. Public announcement of such changes will be promptly provided.

6.3. The Notes issued under this circular shall be obligations of the United States, and, therefore, the faith of the United States Goverment is pledged to pay, in legal tender, principal and interest on the Notes.

Gerald Murphy,

Acting Fiscal Assistant Secretary.

[FR Doc. 85-20034 Filed 8-20-85; 8:45 am]

BILLING CODE 4810-40-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 162
Wednesday, August 21, 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 15, 1985.

TIME AND DATE: 10:00 a.m., Thursday, August 22, 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. Secretary of Labor, MSHA on behalf of Robert Ribel v. Eastern Associated Coal Corp., Docket No. WEVA 84-33-D. (Issues include whether the administrative law judge erred in concluding that the miner had been discharged in violation of the Mine Act and properly denied attorney's fees to the miner's private counsel.)

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.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-20006 Filed 8-16-85; 4:35pm]

BILLING CODE 6735-01-M

2

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-35]

TIME AND DATE: 9:30 a.m., Tuesday, August 27, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Investigation 701-TA-254 [Preliminary] (Certain red raspberries from Canada)—briefing and vote.
2. Investigations Nos. 731-TA-275, 276 and 277 [Preliminary] and 701-TA-255 and 256 [Preliminary] (Oil country tubular goods from Canada and Taiwan)—briefing and vote.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20017 Filed 8-19-85; 9:16 am]

BILLING CODE 7020-02-M

3

INTERNATIONAL TRADE COMMISSION

[USITC SE-85-36]

TIME AND DATE: 10:00 a.m., Tuesday, September 3, 1985.

PLACE: Room 117, 701 E Street, NW., Washington, DC 20436.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratification List.
4. Petitions and Complaints.
5. Investigation No. 22-49 (Sugar)—briefing and vote.
6. Investigation No. 104-TAA-28 (Sugar content of certain articles from Australia)—briefing and vote.
7. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-20018 Filed 8-19-85; 9:16 am]

BILLING CODE 7020-02-M

4

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9 a.m., Tuesday, August 27, 1985.

PLACE: NTSB Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC., 20594.

STATUS: This item will be open.

MATTER TO BE CONSIDERED:

1. *Aircraft accident Report:* Wings West Airlines, Inc., Beech C-99, N6399U, and Aesthetec, Inc., Rockwell Commander 112TC, N1125M, near San Luis Obispo, California, August 24, 1984.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa (202) 382-6525.

Dated: August 16, 1985.

Catherine T. Kaputa,

Federal Register Liaison Officer.

[FR Doc. 85-20028 Filed 8-19-85; 10:11 am]

BILLING CODE 7533-01-M

5

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of August 19, 26, September 2, and 9, 1985.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of August 19

No Commission Meetings

Week of August 26—Tentative

No Commission Meetings

Week of September 2—Tentative

Tuesday, September 3

2:00 p.m.
Periodic Briefing on NTOLs (Open/Portion may be Closed—Ex. 5 & 7)

Wednesday, September 4

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

2:00 p.m.
Continuation of 7/23 Discussion on Threat Level and Physical Security (Closed—Ex. 1)

Thursday, September 5

11:30 a.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 6

10:00 a.m.
Status of Interpretation of Appendix R—Fire Protection (Public Meeting)

Week of September 9—Tentative

Tuesday, September 10

10:00 a.m.
Discussion and Oral Presentations on Uranium Mill Tailings Regulations (Public Meeting) (tentative)

2:00 p.m.
Discussion of Proposed Station Blackout Rule (Public Meeting)

Wednesday, September 11

1:30 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:00 p.m.
Discussion of Plant Issues with Regional Administrators (Public Meeting)

Thursday, September 12

2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for River Bend (Public Meeting) (tentative)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, September 13

10:30 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634–1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado (202) 634–1410.

Julia Corrado,
Office of the Secretary.
August 15, 1985.

[FR Doc. 85–20014 Filed 8–19–85; 8:45 am]
BILLING CODE 7590–01–M

federal register

Wednesday
August 21, 1985

Part II

Department of Energy

Western Area Power Administration

Announcement of Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs; Final Amended Guidelines and Acceptance Criteria

DEPARTMENT OF ENERGY

Western Area Power Administration

Announcement of Final Amended Guidelines and Acceptance Criteria for Customer Conservation and Renewable Energy Programs

AGENCY: Western Area Power Administration, DOE.

ACTION: Final amended guidelines and acceptance criteria.

SUMMARY: The Western Area Power Administration (Western) must amend its existing Guidelines and Acceptance Criteria for customer conservation and renewable energy programs issued November 13, 1981 (46 FR 56140) in accordance with the requirements of the Hoover Power Plant Act of 1984 (Pub. L. 98-381, Title II, signed August 17, 1984). Western's overall program objectives are increased energy production from renewable resources, reduced dependence on foreign energy, and improved efficiency in energy utilization.

The basic program approach recognizes individual customer needs and capabilities and acknowledges past and present accomplishments in the areas of conservation and renewable energy. Customers are given primary responsibility for developing and implementing programs for efficient energy production and conservation goals. The Guidelines and Acceptance Criteria are implemented through contract articles or other formal agreements between Western and its customers. Customers are required to submit their conservation programs within 1 year after a long-term firm power contract or letter agreement is signed. Customers may elect to submit their programs to Western prior to signing such contracts or agreements.

A customer's program submission includes a description of its specific program content. Western's Guidelines and Acceptance Criteria include a list of suggested activities for customer consideration. Western gives full or partial credit for programs required by other entities that meet the requirements of this program.

Acceptance criteria for customer programs are based on the customer's classification (i.e., cooperative, public utility district, etc.) and the level of effort proposed. A customer's program is evaluated as a whole, but it is required to contain a minimum number of annual on-going or planned program activities. Customers may offer substitutes for listed activities. Western also provides technical assistance to resolve programmatic problems.

The major amendments required to the present Guidelines and Acceptance Criteria under the Hoover Power Plant Act of 1984 may be summarized as follows: (1) Increased emphasis on customer program goals definition; (2) A revision in acceptable program elements (activities); (3) Amendments to Western's evaluation and acceptance criteria; and (4) Identification of penalties associated with program noncompliance.

Western's review process for customer submission will now consist of the following:

1. Publishing these final amended Guidelines and Acceptance Criteria.
2. Providing technical assistance to customers, as appropriate.
3. Reviewing customer submissions against defined criteria.
4. Answering customer questions and providing necessary assistance.
5. Reviewing accepted programs every 2 years.
6. Imposing penalties as appropriate, if a customer is found in violation of its contractual obligations.

These final amended Guidelines and Acceptance Criteria also include the option for customers to appeal program acceptability.

DATE: The effective date of these final amended Guidelines and Acceptance Criteria will be 30 days after publication of this notice in the **Federal Register.**

ADDRESS: For further information concerning these final amended Guidelines and Acceptance Criteria, contact either the appropriate Western Area Office or:

Mr. Warren L. Jamison, Assistant to the Administrator for Conservation and Environment, Western Area Power Administration, U.S. Department of Energy, P.O. Box 3402, Golden, CO 80401, (303) 231-7945.

SUPPLEMENTARY INFORMATION:

Authority

The original Guidelines and Acceptance Criteria were developed pursuant to Western's authority granted under the Department of Energy Organization Act (42 U.S.C. 7101, *et seq.*) and under Reclamation Law, Act of Congress approved June 17, 1902 (32 Stat. 388) and acts amendatory thereof or supplementary thereto, in particular section 9(c) of the Reclamation Project Act of 1939 [43 U.S.C. 485h(c)]. These final amendments are developed pursuant to the Hoover Power Plant Act of 1984 (Pub. L. 98-381, Title II).

Determination Under E.O. 12291

Pursuant to E.O. 12291 of February 17, 1981 (46 FR 13193, February 19, 1981), each agency is to determine whether a rule it intends to issue is a major rule. Western has determined that for purposes of E.O. 12291, the final amendments to the Guidelines and Acceptance Criteria for customer conservation and renewable energy programs do not alter the original sufficiently to make it a major rule because:

1. It will not have an annual effect on the economy of $100 million or more;
2. It will not result in a major increase in cost or prices for consumers; individual industries; Federal, State, or local Government agencies; or geographic regions; or
3. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

In addition, Western has received an exemption from sections 3, 4, and 7 of E.O. 12291. However, these Guidelines and Acceptance Criteria will be resubmitted to the Office of Management and Budget prior to publication in the **Federal Register.**

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), each agency, when required by 5 U.S.C. to publish a rule, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the proposed rule on small entities. Western originally determined that: (1) A substantial number of small entities will not be affected as Western's customers represent a relatively small number of entities in the United States; and (2) The impacts of this program will not cause an adverse economic impact on the participating customers or small entities located within their service areas. The requirements of the Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. For the reasons cited above, the Administrator of Western certifies through his signature of this **Federal Register** notice, that the final amendments to the original Guidelines and Acceptance Criteria will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

Pursuant to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, *et seq.*), all agencies of the Federal Government shall include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment a detailed statement by the responsible official.

Western has determined that the Guidelines and Acceptance Criteria would not, of themselves, significantly affect the quality of the human environment or have adverse direct environmental impacts. Therefore, no environmental impact statement is required. This determination is supported after examining the program impacts from actual implementation over a 3-year period. The final amendments will not significantly alter the current program status.

Discussion of Public Comments

Western received three comments from customers during the March 21, 1985, public information and comment forums held in Denver, Colorado. Subsequent to these forums and prior to the April 1 comment deadline, Western received 21 written comments pertaining to the proposed amended Guidelines and Acceptance Criteria. These written comments represented 53 organizations (15 utility customers and 38 environmental groups). All comments have been carefully considered by Western for the final Guidelines and Acceptance Criteria. The comments are herein addressed individually except where multiple comments on like issues have been combined for expediency. Where changes have been made as a result of these comments, they have been so noted. Not all comments submitted to Western pertained to the Guidelines and Acceptance Criteria document itself; however, where appropriate, most have also been addressed for public information. The comments are individually stated followed by Western's response.

