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6-9-83
Vol. 48 No. 112
Pages 26585-26750

federal register

Thursday
June 9, 1983

Selected Subjects

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Federal Register Thesaurus

A revised edition of the Federal Register Thesaurus of Indexing Terms will be printed in the **Federal Register** of Thursday, June 16, 1983 as Part II. Federal agencies wishing to order multiple copies from the Government Printing Office may do so by submitting a completed Standard Form 1 (SF–1) by noon Wednesday, June 15, 1983, to: Planning Services Division, Government Printing Office.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 83-7 of June 3, 1983

Determination Under Subsection 402(d)(5) of the Trade Act of 1974—Continuation of Waiver Authority

Memorandum for the Secretary of State

Pursuant to the authority vested in me under the Trade Act of 1974 (Public Law 93-618, January 3, 1975; 88 Stat. 1978) (hereinafter "the Act"), I determine, pursuant to subsection 402(d)(5) of the Act, that the further extension of the waiver authority granted by subsection 402(c) of the Act will substantially promote the objectives of section 402 of the Act. I further determine that the continuation of the waivers applicable to the Hungarian People's Republic, the People's Republic of China and the Socialist Republic of Romania will substantially promote the objectives of section 402 of the Act.

This determination shall be published in the **Federal Register.**

Ronald Reagan

THE WHITE HOUSE,
Washington, June 3, 1983.

[FR Doc. 83-15632
Filed 6-7-83; 3:29 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 413, Amdt. 1]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action increases the quantity of California-Arizona lemons that may be shipped to the fresh market during the period May 29–June 4, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

DATES: Effective for the period May 29–June 4, 1983.

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

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Secretary's Memorandum 1512–1 and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under Marketing Order No. 910, as amended (7 CFR Part 910; 47 FR 50196), regulating the handling of lemons grown in California and Arizona. 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 recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the Act.

This action is consistent with the marketing policy for 1982–83. The marketing policy was recommended by the committee following discussion at a public meeting on July 6, 1982. The committee met by telephone on June 2, 1983, to consider the current and prospective conditions of supply and demand and recommended an increase in quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons has improved.

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 of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportuntiy to present information and views on the amendment during the telephone meeting, and it relieves restrictions on the handling of lemons. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

1. Section 910.613 Lemon Regulation 413 (48 FR 23805) is revised to read as follows:

§ 910.613 Lemon Regulation 413.

The quantity of lemons grown in California and Arizona which may be handled during the period May 29, 1983, through June 4, 1983, is established at 310,000 cartons.

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

Dated: June 3, 1983.

Charles R. Brader,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-15425 Filed 6-8-83; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 207, 220, 221, and 224

[Regs. G, T, U and X]

Securities Credit Transactions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The List of OTC Margin Stocks[1] is comprised of stocks traded over-the-counter (OTC) that have been determined by the Board of Governors of the Federal Reserve System to be subject to margin requirements under certain Federal Reserve regulations. The List is published from time to time by the Board as a guide for lenders subject to the regulations and the general public. This document sets forth additions to or deletions from the previously published List effective July 26, 1982 and the Supplements to that List, effective October 18, 1982, and February 22, 1983, and will serve to give notice to the public about the changed status of certain stocks.

EFFECTIVE DATE: June 20, 1983.

FOR FURTHER INFORMATION CONTACT: Jamie Lenoci, Financial Analyst, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202–452–2781.

SUPPLEMENTARY INFORMATION: Set forth below are stocks representing additions to or deletions from the Board's List of OTC Margin Stocks. A copy of the complete List incorporating these additions and deletions is also on file at the Office of the Federal Register. This complete List supersedes the last complete List published on July 26, 1982 and includes amendments to that List, effective October 18, 1982 and February 22, 1983 (see 47 FR 30719, July 15, 1982, 47 FR 44241, October 7, 1982, and 48 FR 6094, February 10, 1983). The List, as amended, includes those stocks that the

[1] Filed as part of the original document.

Board of Governors has found meet the criteria specified by the Board and thus have the degree of national investor interest, the depth and breadth of market, and the availability of information respecting the stock and its issuer to warrant incorporating such stocks within the requirements of Regulations G, T, U, and X or are being added pursuant to § 220.2(e)(4) of Regulation T which states that the Board may add any stock to the List "if in the judgement of the Board, such action is necessary or appropriate in the public interest." It should be noted that the company, Figgie International Holdings Inc., will become a publicly-held company as a result of a reincorporation merger in which the current public company, Figgie International Inc., will change its domicile to the State of Delaware. The common stock of Figgie International Inc., is now traded on the New York, Pacific and Midwest stock exchanges. The addition to the List of the common stock of Figgie International Holdings Inc., will become effective on or about July 18, when and if the merger is consummated and simultaneous with the commencement of trading in NASDAQ. Copies of the complete up-to-date List may be obtained from any Federal Reserve Bank.

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion on the List specified in 12 CFR 207.5 (d) and (e), 220.8 (h) and (i), and 221.4 (d) and (3). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of this List as soon as possible. The Board has responded to a request by the public and allowed a two-week delay before the List is effective.

List of Subjects

12 CFR Parts 207 and 221

Banks, banking, Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities.

12 CFR Part 220

Banks, banking, Brokers, Credit, Federal Reserve System, Margin, Margin requirements, Investments, Reporting requirements, Securities.

12 CFR Part 224

Banks, banking, Borrowers, Credit, Federal Reserve System, Margin, Margin requirements, Reporting requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78g and 78w) and in accordance with § 207.2(f)(2) of Regulation G, § 220.2(e)(2) of Regulation T, and § 221.3(d)(2) of Regulation U, there is set forth below a listing of additions to and deletions from the Board's List:

Additions to the List

AB Fortia
American Depositary Receipts for non-restricted B shares (par value Skr 10)
AFP Imaging Corporation
$.01 par common
ACME General Corporation
No par common
Alaska Mutual Bank
$1.00 par common
Altos Computer Systems
No par common
Amerford International Corporation
$.05 par common
Andersen Group, Inc.
No par common
Apollo Computer Inc.
$.02 par common
Berkshire Hathaway Inc.
$5.00 par common
Bio-Response, Inc.
$.004 par common
Boonton Electronics Corporation
$.10 par common
CPI Corp.
$.40 par common
Concept, Inc.
Warrants (expire 07-29-83)
Coopervision, Inc.
$.10 par common
Crownamerica, Inc.
No par common
Designatronics Inc.
$.04 par common
Diasonics, Inc.
No par common
Digital Switch Corporation
Warrants (expire 07-29-84)
Dorchester Hugoton, Ltd.
Depositary Receipts for Units of Limited Partnership Interest
Dynamics Research Corporation
$.10 par common
Educational Computer Corporation
$.10 par common
Erickson Gold Mines Ltd.
$.01 par common
Exchange International Corporation
$1.00 par common
Family Entertainment Centers, Inc.
No par common
Faraday Laboratories, Inc.
$.01 par common
Fidelity Federal Savings and Loan Association (California)
$.01 par common
Figgie International Holdings Inc.
$.10 par common
First City Financial Corporation (New Mexico)
$3.00 par common
First Eastern Corp. (Pennsylvania)
$10.00 par common
First Jersey National Corporation
$1.00 par cumulative convertible preferred
First Midwest Corporation
$1.00 par common
First Valley Corporation
$1.00 par common
Fortune Systems Corporation
$.01 par common
Genetic Systems Corporation
$.01 par common
Class A Warrants (expire 06-03-83)
Genex Corporation
$.05 par common
Gerber Systems Technology, Inc.
$.02 par common
Gibson-Homans Company, The
No par common
Golden Enterprises, Inc.
$.66-2/3 par common
Gott Corporation
No par common
Great Outdoor American Adventure, Inc., The
No par common
Hathaway Corporation
No par common
Helen of Troy Corporation
$.10 par common
Intecom, Inc.
No par common
Intercontinental Dynamics Corporation
$.10 par common
Jiffy Industries, Inc.
$.01 par common
Langly Corporation
$1.00 par common
Larsen Company, The
$1.00 par common
Lee Data Corporation
$.05 par common
Lorimar
No par common
Magma Power Company
$.10 par common
Megadata Corporation
$.01 par common
Merrimac Industries, Inc.
$.50 par common
Methode Electronics, Inc.
Class A, $.50 par common
Midwestern Fuel Systems, Inc.
$.08 par common
National Controls, Inc.
$1.00 par common
National Technical Systems
$.10 par common

Nature's Bounty, Inc.
$.002 par common
North Fork Bancorporation, Inc.
$5.00 par common
Nova Real Estate Investment Trust, The
No par shares of beneficial interest
Novar Electronics Corporation
No par common
Ohio Bancorp
$10.00 par common
On-Line Software International, Inc.
$.01 par common
Pancho's Mexican Buffet, Inc.
$.10 par common
Peoples Banking Corporation
$5.00 par common
Peoples Restaurants, Inc.
$1.00 par common
Price Communications Corporation
$.01 par common
Putnam Trust Company of Greenwich
$5.00 par common
Quantum Corporation
No par common
Quest Medical, Inc.
$.05 par common
Warrants (expire 04-30-84)
Repco Incorporated
$1.00 par common
Royal Business Group, Inc.
$1.00 par common
Royal Resources Corporation
$.01 par common
Ryan's Family Steak Houses, Inc.
$1.00 par common
Sandwich Chef, Inc.
$.05 par common
Scientific, Inc.
$.50 par common
Sega Enterprises, Inc.
$1.00 par common
Sizzler Restaurants International, Inc.
No par common
Summa Medical Corporation
$.01 par common
Sunrise Savings & Loan Association of Florida
Class A, $.01 par common
Warrants (expire 09-30-85)
Super Sky International, Inc.
$.10 par common
Syscon Corporation
$.05 par common
Systems & Computer Technology Corporation
$.01 par common
Tano Corporation
$.05 par common
Technology Incorporated
No par common
Televideo System, Inc.
$.01 par common
Tera Corporation
No par common
Texon Energy Corporation
$.20 par common
Tinsley Laboratories, Inc.
$.16⅔ par common
UST Corp.
$.625 par common
VLSI Technology, Inc.
No par common
Versa Technologies, Inc.
$.10 par common
Vicorp Restaurants, Inc.
$.05 par common
Waters Instruments, Inc.
$.10 par common

Deletions From List

Stocks Removed for Failing Continued Listing Requirements

American Appraisal Associates, Inc.
$1.00 par common
American Medical Affiliates, Inc.
$.10 par common
American Resources Management Corporation
$.50 par common
Atlantic Oil Corporation
$.01 par common
Chemical Leaman Corporation
$2.50 par common
Clinical Sciences Inc.
$.01 par common
Eastern Air Lines, Inc.
Warrants (expires 06-01-87)
Excel Energy Corporation
$.01 par common
Guardian Packaging Corporation
$.34 par common
Jacobson Stores Inc.
$1.00 par common
Kinder-Care Learning Centers, Inc.
7½ % convertible subordinated debentures
Leisure Dynamics, Inc.
$1.00 par common
Magnuson Computer Systems, Inc.
No par common
Nucorp Energy Inc.
No par common
Raypak, Inc.
$.15 par common
Sterling Pipe & Supply Company
$.01 par common
Struthers Oil & Gas Corporation
$.10 par common
Western Preferred Corporation
$.20 par common
Westport Company, The
No par shares of beneficial interest

Stocks Removed for Listing on a National Securities Exchange or Being Involved in an Acquisition

Amfesco Industries Inc.
$.10 par common
Amicon Corporation
$.33⅓ par common
BSN Corporation
$.01 par common
Beverage Management, Inc.
$.10 par common
Brass-Craft Manufacturing Company
$1.00 par common
Buckbee-Mears Company
$.10 par common
C3, Inc.
$.01 par common
Chemineer, Inc.
No par common
First Boston, Inc.
$1.66⅔ par capital
Girard Company, The
$.50 par common
Great American Banks, Inc.
$1.00 par common
Home Federal Savings and Loan Association of Palm Beach
$.01 par common
Instrumentation Laboratory, Inc.
$1.00 par common
Muse Air Corporation
$.10 par common
National Central Financial Corporation
$5.00 par common
Nationwide Corporation
Class A, $2.50 par common
Olympia Brewing Company
$10.00 par common
Pacesetter Finacial Corporation
$10.00 par common
Pay'n Pak Stores, Inc.
$.10 par common
Prairie Producing Company
$.01 par common
Spang Industries Inc.
$1.00 par common
Telesphere International, Inc.
$.01 par common
Unimation, Inc.
$.10 par common
Valleylab, Inc.
No par common

By order of the Board of Governors of the Federal Reserver System acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.2(c)), June 1, 1983.

William W. Wiles,
Secretary of the Board.

[FR Doc. 83-15384 Filed 6-6-83; 9:49 am]
BILLING CODE 6210-01-M

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12 CFR Part 220

[Docket No. R-0389]

Credit By Brokers and Dealers; Complete Revision and Simplification of Regulation T; Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendments.

SUMMARY: The Board is making technical amendments to its final rule on Regulation T (Credit by Brokers and Dealers) published at 48 FR 23161, May 24, 1983. This action is necessary to

correct three typographical errors consisting of one letter and two numbers in section 12 of the regulation.

FOR FURTHER INFORMATION CONTACT: Robert Lord or Douglas Blass, Attorneys, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551; (202) 452-2781.

SUPPLEMENTARY INFORMATION: Section 12 of the final rule in 12 CFR 220 (48 FR 23161, 23170, May 24, 1983) is corrected as follows:

Section 220.12(a) (48 FR 23170) is corrected by changing the letter "(f)" to "(e)".

Section 220.12(b)(4)(i) (48 FR 23170) is corrected by changing the number "(6)" to "(5)". The correct cross-reference is "paragraph (b)(5)".

Section 220.12(b)(6) (48 FR 23170) is corrected by changing the number "(4)" to "(3)". The correct cross-reference is "paragraph (b)(3)".

Board of Governors of the Federal Reserve System, June 2, 1983.

William W. Wiles,

Secretary of the Board.