Comment: The proposed customer Guidelines and Acceptance Criteria do not comply with the language or the intent of the Hoover Power Plant Act of 1984 and will not result in the degree of implementation desired by Congress. The proposed guidelines lack substance and require extensive revisions before adoption as final rules. The regulations must contain specific program evaluation criteria and penalties for noncompliance. The penalties should consist of reductions or eliminations in power allotments to Western's customers.

Answer: The Guidelines and Acceptance Criteria must be examined along with the conservation and renewable energy contract article in order to provide a complete set of customer requirements. The contract article contains the time schedules and penalties associated with the program and incorporates by reference the Guidelines and Acceptance Criteria. A typical conservation and renewable energy contract article reads as follows:

To effect a conservation and renewable energy program, the parties to the contract agree as follows:

The Contracting Officer will provide guidance and, if requested, will assist the Contractor (or its members) in development of a conservation and renewable energy program, as the Contracting Officer deems appropriate. The Contractor's (and its members') program will be developed and implemented in accordance with the terms of the final Guidelines and Acceptance Criteria for customer conservation and renewable energy programs published in the **Federal Register** (46 FR 56140) on November 13, 1981.

The Contractor (and its members) will develop a conservation and renewable energy program suitable for its own geographic area and type of utility operation and will submit said program to the Contracting Officer for review and approval within 12 months after the date of execution of the contract. The program should include a description of what the Contractor (and its members) has done in the past and the plans for future implementation. Credit will be given for past accomplishments. Approval of the Contractor's (and its members') program shall be in accordance with the published Guidelines and Acceptance Criteria. The approved conservation and renewable energy program will be subject to review by the Contracting Officer not less often than every 24 months.

If the Contractor does not obtain the Contracting Officer's approval of its program within 24 months after the date of execution of the contract or approval of the Contractor's program has been revoked, the Contractor's firm power commitment, as set forth in the contract, may be reduced by 10 percent (10%) of the contract rate(s) of delivery for firm power; provided that no such reduction shall be made until 12 months after the Contracting Officer provides comments to the Contractor outlining deficiencies of the Contractor's program based on the Guidelines and Acceptance Criteria, and unless the Contractor fails to obtain approval by appropriate revision of its program.

As applicable, if one or more of the Contractor's members does not obtain the Contracting Officer's approval of its program within 24 months after the date of execution of the contract or approval of the member's program has been revoked, the member's pro rata share of the Contractor's firm power commitment, as set forth in the contract, may be reduced by 10 percent of said pro rata share of the contract rate(s) of delivery for firm power; provided that no such reduction shall be made until 12 months after the Contracting Officer provides comments to the Contractor and the member outlining deficiencies of the member's program based on the Guidelines and Acceptance Criteria and unless the member fails to obtain an approval by appropriate revisions of its program.

The program evaluation criteria are found in the Guidelines and Acceptance Criteria, and the penalties are set forth in the contract article. All basic contract principles apply and remain viable with the issuance of these amended documents.

Comment: Do Western's verification criteria apply to a customer's conservation and renewable energy program efforts, such as budget or staff, or do they apply to actual results of the program, such as a member of customers (retail) enrolled or number of megawatts involved?

Answer: In effect, the criteria apply to both (see the revised Acceptance Criteria section). Western, in approving a set of ongoing customer defined activities, will evaluate performance based upon the achievements made toward the schedules and targeted goals defined. Such goals may have been amended or modified by the customer through the formal approval process with Western. Program activities which involve research and development with associated technical risk would be evaluated accordingly on a case-by-case basis.

Comment: If a utility develops rates based on cost of service or eliminates declining block rates, and then maintains these changes in its rate design, do these qualify as one-time activities or ongoing activities?

Answer: Rate structures which achieve energy savings or beneficially shift energy consumption have been approved as ongoing activities. However, such programs must include an annual commitment of resources to be considered ongoing activities and are evaluated on a case-by-case basis.

Comment: Will a currently approved voluntary customer conservation and renewable energy program require resubmittal upon publication of the final Guidelines and Acceptance Criteria?

Answer: The acceptance criteria stipulate that an approved voluntary program is also "valid for future contractual purposes at the time of contractual arrangements." A paragraph has been added to the Responsibilities section to address this requirement along with that for mandatory resubmittals.

Comment: What criteria would be applied by Western in reviewing program policy goals and implementation methods and schedules?

Answer: See the revised Acceptance Criteria section.

Comment: What period of time does Western allow for resubmittal of a program if a customer has received a Notice of Unacceptability or a Notice of Rejection?

Answer: Under the terms of the contract article, a customer must have submitted a program within 1 year of contract execution. If the program is unsatisfactory during this 1-year period and a Notice of Unacceptability is issued, the customer should submit corrective materials as soon as possible to obtain approval. Should a Notice of Rejection be issued, the customer has 12 months to obtain approval before the penalty is invoked, not to exceed 24 months from contract execution in accordance with the contract article. Should an approved program be revoked, a Notice of Rejection would be issued, and the 12-month period for correcting any noted deficiencies would apply.

Comment: Does Western expect to revise the current conservation and renewable energy contract article or its General Administrative Procedures?

Answer: The contract article will not be changed at this time, but the General Administrative Procedures may be revised this fall.

Comment: Will the penalty for noncompliance remain unchanged?

Answer: The penalty for noncompliance will remain as stipulated in the contract article. (Since program inception, this has been 10 percent of the contract rate of delivery).

Comment: The verification periods defined by Western between customer submittals and program review should be longer.

Answer: Western finds the 2-year verification period appropriate for program monitoring, communication, and progress evaluation.

Comment: The Guidelines and Acceptance Criteria must include numerical targets and schedules for the conservation and renewable energy program activities; i.e., kilowatthours (kWh). The final regulations must require customer programs to achieve a quantifiable reduction in energy consumption.

Answer: The Hoover Power Plant Act of 1984 stipulates that Western shall require the "development and implementation by the purchaser thereunder of an energy conservation program." Western has elected to use specific approved activities as the targets for goal achievements of such programs. It is more accurate and meaningful to measure activity completions than it is to attempt to numerically define and later quantify an approved activity. The development of a renewable energy resource is easily quantifiable, and these types of activities are numerically defined. Conservation measures, on the other hand, are not so readily measured. Variables such as local economy, weather conditions, societal changes, and even national/international events compound the problem of quantifying a specific conservation activity. Therefore, for some conservation activities, it may be highly impractical or even impossible to quantify goals or measure end results. Nonetheless, where goals or results can be identified in measurable quantities, such data will be encouraged under the new acceptance criteria.

Comment: The elements list allows too much latitude for serious accomplishments.

Answer: The listing could potentially be abused if it were not for the fact that Western must review and approve all customer elements or activities. However, a note has been added to the text of the Acceptance Criteria section which will preclude customers from assuming that submitted programs might only contain the lesser activities.

Comment: Western should complete an environmental assessment or an environmental impact statement before promulgating final regulations.

Answer: Western has determined that the Guidelines and Acceptance Criteria would not, of themselves, result in a major Federal action significantly affecting the quality of the human environment.

Comment: Western should promulgate enforceable regulations (not guidelines).

Answer: The Hoover Power Plant Act of 1984 stipulates that Western shall amend its "existing regulations (46 FR 56140)" to incorporate the requirements of Title II. In as much as the Guidelines and Acceptance Criteria are an integral legally binding portion of existing and future contract articles governing the conservation and renewable energy program for the sale of Federal power to long-term firm power customers, it is enforceable. It is also deemed appropriate to retain the currently accepted nomenclature since all Western customers are accustomed to it.

Comment: Western should allow members of the public (the ultimate consumer) to petition for review of the Guidelines and Acceptance Criteria, and should not restrict the period to 3 years. The 3- to 5-year review period should be eliminated.

Answer: Within the structure of Western's public involvement process, a public petition for review would be considered based upon its merit. Any decision to act upon such a request rests solely with Western. Western has determined that the 3-year minimum period for review fits within the conditions stipulated by the Hoover Power Plant Act of 1984 and provides the continuity needed by the customers for funds and program commitment.

Comment: The acceptance criteria are woefully inadequate.

Answer: The acceptance criteria have been revised to reflect the comments which Western finds will enhance the effectiveness of the program while assuring compliance with the mandates of the Hoover Power Plant Act of 1984.

Comment: The conservation and renewable energy program is mandatory, and a customer must have an approved program before entering into any contract.

Answer: The Hoover Power Plant Act of 1984, Title II, stipulates that the contract article shall contain time schedules for meeting program goals. Western agrees that the program becomes mandatory at the time of contract signing, and that the contract article must include a time schedule for goals definition and implementation of the customer program, but does not find a basis for making the conservation and renewable energy program a precondition of the power sales contract.

Comment: Acceptance should be based upon the likelihood of achieving a high degree of energy conservation; simply having a number of activities is meaningless.

Answer: Western does in fact base its acceptance of customer program activities upon the likelihood of achieving quality quality results. To be specific, Western will evaluate each activity for (1) likelihood of successful completion and (2) expected program benefits. These criteria have been expanded to further clarify the acceptance process.

Comment: The ultimate customers affected by a program activity should be afforded the opportunity to appeal a Western decision of a customer's program acceptability.

Answer: The appeals process addressed by the Guidelines and Acceptance Criteria involves a contractual matter between the Federal Government (Western) and its customer.

Comment: Western must by law provide ongoing assistance to its customers to do the program.

Answer: The Hoover Power Plant Act of 1984 states that Western must "Encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner." Western has in place an active customer assistance program which is available to encourage all customers in their implementation of a sound program.

Comment: Western must design the conservation and renewable energy program to "acquire" conservation and renewable resources before it acquires any other resources.

Answer: It is Western's objective to promote the most cost-effective strategy for meeting future demand. To the extent that conservation and renewable energy programs are found to be the best choice, they will be encouraged. However, the Hoover Power Plant Act of 1984 places no such requirement upon Western.

Comment: The criteria for Western approval of a customer program progress should be at least 80 to 90 percent of the program's targeted energy savings (in kWhs).

Answer: The percentage set for activities completion has been reconsidered, and the completion requirement for goal achievement is now 70 percent as a basis for potential program noncompliance. The kWh question has been addressed above. A more adequate definition for activities completion has been added to the Review and Acceptance Process section.

Comment: Do not require a program from any customer who gets less than 50 percent of its power from Western.

Answer: The Hoover Power Plant Act of 1984 expressly requires customer participation in the program. Western has, however, decided to adopt a new matrix of required number of program elements which is graduated in accordance with customer size. This is included in the Acceptance Criteria section.

Comment: Customers should provide some types of cost-effectiveness test to their program activities.

Answer: Western has placed the burden of cost for implementation of this program on its customers. Likewise, it is deemed appropriate that the judgment as to the cost-effectiveness of how their moneys are spent be the sole responsibility of the customers.

Comment: A customer should be allowed to recover its forfeited capacity by subsequent improved and sustained effort. Any reduction in power to a member should go to the parent-entity. Power services withdrawn from customers which Western determines have failed to comply with the program should only be allocated to customers which comply with Western's program.

Answer: The original Guidelines and Acceptance Criteria addressed this issue under the Discussion of Public Comments, Category B. Basically, any reallocation of Federal power will be determined on a case-by-case basis in accordance with Western's authority. Such reallocations will be consistent with Western's marketing policies at that time.

Comment: The 1-year program submittal period should be extendable for any extenuating circumstances.

Answer: A 1-year period is reasonable.

Comment: When a customer has achieved all the goals it can reasonably do, it should be relieved from further program obligations.

Answer: Given the activities available, it is highly unlikely that good management practices would not produce at least one practical program activity. Furthermore, the Hoover Power Plant Act of 1984 requires the program; therefore, a customer must have some type of reasonable activity(ies).

Comment: "Irrigation Districts" should include water delivery districts for one activity annually.

Answer: Agreed, it has been added to the definition.

Comment: Customers should be allowed to change their programs.

Answer: See the Acceptance Criteria section for this provision in the Guidelines and Acceptance Criteria.

Comment: The appeal process should provide for a notice, a hearing or hearings, and a record.

Answer: The Guidelines and Acceptance Criteria should not stipulate these types of details since each appeal process would be considered on a case-by-case basis. In general, a contractual dispute would not be a public process. Western has modified the Appeals section to include some general time frames for response to a customer.

Comment: Program credit should be given even if the results are unsuccessful in an experimental venture.

Answer: See the category G addition to appendix A.

Comment: Add to appendix A, "Improve operating procedures to maximize efficiency."

Answer: Agreed, see addition to appendix A.

Comment: Acceptable activities should include externally mandated conservation standards.

Answer: See the Responsibilities section for externally mandated activities consideration.

Comment: The term "good faith effort" should be more clearly defined.

Answer: A much more detailed definition has been included to provide a better understanding of what is expected of a customer to be in contract compliance.

Comment: The conservation and renewable energy program should be voluntary, not obligatory.

Answer: The Hoover Power Plant Act of 1984 makes it obligatory, but it is voluntary for those customers without current contractual requirements.

Comment: The minimum number of activities should be one for irrigation districts and two for all other customer classes.

Answer: Please see the revised table of required activities. While Western has considered this comment, the table graduates the number of activities required in proportion to the scope of utility operation.

Final Amended Guidelines and Acceptance Criteria—Customer Conservation and Renewable Energy Programs

Goals

These Guidelines and Acceptance Criteria are provided by Western to set forth the approach, responsibilities, program content, and review and acceptance process for customer development and implementation of conservation and renewable energy programs. These requirements apply to long-term firm power contracts.

A long-term firm power service contract is any contract for the sale by Western of firm capacity, with or without energy, which is to be delivered over a period of more than 1 year. The term "purchaser" includes parent-type entities and their distribution or user members. If more than one such contract exists with a purchaser, only one customer program will be required for that purchaser.

Such customer programs, coupled with Western's own conservation and renewable energy efforts, are intended to help achieve one or more of the following goals:

1. Increase energy production from renewable resources.

2. Reduce United State's dependence on imported energy.

3. Improve efficiency in energy utilization.

Approach

Western's overall program approach recognizes the different needs and abilities of each of its customers, acknowledges past and present accomplishments in the areas of conservation and renewable energy development, and involves a cooperative effort in developing and implementing individual customer programs. It is Western's intent that these program requirements do not cause undue hardship or bureaucratic red tape for its customers. To accomplish this, Western is using the approach of having each customer select and implement its own program activities that will support the above-stated goals.

Note.—The Hoover Power Plant Act of 1984 refers to the conservation and renewable energy activities as elements. For the Guidelines and Acceptance Criteria, the term "activities" shall be used in the context of program elements.

Responsibilities

Western's customers have primary responsibility for developing and implementing programs to directly encourage consumers to conserve energy and to increase energy production via renewable resources. An important step in meeting this responsibility is the preparation of a program document that describes the initiatives and activities that the customer organization is already doing or will undertake.

For purposes of these guidelines, a customer conservation and renewable energy program shall:

1. Apply to all uses of energy and capacity which are provided from any Federal project by customers who have long-term power contracts with Western.

2. Contain definite goals and schedules.

3. Encourage customer consumption efficiency improvements and demand management practices which ensure that the available supply of hydroelectric power is used in an economically efficient and environmentally sound manner.

4. Support and promote the increased utilization of renewable resources to meet future needs.

Western's basic requirement is that each customer which benefits from a long-term allocation of Federal power must have an ongoing conservation and renewable energy program. If such a program is already developed, includes the specified minimum number of annual ongoing activities from the listing in appendix A, and contains the required program content as indicated in these Guidelines and Acceptance Criteria, Western will review the customer's program for acceptance. If not, a program should be developed for submission to Western that meets the needs of the particular customer organization. Western will provide technical assistance as appropriate for such program development within its capabilities.

Western also recognizes that some of its customers are already responding to a variety of Federal, State, and other programs that apply to conservation and renewable energy development. In order to avoid duplication of effort, customers may receive full or partial program credit(s) for previously initiated activities; provided that such activities are still ongoing as defined under the Acceptance criteria section.

Western will review and may modify its Guidelines and Acceptance Criteria at intervals of not less than 3 years nor more than 5 years. Such modifications would be fully coordinated with Western's customers and through public participation procedures.

With regard to the amendments to these Guidelines and Acceptance Criteria as a result of the Hoover Power Plant Act of 1984 the responsibility for examining each customer conservation and renewable energy program for current compliance lies both with the customers and with Western. Customers with existing contractual requirements or who have approved voluntary programs should submit any corrections or modifications needed at the time of their next program verification period.

Program Content

The most important element of a customer's program document submission is the description of specific program content. Such content is essentially a detailed description of each ongoing or proposed activity, and their associated goals and schedules that, as a set, describe the customer's program submittal for Western approval. The customer's program submittal must include the following items as part of this description:

1. Designated contact person(s) within the customer's organization who is responsible for program development and implementation, identification of customer's total system sales or total annual system consumption if a nonutility (kWhs/year), and identification of customer type (i.e. cooperative, municipality, etc.).

2. Statements adopted by the customer's governing body regarding formal conservation and renewable energy policies and objectives.

3. A brief narrative description of each ongoing or proposed customer program activity directed at increasing the use of renewable energy resources, increasing the efficient utilization of energy, or reducing U.S. dependence on foreign energy imports. Customers are to use table A and the listing in appendix A for activities selection.

Where energy savings or added energy/capacity supply goals may be numerically quantified for each ongoing customer program activity officially presented to Western for approval, such data should accompany each program submittal.

4. Identification of customer goals, plans, schedules and location(s) for each required activity.

5. Customer methods for determining successful program accomplishment.

6. Other documents prepared for other Federal, State, or local agencies that could be submitted in lieu of or supplemental to Western's requested information.

7. Specific areas where a customer feels that assistance is needed from Western.

8. Identification of potential adverse environmental impacts and issues of customer proposed C&RE activities.

9. Additional data/information that a customer desires to be included as part of its program description.

Suggested Program Reporting Format

The example reporting format provided in appendix B is suggested for customer use in describing programs. This format is intended to allow customers to briefly describe the general nature and direction of their program, as well as their specific program content. Western recognizes that some customers are already submitting reports to other governmental agencies pertaining to their ongoing conservation and renewable energy activities. If a customer's existing reporting format already includes the desired information describing its program, such format may be substituted for that suggested in appendix B.

Customers are expected to notify Western of continuation and progress regarding previously accepted program activities and to report significant changes in their program content either as they occur or at the time of their 2-year verification period. Such notification is to be by letter. Significant proposed changes in program content must be submitted to Western for review and acceptance.

Acceptance Criteria

Customer program acceptance criteria are defined as a set of minimum program activities, schedules, and goals. That criteria will be reviewed by Western in its acceptance process of a customer's conservation and renewable energy program, submitted in accordance with applicable Western contractual articles or other formal agreements. Program development and implementation prior to execution of formal contracts is encouraged, but is not mandatory.

Voluntary participation requires a formal program submission that will be reviewed by Western for acceptability and applicability to future firm power contracts.

The acceptance criteria defined in this section shall apply to the customer programs for both the initial approval and at each 2-year customer verification period thereafter. The verification periods should be used by both the customers and Western as opportunities to communicate any issues and to coordinate warranted technical assistance.

A customer's program will be reviewed as a whole, based on a demonstrated good faith effort. A good faith effort shall be defined as a customer having committed annual resources and made reasonable organizational attempts at achieving its defined and approved program goals and schedules. It is also construed as having kept Western appropriately informed of program changes or problems which may impact the attainment of those goals. In numerical terms, Western is anticipating at least a 70 percent completion of approved customer goals, schedules, and activities when examining program progress (during a detailed review which will occur every 3 to 4 years or during every other verification period).

In order to provide an objective basis for consistency, Western requires that a customer's program include a minimum number of ongoing/planned program activities selected from the listing in appendix A as shown in table A.