[FR Doc. 83-15390 Filed 6-8-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 505c

[No. 83-318]

Classified Information; Mandatory Review Requests

Dated: June 3, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is re-publishing its regulations pertaining to the handling of classified information, and revising the time period for agency action on mandatory review requests. Publication of this material is required by Executive Order No. 12356.

EFFECTIVE DATE: June 9, 1983.

FOR FURTHER INFORMATION CONTACT: Lynnae M. Henderson, Chief, Building Management Section, Administration Office, Federal Home Loan Bank Board, 1700 G Street, NW, Washington, D.C. 20552 (202-377-6229).

SUPPLEMENTARY INFORMATION: Executive Order No. 12356, 47 FR 27836 (1982), established revised policy for the classification, safeguarding, and declassification of national security information, i.e., information classified Top Secret, Secret, or Confidential. Under that Order, each agency that handles such information must establish procedures regarding such handling and publish them in the **Federal Register.** In accordance with that requirement the Board is re-publishing Part 505c of its General Regulations (12 CFR Part 505c) to provide such information, and is taking this opportunity to revise § 505c.3, regarding the time period for agency actions on declassification requests, in conformance with the Information Security Oversight Office's implementing directive for Executive Order No. 12356, § 2001.32 (June 25, 1982).

The Board finds that notice and public procedure are unnecessary under 12 CFR 508.11 and 5 U.S.C. 553(b) because the regulation concerns internal agency procedures, and that publication of the regulation for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to effective date is unnecessary for the same reason.

List of Subjects in 12 CFR 505c

Classified information.

Accordingly, the Board hereby amends Part 505c, Chapter V of Title 12, Code of Federal Regulations, as set forth below.

Revise Part 505c as follows:

PART 505c—NATIONAL SECURITY INFORMATION

Sec.

Authority: Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); E.O. 12356, 47 FR 27836 (1982); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR 1943-48, Comp. p. 1071.

§ 505c.1 Purpose and scope.

(a) This Part is issued by the Board pursuant to the requirement of Subpart E of Executive Order No. 12356, 47 FR 27839 (1982) ("the Order"), that unclassified regulations that establish information security policy and unclassified guidelines for systematic declassification review, which affect the public, be published in the **Federal Register.**

(b) This Part covers all information and material handled by the Board that is owned by, produced for or by, or under the control of, the United States Government, has been determined pursuant to the Order or prior Orders to require protection against unauthorized disclosure, and is so designated. Such material is referred to in this Part as classified information.

§ 505c.2 Policy.

It is the Board's policy to act in accordance with the Order with respect to all classified information.

§ 505c.3 Administration of program.

The Director, Office of Administration ("Director"), shall: (a) Implement and oversee the Board's information security program; (b) receive questions, suggestions, and complaints regarding it; (c) make changes to it as he deems advisable; (d) ensure that it is at all times consistent with the Order; (e) receive requests for declassification regardless of the origin of any such request, ensuring that requests are acted upon promptly and a final determination as to declassification is made within one year from the date or receipt except in unusual circumstances; and (f) ensure that requests submitted under the Freedom of Information Act are handled in accordance with that Act.

§ 505c.4 Mandatory review procedure.

The Director shall process requests for mandatory review for declassification. The Director shall not refuse to confirm the existence or non-existence of a document requested under the Freedom of Information Act or the Mandatory Review Provision of the Order, unless the fact of its existence or non-existence would itself be classified under the Order.

(E.O. 12356, 47 FR 27876 (1982))

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-15465 Filed 6-8-83; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 82-ANE-35; Amdt. 39-4658]

Airworthiness Directives; Bendix Engine Products Division S-20, S-200, S-1200, D-2000, and D-3000 Series Magnetos

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: Emergency airworthiness directive (AD) 82-20-01 was issued September 17, 1982, and made effective immediately upon receipt by the operators and owners of certain Bendix magnetos of the above noted series. This AD requires inspection in accordance

with instructions specified herein, and if defective (soft material), the impulse coupling or cam assembly must be replaced. The AD is needed to detect and replace impulse coupling flyweights which were improperly heat treated resulting in rapid wear and failure.

DATES: Effective June 14, 1983, to all persons except those persons to whom it was made immediately effective by priority mail, issued September 17, 1982. Comments on the rule must be received on or before July 14, 1983.

ADDRESSES: The applicable service bulletin may be obtained from Bendix Engine Products, Sidney, New York 13838.

A copy of the applicable service bulletin [1] is contained in the Rules Docket in the Office of the Regional Counsel, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803, and in the New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

FOR FURTHER INFORMATION CONTACT: Mr. I. Mankuta, ANE-174, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone: (516) 791-7421.

SUPPLEMENTARY INFORMATION: There have been two incidents in which engine stoppage occurred due to failure of the impulse coupling (less than 200 hours operating time). It was found that the impulse coupling flyweights had been improperly heat treated (soft) and had worn rapidly and jammed. It is believed this damaged the engine accessory drive resulting in engine failure.

Since it was found that immediate corrective action was required, and notice of public procedure was impracticable and contrary to the public interest, good cause existed for making the AD effective immediately to all known U.S. operators and owners of aircraft with Bendix magnetos by individual priority mail letters dated September 17, 1982. (Emergency AD 82-20-01 issued September 17, 1982, specified 18-28 ft. lb. torque upon reassembly of the castellated nut securing the impulse coupling to the drive shaft. This AD specifies 15-25-ft.lb. torque. If compliance has already been accomplished based on AD 82-20-01, it is not necessary to retorque to 15-25 ft. lb.) These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective to all persons.

The FAA determined that this regulation only involves approximately 3,800 defective couplings (based on an estimated 2 percent defects in 190,000 impulse couplings in service). At a labor cost of $22/hour, and allowing 1½ hours for the replacement, the total labor cost would be $125,400. Material cost at $35/coupling add $133,000. Additional allowances for travel (to maintenance facilities), publication cost of bulletins, and shipping costs indicates a total industry cost of approximately $400,000.

Request for Comments on the Rule

Although this action is in the form of a final rule which involves requirements affecting immediate flight safety and, thus, was not preceded by notice and public procedure, comments are invited on the rule.

When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the AD and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Send comments to Federal Aviation Administration, Office of Regional Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803.

List of Subjects in 14 CFR Part 39

Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR Part 39) is amended by adding the following new AD:

Bendix: Applies to Bendix Engine Products Division magnetos with type designations listed below:

Compliance required within the next 10 hours of engine operation unless already accomplished for all affected impulse couplings having less than 300 operating hours. (Compliance with this AD is not required for magneto impulse couplings having more than 300 operating hours.)

S4LN-21/S4RN-21, S6LN-21/S6RN-21, S6LN-23/S6RN-23, S6LN-25/S6RN-25—Except Bendix Red Label magnetos above Serial Nos. B-001171 or A297043.

S4LN-1225/S4RN-1225, S4LN-1227/S4RN-1227, S6LN-1225/S6RN-1225, S6LN-1227/S6RN-1227—Except Bendix Red Label magnetos above Serial Nos. B-001162 or A297043.

S4LN-200 P/N 10-163005-7—Except Bendix Red Label magnetos above Serial Nos. B-001732 or A297043.

D4LN-2021/D4RN-2021, D4LN-2031/D4RN-2031, D4LN-2021/D4RN-2021, D6LN-2021/D6RN-2021, D4LN-2031/D4RN-2031, D6LN-2031/D6RN-2031—Except Bendix Red Label magnetos above Serial Nos. 35550.

D4LN-3000/D6RN-3000—Except Bendix Red Label magnetos above Serial Nos. B-000249 or 5806.

All Blue Label impulse coupled magnetos of the above types—Except Serial Nos. 8236001 and above.

To prevent failure of impulse coupling due to improperly heat treated (soft) flyweights resulting in engine damage or failure, accomplish the following: (Ref. Bendix Service Bulletin No. 623 dated September 1982.)

Note.—The magneto should be removed from the engine only to the extent necessary to perform the inspection described herein. Depending on the engine application, it may not be necessary to remove the harness from the magneto for the inspection procedure.

Note.—All magnetos with the impulse coupling recessed into the magneto flange must have the impulse coupling removed from the magneto to perform the inspection. This is a bench operation and will require the magneto to be completely removed from the engine and the harness removed from the magneto.

Note.—Whenever an impulse coupling is removed from a magneto, it must be removed following the manufacturer's published procedures, paying strict attention to notes and conditions. Upon reassembly, the castellated nut securing the impulse coupling to the drive shaft must be torqued to 15-25 ft. lb. (Emergency AD 82-20-01 issued September 7, 1982, specified 18-28 ft. lb. torque. If compliance has already been accomplished based on AD 82-20-01, it is not necessary to retorque to 15-25 ft. lb.) The cotter pin, Bendix PN 10-90751-18 removed during disassembly, must be discarded and replaced.

1. Remove the magneto from the engine in accordance with the engine/aircraft manufacturer's published instructions.

2. Place the magneto in a suitable work stand with the impulse coupling facing up.

3. Use finger pressure to push inward on the toe (See Figure 1) of each flyweight so that the flyweight heel protrudes outward.

4. Using a fine #1, double cut, ½-inch wide file at least 5/32-inch thick, pass the file across the heel of the flyweight attempting to remove material (See Figure 1). If the flyweight has been properly heat treated, the file will "glide" smoothly over the heel of the flyweight, removing no material. If the flyweight is not properly heat treated (soft), the file will not "glide" easily across the surface of the flyweight heel, and material will be removed.

[1] Bulletin filed as a part of original document.

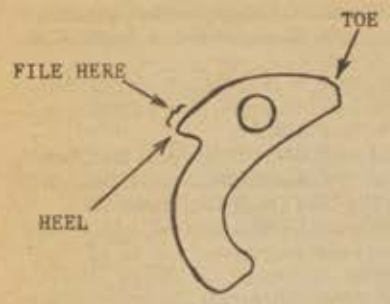

FIGURE 1

5. If an improperly heat treated (soft) flyweight is found, immediately remove and replace the cam assembly and/or the impulse coupling assembly with an assembly meeting the requirements of this AD, following procedures in the magneto overhaul instructions, and paying strict attention to notes and cautions.

6. Inspect the impulse coupling stop pins for wear and replace as necessary.

7. After flyweights have been identified, stop pins inspected, and the impulse coupling reinstalled on the magneto (if removed), identify the magneto by stamping a 1/16-inch letter "F" in the upper right corner of the identification plate to indicate that this AD and Bendix Service Bulletin No. 623 have been complied with.

8. Reinstall the magneto on the engine following the manufacturer's published procedures.

9. Make an appropriate engine logbook entry, recording magneto serial number to indicate that this AD and Bendix Service Bulletin No. 623 have been complied with.

10. Inspect all spare impulse coupling assemblies, cam assemblies, and magnetos following the same procedures described in Steps 3 and 4 of this AD. If both flyweights are found acceptable, identify the cam assembly by applying yellow dyken or yellow lacquer to the heel of each flyweight. Stamp "F" on data plate as described in Step 7.

11. An equivalent method of compliance with this AD may be used if approved by the Manager, New York Aircraft Certification Office, Federal Aviation Administration, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581.

This amendment becomes effective June 14, 1983 as to all persons except those to whom it was made immediately effective by priority mail, issued September 19, 1982.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958 as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and § 11.89 Federal Aviation Regulations (14 CFR 11.89))

Note.—The FAA has determined for the reasons stated in **"SUPPLEMENTARY INFORMATION"** that this regulation is not considered to be major under Executive Order 12291 or significant under the criteria of DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A regulatory evaluation has been prepared and placed in the regulatory docket. A copy may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Burlington, Massachusetts, on May 28, 1983.

Robert E. Whittington,

Director, New England Region.

[FR Doc.83-15341 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-41-AD; Amdt. 39-4659]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing Airworthiness Directive applicable to Boeing Model 747 series airplanes which requires inspection and replacement of the floor beams located over the main landing gear wheel wells. Recent service experience indicates that the AD is not adequate to detect cracks that have been found in floor beams on airplanes with less than 5000 landings and that the 175 landing visual inspection repetitive interval is not adequate to prevent the occurrence of cracking in two adjacent beams. Since cracking of the floor beams could lead to rapid decompression, a new AD is being issued to lower the threshold and reduce the inspection interval.

DATES: Effective June 20, 1983. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained upon request from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information also may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM-120S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2516. Mailing Address: Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: AD 81-13-03 (Amdt. No. 39-4138; 46 FR 31873) as amended by (Amdt. No. 39-4485; 47 FR 49957), superseded AD 78-04-04 and AD 78-09-08, to combine inspections of floor beams into one AD and to properly account for earlier cracking. Service experience has shown that the thresholds and some repetitive intervals are inadequate. A 30" chord crack and full depth web crack was found on an aircraft which had accumulated 2534 landings. Two cases of adjacent beam web cracks were reported during the required 175 landing repetitive visual inspection. Another adjacent beam web failure was found within 349 landings after an eddy current inspection.

The current 5000 landing threshold and the repetitive inspections of 175 landings visual and 350 landings eddy current are inadequate to prevent the occurrence of full depth cracks in two adjacent floor beams.

Since this condition is likely to exist or develop on other 747 airplanes of the same type design, this amendment supersedes AD 81-13-03 (Amdt. No. 39-4485; 47 FR 49957) to require inspections at an earlier landing threshold of 2000 landings and repetitive inspections at 125 landings for certain areas of the floor beams. Further, since a situation exists for the Boeing Model 747 that requires immediate adoption of this regulation, it is found that notice and public procedure are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to those Model 747 series airplanes certificated in all categories listed in Service Bulletin 747-53-2224, Revision 3, or later FAA approved revisions. To prevent failure of the floor beams and webs, accomplish the following:

A. Visually inspect, or as an alternate, inspect using eddy current inspection techniques, the longitudinal floor beams in the areas noted in the appropriate table of Section III of Boeing Service Bulletin 747-53-2224, Revision 3, or later FAA approved revisions, unless previously accomplished. The inspections are to commence prior to the accumulation of one-half the number of cycles specified in the "Repeat Inspection Interval Cycles" column in the appropriate table in Section III of the service bulletin after the effective date of this AD for airplanes which have accumulated more than the number of cycles listed in the "Inspection

Threshold Cycles" column of the table, or prior to accumulating the inspection threshold number of cycles, whichever is later. Inspections are to be repeated at intervals not to exceed those specified in the table.