TABLE A.—REQUIRED CONSERVATION AND RENEWABLE ENERGY ONGOING ACTIVITIES FOR A CUSTOMER PROGRAM

Customer type	Total customer system sales (or annual consumption if a nonutility) in gigawatthours per year—		
	<50	50–100	>100
Cooperatives	3	4	5
Municipalities	3	4	5
Pub. util. dist.	3	4	5
Fed./State Agen.	3	4	5
Inv. owned util.	3	4	5
Parent entity & members	3	4	5
Pub. power dist.	3	4	5
Irrigation dist. w/util. funct.	3	4	5
Irrigation dist. w/o util. funct.	1	1	1

TABLE A.—REQUIRED CONSERVATION AND RENEWABLE ENERGY ONGOING ACTIVITIES FOR A CUSTOMER PROGRAM—Continued

Note (1): Customers may petition Western for special consideration for programs which contain less than the above-stated minimum number of annual ongoing activities. Such petitions must be accompanied by detailed information regarding the anticipated energy savings or added renewable energy capacity, the resource expenditures, and the percentage of the total annual electrical supply or demand expected to be increased or reduced. If a petition identifies a program which significantly contributes to a load reduction or places a sizable renewable resource on line within 3 years, it will be given favorable consideration.

Note (2): Western may not approve a customer program which only contains low-yield energy savings benefits. This will be dependent upon the size and nature of the customer.

Note (3): An acceptable customer program will contain the minimum number of activities as indicated. However, a customer program may have considerably more than this required number. Those activities which are to formally constitute the Western-approved elements must be clearly identified as such. Any activities submitted in excess of the minimum required acceptable ongoing number may be of any mix or size desired by the customer. Such additional activities identification is encouraged by Western, but is at the customer's discretion.

Note (4): The term "customer" refers to an entity that has a firm power contract and its member systems, if any, that receive the benefits of Federal power.

Note (5): The term "irrigation districts" also includes agricultural types of districts such as electrical districts, water delivery districts, and water conservation districts.

Note (6): An irrigation district only performs an irrigation function. If an irrigation district performs electrical functions as well (i.e., residential service, other utility responsibilities, etc.), it is considered to have utility functions. Such a determination will be made by Western on a case-by-case basis.

Note (7): The cost effectiveness of specific activities should normally be at the discretion of the customer. However, if, in the judgment of Western, a proposed program element appears economically inappropriate, it may be challenged for validity.

Each customer must submit an individual conservation and renewable energy program, although the activities identified in a customer's program may be undetaken by a group of entities. Such customer programs must identify the specific contribution being made to the group activity.

Ongoing/planned program activities must involve an annual commitment of resources in either staff or funds. A one-time activity (i.e., one that sees no further yearly expenditures such as building insulation), which will not be repeated, will only be credited once for the year the effort or funds are expended (i.e., it will not be credited in subsequent program submittals).

Western shall use the following acceptance criteria for evaluating and approving a customer program:

1. Central to Western's acceptance of a submitted customer conservation and renewable energy program are the ongoing/planned program activities. These must meet the minimum required number of such activities by customer type as defined in table A.

2. While Western has given considerable latitude to its customers in defining and executing their programs, an acceptable program must target the realistic achievement of energy conservation or renewable resource development. Therefore, the customer program shall include a cost-effective strategy for the attainment of measurable load reductions from the application of sound conservation technologies or quantifiable additions of energy and/or capacity from renewable energy sources. The strategy must also be capable of being evaluated over time and contain clearly defined expected results. A customer's program policies, goals, implementation methods, and schedules shall be reviewed for (1) the likelihood of successful completion and (2) the expected program benefits. An acceptable program will reflect a positive response in both of these areas.

If customers believe that they have sufficient justification (i.e., economic, technical, net benefits, cost effectiveness, etc.) to warrant special consideration by Western, they may offer substitutions to the activities listed in appendix A, request deferred activity implementation, or request program credit(s). Western will provide technical assistance to resolve individual customer problems.

Program activities accepted by Western will be implemented and remain in effect until customer initiated changes are requested and subsequently accepted by Western. Program activities accepted by Western as a result of voluntary customer participation via formal program submission shall be considered valid for future contractual purposes at the time of contractual

arrangements. Such prior Western acceptance of a customer's voluntary program does not preclude the requirement for a future customer conservation and renewable energy program contract article.

Western's Review and Acceptance Process

The process for publication, submittal, review, and reapproval of draft, final, and revised customer conservation and renewable energy programs is as follows:

1. Western's publication of these final amended customer Guidelines and Acceptance Criteria.

2. Within its capabilities, Western will provide technical assistance to help customers prepare their programs, develop activities, and implement their programs in accordance with these published final amended Guidelines and Acceptance Criteria.

3. Customers will submit their programs to the appropriate Western Area Office within 1 year after a contract or formal agreement is signed (in accordance with the contract article or formal agreement).

4. Western's Area Offices will review customer program submissions in accordance with these published final amended Guidelines and Acceptance Criteria within 3 months of receipt and decide on overall program acceptability. This process may include oral or written communications and possible visits to a customer's headquarters or other program activity locations.

5. During the entire customer program development, submission, and acceptance cycle, Western will be available to answer customer questions and provide assistance to expedite program development, acceptance, and implementation.

6. Western will work cooperatively on a continuing basis as customers implement their accepted programs to reduce the need for reports and paperwork. Accepted programs are subject to onsite reviews upon reasonable notice by Western (i.e., 2 weeks or more).

7. In order for a customer to obtain reapproval of their program, the required number of activities must be of an ongoing nature or new activities.

8. Customers must submit verfication letters to Western at 2-year intervals from the date of the original customer program acceptance. Such letters shall indicate the following: (1) Continuation of the previously accepted activities; (2) modifications to ongoing activities; (3) deletions and additions to their activities; (4) progress made to date; and (5) identification of any problems, concerns, or issues which may warrant discussion. These verification submittals are subject to Western review and acceptance.

9. Western's customers are subject to the conduct of a detailed review of their achievements against their original or amended goals and schedules approximately every 3 to 4 years or every other verification period. If a customer is proceeding reasonably well in meeting its goals and schedules, based on a demonstrated good faith effort as previously defined, verification acceptance will be favorable considered.

10. Should an examination of a customer's achievements disclose that less than 70 percent of the approved customer program activities or goals has been completed in accordance with the defined schedules during the detailed review, it may be concluded that the customer has not proceeded with a good faith effort. A Notice of Rejection would then be issued by Western. If the customer's contract were to remain in noncompliance, it will be subject to the penalty set forth in the contract article in the event that program approval is revoked.

Note.—The examination of a customer's program progress during the detailed review will involve a more extensive discussion of the activities and their respective results. Prior to any determination that a good faith effort has not been made, Western would make an onsite review as defined in item 6 above and would closely examine all of the facts associated with the activities. In applying a completion factor of 70 percent to the goals, Western will consider both resource expenditures and actual achieved results as related to the defined activities.

11. Any reduction in a customer contract rate of delivery shall not be made prior to 12 months after the customer receives written comments and a Notice of Rejection from Western, denoting specific deficiencies in the customer submitted plan.

Administrative Appeal Procedures

If a customer disagrees with Western's determination of the acceptability of its submitted program progress reports, requested program changes, or other items, the customer may request reconsideration by filing a written appeal with the appropriate Western Area Office. Appeals may be submitted any time that such a disagreement should occur. They should be specific as to the nature of the disagreement, the reasons why the customer disagrees, and any other pertinent facts which the customer feels should be brought to Western's attention. Appeals made to an Area Office will be responded to within 45 days. If a customer's disagreement cannot be resolved at the Western Area Office level, the appeal may then be made to the Administrator of Western who will act upon such an appeal within 30 days.

Appendix A—Customer Conservation and Renewable Energy Activity List

The following list of program activities is provided for customer consideration as Western-accepted program activities. Various numbers of these activities must be included as part of a customer's program based on classification as a particular type of customer as previously stated in the Acceptance Criteria section. Selected activities may come from a single category or a combination of the categories listed below:

Category A—Energy Consumption Efficiency Improvements:

- Building energy conservation programs which may include such activities as:

—Boiler, furnace, air condition retrofitting
—Weatherization/insulation (home or utility)
—Storm windows/doors
—Insulation of air ducts, boilers, pipes, etc.
—Heat reflective/absorbing window or floor materials, waterheaters, etc.
—Clock thermostats and equipment/system timers
—Electrical or mechanical ignition systems
—Heat pumps

- Energy audits.
- Installation of energy storage equipment.
- Information dissemination programs.
- Economic assessment studies for conservation activities.
- Development of energy efficiency awards programs.
- Building plan review/service programs.
- Loan arrangements or assistance.
- Conservation demonstration projects.
- Installation arrangements/assistance.
- Attendance at conservation and/or renewable energy training.
- Technical assistance to customers.
- Listing services for suppliers/lenders.
- Customer in-house program activities.
- Use of infrared heat detection equipment.

- Home energy rating systems development.
- Computer program developments for conservation/energy efficiencies.
- Energy efficient lighting conversions.
- Equipment inspection programs.
- Improve operating procedures to maximize efficiencies.

Category B—Use of Renewable Energy Resources in Addition to Large-scale Hydroelectric Power

- Solar thermal/photovoltaics projects.
- Solar pond projects.
- Daylighting technologies.
- Active solar installations.
- Ocean thermal gradients/tidal power.
- Passive solar installations.
- Small/large-scale wind turbine installations.
- Biomass/Refuse-Derived Fuels (RDF) projects.
- Geothermal projects.
- Wind measurement/recording equipment.
- Economic assessment studies for renewable resources.
- Interconnection services to renewable resource facilities.
- Cooperative renewable resource development projects.
- Fuel cells projects.
- Small-scale hydro projects.

Category C—Load Management Techniques

- Load management devices/systems.
- Rephasing operations to reduce energy consumption.
- Demand control techniques and equipment.
- Consumer education.
- Cable television metering systems.
- "Smart" meters or automated equipment.
- Data management analyses or interpretation.
- Time-of-use meters.
- Energy usage patterns analyses.

Category D—Cogeneration

- Cogeneration projects.
- Scrap and waste reclamation.
- Waste heat recovery.
- District heating.
- Greenhouse applications.
- Utility/industrial interfaces as related to cogeneration technologies.

Category E—Rate Design Improvements

- Cost of service pricing.
- Elimination of declining block rates.
- Time-of-day rates.
- Seasonal rates.
- Interruptible rates.
- Purchase of customer-generated renewable energy.
- Sale and purchase of surplus power to displace petroleum fuels (resource coordination).
- Rate restructuring/adjustments.

Category F—Production Efficiency Improvements

- Improved generation equipment efficiency.
- Lighting redesign and management (street, building, etc.).
- Upgrading of transmission lines and/or substation equipment.
- Improved boiler and equipment maintenance.
- Better sizing of boilers and/or equipment.
- Electric motor replacement.
- Area-wide resource assessments.
- Agricultural improvements which conserve energy such as:

—Irrigation pump utilization/scheduling
—Irrigation pump testing or efficiency improvements
—Ditch lining and piping
—Laser land-leveling
—Pumpback systems
—Alternate energy saving water sources
—Field irrigation system improvements

- Any other generation or transmission efficiency improvements.
- Power factor corrections.

Category G

Other energy conservation activities such as activities initiated under DOE's Residential Conservation Service (RCS) Program, Commercial and Apartment Conservation Service (CACS) Program, or other Federal/State/local programs (i.e., REA, State PUC, etc.).

Note.—Conservation and renewable energy activities may be experimental in nature. In such cases, Western will make reasonable allowances for the uncertainty of the end results.

Appendix B—Suggested Reporting Format

Western Area Power Administration Customer Conservation and Renewable Energy Programs, Program Content, and Description:

1. Customer Name(s) and Address(es):

—Contact Person(s):
—Phone Number(s):
—Total customer system sales or total annual energy consumption if a nonutility (kWh/yr):
—Type of Customer: (i.e. cooperative, municipality, etc.)

2. A brief, clearly defined narrative description of the customer's overall program. Include a policy statement if appropriate.

3. Using the activity list in appendix A of Western's Guidelines and Acceptance Criteria, identify each conservation and renewable energy program activity that the customer includes in its program submission for specific review and acceptance by Western. Each identified customer activity submitted to Western for approval must include a brief narrative description, its locations(s), an implementation schedule, and targeted goals. Where energy savings or added energy/capacity supply goals may be numerically quantified for each ongoing customer program activity officially presented to Western for approval, such data should accompany each program submittal. If applicable, customers should identify any potential adverse environmental issues or impacts associated with their proposed activities.

A listing of other conservation and renewable energy program activities is encouraged by Western, but inclusion is at customer discretion.

4. A brief narrative statement of the method(s) used to sucessfully accomplish the customer's conservation and renewable energy program.

5. Inclusion of any other documents or materials the customer may wish considered for Western's review and acceptance of the program such as:

—Program document submittals to other Federal, State, or local agencies if appropriate
—Request for Western assistance
—Request for special consideration or other conditions
—Customer profile: Pertinent information that provides a general description of the customer's organization (i.e., annual report, FPC Form 1, load factors, types of service etc.)
—Other data

In consideration of the foregoing, Western's final amended Guidelines and Acceptance Criteria for its customer conservation and renewable energy programs are as set forth above.

Issued at Washington, DC on August 14, 1985.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

[FR Doc. 85-19957 Filed 8-20-85; 8:45 am]

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Federal Register

Wednesday
August 21, 1985

Part III

Environmental Protection Agency

40 CFR Parts 264 and 265

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities: Liability Coverage; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[SWH-FRL 2865-7]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities: Liability Coverage

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency), considering whether to revise the financial responsibility requirements in 40 CFR Sections 264.147 and 265.147, 265.151 (i) and (j), is today requesting comments on the availability of insurance to satisfy the existing liability coverage requirements for owners and operators of hazardous waste facilities and on methods for the Agency to address potential restrictions in the availability of coverage. Owners and operators reportedly have encountered difficulties in obtaining insurance necessary to comply with these requirements.

EPA is considering whether any revisions to 40 CFR Sections 264.147 and 265.147 are necessary in light of the current state of the insurance market. This rule sets forth several regulatory options under consideration by the Agency, and also requests comments on a range of subjects related to the availability of insurance policies that may be used to comply with the liability coverage requirements. [Other alternatives considered by EPA would require new legislation and are not considered in this proposal.]

DATE: Comments must be submitted on or before September 20, 1985.

ADDRESSES: Comments may be mailed to Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Comments received by EPA may be inspected in Room S-212, U.S. EPA, 401 M Street, SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact Susan Hughes Office of Solid Waste [WH-562], U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 (202) 382-4761.

SUPPLEMENTARY INFORMATION: The contents of today's rule are listed in the following outline:

I. Background

A. Current Liability Coverage Requirements

Section 3004(a)(6) of the Resource Conservation and Recovery Act (RCRA), as amended, requires EPA to establish financial responsibility standards for owners and operators of hazardous waste management facilities as may be necessary or desirable to protect human health and the environment.

EPA promulgated the financial responsibility standards for both liability coverage and financial assurance for closure and post-closure care on January 12, 1981. On October 1, 1981, EPA deferred the effective date of the regulations governing liability coverage and announced its intent to publish a proposal to eliminate the liability requirements (46 FR 48197). The Agency at that time questioned whether those requirements were necessary or desirable to meet the requirements of RCRA. In response to that announcement EPA received considerable comment from the public, regulated industries, insurance companies, members of Congress, and State agencies. These comments indicated widespread support for a Federal liability coverage requirement for hazardous waste management facilities; there was virtually no opposition to such a requirement.

On April 16, 1982, EPA promulgated regulations requiring owners and operators to demonstrate liability coverage during the operating life of the facility for bodily injury and property damage to third parties resulting from facility operations (47 FR 16554). Under the liability coverage regulations (40 CFR 264.147 and 265.147), owners and operators of all types of TSDFs are required to demonstrate, on a per firm basis, liability coverage for sudden and accidental occurrences in the amount of $1 million per occurrence and $2 million annual aggregate, exclusive of legal defense costs. Owners and operators of surface impoundments, landfills, and land treatment facilities are also required to demonstrate, on a per firm basis, liability coverage for nonsudden accidental occurrences in the amount of $3 million per occurrence and $6 million annual aggregate, exclusive of legal defense costs. "First-dollar" coverage is required; the amount of any deductible must be covered by the insurer, with right of reimbursement from the insured. Financial responsibility can be demonstrated through a financial test, liability insurance, or a combination of the two.

The requirements for coverage of sudden accidental occurrences became effective on July 15, 1982. The requirements for nonsudden accidental occurrences were phased in gradually. Firms with annual sales or revenue of $10 million or more were required to submit evidence of this coverage by January 16, 1983. Firms with annual sales or revenue of $5 million to $10 million were required to submit evidence of coverage by January 16, 1984. All other firms were required to demonstrate such coverage by January 16, 1985.

The requirements assure that funds will be available for third parties seeking compensation for bodily injury and property damage arising from facility operations. Furthermore, insurance is a vital part of the Agency's regulatory program for improving environmental management practices of insured parties. It is also less Federally-intrusive than other approaches such as provision of insurance by the Federal Government. In addition, by offsetting a degree of activity-related risk, insurance fosters broad participation in hazardous waste management. The requirements may also instill public confidence in hazardous waste management activities and help to gain public support for the siting of new and improved facilities.

Congress has also expressed its support for financial responsibility requirements. Section 213 of the Hazardous and Solid Waste Amendments of 1984 (RCRA section 3005(e)) provides for the termination of interim status for all land disposal facilities by November 8, 1985, unless: (1) The owner or operator applies for a final determination regarding the issuance of a permit by that date and (2) certifies that the facility is in compliance with all applicable groundwater monitoring and financial responsibility requirements for liability coverage, closure, and post-closure care.

Failure to comply with the liability requirements can have other significant ramifications. First, § 270.14(b)(17) requires that an owner or operator demonstrate compliance with the RCRA liability requirements in the Part B permit application. The Agency may experience extreme difficulties in issuing RCRA permits without a demonstration of compliance in accordance with the requirements in § 264.147. Second, most authorized States have liability requirements in effect that are equivalent to the existing Federal requirements. Therefore, in the absence of any action by the Agency, owners and operators are still subject to RCRA requirements in authorized States. Consequently, until the States amend their regulations, owners and operators would still be unable to certify compliance with RCRA liability requirements and they will lose interim status. Third, the owner or operator may be subject to citizen suits under RCRA section 7002 or Agency or State enforcement efforts. In addition, publicly-held firms unable to comply might be required to disclose information about their noncompliance on their Securities and Exchange Commission (SEC) 10–K and 10–Q filings. (See 17 CFR Part 229.) If the inability to comply with the RCRA liability coverage requirements might force a firm to close down a facility or plant and that fact is deemed "material" (i.e., important to a reasonable investor in securities issued by that firm), then that fact might need to be disclosed.

Also, if a firm believes that a legal proceeding might be instituted against it because of a failure to comply with the liability coverage requirements, the firm may be required to disclose that fact. Some Agency action may be desirable to forestall serious difficulties arising from a widespread failure to comply with the liability coverage requirements due to a general lack of available insurance coverage. The Agency intends to promulgate one of the options in this notice by November 8, 1985.

B. Liability Insurance for RCRA Facilities

1. Policy Types

Two basic types of liability coverage are available to cover third party bodily injury and property damage caused by RCRA facility operations: comprehensive general liability (or CGL policies) and environmental impairment liability (or EIL policies). The terms and availability of these two types of policies vary significantly. Both types of insurance are sold to a wide variety of firms in addition to owners and operators of RCRA facilities.

There are two basic distinctions in policy types: claims-made and occurence based. Under a claims-made insurance policy, coverage is triggered only when claims are made during the policy period. Insurers use the claims-made format to relieve themselves of the burden of claims brought long after the original occurrence and to reduce the difficulty of predicting the number of claims that will be made and the amount of damages that may be awarded. An occurrence based policy covers claims arising from the events that occur during the policy period, regardless of when the claim is filed.

The period of coverage under claims-made policies may be further expanded or restricted by incorporation of "discovery period" or "retroactive period" provisions. The discovery period provision in a claims-made policy provides that an insured, for the payment of an additional premium, may obtain an extension of coverage following expiration of the policy, for losses occurring during the policy period but which are not brought until after the policy's expiration. It is sometimes referred to as an extended reporting period. The retroactive date in a claims-made policy limits coverage to damages caused by occurrences that occurred subsequent to that date.

a. *CGL Policies.* CGL policies have been widely available for decades. They cover all types of third party damages, except those specifically excluded, and therefore cover many types of damages in addition to injuries caused by releases of hazardous wastes. CGL policies are generally issued on an occurrence basis. As a result of this policy feature and of uncertainty about what circumstances in the chain of events leading to third party damages constitute an "occurrence," insurers may be required to defend and/or indemnify parties they insured many years in the past. Most standard CGL policies issued since the early 1970's have excluded from coverage those damages caused by the release of a pollutant that is not "sudden and accidental." A standard version of the exclusion states that the insurance does not apply "to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental."