B. Webs or chords found cracked are to be repaired or replaced prior to further flight in accordance with the instructions of Section III of Boeing Service Bulletin 747-53-2224, Revision 3, or later FAA approved revisions, or repair of damaged structure may be deferred as noted therein.

C. Complete modification of the floor beam webs and chords in accordance with the terminating action procedures described in Boeing Service Bulletins 747-53-2224, Revision 3; 747-53-2176, Revision 4; and 747-53-2183, Revision 2; or later FAA approved revisions, constitutes terminating action for this AD.

D. After accomplishing each inspection, repairs, or the terminating modification, apply organic corrosion inhibitor (BMS 3-23) or equal to all exposed floor beams and pressure web structures as required.

E. For purposes of complying with this AD, subject to acceptance by the assigned FAA Principal Maintenance Inspector, the number of landings may be determined by dividing each airplane's hours time in service by the operator's fleet average from takeoff to landing for the airplane type. Only pressurized flights need be considered when establishing number of landings on the airplane.

F. Upon request of the operator, an FAA Principal Maintenance Inspector, subject to prior approval by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection interval, if the request contains substantiating data to justify the increase for that operator.

G. Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations to operate airplanes to a base for the accomplishment of the inspections and/or modifications required by the AD.

H. Alternate means of compliance or other actions which provide an equivalent level of safety may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

I. This amendment supersedes Airworthiness Directive (AD) 81-13-03; Amdt. No. 39-4138; (46 FR 31873), as amended by Amdt. No. 39-4485; (47 FR 49957).

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

This amendment becomes effective June 20, 1983.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.89)

Note.—The FAA has determined that this regulation is an emergency regulation that is not major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in the aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on May 31, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-15466 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 83-NM-50-AD; Amdt. 39-4660]

Airworthiness Directives; McDonnell Douglas Model DC-10 Series Airplanes With Operable Galley Lifts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing Airworthiness Directive (AD) applicable to certain McDonnell Douglas Model DC-10 series airplanes which requires modification of the galley lift electrical interlock system. This amendment is required because a spring assembly, required by the existing AD did not retain the proper design tolerances to assure proper interlock switch operation. For those who have yet to comply with the existing AD no additional burden is imposed. Anyone who has complied with the existing AD will be required to replace the existing spring assembly. The compliance time is being extended to account for parts availability.

DATES: Effective June 15, 1983. Compliance schedule as prescribed in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Gilbert L. Thompson, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, Federal Aviation Administration, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 548-2831.

SUPPLEMENTARY INFORMATION: Airworthiness Directive AD 82-27-11, Amendment 39-4530 (48 FR 1935, dated January 17, 1983), applicable to McDonnell Douglas Model DC-10 series airplanes with operable galley lifts, requires modification of the galley lift electrical interlock system. After issuance of Amendment 39-4530 McDonnell Douglas found, upon initial installation of the galley lift modifications required by Paragraph (b) therein, that the material from which P/Ns AWJ 7445-1 or AWJ 7445-501 spring assemblies were constructed deformed under heat treatment. As a result of this deformation, the required tolerances on galley lift interlock switch actuation were not being maintained. This amendment requires installation of spring assemblies constructed from a material which retains its required tolerances assuring proper interlock switch actuation.

Amendment 39-4530 requires compliance with the modifications therein specified by June 15, 1983. Since the proper operation of the galley lift interlock switches depends upon installation of spring assemblies exhibiting correct design tolerances, an urgent need exists to amend AD 82-27-11. For those who have yet to comply with Amendment 39-4530, no additional burden is imposed. However, those who have complied will be required to accomplish the additional task of replacing the original spring assembly. This is estimated to take 1.5 manhours. This amendment provides for an extension of original compliance time to account for parts availability. As a result, this amendment is considered to have minimal economic impact.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

List of Subjects 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation regulations (14 CFR 39.13) is amended by amending AD 82-27-11, Amendment 39-4530 (48 FR 1935, dated January 17, 1983), by amending the compliance period to read "Compliance required by January 30, 1984, unless already accomplished," and revising paragraph B to read as follows:

B. Replace the plunger type interlock switch actuators with leaf spring actuators, install structural protection for the interlock switches, and install additional warning placards as outlined in the Accomplishment Instructions of McDonnell Douglas DC-10 Service Bulletin 25-307, Revision 1, dated March 25, 1983, or later revisions approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note.—Airplanes modified in accordance with Service Bulletin 25-307 dated May 5, 1982, require rework.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents also may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This amendment becomes effective June 15, 1983.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89)

Note.— The FAA has determined that this regulation is an emergency regulation that is not major under Section 8 of Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed, may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

Issued in Seattle, Washington, on May 31, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-15468 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASO-17]

Alteration of Transition Area, Beaufort, South Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment increases the size of the Beaufort, South Carolina, transition area to accommodate Instrument Flight Rule (IFR) operations at Beaufort County Airport. This action will lower the base of controlled airspace from 1,200 to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure, based on the Beaufort MCAS Airport Surveillance Radar system, has been developed to serve the airport and the additional controlled airspace is required for protection of IFR aeronautical activities.

EFFECTIVE DATE: 0901 G.m.t., August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

History

On Thursday, April 14, 1983, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the Beaufort, South Carolina, transition area. This alteration will provide controlled airspace for aircraft executing a new instrument approach procedure to Beaufort County Airport (48 FR 16064). The operating status of the airport is changed from VFR to IFR. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received in response to the circularization. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the Beaufort, South Carolina, transition area, by lowering the base of controlled airspace in the vicinity to Beaufort County Airport from 1,200 to 700 feet above the surface.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., August 4, 1983, as follows:

Beaufort MCAS, SC [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of Beaufort MCAS (Latitude 32°28'53" N.; Longitude 80°43'10" W.); within 5 miles each side of Beaufort TACAN 037° radial extending from the 8.5-mile radius area to 9 miles northeast of the TACAN; within a 6-mile radius of Beaufort County Airport (Latitude 32°24'45" N.; Longitude 80°38'00" W.), excluding that portion that coincides with the Hilton Head transition area.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in East Point, Georgia on June 1, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-15467 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-AWA-4]

Alteration of VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of several VOR Federal airways in the vicinity of Montpelier, VT. VORTAC. The Montpelier VORTAC has been relocated approximately 9 miles southeast of the present location. This action amends the descriptions of all airways affected by the relocation.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On March 17, 1983, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the descriptions of VOR Federal Airways V-72, V-104, and V-447 (48 FR 11285). The Montpelier VORTAC is being relocated to lat. 44°05'08" N., long. 72°26'59" W., which is approximately 9 miles southeast of the present location. This action amends the descriptions of the affected airways. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the descriptions of several VOR Federal airways in the vicinity of the Montpelier, VT. VORTAC. The Montpelier VORTAC has been relocated approximately 9 miles southeast of the present location. This action amends the descriptions of all airways affected by the relocation.

List of Subjects in 14 CFR Part 71

VOR federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me § 71.123 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., August 4, 1983, as follows:

V-72 [Amended]

By removing all the words after the word "Lebanon, NH."

V-104 [Amended]

By removing all after the words "Bangor, ME." and substituting the words "The airspace within Canada is excluded."

V-447 [Amended]

By removing the words "From Cambridge, NY, via INT Montpelier 020° and Sherbrooke, PQ, Canada, 217° radials; Sherbrooke." and substituting for them the words "From Cambridge, NY, via INT Cambridge 025° and Montpelier 221° radials; Montpelier; to Sherbrooke, PQ, Canada."

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on June 2, 1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-15342 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 83-ASO-23]

Alteration of Transition Area, Manning, South Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment alters the Manning, South Carolina, transition area by raising the base of controlled airspace in an area between the Clarendon County Airport and the Vance VORTAC from 700 to 1,200 feet above the surface. The instrument approach procedure which previously established the requirement for the 700-foot transition area arrival extension has been canceled, thus negating the need for the airspace.

DATES: Effective date: 0901 G.m.t., August 4, 1983.

Comments must be received on or before July 3, 1983.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, ASO-530, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Donald Ross, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves raising the floor of controlled airspace and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to raise the floor of controlled airspace in an area southwest of Clarendon County Airport as there is no existing requirement for a 700-foot transition area arrival extension. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Advisory Circular AC 70-3A dated January 3, 1983. Under the circumstances presented, the FAA concludes that there is a need to raise the base of controlled airspace from 700 to 1200 feet above the surface. The change relieves a restriction and is so minor I find that notice or public procedure under 5 U.S.C. 553(b) is unnecessary.

List of Subjects in 14 CFR Part 71

Aviation safety, Airspace, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Manning, South Carolina, transition area under § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) (as amended) is further amended, effective 0901 G.m.t., August 4, 1983, to read as follows:

Mannng Clarendon County Airport, SC— [Revised]

That airspace extending upwards from 700 feet above the surface within a 6.5-mile radius of Clarendon County Airport (Lat. 33°35'13" N., Long. 80°12'32" W.); within 3 miles each side of the 201° bearing from Manning RBN (Lat. 33°35'18" N., Long. 80°12'20" W.), extending from the 6.5-mile radius area to 8.5 miles south of the RBN.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in East Point, Georgia, on May 27, 1983.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 83-15343 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Parts 71 and 75

[Airspace Docket No. 83-AWA-5]

Alteration of Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revokes segments of VOR Federal Airways V-510 and V-90 and Jet Route No. J-85 to accommodate traffic flows within the terminal and en route environment.

EFFECTIVE DATE: August 4, 1983.

FOR FURTHER INFORMATION CONTACT: Boyd Archer, Airspace Regulations and Obstructions Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

On April 11, 1983, the FAA proposed to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to revoke VOR Federal Airways V-90 between Litchfield, MI, and Windsor, ON, Canada, and V-510 between Lansing, MI, and Salem, MI; and Jet Route No. J-85 between Salem, MI, and Dryer, OH (48 FR 15483). Changes in traffic flows within the terminal and en route environment and limited utilization justify cancellation of these airway and jet route segments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, these amendments are the same as those proposed in the notice. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Advisory Circular AC 70-3A dated January 3, 1983.

The Rule

These amendments to Parts 71 and 75 of the Federal Aviation Regulations revoke segments of VOR Federal Airways V-510 and V-90 and Jet Route No. J-85 to accommodate traffic flows within the terminal and en route environment.

List of Subjects in 14 CFR Parts 71 and 75

Airways, Jet routes.

Adoption of the Amendments

Accordingly, pursuant to the authority delegated to me, § 71.123 and § 75.100 of Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) are amended, effective 0901 G.m.t., August 4, 1983, as follows:

1. V-90 [Revised]

From Windsor, ON, Canada, via INT Windsor 063° and Dunkirk, NY, 266° radials; Dunkirk. The airspace within Canada is excluded.

2. V-510 [Amended]

After the words "Lansing, MI" delete the words "; INT Lansing 091° and Salem, MI, 308° radials; Salem".

J-85 [Amended]

After the word "DRYER" delete the words "; to Salem, MI".

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.69)

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

Issued in Washington, D.C., on June 2, 1983.

B. Keith Potts,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 83-15340 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

CIVIL AERONAUTICS BOARD

14 CFR Part 204

[Economic Reg. Amdt. No. 6 to Part 204; Docket 40734; ER-1326]

Data To Support Fitness Determinations; Erratum

AGENCY: Civil Aeronautics Board.

ACTION: Erratum.

SUMMARY: This erratum notice corrects a typographical error in the information submission requirements for fitness proceedings to refer correctly to the CAB's rules on compliance with the Montreal Agreement for carrier liability limits.

FOR FURTHER INFORMATION CONTACT: Joseph A. Brooks, Office of the General Counsel, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5442.

SUPPLEMENTARY INFORMATION: In ER-1236 (48 FR 8048, February 25, 1983) a new § 204.7(r) was added to 14 CFR Part 204 (Data to Support Fitness Determinations), requiring submission of a signed counterpart to the Montreal Agreement with respect to liability limits for aircraft accidents, as part of a carrier's fitness proceeding. The amended section erroneously made reference to Part 202. The correct reference is Part 203, which contains the

Board's new rules concerning that Agreement.

PART 204—[AMEMDED]

Section 204.7(r) should read as follows:

§ 204.7 Commuter carriers serving an eligible point but not providing essential air services or applying for certificate authority.

* * * * *

(r) A signed counterpart of CAB Agreement 18900 (CAB Form 263 or CAB Form 298–A (Rev.)), as required by Part 203 of this chapter. Those forms can be obtained from the Publications Services Division, Civil Aeronautics Board, 1825 Connecticut, Ave., N.W., Washington, D.C. 20428.

Dated: June 6, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-15464 Filed 6-8-83; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-3109]

Allied Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement requires Allied Corporation (Allied), a Morristown, N.J. producer and seller of three high-purity acids, among other things, to divest Hi-Pure Chemicals, Inc. (Hi-Pure) within 15 months from the effective date of the order. Hi-Pure, acquired from Fisher Scientific Company (Fisher), has to be divested absolutely and in good faith as a visable business concern to a Commission-approved purchaser. Further, Allied is required to grant Hi-Pure's acquirer a ten-year royalty-free nonexclusive license to all patents owned or applied for by Fisher which are used by Hi-Pure in the manufacturing or packaging of any of the three high-purity acids. Additionally, the company is barred for a period of ten years from acquiring any business entity engaged in the manufacturing or packaging of high-purity acids, without prior Commission approval.

DATE: Complaint and order issued May 17, 1983.*

FOR FURTHER INFORMATION CONTACT: FTC/CS–1, Charles Corddry, Washington, D.C. 20580. (202) 724–1269.

SUPPLEMENTARY INFORMATION: On Thursday, Dec. 9, 1982, there was published in the **Federal Register**, 47 FR 55398, a proposed consent agreement with analysis In the Matter of Allied Corporation, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Acquiring Corporate Stock or Assets: § 13.5 Acquiring corporate stock or assets; 13.5–20 Federal Trade Commission Act. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–43 Grant license(s).