Recently, some courts have found pollution exclusion clauses ambiguous and, in accordance with accepted principles of contract law, have interpreted the ambiguity in favor of the insured. *Keene Corp.* v. *INA*, 667 F. 2d 1034 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 1007 (1982); *Farm Family Mutual Insurance Co.* v. *Bagley*, 64 A.D. 2d 1014, 409 N.Y.S. 2d 294 (4th Dept. 1978); *Jackson Township Municipal Utilities Authority* v. *Hartford Accident and Indemnity Co.*, 186 N.J. Super. 156, 451 A.2d 990 (1982). As a result, insurers claim they are being forced to defend and/or indemnify their insureds for risks they did not knowingly assume when the policies were issued. On the other hand, some courts have interpreted the policies narrowly and accepted the exclusion. *Barmet of Indiana* v. *Security Insurance Group*, 425 N.E. 2d 201 (Ind. App. 1981); *National Standard Insurance Co.* v. *Continental Insurance Co.*, CA–3–81–1015–1 (N.D. Tex. October 4, 1983); *Great Lakes Container Corp.* v. *National Union Fire Insurance Co.*, 727 F. 2d 30 (1st Cir. 1984); and *American States Insurance Co.* v. *Maryland Casualty Co.*, Civ. No. 82–70353 (E.D. Mich. July 3, 1984).

The insurance industry has responded to these interpretations in several ways. First, standard CGL policy forms are being rewritten to exclude all damages causd by pollution. A new CGL form developed by the Insurance Services Office (ISO) will exclude all pollution liabilities. This form has been filed for approval with many State insurance commissions. "Buy-backs" of coverage for damages caused by sudden and accident releases are expected to be available under these policies. Buy back is a type of coverage excluded under the basic terms of the policy which can be included for the payment of an additional premium. Second, pending the approval of a revised CGL form, many insurance companies are issuing some CGL policies with a restrictive

endorsement excluding all coverage of damages caused by pollution. Third, the insurance industry has also considered issuing CGL policies on a claims-made basis, rather than an occurrence basis. This change will generally require amending the standard CGL policy forms and approval by State insurance commissions. Fourth, insurers are responding by reducing the availability of coverage. The CGL policies that cover sudden and accidental releases have reportedly been difficult to obtain and costly for firms that manage hazardous wastes or toxic substances.

b. *EIL Policies.* Environmental impairment liability (EIL) policies are designed specifically to cover third party damages caused by pollution, and therefore are narrower in scope than CGL policies. Virtually all EIL policies are issued on a claims-made basis. EIL policies can be purchased to cover third party damages caused by either nonsudden incidents only or both sudden and nonsudden incidents

EIL policies are a relatively recent phenomenon. Between the early 1970's and 1981, coverage was generally unavailable for nonsudden releases. Only a few excess and surplus lines insurers offered such coverage. Excess and surplus lines are a designation that a State gives to insurance companies that provide insurance that is not readily available from companies licensed or "admitted" to transact busines in that State. Because such companies are not regulated directly, States often control their ability to transact businesss by regulating brokers and agents. By 1981, a market for nonsudden pollution liability coverage developed because of increasing public awareness of injuries caused by toxic substances and the Agency's proposed RCRA liability coverage requirements.

Many insurance companies entered the initial pollution liability market. The Pollution Liability Insurance Association (PLIA), a reinsurance pool, was established in October 1981 with 37 member companies. The PLIA now has 42 members. At least a dozen other U.S. insurance companies and several London-based insurers also marketed EIL policies.

The market for EIL policies reportedly has changed dramatically in the last year or two. The number of insurers offering coverage has apparently declined significantly. Some of the largest EIL insurers such as Shand, Morahan and Co. Inc., and Stewart Smith Mid-America, Inc. withdrew from the market. Based on anecdotal evidence, the cost of coverage has apparently increased singificantly while policy limits have declined. For example, a company reported to EPA that it recently purchased a policy with limits of $3 million per occurrence and $6 million annual aggregate, the minimum acceptable limits for nonsudden accidental occurrences under the RCRA requirements, for $99,000. A year earlier they purchased a policy with limits of $20 million per occurrence and $20 million annual aggregate for about the same price.

2. Reasons for Market Gonditions

A wide variety of explanations have been given for the apparent reduced availabililty and increased cost of EIL coverage for RCRA facilities and other installations. These reasons include: losses due to low premiums and large claims (reducing the availability and increasing the price of reinsurance); difficulty of setting premiums based on risk; judicial interpretation of policies favoring insureds; lack of compliance with liability requirements; and the tragedy in Bhopal, India. Also, some insurers have suggested that another possible factor bearing on the availability of EIL coverage is the apparent lack of demand for such coverage because of the lack of compliance with RCRA liability coverage requirements.

In addition, over the past four years, both the primary insurance and reinsurance industries have incurred large underwriting losses throughout the property and casualty market sector. In 1984, property and casualty insureres suffered a net loss of $3.55 billion, the first net loss for the insurance industry since 1906, the year of the San Francisco earthquake.

One reason for the insurance industry losses is declining interest rates. When interest rates were high in recent years, the insurance industry was willing to write policies at a "loss" in order to obtain money that could then be invested for a net profit. Consequently, a highly competitive insurance industry often accepted premiums that apparently did not adequately reflect accepted policy risks. However, declining interest rates have reduced investment income and insurers are no longer able to offset policy "losses."

It is important to note that insurance industry profits, like the stock market, are subject to changing economic conditions that are often cyclical. During periods when economic conditions result in large insurance industry losses, the insurance industry may respond by curtailing their riskiest policies. This response is due in part to the insurance industry's need to maintain a sufficient ratio of premiums to reserves. In this case, RCRA insurance is among the curtailed policies.

Reinsurance is a mechanism which spreads losses and risks by broad participation. Reinsurers provide coverage to insurance companies for excess losses sustained in a certain line or lines of coverage. Reinsurance acts as an incentive for insurance companies to continue writing policies in "tight" markets. Therefore, conditions in the reinsurance marketplace significantly affect the price, amount and type of primary insurance available to potential insureds. The abundance of inexpensive reinsurance in recent years was a major factor fueling competition among primary and excess insurers. Reinsurers have decided to raise rates and restructure major factor fueling competition among primary and excess the risks they will underwrite because the primary insurers have not adequately screened the risks they underwrite. The result of tighter control by reinsurers is a decrease in the availability of policies written by primary insurers in the affected lines of coverage. For example, the Hartford Steam and Boiler Inspection and Insurance Company and Environmental Risk Assessement Service (International) Ltd., a major London-based pool of 15 EIL insurers, stopped writing pollution coverage last year when they could not find reinsurance.

As we understand it, the insurance industry contends that RCRA insurance is a high risk proposition for several reasons. First, there is a lack of actuarial data to establish realistic premiums that adequately reflect risk. Second, there is a lack of acceptable and universally applied risk analysis methods. Third, there is a social perception that hazardous waste has not been and cannot be adequately managed. The insurance industry contends that this perception will ultimately lead to several costly effects: third party claims for virtually all policies that they underwrite; a subsequent duty to defend against these claims; resultant high litigation costs; and policy losses due to court rulings in favor of the insured for coverage that the insurer did not intend to provide.

Litigation costs and court rulings on coverage of hazardous waste related claims, at present, appear to be two factors of great concern to the insurance industry. As noted above, some recent court rulings have narrowly interpreted the standard "pollution exclusion" in the standard CGL form, following the judicial tradition of interpreting ambiguities in insurance contracts against the insurer. In several rulings,

coverage was held to apply to third party off-site bodily injury and property damage claims. The courts have also frequently ruled that the statute of limitations does not begin in a hazardous waste tort case until a victim knew or reasonably should have known of his or her injury. Therefore, where CGL policies allows occurrence made claims, coverage may be provided long after the policy has expired.

While the narrow judicial interpretations of policy *exclusions* for nonsudden pollution do not explain the insurance industry's reluctance to issue nonsudden policies, the industry is concerned that such rulings, in effect, force insurers to assume liability for obligations they allegedly never knowingly agreed, by contract, to assume, and for which they collected no premium. Thus, insurers claim they cannot rely on the terms and conditions of their policy contracts to estblish the scope of coverage from which insurers ultimately estimate potential liability risks and establish policy premiums.

The insurance industry places a large portion of the responsibility for insurance industry losses on a legal system that encourages suits against "deep pockets" and Federal and State liability provisions. However, this problem may also be attributed to ambiguous insurance contracts that created high potential exposure to insurers. In fact, when the pollution exclusion was inserted into the CGL policy in the 1970's, some insurers argued that the pollution exclusion language did not clarify coverage, but rather only confused the definition of an occurrence warranting coverage. In addition, hazardous waste management was not a high profile public issue during the early 1970's. Therefore, it is possible that the insurance industry inserted the pollution exclusion clause into the CGL policy aware of its potential ambiguity but unaware of the magnitude of its potential implication.

This explanation finds further corroboration in current insurance industry efforts to eliminate policy ambiguities. More restrictive CGL policies are now being drafted. Pollution coverage for both sudden and nonsudden events will be offered through EIL policies on a claims-made basis. However, it may be some time before the insurance industry has recovered from its current economic condition and is willing to provide sufficient EIL coverage.

Finally, the recent tragedy in Bhopal, India, has further heightened insurers' concerns about the riskiness of toxic substances. Insurers are concerned about being required to pay for cleanup costs under the strict, joint and several liability standard of the Comprehensive Environmental Reponse, Compensation, and Liability Act of 1980 (CERCLA). The insurers' concerns regard future liabilities at CERCLA sites for which they had written liability coverage policies when the facilities were managed under RCRA.

Despite the recent publicity about the lack of insurance for owners and operators of hazardous waste management facilities and other firms that handle toxic substances, the Pollution Liability Insurance Association (PLIA) has reported to the Agency a recent increase in its sales of EIL policies. During the first quarter of 1985, PLIA sold more EIL policies and collected more premiums than in the previous year. In addition, American Home/National Union Insurance Companies in the American International Group, and The Travelers Insurance Company are still writing RCRA liability coverage. However, Travelers and PLIA apparently only write coverage for firms which carry other insurance with their company.

II. Request for Comments

This section of the notice requests comments in four areas: (1) The current market for insurance policies that may satisfy RCRA liability coverage obligations and reasons for the present state of the insurance market, particularly with regard to availability and rates; (2) what actions or events might improve the market; (3) what types of firms, facilities, and risks are not insurable; and (4) alternative regulatory approaches that the Agency may adopt in addressing possible problems. In answering the questions that follow, commenters are requested to distinguish, where possible, the different types of insurance policies: CGL policies that cover sudden and accidental releases, EIL coverage for sudden and accidental releases, and EIL coverage for nonsudden and accidental releases. Although the primary focus of the Agency is on coverage for operating RCRA facilities, relevant comments on the insurance market for other types of firms and facilities will also be appreciated.

A. Market Situation

To determine if need exists for modification of federal requirements due to limitations in the availability of third party liability insurance covering the operation of RCRA facilities, the Agency needs a clear and detailed understanding of the current availability of insurance. Among the questions that must be addressed are the following:

What insurance companies are currently offering EIL and/or CGL coverage for RCRA facilities? How many insurance companies that previously offered EIL coverage have withdrawn from the market either completely or selectively? Why did they withdraw? What amounts of coverage (per occurrence and annual aggregate) are available and what amounts are commonly sought for RCRA facilities? Are the current liability limits adequate? How do the amounts of coverage purchased vary by the number of facilities covered, process types, wastes managed, and other factors? Is first-dollar coverage available? Is coverage exclusive of legal defense costs available?

What has been the experience of insurers and insureds under these policies? How many policies have been canceled by the insurer? Why have these policies been canceled? How many claims based on events at RCRA facilities have been paid? What amount has been paid out in these claims? How does this amount compare to the premiums collected? Do the policies and premiums create an effective incentive for facility owners to reduce the risks they present?

How much are the premiums? How have they changed in the last three years? What is the cost for the minimum acceptable amount of first-dollar coverage? What are the costs of higher levels of coverage? What are the most important factors influencing the cost of coverage (e.g., facility age, design, process types, safety record, wastes handled)?

What limitations are there in the availability of reinsurance? What companies offer reinsurance in this line of insurance? Why have the reinsurers withdrawn from the market? Are any captive insurance companies providing coverage for RCRA facilities? A captive insurance company is an insurance company set up by a company or group of companies to insure their own risks, or risks common to the group. Are any efforts underway to establish new captive insurance companies? What limits the establishment of such captives?

What are the major effects of any limitations in the availability of coverage for RCRA facilities? Have any facilities closed solely because of the lack of insurance at an affordable price? How will the availability and cost of insurance influence decisions of owners and operators of interim status facilities about whether to seek Part B permits? Are generators seeking greater liability coverage because of a lack of coverage

by the commercial facilities that handle their wastes?

If sudden accidental occurrence coverage and/or nonsudden accidental occurrence coverage is difficult or excessively expensive to obtain, why? What are the most important causes of the limited availability of coverage? How important are the following factors: lack of demand for coverage; court decisions that broadly interpret policies in favor of the insured; the difficulty of predicting the likelihood of claims, the cost of defense, and the cost of judgments against the insured; the fear of being liable for cleanup costs under CERCLA or other laws; the capacity shortage in the property and casualty insurance market; the lack of reinsurance for environmental risks; and recent concern aroused by the tragedy in Bhopal, India.

B. What Will Improve the Market

The Agency recognizes that it has a limited ability to influence the availability of insurance for RCRA facilities. In this regard, the Agency solicits comments addressing what events or actions will increase the availability of coverage for owners and operators of RCRA facilities. What actions by the Agency, if any, would increase the availability of coverage that would satisfy the intent of the liability coverage requirements? For example, what would be the impact of: increased Agency and State enforcement efforts to ensure compliance with the rules, which might stimulate demand for coverage; and/or clarification by EPA of the term "sudden accidental occurrences," so that it is expressly narrower than the interpretation some courts have applied to that phrase in the CGL pollution exclusion?

C. "Insurability"

One of the purposes of the liability coverage requirements is to encourage owners and operators of RCRA facilities to manage hazardous waste in an environmentally sound manner. Thus, the regulations may be judged successful if poorly designed or improperly managed facilities are forced to close because the risk of accidents they present prevents them from obtaining insurance coverage at an affordable price. However, if low risk facilities that comply with all RCRA statutory and regulatory requirements are unable to obtain insurance coverage at a reasonable price, the liability coverage regulations may merit reconsideration.

To better understand the relationship between risks presented by RCRA facilities and the availability of insurance, the Agency requests comments on the following issues:

What types of firms and facilities can obtain CGL and EIL coverage? Who cannot obtain coverage at any price? What types of firms, facilities, or risks are reinsurers most hesitant to cover? Does it matter whether a facility has interim status or a permit? On what basis do insurers decide whether a facility or firm will be offered coverage and the cost of coverage? What is a "reasonable" range for premiums? How do these premiums compare to those set for parallel risks (e.g., product liability coverage)? How do these factors differ for different types of policy coverage? What risk assessments are required before a CGL or EIL policy will be issued for a RCRA facility? How does the market distinguish between disposal and nondisposal facilities for sudden and accidental coverage? Does the market distinguish among land treatment facilities, surface impoundments, and landfills for nonsudden coverage? How does the market distinguish among on-site facilities serving only the owner or operator? How does the market distinguish among off-site commercial facilities?

III. Possible Regulatory Approaches to Potential Problems

The Agency believes that requiring insurance or other liability coverage is desirable to protect human health and the environment. However, in light of the present and potential difficulties encountered by some TSDF owners and operators in obtaining insurance coverage, the Agency is considering taking one or a combination of the following five regulatory actions in response to the problem of possible limited insurance availability. These five responses are neither exhaustive nor mutually exclusive, and the Agency is soliciting both comments on these approaches and suggestions for alternative responses. The Agency will find especially useful comments that specify which alternative or combination of alternatives is preferred and why, the predicted benefits and costs of each alternative, and the extent to which each alternative will assist the regulated community in obtaining liability coverage.

A. Maintain the Existing Requirements

If the Agency does not take any action designed to address the problem of possible insurance availability, then the liability requirements contained in 40 CFR 264.147 and 265.147 remain in full effect. Owners and operators of disposal facilities who are unable to procure insurance or satisfy the financial test, will, under the new amendments, lose interim status.

Of course, not all firms that are unable to procure insurance will fail to meet the RCRA financial responsibility requirements; many firms will instead demonstrate financial responsibility by passing the financial test specified in 40 CFR 264.147 or 265.147. Some owners and operators who are owned by corporations that satisfy the financial test may wish to transfer ownership or operation to the parent corporation. If the parent corporation can pass the financial test for the facility's financial responsibility requirements, the facility would then be in compliance with the liability requirement. (A transfer of ownership or operational control should be accompanied by a revised Part A). However, it is possible that some facilities that follow environmentally sound operating procedures and are, in some sense, "insurable," may nonetheless be unable to retain interim status or obtain a RCRA permit, because the owners and operators can neither pass the financial test nor obtain insurance.

The Agency has adopted a short term enforcement policy in response to the depressed state of the insurance market. The Agency will consider placing an owner or operator on a schedule of compliance to get insurance if: (1) The Agency finds that providing for such a schedule is consistent with the facility's compliance with other RCRA requirements, and (2) the facility can substantiate good faith attempts at securing insurance. Failure to exercise the obligation to obtain insurance or unsubstantiated good faith claims will result in appropriate enforcement actions; compliance orders will be issued and penalties will be assessed when the owner or operator fails to make a good faith effort in accordance with specified criteria.

Several factors are used to define good faith including: submittal of a complete application to insurance companies in a timely fashion, allowing for the insurance companies to process and issue the policy; submittal of an application to "known" suppliers of EIL insurance; submittal of evidence of attempts to acquire insurance with known insurers by documenting the contracts made and the reasons given by the insurance companies for denying or delaying the applications

This enforcement approach was established as an interim measure, pending a more detailed analysis of the issue. The policy does not apply after

November 8, 1985, and will not (as presently stated) affect the requirement that interim status facilities certify compliance with the financial responsibility requirements as of that date.

B. Clarify the Required Scope of Coverage and/or Lower the Required Levels of Coverage

Limited insurance availability may be caused by the unwillingness of the insurance industry to issue policies with the scope of coverage specified by the regulations. If this is the case, the Agency could address these concerns by clarifying the scope of coverage, and/or revising the regulations to lower the minimum amounts of liability coverage required both per occurrence and on an annual aggregate basis, and/or allow modest deductibles.

The meaning of the terms "sudden and accidental occurrences" and "nonsudden and accidental occurrences" could be specified in a manner that is still conducive to protecting human health and the environment but also clarifies what type of liabilities must be covered. For example, the term "sudden and accidental occurrences" could be defined to be narrower than some recent judicial interpretations of the phrase "sudden and accidental" in CGL policies. However, a clarification of terms by the Agency may not preclude continued judicial interpretation of policy coverage.

The Agency could also address the acceptability of claims-made policies, retroactive dates in claims-made policies, and certain exclusions (e.g., cleanup costs, legal defense costs) in policies used to demonstrate liability coverage. The Insurance Services Office (ISO) announced that it is considering rewriting its new CGL form to include legal defense costs within the policy limits. ISO is considering the change because of concern among both direct insurers and reinsurers over growing defense costs associated with CGL policies. ISO indicated that defense costs often exceed 30% of the cost of a claim paid under a CGL policy. A summary of a study conducted by the Rand Corporation Institute for Civil Justice states that plaintiffs received an average of 37% of the total payout by defendants after deducting plantiffs' and defendants' litigation expenses.

EPA requires owners or operators to obtain liability coverage exclusive of legal defense costs. This was done because allowing defense costs to be included within the policy limits might defense costs to be included within the policy limits might severely restrict the amount of insurance coverage available to compensate third parties. Unusually large legal defense costs could result in a significant erosion in the compensation available. This is a special problem for liability suits arising out of the operation of hazardous waste management facilities, as this is an area of expanding liability involving potentially complex issues related to causation and damage. However, insurers could place limits on defense costs as long as the policies specify that the levels of coverage required by EPA are guaranteed before defense costs are absorbed.