List of Subjects in 16 CFR Part 13

High-purity acids.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended (15 U.S.C. 45, 18))

Emily H. Rock,

Secretary.

[FR Doc. 83-15462 Filed 6-8-83; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket No. C-2836]

E. & J. Gallo Winery; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying Order.

SUMMARY: This order reopens the proceeding and vacates in its entirety the order issued on Aug. 26, 1976 (October 26, 1976; 41 FR 46847). The order, which was due to expire by its terms on Aug. 26, 1986, prohibited respondent from engaging in exclusionary marketing practices.

* Copies of the Complaint and the Decision and Order filed with the original document.

DATE: Consent Order issued August 26, 1976. Modifying Order issued May 18, 1983.

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

SUPPLEMENTARY INFORMATION: In the Matter of E. & J. Gallo Winery, a corporation. Codification appearing at 41 FR 46847 is deleted.

List of Subjects in 16 CFR Part 13

Trade practices, Wine.

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

The Order Reopening and Setting Aside Order Issued on August 26, 1976 is as follows:

Before Federal Trade Commission, Commissioners: James C. Miller III, Chairman, David A. Clanton, Michael Pertschuk, Patricia P. Bailey, George W. Douglas. In the matter of E. & J. GALLO WINERY, a corporation, Docket No. C–2836. Order Reopening and Setting Aside Order

Issued on August 26, 1976.

On September 23, 1982, respondent E. & J. Gallo Winery ("Gallo") filed a Petition requesting that the Commission reopen the proceeding in Docket No. C–2836 and set aside the Order. Absent Commission action, the order would expire by its terms on August 26, 1986. The Petition was placed on the public record pursuant to § 2.51 of the Commission's Rules of Practice, 16 CFR 2.51. Four timely comments were received requesting that the Commission deny Gallo's Petition. Thereafter, in response to requests of various parties, the Commission allowed further opportunity for comment upon all matters, including information released only after the first comment period had closed. Five comments have been received in the latest comment period which expired on April 29, 1983. Although Rule 2.51 and Section 5(b) of the Federal Trade Commission Act, 15 U.S.C. 45(b), require that the Commission decide petitions to reopen within 120 days of filing Gallo has voluntarily waived this deadline.

The complaint and Consent Order in this matter were issued in 1976. They were based on the belief that Gallo had a dominant position in the sale and distribution of wine in the United States and had used its market power to lessen or restrain competition in violation of Section 5 of the Federal Trade Commission Act. After the complaint and Consent Order in this matter were issued, the Commission issued decisions

in *Coca-Cola Bottling Co.*, 93 F.T.C. 110 (1979), and *Heublein, Inc.*, 96 F.T.C. 385 (1980), concerning the domestic wine market. The records in these cases predated the factual information which gave rise to the complaint in Gallo.

The complaint and resulting consent order against Gallo reflected the Commission's concern that the domestic wine market in the mid-1970's was sufficiently concentrated to warrant close scrutiny, particularly since Gallo was then, as now, the market leader. Morever, the Commission was concerned that Gallo may have used its dominant market position to establish and maintain exclusive dealing practices with its distributors. The Commission also believed, as evidenced by the allegations in the complaint, that: wine sales were either declining or at least stabilizing; there were no new entrants at the manufacturing level; Gallo's market share was increasing while concentration of domestic wine supply was rising; and entry barriers were substantial, in part, because of the perceived difficulty of obtaining access to distribution at the wholesale level.

In its Petition, Gallo argues that the structure of the wine market has changed, with concentration declining, demand increasing, significant new entry and low entry barriers. (Petition at 9–17). Gallo also asserts that the Commission's decision in *Coca-Cola* undercuts the rationale of the consent, especially with respect to whether distribution barriers are high at the wholesale level. (Petition at 17–19). In addition, Gallo claims that the consensual vertical practices prohibited by the Order are now analyzed under a rule of reason by the courts and the Commission and are almost always found to be procompetitive or neutral. *See, e.g., Continental T.V. Inc.* v. *GTE Sylvania, Inc.*, 433 U.S. 36 (1977); *In re Beltone Electronic Corp.*, 100 F.T.C. 68 (1982). Gallo contends that the Order hinders it from developing effective distribution programs that will promote interbrand competition. (Petition at 20–21).

The principal thrust of the comments filed in opposition to the Petition is that Gallo will engage in exclusive dealing to the detriment of competition if the Order is vacated in its entirety. (*See, e.g.*, November 5, 1982 Comment of Albert Kramer, Esquire, Cohn and Marks, on behalf of anonymous distributor; November 5, 1982 and January 6, 1983 Comment of Howry & Simon on behalf of *Heublein;* November 5, 1982 Comment of Michael J. Keady, Esquire, on behalf of an unnamed winery. *See also, e.g.*, April 28, 1983 Comments of Wine and Spirits Wholesalers of America, Inc.; April 29, 1983 Additional Comments of the Wine Spectrum.) These commenters contend that Gallo has the market power to impose exclusive dealing on distributors and that such action would raise entry barriers by restricting supplier access to wholesale distributors.

The Commission's decisions in *Coca-Cola* and *Heublein* paint a somewhat different picture of the wine market than is implicit in the Gallo complaint and consent order. Rather than describing a market with stable or declining demand and increasing concentration, these decisions reveal that the market was experiencing rapid growth during the periods in question. In addition, concentration was at moderate levels and increasing only slightly, if at all. Of even greater import, the Commission in *Heublein* noted that considerable entry had occurred and a large number of potential entrants existed who were capable of entering or expanding into the wine business. 96 F.T.C. at 590–91. While not specifically addressing the extent of entry barriers, the Commission's analysis indicates that potential entrants, particularly those in the spirits and beverage business, face no major obstacles to entering the wine market. In discussing the issue of supplier leverage vis-a-vis distributors, the Commission concluded that no significant potential for leverage existed—distributors appeared capable of resisting supplier pressure aimed at forcing dealers to carry a particular brand or line of products. 96 F.T.C. at 599. To be sure, the decision in *Heublein* did not specifically address the issue of exclusive dealing, nor did it suggest that all non-price vertical restraints in the wine market are legal, but it clearly casts doubt on the continued validity of the market assumptions that underlie the Gallo Order.

Apart from evidence presented concerning the competitive state of the wine market, the Petition also makes a strong case for eliminating many of the Order's prohibitions. The Order strictly limits the financial information Gallo can obtain from its distributors as well as any financial assistance that it may seek to provide to wholesalers. In addition, the Order places undefined limits on the extent to which Gallo may restrict the extra-territorial sales of its distributors. Finally, the Order prohibits any kind to tying or requirements arrangement and limits Gallo's ability to influence distributor inventory practices. These restrictions go far beyond concerns about exclusive dealing and the financial limitations, in particular, are highly regulatory in nature. (September 16, 1982 letter from Professor Lawrence A. Sullivan to Jack Owens, Vice President and General Counsel for Gallo.) The information submitted indicates that other wine suppliers use a variety of devices, including brand dedication requirements, to induce distributors to provide more effective promotional services. Although Gallo is permitted under Section II(2)(3) of the Order to terminate dealers for cause, the broad scope of the Order's prohibitions appears to hinder unnecessarily Gallo's ability to utilize many of the marketing devices that are freely employed by its competitors. The fact that some competitors utilize a practice does not, of course, make that practice lawful for all firms, irrespective of their market power. But the conditions in the wine market make it unlikely that competitive injury would result if Gallo were allowed greater flexibility in devising effective distribution programs. Thus, the Commission finds no reason to continue these provisions of the Order.

A closer question is raised by Paragraph I(3)(2) of the consent order, which prohibits exclusive dealing, and is the principal focus of the objecting commenters' concerns. After careful consideration of all comments submitted, the Commission has concluded that this portion of the Order, as well, should be set aside. We believe that the factual considerations identified by Gallo in its petition, and by the Commission in the *Coca Cola* and *Heublein* decisions, indicate that Paragraph I(3)(2) is not necessary or reasonably related to the prevention of competitive harm, and thus can only operate to chill procompetitive conduct by Gallo (*e.g.*, brand dedication efforts) that is open to its competitors. A blanket prohibition upon exclusive dealing is not necessary under all the facts presented, because Gallo's widespread resort to exclusive dealing arrangements would likely be thwarted by the competitive structure of the wine industry, while such resort to exclusive dealing as Gallo might attempt is unlikely to foreclose competitors from needed distributional outlets.

In reaching our conclusion, we do not suggest that use of exclusive distribution arrangements would be lawful in this market under every conceivable market scenario. That would remain to be determined on a case by case basis under the rule of reason. We conclude simply that under all the particular circumstances of this case the likelihood of competitive harm is sufficiently remote that it is in the public interest to

vacate the blanket prohibition on exclusive dealing contained in the order.

Therefore, it is ordered that the order of August 26, 1976 in this matter be, and it hereby is, set aside.

By direction of the Commission. Commissioner Bailey dissenting. Commissioner Pertschuk did not participate.

Issued: May 18, 1983.

Emily H. Rock,

Secretary.

Dissenting Statement of Commissioner Patricia P. Bailey

E. & J. Gallo Winery

May 19, 1983.

I oppose the Commission's decision to grant in full Gallo's petition to reopen and to vacate a 1976 consent order because of my concern about potential anticompetitive exclusive dealing in the wine industry. I support much of the relief requested by Gallo, except for that order provision barring efforts by Gallo to condition continued distribution of its wines on the exclusion of competing brands. I do believe that some relaxation of even this order provision is justified, in order to permit reasonable and non-discriminatory minimal performance standards on the part of wholesalers of Gallo products. These might include brand dedication efforts, such as some kind of volume sales requirements, forms of promotion and store display, inventory level standards, and assurances of dealer financial stability.

I am concerned by the public record comments received from participants in the wine industry who object to our vacating the exclusive dealing aspect of the Gallo petition. They have argued that vacating the entire order is unjustified because even the existing proscriptions permit Gallo to impose legitimate reasonable brand dedication requirements on wholesalers. They believe that exclusive dealing is potentially a genuine problem because of Gallo's role as the wine industry's "dominant" firm. They have argued that Gallo's inherent market power stems not just from its national market share (in excess of 25%), but from its market share edge over all other competitors. Gallo's market share in some geographic areas may even exceed its position nationwide. Gallo is larger than its next several rivals combined, has maintained this share by capturing more market growth than have its competitors, and throughout has remained the firm with the most desirable "full-line" offering of wine products. The thrust of all these arguments is that Gallo may have the ability to force wholesalers in at least some major markets to decide between carrying Gallo products, which may account for a fourth of sales or more, and the products of other major competitors. Gallo apparently engages even now in exclusive dealing in eleven major markets through wholesalers controlled by Gallo or Gallo executives.

To counter these concerns, the argument is made that barriers to entry into wine wholesaling are so low that any Gallo efforts at exclusive dealing will only cause new wholesaling outlets to appear and carry the lines ousted from wholesalers electing Gallo-only distribution. While it is true that there are few technical obstacles to entry into wine wholesaling, it also appears to be the case that this business is characterized by high volume/low margin sales, with only a half-dozen or fewer incumbent wholesalers serving most urban markets. Most markets, being saturated, may be unattractive to new distributors of the size needed to ensure profitability.

Finally, Gallo has argued that the order places it at a competitive disadvantage because the order inhibits its distributional efficiency. Given Gallo's steady and longterm role as the largest and most successful of the nation's wine distributors, and its success in exploiting market growth so as to retain its overall market share, I do not see how Gallo has demonstrated that the Commission's order has hampered the success of its marketing practices.

The Commission has also taken notice of its decisions in the *Heublein* and *Coca-Cola of New York* Section 7 wine merger matters as creating a "special circumstance" justifying application of the facts of those cases to the Gallo petition. Those merger cases did not focus on exclusive dealing, or the acts, practices and market position of the Gallo wine firm, or even, in detail, the subject of wine wholesale distribution. They do not compel the granting of the Gallo petition, particularly with regard to any specific Gallo decision that might be made to require wholesalers to exclude competing brands in Gallo's favor.

Respondent bears the burden of proof that altering any part of an FTC order is justified. With respect to exclusive dealing, I believe Gallo has failed to meet this burden, even though the Commission retains the right to sue Gallo in the future if any of its actions amount to violations of the antitrust laws under a rule of reason analysis. The course of action that I proposed as a substitute for the Commission's decision would have permitted Gallo all the relief it seeks, except with respect to a single course of action, which Gallo neither proves it needs nor states that it intends, yet which was a vital part of the original FTC settlement that respondent agreed to in 1976.

My fear is that the vacation of the Commission's order encourages exclusive dealing by Gallo in at least some large and important markets, and that such a signal in the marketplace is an ominous portent for product distribution in other industries.[1]

[FR Doc. 83-15459 Filed 6-8-83; 8:45 am]

BILLING CODE 6750-01-M

[1] See, for instance, a discussion of efforts to establish exclusive distributorship in the beer industry, *National Journal*, April 2, 1983, p. 1.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-83-13]

Special Local Regulations; LSCORA Downriver Offshore Classic

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the LSCORA Downriver Offshore Classic. This event will be held on July 30, 1983 from 10:00 AM (EDT) until 2:00 PM with a rain date of July 31, 1983. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on July 30, 1983 and terminate on July 31, 1983.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553(b)(3)(B). This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Bruce Graham, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Lake St. Clair Offshore Racing Association's 3rd Annual Southshore Classic will be conducted on the Detroit River on July 30, 1983. This event will have an estimated 20–30 high performance ocean racers which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (Officer-in-Charge, U.S. Coast Guard Station, Belle Isle, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0913 to read as follows:

§ 100.35–0913 Special local regulations.