In addition, premiums could more accurately reflect potential liability by providing mechanisms for apportioning costs based on risks. For RCRA facilities, the most effective mechanism could involve conducting insured-specific environmental audits based on existing scientific, engineering, and medical data. EPA could facilitate this approach by providing insurers with comprehensive technical data compiled over the past decade. This data may serve as an actuarial basis from which to calculate premiums related to policy coverage. EPA could also provide technical assistance as appropriate.

This approach would provide several benefits. First, the insurance industry could enter the market having determined limits of liability to their satisfaction. Second, a source of defined compensation to pollution victims would be available through the private sector, minimizing Federal intrusion. Third, such insurance would provide an effective market force mechanism to help regulate and reduce the risk of environmental damage by an insured facility or organization by demanding responsible environmental management as a condition and cost or insurance. Improved operations could result from the incentive of lower premiums and insurer oversight. Fourth, this approach would consider environmental risk as a condition of financial responsibility. This consideration should lead, for example, to RCRA permitting of environmentally sound and financially responsible facilities of varying size.

Lowering the minimum level of coverage or narrowing the scope of coverage may lessen the protection of human health and the environment. However, since there are insurance companies currently writing policies below the required limits for RCRA, this option would allow some additional owners and operators to comply with the liability requirements. The Agency solicits comments on the appropriate levels of coverage, how the scope of coverage should be defined, and the potential effects of these changes, including the effects on the availability of liability coverage.

C. Authorize Other Financial Responsibility Mechanisms

To enable more firms to meet the liability coverage required during a facility's operating life, the Agency could revise 40 CFR 264.147 and 265.147 to authorize, in addition to insurance and financial tests, the use of the corporate guarantee. The EPA regulations requiring financial assurance for closure and post-closure care allow the use of a corporate guarantee by the owner or operator's parent corporation. (See 40 CFR 264.143, 264.145, 265.143, and 265.145.) In addition, the Agency could authorize indemnity contracts as an alternative mechanism.

The corporate guarantee is a promise to answer for the debt or default of another. It is a collateral undertaking and presupposes another contract or transaction, which is identified in the guarantee. There is ordinarily a contract or other agreement between the principal and a third party creating the primary obligation and a contract between the principal and the guarantor creating the guarantee, which supports the primary obligation. If the principal defaults on the primary obligation, then the gaurantor is liable to the third party on the obligation created by the guarantee. An indemnity contract is not a collateral undertaking, but rather a two-party agreement that provides that one party, the indemnitor, will reimburse the other party for losses that he may incur because of the occurrence of a specified event.

In the past, the Agency has not approved the use of the corporate guarantee as an alternative mechanism for liability coverage because of concern about the validity and enforceability of the guarantee under State insurance laws. However, if a parent (or unrelated firm) were allowed to provide a subsidiary (or unrelated firm) with a corporate guarantee or an indemnity contract that would assure coverage for third-party damages, a larger number of firms and facilities may be able to comply with the financial responsibility requirements for liability coverage.

In most States, insurance is controlled under State law, with limitations on who may engage in the business of insurance and detailed regulation of business practices. Carrying on the business of insurance without appropriate licenses or certificates of authority can subject companies to fines or other penalties. In addition, corporate guarantees, such as

those for liability coverage could be found void under State laws.

Precisely what constitutes the "business of insurance" varies from State to State. Many States, however, either by statute or common law, exempt from their insurance regulations actions by a firm that might otherwise be covered by the insurance laws, if those actions are incidental to or connected with other business activities of the firm. Thus, a corporate guarantee or indemnity by a corporate parent to its subsidiary that is considered to be incidental to the ownership of the subsidiary by the parent might, in at least some states, be exempt on that basis.

Another question is whether a guarantee provided by one firm to another firm that is not a corporate subsidiary of the guarantor would be considered incidental to the business activities of the guarantor. A single guarantee contract for liability coverage, undertaken exclusively for profit, would probably be subject to most State insurance requirements. If, however, the guarantee was given to ensure that hazardous waste management would continue to be provided to the guarantor, the guarantee might be viewed as incidental to the guarantor's business activities, and thus exempt from some State insurance laws.

The Agency requests comments on the relative merits and disadvantages of allowing either the corporate guarantee or the indemnity contract to be used as a liability coverage mechanism and on their respective likelihood of creating a valid and enforceable obligation under State laws. The Agency will consider amending its regulations to allow use of this mechanism in States where the State Attorney General certifies that the corporate guarantee would be valid and enforceable. In addition, the Agency requests information on the extent to which these alternative mechanisms have been used to demonstrate financial responsibility under other, non RCRA programs.

D. Authorize Waivers.

The Agency could amend its regulations to authorize case-specific waivers of the liability coverage requirements if the owner or operator can demonstrate that it failed to obtain coverage despite a "good faith effort." "Good faith effort" is described in option A. The waiver would be given on a case-by-case basis and would operate for a limited time, to be specified by the Agency (e.g. November 8, 1986). The waiver might be subject to other conditions; for example, a waiver might not be granted to a facility that is owned or operated by a subsidiary of a corporation that passes the financial test.

This approach would promote environmental protection by maintaining the general liability coverage requirements, allowing the insurance industry additional time to develop needed insurance policies, and allowing regulated facilities that genuinely attempt to comply with the regulations to continue operation. On the other hand, this approach may have the disadvantage of giving firms that obtain a waiver an unfair economic advantage over those that purchase insurance, and of allowing the continued operation of facilities that may be unable to obtain coverage because of the great health and environmental risks they pose. In addition, by decreasing the demand for insurance, widespread use of waivers may actually suppress the development of the needed insurance policies. Finally, the Agency would face a potentially heavy administrative burden of reviewing waiver requests and determining whether a "good faith effort" was made.

One possible way to avoid the problem of allowing uninsured, "high-risk" facilities to continue to operate is to grant waivers only if the owner or operator demonstrates not only a "good faith effort," but also that the facility is "insurable." This approach, however, entails the additional difficulty of determining which facilities are "insurable." An assessment of "insurability" may impose significant administrative burdens on the Agency by requiring it to perform risk analyses on the facilities of each firm that applies for a waiver. The Agency solicits comments on appropriate standards for "good faith effort" and "insurable."

E. Suspend or Withdraw the Liability Coverage Requirements

To the extent that any limited availability of insurance is cause by a temporary depression in the insurance industry, it may be desirable to suspend by regulation the liability coverage requirements for all firms in the regulated community. This approach would avoid the possibility of enforcing requirements which currently may not be attainable. Owners and operators of RCRA facilities would not face potential citizen suits for noncompliance with regulations. Also, a suspension would give the Agency, the regulated community, the insurance industry more time to develope appropriate methods of financial responsibility for liability coverage at RCRA facilities.

However, the approach has several disadvantages. Until the liability coverage requirements are reactivated, adequate protection may not be provided to human health and the environment. Currently insured firms may terminate their coverage as a result of the suspension. Furthermore, the likelihood that the required environmental insurance would become more available at some point in the future remains unclear. To date, the insurance industry and the regulated community have had several years to develop the required liability insurance. In addition, suspending the requirements for liability coverage would also suspend much of the demand for such insurance, reducing incentives for carriers to provide insurance policies for RCRA facilities. If the insurance market for RCRA facilities is presently depressed, some measure would be needed to determine when the market has recovered sufficiently to reinstate the liability coverage requirements. The Agency requests comments on the present state of the insurance market and on whether insurers will be better able to offer the required liability coverage at some point in the near future.

Finally, the Agency may consider rescinding the liability coverage requirements permanently. The Agency solicits comments on whether human health and the environment would be sufficiently protected in the absence of these requirements.

One obstacle to realizing practical benefits from this approach is that State regulations requiring financial responsibility assurances analogous to the Federal program will remain in effect unless and until a State revises its regulations to parallel EPA's newly amended regulations. Absent some action by EPA, it could be argued that such State regulations would still be regarded as EPA-authorized Subtitle C requirements even though there is no longer a corresponding EPA Subtitle C requirement. Thus, under this theory, facilities in authorized States would obtain no relief from this rulemaking.

EPA's current view is that such a result is inconsistent with the purposes of State authorization under the statute. The general objective of section 3006 is to allow EPA to suspend its implementation of the RCRA program in those States where the State's program (including its substantive standards) satisfies the statutory and regulatory objectives of the RCRA program. Where EPA removes a particular regulatory requirement from the RCRA program, it no longer makes sense for EPA to view the State analog to that requirement as

part of the "RCRA authorized" State program.

Accordingly, if EPA suspends the financial responsibility requirements, EPA would also modify its regulations to indicate that the State's analog to those requirements would no longer be RCRA requirements. It is important to note, however, that the State regulations remain valid requirements enforceable by the State even though they would no longer be Subtitle C requirements. Under section 3009 and 40 CFR 271.1(i) and 271.1(ii), authorized States are allowed to impose more stringent requirements than EPA. Consequently, while EPA would no longer have the authority to enforce the state regulations, the State would remain free to enforce its own law.

Such a modification of the scope of the RCRA State program, would have a direct impact on the responsibilities of owners and operators under section 3005(e)(2)(B) to certify compliance with the "applicable financial responsibility requirements." If State law analogous to the Federal insurance requirements have been removed from the RCRA State program, then they are no longer the *applicable* requirements for purposes of the certification responsibilities.

IV. Executive Order 12291

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. The regulatory amendments being considered today to the liability requirements are not "major rules". The options under consideration are not likely to result in a signficant increase in costs and thus are not a major rule, no Regulatory Impact Analysis has been prepared.

V. Paperwork Reduction Act

There are no information collection requirements associated with this rule.

VI. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), Federal agencies must, in developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). The options under consideration either maintain the existing regulations and thereby impose no additional costs, or relax the existing insurance requirements and thus reduce costs associated with compliance.

List of Subjects

40 CFR Part 264

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

Accordingly, I certify that this proposed regulation will not have a significant impact on a substantial number of small entities.

Dated: August 16, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-20108 Filed 8-20-85; 8:45 am]

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