(a) *Regulated Area.* That portion of the Detroit River in U.S. waters north of a line from Hickory Island to Celeron Island to Horse Island up to a line extending from Pt. Hennepin to Grassy Island to Mud Island, then along the north side of the Ecorse Channel to Mud Island Junction Lighted Buoy (LLNR 974) thence due west to shore. Also, the Fighting Island Channel from the Mud Island Junction Lighted Buoy (LLNR 974) south to where the course leaves the channel at approximately 44 degrees 11.2 minutes North, thence on a bearing of 206 degrees true and 200 yards wide to a point at 42 degrees 10.65 minutes North, thence on a bearing of 160 degrees true to the International Boundary. The Livingstone Channel from 42 degrees 08 minutes North to 42 degrees 06.5 minutes North. Also, from the International Boundary at 42 degrees 04 minutes North northwest on a bearing of 312 degrees true 200 yards wide to the previously mentioned line from Hickory Island to Celeron Island to Horse Island.

(b) *Special Local Regulations.* (1) The above area will be closed to recreational vessel navigation or anchorage from 10:00 AM (EDT) until 2:00 PM, or until the completion of the race.

(2) No vessel shall anchor in or around the main shipping channel of the Detroit River, Trenton Channel, nor shall any spectator craft interfere with the free passage of commercial traffic in the main fairways of the Detroit River.

(3) Recreational vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(5) This section is effective from 10:00 AM (EDT) on 30 July 1983 until 2:00 PM on 31 July 1983.

(46 U.S.C 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35.)

Dated May 24, 1983.

Henry H. Bell,

U.S. Coast Guard.

[FR Doc. 83-15493 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 09-83-08]

Special Local Regulations; International Freedom Festival Air and Water Show

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the International Freedom Festival Air and Water Show. This event will be held on the Detroit River on July 2 and 3, 1983. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective on July 2, 1983 and terminate on July 3, 1983.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522–4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553 (b)(3)(B). This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information:

The drafters of this regulation are MSTC Bruce Graham, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations.

The International Freedom Festival Air and Water Show will be conducted on the Detroit River on July 2 and 3, 1983. This event wil have a variety of water activities and air events which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Detroit, MI).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

PART 100—[AMENDED]

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35–0908 to read as follows:

§ 100.35–0908 Special local regulations.

(a) *Regulated Area.* That portion of the Detroit River which lies between 083 degrees 01.9 minutes West, and 083 degrees 03 minutes West, from the international boundary to the U.S. shoreline.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage by vessels less than 65 feet in length from 5:30 P.M. (local time) until 8:30 P.M. on 2 and 3 July 1983.

(2) No vessel shall anchor in or around the main shipping channel of the Detroit River within U.S. waters nor shall any spectator craft impair the free passage of any commercial vessel in the main fairways of the Detroit River.

(3) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or vessels of the patrol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35)

Dated: May 24, 1983.

Henry M. Bell,

U.S. Coast Guard.

[FR Doc. 83-15494 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-83-12]

Special Local Regulations: B&T Icebreaker Regatta

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the B&T Icebreaker Regatta. This event will be held on the Niagara River on June 25 and 26, 1983. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on June 25, 1983 and terminate on June 26, 1983.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553 (b)(3)(B). This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Bruce Graham, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The B&T Icebreaker Regatta will be conducted on the Niagara River, Tonawanda Channel, on June 25 and 26, 1983. This event will have an estimated 50 hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Buffalo, NY).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0912 to read as follows:

§ 100.35-0912 Special local regulations.

(a) *Regulated Area.* That portion of the east branch of the Niagara River, Tonawanda Channel, from the overhead cable, 1300 yards northeast of the South Grand Island Bridge, to an east-west line through Tonawanda Channel Buoy 35 (LLP 29).

(b) *Special Local Regulations.* (1) The above area will be restricted to vessel navigation or anchorage from 1200 (local time) until 1900 on June 25 and 26, 1983.

(2) The patrol of a portion of Niagara River will be under the direction of a designated Coast Guard Patrol Commander who is empowered to forbid and control movement of vessels in the area before, during, and after the events for such time as he finds it necessary for the safe and orderly conduct of the events.

(3) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for faiure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35.)

Dated: May 24, 1983.

Henry H. Bell,

U.S. Coast Guard.

[FR Doc. 83-15495 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 09-83-10]

Special Local Regulations; Duluth Harbor Fireworks

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for Duluth Harbor Fireworks. This event will be held on July 4, 1983 at Duluth Harbor. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: These regulations become effective and terminate on July 4, 1983.

FOR FURTHER INFORMATION CONTACT: MSTC Bruce Graham, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: A notice of proposed rule making has not been published for these regulations. Following normal rule making procedures is unnecessary as per 5 U.S.C. 553(b)(3)(B). This has been an annual event for many years and no negative comments have been received concerning the holding of the event in the past.

Drafting Information

The drafters of this regulation are MSTC Bruce Graham, project officer, Office of Search and Rescue and LCDR A. R. Butler, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Duluth fireworks display will be conducted in Duluth Harbor on July 4, 1983. This event will have falling ash and debris and an unusually large concentration of spectator boats which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Station, Duluth, MN).

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding a temporary § 100.35-0910 to read as follows:

§ 100.35-0910 Special local regulations.

(a) *Regulated Area.* That portion of Duluth Harbor Basin Northern Section bounded on the south by a line drawn on a bearing of 087 degrees true from the Cargill Pier through Duluth Basin Lighted Buoy 5 (LLNR 1813) to the opposite shore and on the north by the Duluth Aerial Bridge.

(b) *Special Local Regulations.* (1) The above portion of Duluth Harbor, Lake Superior will be closed to commercial vessel navigation or anchorage from 7:30 p.m. (local time) until 11:00 p.m. on 4 July 1983.

(2) The following portions of Duluth Harbor Basin Northern Section will be closed to all traffic from 7:30 p.m. until 11:00 p.m. on 4 July 1983.

(i) Within 300 yards of position 46 degrees 46 minutes 43 seconds North and 092 degrees 06 minutes 03 seconds West.

(3) Vessels desiring to transit the restricted area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum and in a manner which will not endanger participants in the event or any other craft. These rules shall not apply to participants in the event or

vessels of the patrol, in the performance of their assigned duties.

(4) A succession of sharp, short signals by whistle or horn from vessels patrolling the areas under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels signaled shall stop and shall comply with the orders of the Patrol Vessel; failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46(b); and 33 CFR 100.35.)

Dated: May 24, 1983.

Henry H. Bell,

U.S. Coast Guard.

[FR Doc. 83-15496 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD1 83-01]

Marine Parade; the Great Kennebec River Whatever Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is restricting the navigation of vessels not involved as participants or safety patrols on the Kennebec River during the 1983 Great Kennebec River Whatever Race on July 3, 1983. The purpose of this regulation is to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATE: July 3, 1983, 6:00 A.M. to 6:00 P.M.

FOR FURTHER INFORMATION CONTACT: LT M. J. Chaplain, USCG, Chief, Boating Standards/Affairs Branch (bc), Room 1102, First Coast Guard District, 150 Causeway Street, Boston, MA 02114, (617) 223-3607.

SUPPLEMENTARY INFORMATION: On March 17, 1983, the Coast Guard published a notice of proposed rule making in the **Federal Register** for this regulation (48 FR 11300). Additionally, Public Notification of the Notice of Proposed Rulemaking was forwarded to newspapers in Sagadahoc and Kennebec Counties, Maine, for publication. Interested persons were requested to submit comments. No comments were received.

Drafting Information

The drafters of this regulation are LT M. J. Chaplain, USCG, project officer, First Coast Guard District Boating Standards/Affairs Branch and LCDR S. C. Ploszaj, project attorney, First Coast Guard District Legal Office.

Discussion of Comments

No comments have been received. Accordingly, this final rule is published with no changes to the proposed regulation having been made.

Economic Assessment and Certification

This regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the restriction to navigation is for only a short period of time, and only affects a small portion of the river. Additionally, since this regulation supports an area promotional activity sponsored by the Kennebec Valley Chamber of Commerce, an increase in area business due to this marine parade is anticipated. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulation and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

PART 100—[AMENDED]

Final Regulation

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended by adding § 100.35-1-01 to read as follows:

§ 100.35-1-01 The Great Kennebec River Whatever Race, Regatta.

(a) Regulated Area: Kennebec River, bank to bank, between the State of Maine Route 126 Highway Bridge connecting Randolph, Maine, and Gardner, Maine, and the U.S. Route 201-202 Highway Bridge at Augusta, Maine.

(b) Effective Period: 6:00 am, July 3, 1983 until 6:00 pm, July 3, 1983 or completion of the Great Kennebec River Whatever Race, whichever is earlier.

(c) Special Local Regulations: Vessels not participating in, or operating as a safety patrol in support of, the Great Kennebec River Whatever Race shall:

(1) Observe a maximum speed limit of five (5) mph or "No Wake Speed", whichever is less.

(2) Be alert for disabled craft and persons falling overboard.

(3) Exercise extreme caution when operating in the area of this marine parade.

(46 U.S.C. 454; 49 U.S.C. 1655(b); 49 CFR 1.46; and 33 CFR 100.35)

Dated: May 26, 1983.

C. E. Robbins,

RADM, USCG, First Coast Guard District.

[FR Doc. 83-15499 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD 08-83-01]

Drawbridge Operation Regulations; Bayou Chico, Florida

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Florida Department of Transportation and the Pensacola Urbanized Area Metropolitan Planning Organization, the Coast Guard is changing the regulation governing the State Highway 292 (Barrancas Avenue) bascule span bridge across Bayou Chico, mile 0.3, Pensacola, Escambia County, Florida. The bridge provides a vertical clearance of 14.5 feet at the center of the closed span during mean low water and now opens on signal at any time for any vessel.

The change will require that the draw continue to open on signal from all vessels but will not need to open for pleasure vessels Monday through Friday excluding holidays, from 6:00 A.M. to 8:00 A.M., 11:00 A.M. to 1:00 P.M., and 3:00 P.M. to 6:00 P.M. Exceptions to this restriction for pleasure vessels will be for the draw to open (a) on the hour and half-hour if these vessels are waiting to pass (b) when at least five of that type are waiting to pass or (c) in case of an emergency or when they are seeking refuge from severe storms. Moreover, pleasure vessels will be able to pass through the draw while it is opened for non-pleasure vessels. This action is being taken to relieve overland traffic congestion during the peak morning, noon and afternoon vehicular traffic periods, while still providing for the reasonable needs of pleasure vessels.

EFFECTIVE DATE: This amendment is effective on July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph Irico, Chief, Bridge Administration Branch, Eighth Coast Guard District, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130 — (504) 589-2965.

SUPPLEMENTARY INFORMATION: On 28 February 1983, the Coast Guard

published a proposed rule (48 FR 8302) concerning this amendment. The Eighth Coast Guard District also published this proposal as a Public Notice dated 28 February 1983. Interested persons were given until 14 April 1983 to submit comments.

Drafting Information

The principal persons involved in drafting this rule are: Joseph Irico, Project Manager, District Operations Division, and Steve Crawford, General Attorney, District Legal Office.

Discussion of Comments

Twenty-nine comments were received in support of the change. Nineteen were from individuals, six from local civic or employee groups with extensive membership (one as high as 30,000 members), two from local governing bodies, and one each from a federal legislator and federal agency.

No comments were received from owners whose vessels or marinas are located downstream of the bridge. However, five comments were received in opposition to the change from four owners of individual pleasure vessels and one owner of a marina, whose vessels and marina are located upstream of the bridge. There are about 150 pleasure vessels berthed in four marinas above the bridge.

The five in opposition addressed five areas of concern in varying degree: (1) Vehicular congestion caused more by commercial than pleasure vessels (2) congestion and safety of the waterway (3) side effect on vehicular operations (4) loss of business (5) alternative vehicular routing. These areas of concern are discussed below.

During the peak vehicular traffic periods, Monday through Firday, 6:00 A.M. to 8:00 A.M., 11:00 A.M. to 1:00 P.M. and 3:00 P.M. to 6:00 P.M., the daily average number of bridge openings for pleasure vessels has been running at 0.16, 1.34 and 2.86, respectively. Except for the morning peak period, those openings exceed those for commercial vessels by a comfortable margin. Thus, limiting the openings for pleasure vessels during the peak traffic periods should have a salutary effect on traffic flow over the bridge. The daily average number of vehicles crossing the bridge has been running at 2721, 2498 and 4753 during the three peak traffic periods, respectively.

It is possible for waiting vessels to cause waterway congestion and safety hazards, although there is no reason to believe that this will occur in the instant case. There should be little waiting traffic, during the closure periods, given the passage through the bridge of pleasure vessels on the scheduled hour and half-hour openings and incidental to the openings for non-pleasure vessels, and with the tendency of mariners to time their arrivals to coincide with the scheduled openings based on our experience with other closures. Moreover, there is room for waiting vessels on both sides of the bridge—near the right descending bank upstream and at or near the confluence of Bayou Chico with Pensacola Bay downstream.

Traffic through the bridge has been averaging just over one vessel per opening. This is not expected to necessarily increase during the closure periods for pleasure vessels, considering the scheduled openings at half-hour intervals for these vessels and their use of openings made for commercial vessels. Nor is it expected that the situation would ever materialize, except in unique cases, where at least five sailboats would accumulate for passage within a half-hour interval. However, should the occasion arise where the programmed bridge opening is longer than with a random opening to pass waiting vessels, with a corresponding increased delay to vehicular operations, the motoring public has expressed a willingness to accept this side effect on those occasions in exchange for the programmed bridge operation.

The closure restrictions are not considered significant enough to cause pleasure boat owners to discontinue mooring or seeking service upstream of the bridge. There should be little inconvenience to pleasure boat owners in transiting the bridge site. No loss of business is anticipated.

There are two crossings of Bayou Chico, one on Barrancas Avenue where the subject bridge is located and the other on Navy Boulevard located upstream. These routes are not so much alternatives to each other as they are complementary. Both carry an average daily traffic of about 21,000 vehicles, with the Barrancas Avenue route being 3.5 miles long and the Navy Boulevard route being 4.17 miles long. Considering these factors, there is no incentive for motorists presently using the Barrancas Avenue route to shift to Navy Boulevard as an alternative.

To facilitate vessel movement and to minimize the opening time to pass waiting traffic, a sound signal will be given at least five minutes in advance of a scheduled opening. This notice will allow waiting vessels to make preparations to be underway as soon as the bridge is opened.

Economic Assessment and Certification

This final regulation has been reviewed under provisions of Executive Order 12291 and has been determined not to be a major rule. It is considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedure for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 22 May 1980). An economic evaluation has not been conducted since the impact is expected to be minimal for the reasons discussed above. In accordance with section 605(d) of the Regulatory Flexibility Act (94 Stat. 1164), it is also certified that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

In consideration of the foregoing, Part 117 of Title 33 of the Code of Federal Regulations is amended by revising § 117.245(i)(11) to read as follows:

§ 117.245 Bayou Chico, mile 0.3, Pensacola, Florida.

* * * * *

(i) * * *

(ii) The draw shall open on signal but need not open for pleasure vessels from 6:00 A.M. to 8:00 A.M., 11:00 A.M. to 1:00 P.M. and 3:00 P.M. to 6:00 P.M., Monday through Friday excluding holidays, except (i) on the hour and half-hour (ii) when at least five such vessels are waiting to pass or (iii) in emergencies or severe storms. The draw when otherwise opened for other vessels may be used by pleasure vessels.

(33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3))

Dated: May 27, 1983.

J. M. Fournier,

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

[FR Doc. 83-15475 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 262

Law Enforcement Support Activity

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This rule incorporates existing Forest Service procedure and direction on the purchase of information and evidence in investigating violations of laws and regulations related to administration of the Forest Service.

Previously, Forest Service officials have had to refer to the text of Comptroller General Decision No. B–172259, dated April 29, 1971, for this direction. Codification of this direction with related rules on law enforcement support activities will provide an easy-to-locate reference for both Forest Service personnel and National Forest users. In addition, the rule retitles Part 262 and reorganizes and recodifies existing material in Part 262.

EFFECTIVE DATE: July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Wayne Wilson, Fiscal and Accounting Management Staff, USDA-Forest Service, P.O. Box 2417, Washington, DC 20013, (703) 235–8094.

SUPPLEMENTARY INFORMATION: Certain acts and behavior of persons using National Forest System lands or other lands under the care, custody, control, or otherwise administered by the Forest Service, are deemed felony and misdemeanor violations as set forth in Title 16, Conservation, and Title 18, Crimes and Criminal Procedures, of the United States Code. Unacceptable behavior may include: Theft and destruction of archaeological resources; destruction of Government property; theft of timber; and setting fire to timber, brush, or grass. When these acts occur, it is generally necessary to conduct an investigation to obtain information and evidence to apprehend and charge those responsible. Investigative procedures can include the purchase of information and evidence when all other investigative means have been exhausted. This procedure has been accepted by Forest Service line and staff personnel as a standard operating procedure to expedite investigations in a cost-effective manner.

The Forest Service has been operating under the Comptroller General Decision, No. B–172259, dated April 29, 1971, as the basis of using appropriated funds for the purchase of information and evidence which furthers the investigation of violations of laws and regulations relating to the administration of the National Forests. However, Forest Service managers have difficulty in locating and referencing this decision for the purpose of informing other Forest Service personnel and National Forest users of operating procedures and have recommended that this direction be codified with related material in 36 CFR Part 262.

The final rule incorporates in Part 262 the direction of the Comptroller General's decision, sets forth the amounts that may be paid for information and evidence, and specifies the officials who may authorize payments. This rule does not contain penalties for noncompliance. The rule will allow designated Forest Service personnel to purchase information and evidence within monetary constraints with oversight by certain line officers. Provisions are incorporated in the rule to monitor expenditures and to account for all information and evidence purchased.

The inclusion of regulations prescribing payment for information and evidence necessitates reorganizing and recodifying existing material in 36 CFR Part 262, Rewards and Impoundments. However, changes are not made in the existing rules. The title of Part 262 also is being changed to more appropriately reflect the material now contained in this Part.

In accordance with exceptions to rulemaking procedures in 5 U.S.C. 553 and Department of Agriculture policy (36 FR 13804), it has been determined that advance notice and request for comments are unnecessary. This rule incorporates a long-standing operating procedure authorized by a Comptroller General decision and is an interpretative rule of existing policy and law.

This action has been reviewed pursuant to Executive Order 12291, and it has been determined that this action is an administrative and procedural matter which is exempt from the requirements of the Executive order. In addition, the Assistant Secretary of Agriculture for Natural Resources and the Environment has determined that this action will not have a significant economic impact on small entities and does not directly affect the private sector. The rule will have no effect 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.

List of Subjects in 36 CFR Part 262

Law enforcement, National forests, Penalties, Seizures and forfeitures.

For the reasons set forth in the preamble, Part 262 of Chapter II of Title 36, Code of Federal Regulations is amended as follows:

1. The title and table of contents of 36 CFR Part 262 are revised to read as follows:

PART 262—LAW ENFORCEMENT SUPPORT ACTIVITIES

Subpart A—Rewards and Payments

Subpart B—Impoundments and Removals

Authority: 30 Stat. 35, as amended (16 U.S.C. 551); sec. 1, 33 Stat. 628 (16 U.S.C. 472); 50 Stat. 526 as amended (7 U.S.C. 1011(f)); 58 Stat. 736 (16 U.S.C. 559(a)), unless otherwise noted.

2. 36 CFR 262.2, 262.3, 262.4, and 262.5 are redesignated as 36 CFR 262.10, 262.11, 262.12, and 262.13 respectively.

3 New §§ 262.2, 262.3, 262.4, and 262.5, are added to read as follows:

Subpart A—Rewards and Payments

* * * * *

§ 262.2 Purchase of information in furtherance of investigations.

(a) *Approval of Payments.* Payments for purchase of information to further investigations of felonies and misdemeanors related to Forest Service administration are authorized for each transaction as follows:

(1) Criminal investigators in the GS–1811 series and such other personnel as the Chief of the Forest Service or a Regional Forester may designate, may, without prior approval, pay up to but not exceeding $200 for the purchase of information under this section.

(2) For payments of amounts over $200 but not exceeding $500, advance approval of the Forest Supervisor is required.

(3) For payments of amounts over $500 but not exceeding $2,500, advance approval of the Regional Forester is required.

(4) For payments of amounts over $2,500, advance approval of the Chief of the Forest Service is required.

(5) For purchase of information to further investigations within a Regional Office, Forest and Range Experiment Station, State and Private Forestry Area Office, or the National Office, payments in excess of $200 must be approved in advance by the Chief of the Forest Service or by such other personnel as the Chief may designate.

(b) *Limitations.* Purchase of information under this section is restricted to furthering investigations of felony and misdemeanor violations. Payment for information to further investigations of petty offenses as

classified in Title 18, U.S. Code, Section 1, are not authorized under this section.

§ 262.3 Purchase of evidence in furtherance of investigations.

(a) *Approval of Payments.* Payments for purchase of evidence to further investigations of felonies and misdemeanors related to Forest Service administration are authorized for each transaction as follows:

(1) Criminal investigators in the GS–1811 series and such other personnel as the Chief of the Forest Service or a Regional Forester may designate, may, without prior approval, pay up to but not exceeding $400 for the purchase of evidence under this section.

(2) For payments of amounts over $400 but not exceeding $1,000, advance approval of the Forest Supervisor is required.

(3) For payments of amounts over $1,000 but not exceeding $5,000, advance approval of the Regional Forester is required.

(4) For payments of amounts over $5,000, advance approval of the Chief of the Forest Service is required.

(5) For purchase of information to further investigations within a Regional Office, Forest and Range Experiment Station, State and Private Forestry Area Office, or the National Office, payments in excess of $400 must be approved in advance by the Chief of the Forest Service or by such other personnel as the Chief may designate.

(b) *Limitations.* Purchase of evidence under this section is restricted to furthering investigations of felony and misdemeanor violations. Payment for evidence to further investigations of petty offenses as classified in Title 18, U.S. Code, Section 1, are not authorized under this section.

§ 262.4 Audit of expenditures.

The Chief of the Forest Service shall, through appropriate directives to agency personnel, assure the accountability of all funds spent in carrying out the provisions of this subpart and safeguard the identity of those wishing to remain anonymous.

§ 262.5 Disposal of purchased property.

All evidence purchased under the authority of this subpart shall be maintained in accordance with all laws, regulations, and rules applicable to the care, custody, and control of evidence. Evidence purchased under this subpart shall be disposed of in accordance with laws, regulation, rules, and Forest Service policy applicable to the disposal of evidence.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

June 3, 1983.

[FR Doc. 83-15487 Filed 6-8-83; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

41 CFR Part 3-3

Selection of Offerors for Negotiation and Award; Correction

AGENCY: Department of Health and Human Services.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule on the selection of offerors for negotiation and award that appeared at page 20904 in the **Federal Register** of Tuesday, May 10, 1983 (48 FR 20904). This action is necessary to correct typographical errors in cross references, a section number, and the text of one sentence.

FOR FURTHER INFORMATION CONTACT: Norman Audi, Division of Procurement Policy, (202) 245–6154.

Dated: June 2, 1983.

Henry G. Kirschenmann, Jr.,

Deputy Assistant Secretary for Procurement, Assistance, and Logistics.

The following corrections are made in FR Doc. 83–12448 appearing on 20904 in the issue of May 10, 1983:

1. On page 20906, under § 3–3.5107–6(a), the cross reference "(see § 3–1.353(f))" is corrected to read "(see § 3–1.353(e))".

2. On page 20907, under § 3–3.5109(a), the cross reference "3–3.807.2" is corrected to read "3–3.807–2".

3. On page 20909, the section number "§ 3–3.5515" is changed to read "§ 3–3.5115".

4. On page 20909, under § 3–3.5515, (corrected to read § 3–3.5115 in 3. above), the second sentence "However, awards should be made for research and development capabilities that exceed those needed for the successful performance of the particular project" is corrected to read "However, awards should not be made for research and development capabilities that exceed those needed for the successful performance of the particular project".

[FR Doc. 83-15428 Filed 6-8-83; 8:45 am]

BILLING CODE 4110-12-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–6531]

Identification and Mapping of Special Flood Hazard Areas; Changes in Special Flood Hazard Areas Under the National Flood Insurance Program

AGENCY: Federal Emergency Management Agency.

ACTION: Interim rule.

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

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

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

ADDRESSES: The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the Community, listed in the fourth column of the table.

Send comments to that address also.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

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

Any request for reconsideration must be based on knowledge of changed

conditions, or new scientific or technical data.

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

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

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

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

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

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

List of Subjects in 44 CFR Part 65

Flood insurance, Flood plains.

State and county	Location	Date and name of newspaper where notice was published	Chief Executive officer of community	Effective date of modified flood insurance rate map	New community No.
Florida: Broward County	(T) Davie	*Hollywood Sun—Tatler*: October 29, 1982; November 5, 1982.	Honorable Scott Cowan, Mayor, Town of Davie, 6591 S. W. 45th Street, Davie, Florida 33314.	Nov. 5, 1982	120035

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 20, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-15442 Filed 6-8-83; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 97

[PR Docket No. 82-726; FCC 83-249]

Elimination of Logging Requirements in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rules (report and order).

SUMMARY: This Report and Order amends the Amateur Radio Service Rules, Part 97, to eliminate requirements that station licensees maintain detailed logs of station operation. It delegates authority to the Engineers-in-Charge of Commission field facilities to require individual station licensees to maintain a station record of third-party traffic. It places the implied operational requirements in the rule section to which they applied. This requirement that amateur radio stations maintain logs is being eliminated because it no longer serves a regulatory function and it will relieve licensees of an unnecessary paperwork burden.

DATE: Effective June 9, 1983.

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

FOR FURTHER INFORMATION CONTACT: James C. McGrath, Private Radio Bureau, Washington, D.C. 20554; (202) 632–4964.

List of Subjects

47 CFR Part 0

Commission organization, Organization and functions (government agencies).

47 CFR Part 97

Radio.

Report and Order; Proceeding Terminated

In the matter of elimination of logging requirements in the Amateur Radio Service; PR Docket No. 82–726.

Adopted: May 26, 1983.

Released: June 6, 1983.

By the Commission: Commissioner Fogarty not participating; Commissioner Sharp absent.

1. On October 21, 1982, the Commission adopted a Notice of Proposed Rule Making in PR Docket 82–726 (47 FR 50726, November 9, 1982). The Commission, on its own initiative, proposed to remove station log requirements from the Amateur Radio Service Rules. The present rules require each amateur radio station to maintain such a log and to include in it a variety of information regarding station activity, operators, facilities and communications.[1] The Notice also proposed to remove the implied operational requirements from the logging rules and place them in the rule sections to which they apply. It was proposed to let individual licensees determine how they wished to document the identity of control operators other than the station licensee. Finally, the Commission proposed to allow licensees to keep those few records that it would still require—that is, certain technical documentation regarding repeater operation, auxiliary operation and operations by remote control—in any form which could be made readily available to the Commission. Comments were invited regarding the desirability of delegating authority to the Engineers-in-Charge (EIC's) of Commission field facilities to require individual station licensees in the future to maintain a log with certain items of information that are currently required.

2. As part of our regulatory review program we examined the necessity and usefulness of these station log requirements. We found no Commission need for a record of routine station activity. The requirements for noting various aspects of routine station

[1] There are over 413,000 amateur radio operators licensed by the FCC.

operation were intended to provide the Commission with a means to verify when the station was in operation and whether communications from the station were of a permissible nature. The Commission has rarely used this information from the log, preferring to rely instead on monitoring data it has collected.

3. Comments were received from over a dozen individuals and organizations representing a cross-section of the amateur radio community. The majority of the comments favored the proposed action. The Northern Virginia FM Association, Inc. (NVFMA) said, "Prior simplification of logging requirements in the Amateur Radio Service has had no apparent harmful effect on either compliance or enforcement of the substantive regulations". NVFMA also said, "The logging of third-party traffic transmitted by the users of the Association's repeaters has created a continuing heavy burden on the licensees and users of the repeaters". Those commenting who were in disagreement with the Commission's position, that keeping a station log no longer served a useful purpose, said that a station log created a record of station operation that was of value to the station licensee. However, licensees are always free to voluntarily keep records of whatever information they find to be of value.

4. The American Radio Relay League (ARRL), while agreeing generally with the Commission's proposals said that the current requirement for a specific notation of international third-party traffic should be retained in the regulations. The ARRL said "(T)he same would insure operator awareness of the international treaty requirements and permit the Commission to establish deviation from international third-party message limitations should such deviation occur." We believe there is no Commission need for station records of routine international third-party traffic. Self-regulation as it exists in the amateur community would eliminate any continued unintentional deviation from international treaty requirements. As to willful violations, we will retain logging requirements on a case-by-case basis through the EIC's.

5. The majority of those commenting on the proposal to delegate authority to the EIC's to require individual licensees to maintain a station log, were in favor of the proposal. They said they favored regulations that serve to enhance the efficient and lawful operations of stations in the Amateur Radio Service. The ARRL said they were supportive of the Commission's desire to investigate matters locally through Commission Field Offices. Accordingly, we will adopt a rule giving EIC's authority to require logs on a case-by-case basis as the conditions warrant.

6. We conclude it is in the public interest to remove the rules requiring stations in the Amateur Radio Service to maintain station logs. As we stated in the NPRM this will result in elimination of most of the record keeping burden placed on amateur radio operators. We estimate a savings to the public of over 300,000 paperwork burden hours annually. In addition, the considerable expense of tape-recording third-party transmissions will be eliminated for those operators who have satisfied the logging requirements in this manner.[1] We are also removing the implied operational requirements from the logging rules and placing them in the rule sections to which they apply. Also, we are allowing the licensees to keep those few records which we still require in any form which can be made readily available to the Commission. In order to provide a record of station operations for enforcement purposes, we are delegating authority to the EIC's to require individual station licensees to maintain a record of station operations.[2]

7. Nothing in this Order shall prevent station licensees from maintaining a station log in the current manner or from including in it any information they desire to keep.

8. The Secretary is hereby directed to forward a copy of this Report and Order to the Office of Management and Budget (Director, Office of Information and Regulatory Affairs) and to the Chief Counsel for Advocacy of the Small Business Administration. The Secretary shall also cause a copy of this Report and Order to be published in the **Federal Register.**

9. The Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) do not apply to this rule making proceeding since this proposal would simply eliminate certain individual record-keeping requirements for amateur radio operators. These proposals are either insignificant in effect or deregulatory. Consequently, there would be no economic impact on small businesses, small organizations or small governmental jurisdictions.

[1] The ARRL estimates a $200.00 equipment cost, for tape-recording third-party transmissions, for most of the estimated 7000-9000 amateur stations in repeater operation.

[2] We are changing the wording in § 97.79(b) from that proposed in the Notice of Proposed Rule Making in this proceeding to conform to the changes in this Section that were made in PR Docket No. 81-823, 47 FR 50702, November 9, 1982.

10. In view of the foregoing, it is further ordered, effective on the date of publication of this Order in the **Federal Register,** Parts 0 and 97 of the Commission's Rules and Regulations, 47 CFR Parts 0 and 97, are amended as set forth in the attached Appendix. This action is taken pursuant to the authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.SC. 154(i) and 303.

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

12. Further information on this matter may be obtained by contacting James D. McGrath, (202) 632-4964, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 0 and 97 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

A.1. Section 0.314 is amended by adding new paragraph (x) as follows:

§ 0.314 Additional authority delegated.

* * * * *

(x) When deemed necessary by the Engineer-in-Charge of a Commission field facility to assure compliance with the Rules, a station licensee shall maintain a record of such operating and maintenance records as may be necessary to resolve conditions of interference or deficient technical operation.

PART 97—AMATEUR RADIO SERVICE

B.1. In § 97.79, paragraph (b) is revised to read as follows:

§ 97.79 Control operator requirements.

* * * * *

(b) Every amateur radio station, when in operation, shall have a control operator. The control operator shall be present at a control point of the station, except when the station is operated under automatic control. (Automatic control is only permitted where specifically authorized by the rules of this part.) The control operator may be the station licensee, if a licensed amateur radio operator, or may be another amateur radio operator with the required class of license and designated by the station licensee. The control operator shall also be responsible,

together with the station licensee, for the proper operation of the station. (For purposes of enforcement of the rules of this part, the FCC will presume that the station licensee is, at all times, the control operator of the station, unless documentation exists to the contrary.)

* * * * *

2. In § 97.85, a new paragraph (g) is added to read as follows:

§ 97.85 Repeater operation.

* * * * *

(g) Each station in repeater operation transmitting with an effective radiated power greater than 100 watts on frequencies between 29.5 and 420 MHz, or 400 watts on frequencies between 420 and 1215 MHz, shall have the following information included in the station records during any period of operation:

(1) The location of the station transmitting antenna marked upon a topographic map having contour intervals and having a scale of 1:250,000 (indexes and ordering information for suitable maps are available from the U.S. Geological Survey, Washington, D.C. 20242, or from the Federal Center, Denver, CO 80255);

(2) The transmitting antenna height above average terrain (see Appendix 5);

(3) The effective radiated power in the horizontal plane for the main lobe of antenna pattern, calculated for the maximum transmitter output power which occurs during operation;

(4) The maximum output power which occurs during operations;

(5) The loss in the transmission line between the transmitter and the antenna (including devices such as duplexers, cavities or circulators), expressed in decibels; and

(6) The relative gain in the horizontal plane of the transmitting antenna.

3. In § 97.88, papragraph (a) is revised, and new paragraphs (f) and (g) are added to read as follows:

§ 97.88 Operation of a station by remote control.

* * * * *

(a) A photocopy of the license for the remotely controlled station shall be posted in a conspicuous place at the station location.

* * * * *

(f) The station records shall include during any period of operation:

(1) The names, addresses, and call signs of all persons authorized by the station licensee to be control operators; and

(2) A functional block diagram of the control link and a technical explanation sufficient to describe its operation.

(g) Each remotely controlled station shall be protected against unauthorized station operation, whether caused by activation of the control link, or otherwise.

4. Section 97.90 is added to read as follows:

§ 97.90 System network diagram required.

When a station has one or more associated stations, that is, stations in repeater or auxiliary operation, a system network diagram (see § 97.3(v)) shall be included in the station records during any period of operation.

5. Section 97.92 is added to read as follows:

§ 97.92 Record of operations.

When deemed necessary by the Engineer-in-Charge (EIC) of a Commission field facility to assure compliance with the rules of this part, a station licensee shall maintain a record of station operations containing such items of information as the EIC may require under Section 0.314(x).

§ 97.99 [Amended]

6. In § 97.99, paragraph (c) is removed.

§ 97.103 Undesignated heading. [Removed]

7. Section 97.103 and the undesignated heading "Logs" which precedes § 97.103 are removed in their entirety.

§ 97.105 [Removed]

8. Section 97.105 is removed.

§ 97.417 [Amended]

9. In § 97.417, papragraph (d) is removed.

[FR Doc. 83-15412 Filed 6-8-83; 8:45 am]
BILLLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-1; FCC 83-155]

Radio Broadcast Services; Amendment of the Commission's Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action, initiated on the Commission's own motion, revises § 73.593 of the Commission's Rules to permit noncommercial educational FM stations to use their subcarrier capacity for remunerative purposes. This will enable these stations to obtain funds that are needed for their support. If a station engages in remunerative use of its subcarrier capacity, it must ensure that such use is not detrimental to the provision of existing or potential radio reading services for the blind or otherwise inconsistent with its public broadcasting responsibilities.

DATE: Effective July 5, 1983.

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

FOR FURTHER INFORMATION CONTACT: Jonathan David, Mass Media Bureau (202) 632-7792.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.593 of the Commission's rules, BC Docket No. 82-1.

Adopted: April 7, 1983.

Released: June 3, 1983.

By the Commission: Commissioner Fogarty absent.

I. Introduction

1. The Commission has before it the *Notice of Proposed Rule Making* in this proceeding (47 FR 2384, published January 15, 1982).[1] In the *Notice* we proposed to amend the provisions of § 73.593 of the Commission's Rules which govern the use of Subsidiary Communications Authorization ("SCA") by noncommercial educational FM stations.[2]

2. Section 73.593 of the Commission's Rules permits noncommercial educational FM stations to conduct subcarrier operations, but it places a limit on the subcarrier service these stations can provide. Unlike commercial FM stations, these stations are not permitted to use their subcarrier capacity for remunerative purposes. Instead, they are limited to noncommercial uses in furtherance of the station's overall educational purpose. In issuing the *Notice*, the Commission questioned whether it was appropriate to maintain these limitations, particularly in light of recent amendments to the Communications Act.[3] Section 399B of the

[1] In addition, we have before us the comments and reply comments submitted in response to the *Notice of Proposed Rule Making* in BC Docket No. 82-536 (47 FR 46118 (1982)) which explores a wide range of subcarrier issues affecting both commercial and noncommercial educational FM stations. Because of the overlapping nature of the issues in these two proceedings, insofar as public radio stations are concerned, the Commission earlier decided to act on both *Notices* simultaneously. To the extent that the comments in BC Docket No. 82-536 bear upon the issues in this proceeding, they are considered and resolved herein. The balance of the issues in 82-536 are addressed in a companion *Report and Order* adopted today.

[2] These stations also are referred to as public radio stations. The two terms are used interchangably herein.

[3] Public Broadcasting Amendments Act of 1981 (Pub. L. 97-35) (hereinafter the "1981 Amendments").

Communications Act, which was added as part of the 1981 Amendments, gave public broadcasters the authority to use their facilities for remunerative purposes.[4] The legislative history of the provision clearly reflects Congress' expectation that public stations do more to provide their own support in view of anticipated reductions in the level of government funding for such stations. Thus, the Commission inaugurated this proceeding to consider whether the subcarrier capacity of these stations could be used to obtain additional funds. Some background about subcarriers will help put the current proposal in context.

3. In addition to the programming FM stations present on their main channel, all FM stations have the capacity to program one or more subcarriers on a multiplex basis. One of these subcarriers may be used to provide the second signal needed for stereo operation. Conventional FM sets can receive the main channel and if they are so designed, the stereo channel as well. However, these sets are unable to receive other subcarrier signals that can be heard only on special receivers. In addition to the stereo signal, FM stations have one other subcarrier channel available for use.[5]

4. In conducting subcarrier operations, commercial and noncommercial FM stations are subject to the same engineering standards. Likewise, both are allowed to conduct subcarrier operations themselves or to contract with another party to act on their behalf. Moreover, in both instances, the required subcarrier receivers are made available by the party conducting the subcarrier operation. However, there are differences between commercial and noncommercial stations with respect to how they may use their subcarriers. In the case of commercial FM stations, the subcarrier operation can be run on profit making basis, with the subscriber paying a substantial monthly fee. Public radio stations, on the other hand, can only use the subcarrier for an educational purpose. In addition, they are limited by the provisions of Section 73.593 of the Commission's Rules to conducting subcarrier operations on a non-profit basis. Although this Section does allow public broadcasters to charge fees for providing instructional material to subscribers,[6] these fees are not permitted to exceed the cost of providing this service.[7]

5. Because of the current restrictions, only a small portion of noncommercial stations actually offer subcarrier service of any kind. For those that do, radio reading services for the blind represents the most frequent use.[8] By way of contrast, § 73.293 of the Commission's Rules gives commercial FM stations much greater latitude in the use of their subcarriers. They are allowed to use them commercially to present a wide variety of "broadcast like" material. The most frequent of these uses is the transmission of background music for stores and offices. In addition, in BC Docket No. 81–352, the Commission made it possible for commercial stations to use their subcarriers for utility load management, a non-broadcast use.[9] Moreover, in BC Docket No. 82–536 the Commission proposed, and is today adopting, a substantial expansion in the range of permissible broadcast and non-broadcast uses for commercial station subcarriers. These changes are clearly important for public broadcasters as well, because in this proceeding we proposed to allow public broadcasters the same flexibility in using their subcarriers as is accorded commercial FM stations.

II. The Comments

6. A large number of comments and reply comments was filed in response to the *Notice*.[10] Comments in support of the Commisson's proposal were filed by public broadcasting licensees and organizations and by companies interested in making use of the subcarrier capacity of public stations. Comments in opposition to the Commission's proposal were filed by radio reading services and by organizations representing the blind. In addition to these comments on the issues directly raised by the *Notice*, many of the supporting and opposing comments urged an expansion of the FM baseband so that each station could have an additional subcarrier channel. Although they approach this point from different perspectives, both sides agree that making an additional subcarrier channel available to each station could help respond to the various demands for subcarrier use, including reading services. Furthermore, comments directed to the impact and implications for public broadcasting of the availability of two subcarrier channels were filed by public radio station and radio reading service interests in BC Docket No. 82–536, where we explicitly proposed expansion of the FM baseband. These comments, as well as those filed here which urged and anticipated making an additional subchannel available, will be considered below.[11]

A. Comments in Support of the Proposal

7. *Public Radio Stations Need to Provide More of Their Own Support*—Virtually all of the comments in favor of the proposal assert that public radio stations need to use their subcarrier capacity as a fund raising mechanism to help replace previously available federal funds. For example, National Public Radio ("NPR") asserts that the federal contribution to public broadcasting of $172 million for fiscal year 1982 is being reduced to $137 million for fiscal year 1983. For fiscal years 1984, 1985 and 1986, the federal contribution may be no higher than $130 million each year. NPR insists that these sums fall far short of public broadcasting needs. Taking the effects of inflation into account, it states that public broadcasters will be hard pressed unless alternative funding sources are developed. This view is repeated in various other comments which assert a similar general need for additional funds. Some areas, such as Alaska, are said to be in even greater need. According to the Alaska Public Broadcasting Commission ("APBC"), the problem is particularly acute there because the communities are so small. APBC asserts that this means there are fewer local sources of funds. Consequently, APBC states that the typical Alaskan station is able to raise only 10 percent of its support locally, only about one-third of the national average.

8. *Remunerative Subcarrier Use Can Contribute to Station Support*—Virtually

[4] The only restriction in 399B was that these remunerative uses could not interfere with a station's public telecommunications function.

[5] A station operating monaurally thus has two channels available for subcarrier use. Most stations, however, operate stereophonically. In either case, we are here referring to full-service channels which could be used for broadcast-like purposes. The non-broadcast uses authorized in BC Docket No. 82–536 do not need as much bandwidth, so that more than two channels of operation could be conducted, depending on the nature of the services involved. However, the discussion here regarding number of channels refers to full-service channels.

[6] Section 73.593 specifies that charges can be made only for instructional material presented by or in conjunction with a bona fide educational institution or which is directed to the special needs of its particular subcarrier audience.

[7] In calculating these costs, § 73.593(a)(1)(iii) allows a station to include appropriate portions of its general overhead and operational costs.

[8] Radio reading services serve all who are unable to use written material, including those who are unable to hold written material, those who suffer from reading difficulties, such as dislexia, as well as persons who are blind.

[9] *Report and Order*, 47 FR 1386 (January 13, 1982).

[10] These comments and replies are listed in Appendix B hereto.

[11] A detailed summary of the comments and reply comments filed in BC Docket No. 82–536 addressing public telecommunications issues is attached hereto as Apprendix C.

all of the public broadcast comments make general reference to the revenue generating opportunities that the subcarrier could provide, but most do not provide specific information. There were exceptions, such as the licensee of public radio Station KLYT(FM) which notes that two groups have already approached it about leasing its subcarrier capacity. One of these groups proposes to use the subcarrier for stock market reports, while the other would transmit background music. Support for the proposal also comes from MUZAK and Bonneville International, two companies already involved in using subcarriers on commercial stations. They assert that there is sufficient demand to support use of subcarriers on public radio stations, and they think this expansion can help ensure the availability of low cost, high quality subcarrier facilities. In fact, without this expansion, they think the number of available subcarrier channels will not be sufficient to accommodate the specialized programming and other subcarrier uses that are being developed. Given this demand, they are convinced that there is a substantial revenue potential that can be used by public radio stations in the same way commercial FM stations did in their early days when revenues were inadequate to support main channel station operation. Overall, they believe that these revenues would make an important contribution to supporting the principal noncommercial services being provided by stations on their main channels.[12]

9. *Remunerative Subcarrier Use Reflects the Will of Congress*—According to supporters of the proposal, Congress has called upon public broadcasters to provide more of their own support and at the same time has given them the means to do so. In particular, they point to the statutory provisions in Section 399B(b)(1) of the Communications Act which allow public broadcasters to engage in entrepreneurial activities through the "offering of services, facilities, or products" in exchange for remuneration.[13] As they read this language, Congress intended the Commission to authorize public stations to use their facilities creatively to earn extra revenues. On this basis, they assert that the present Commission prohibition on remunerative subcarrier use is inconsistent with the intent of Congress. According to these parties, leasing a subchannel for commercial purposes, as the Commission proposes to allow, is an "offering of a facility" as contemplated under the 1981 Amendments. Likewise, they assert that transmission of special programming by the licensee to subscribers is an example of an "offering of a service" under the 1981 Amendments. Although the supporting comments acknowledge that Congress stipulated certain limits on the remunerative activities of public broadcasters, they insist that these restrictions do not apply here. Instead, they see such restrictions only as precluding the broadcast or transmission of advertisements or other actions that would subvert the noncommercial nature of the service offered on the main channel.

10. *Prohibition on Remunerative Subcarrier Use Is Out of Date*—Several parties, including the Corporation for Public Broadcasting, question the continued need for public radio subcarrier restrictions, even if funding were not so pressing an issue. According to this view, such restrictions were an outgrowth of an entirely different time when public stations offered only a narrow range of educational programming. In their view, it was appropriate then to require the subcarrier to be used for the same limited purposes. Now, these parties point out, the service provided by noncommercial stations has greatly expanded as educational broadcasting has evolved into general public broadcasting. They note, however, that there has been no equivalent change in the definition of the types of material that can be offered on a subcarrier. This leads them to believe that the present restriction is out of date and that the permissible uses should be expanded so that public radio stations can provide a wider range of subcarrier service. They believe that such an expansion also would be consistent with the Commission's action which allowed greater fund raising activities and on-air acknowledgments by public stations.[14]

11. *Remunerative Subcarrier Use Would Benefit the Public*—The Ohio Educational Broadcasting Network Commission asserts that allowing remunerative subcarrier use would permit public radio stations to provide an even wider range of services than they currently offer. It notes that many public radio stations have been forced to narrow the content of their broadcast offerings and have found it necessary to follow more rigidly "formatted" program schedules in order to attract an audience that can be persuaded to contribute to the support of preferred programming. This, it states, is the case because presenting a broader range of programming fare makes it harder to attract a loyal audience that can be relied on to provide substantial contributions. Although Ohio Network accepts the fact that this approach may have yielded greater contributions, it asserts that this has meant that public radio stations have not been able to present a broader variety of programs designed to appeal to appeal to differing segments of their audiences. It believes that revenues from remunerative subcarrier uses could provide support for main channel operations and could make it possible to use subcarriers to provide service to smaller audience groups with specialized interests. Other parties make similar observations about the possibilities for providing new and varied types of programs. Pacific Lutheran University, for example, mentions specialized course offerings, services for professional groups and programs directed to the legal, health care and law enforcement communities. They and several others mention that the subcarrier could be used to present important agricultural material. However, as all these parties agree, unless the Commission eliminates the present restrictions, public stations will not be able to present this material.

12. The Alaska Public Broadcasting Commission addresses the unique needs of Alaska. In particular, APBC notes that Alaska principally consists of small isolated communities that cannot support commercial stations. Instead, they must rely on service from public stations. In fact, APBC states that public broadcasting provides the principal service to virtually all of these communities, unlike the merely supplemental service provided by public stations in the lower 48 states. Among other things, this means that if these communities are to benefit from the types of service that can be offered on a subcarrier, such as utility load management, it must be done through use of the subcarrier of public stations.

13. *Impact on the Blind of Deregulating Subcarrier Use*—Supporters of remunerative subcarrier

[12] Because the proceeding in BC Docket No. 82-536 had not yet begun when these comments were filed, the parties here focused on a narrower range of possible subcarrier uses than that proposed in the 82-536 proceeding. However, the comments filed there reiterate and expand upon the observations made here about the contribution subcarriers could make to public radio station support.

[13] In addition, Congress created a Temporary Commission on Alternative Financing for Public Telecommunications to study various sources of funding. Recently, the Temporary Commission reported its findings and recommendations to the Congress. One such recommendation was that the Commission authorize public stations to use their subcarrier capacity for remunerative purposes.

[14] *Second Report and Order* in Docket No. 21136, 86 F.C.C. 2d 141 (1981).

use assert that the Commission should not refuse to authorize it because of fears about its impact on the blind. They do not believe that the proposed rule change necessarily would lead to displacing radio reading services, even if there is only one subcarrier channel available per station.[15] Rather, they assert that the likely impact has been greatly exaggerated. They expect a number of radio reading services to continue in operation much as before. Indeed, NPR indicates that a poll of its member stations providing radio reading services revealed that not one intended to reduce, much less eliminate, these services if subcarrier uses were deregulated.[16] NPR also notes its intention to provide incentives to its member stations to continue providing radio reading services both by offering such stations $500 per month to support these operations and by fashioning its commercial subcarrier ventures with public radio stations in a manner calculated to avoid adverse impact on radio reading services. Even for other reading services that may be affected, parties favoring subcarrier deregulation think time sharing is a feasible answer because many commercial subcarrier users do not need full-time use of their channels. Overall, they contend that the effect of any displacement would be less than the opponents assert because material for the blind can be, and in fact is, provided through means other than use of a subcarrier. For example, they refer to the distribution of recorded material through the Library of Congress and the circulation of audio tapes from various sources.

B. Opposition Comments

14. *Radio Reading Services Would Be Displaced*—The principal concern over the proposed rule is the impact it would have on the radio reading services which use subcarriers.[17] The opposition comments express the belief that if commercial subcarrier users become eligible to employ public radio station subcarriers, such users would be able to outbid radio reading services for subcarrier channel capacity. Under current restrictions, this is not a problem because commercial uses are precluded, thereby protecting the position of non-profit users like radio reading services. The reading service comments stress how dependent radio reading services are on contributions and volunteers and assert they are in no position to pay increased costs for subcarrier use. Moreover, in many cases they are said to lack the funds necessary to provide receivers for all those in need of them. As a result, blind people in many areas have to be put on a waiting list before funds are made available to provide a subcarrier receiver. While the reading services acknowledge that those who can afford to purchase their own receiver are able to avoid this delay, they state that this is of no help to those who lack the resources for such purchases. Further, they assert that this situation could only get worse if the Commission allowed remunerative subcarrier uses.

15. The American Foundation for the Blind ("Foundation") undertook an overall study of radio reading services. It was able to obtain data on 81 of the 113 operations being conducted. Of these 81, 47 were not being charged for use of the subcarrier channel. This group included 19 operations conducted by public radio stations themselves, as well as 28 others which were conducted by other entities. For those that did have a monthly charge, the Foundation found that the charges were as follows:

$1 to $249	3
$250 to $499	12
$500 to $749	14
$750 to $1,000	4
Over $1,000	1

16. By way of contrast, fees for commercial uses are said to average $2,000–$3,000 per month, an amount that can rise to $3,000—$5,000 per month in a major market. Overall, the commercial rates are said to average 5 times the rate paid by the radio reading services. According to the Foundation, the radio reading services are in no position to accept such an increase. Just as public broadcast funding has been reduced, organizations for the blind are said to be facing reductions in funding from local, state and federal sources. Private funding is also becoming scarce, apparently because of increasing demands on private contributors. Thus, even without having to face commercial competition, we are told that three radio reading services were forced off the air for lack of funds and others will be unless they are protected from the impact of commercial competition.

17. *Subcarriers Are Needed To Deliver Reading Service Material*—While the reading service comments acknowledge the possibility that other means could be used to deliver some material, they insist that subcarriers continue to be needed for such things as reading job vacancies listed in the newspaper or informing the audience about products available at a sale price in stores that day. Principally, they state that the reading of material in daily newspapers could not be replaced. According to the Chicagoland Radio Reading Service ("CRRS"), the Chicago operation devotes 3 hours and 45 minutes to reading the *Chicago Tribune* and *Sun-Times* each morning.[18]

18. According to the opposition comments, radio reading services provide a vital service to the 125,000 persons that are now served. In their view, this service needs to be continued and expanded to serve the almost three million additional individuals in need of reading services.[19] The Association of Radio Reading Services notes that an active effort is underway to extend service to those in need, with operations being planned in 45 additional locations. They and the other opponents fear that this process would be halted if the Commission's proposal is adopted, because organizations such as theirs, which have to depend on contributions, cannot bid effectively against commercial interests.

19. *The Proposal is Contrary to National Policy on the Handicapped*—The opponents assert that the proposal should not be adopted because it is contrary to the thrust of Commission policy which is designed to accommodate the needs of the handicapped wherever possible. In this

[15] They assert that there would be even less likelihood of displacement if the Commission enlarges the FM baseband and thereby permits an additional subcarrier operation at 92 kHz. In this regard, some of the spporters would open both channels to remunerative use, while others would rely on the second channel to provide radio reading service. Some of the comments support reservation of a channel for radio reading service use, but they express a preference for reserving the channel at 92 kHz rather than the channel at 67 kHz. This point is discussed further below.

[16] Greater Washington Educational Television Association, Alaska Public Broadcasting Commission, the University of Texas at Austin, Ohio Educational Broadcasting Network Commission, KMCR-FM, WVOL-FM and various other noncommercial educational station licensees reflect a similar commitment to continued radio reading services in their comments in BC Docket No. 82-5-36.

[17] Although a majority of these services use subcarriers on noncommercial stations, an appreciable number utilize other means of delivery, including commercial FM station subcarriers, public station main channel facilities or even cable television channels.

[18] This is repeated each evening. In addition, the Chicago reading service reads from the *New York Times, Wall Street Journal, Chicago Defender* and other publications. All together, the Chicago operation is on the air 24 hours daily Monday through Friday, from 6:00 a.m. Saturday to 2:00 a.m. Sunday and from 6:00 a.m. to 11:00 p.m. Sunday. Because most radio reading services did not provide program schedules, it is not clear whether this is at all typical.

[19] In addition to the blind, other groups of reading impaired persons are said to derive important benefits from radio reading services.

connection, CRIS makes reference to closed captioning to serve the hearing impaired, the inquiry into telecommunications services for the deaf, the expectation that news bulletins concerning public safety will be displayed on television screens and other actions designed to make communications services available to all. These are seen as reflecting a national policy of giving full consideration to the needs of the handicapped, concerns which are said to have been reflected in the 1981 Amendments Act. In particular, the Commission is referred to language in the conference Committee Report on the 1981 Amendments as follows:

> The Conferees, however, take note of the concerns that certain responsibilities public broadcasting does have, such as to the blind, cannot, in every instance, be met through the delivery of public television and radio stations alone, and hope that the Corporation (CPB) will give continuing attention to this issue.

In addition, the Foundation quotes from the House Report language which indicates that "* * * the particular needs of all persons, be they minorities, women, handicapped or otherwise must be served." The Foundation acknowledges that this language occurs in connection with a discussion of CPB. Nonetheless, it insists that its use reflects an overall policy that transcends its apparently exclusive application to CPB. According to the opponents, Congress intended for pubic broadcasting to continue to play an important role in serving the needs of the print handicapped. However, in their view the proposed change would lead to a decrease in the availability of subcarriers for radio reading services without providing a substitute method for delivering these services.

20. The Association of Radio Reading Services ("ARRS") argues that it would be improper to deregulate subcarrier use as proposed without taking measures to protect the blind. According to ARRS, the Commission is required to ensure that its public station licensees observe their special statutory duty to accommodate the needs of the handicapped wherever possible. This duty, ARRS contends, arises essentially from Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as interpreted by the decision in *Gottfried* v. *FCC*, 65 F. 2d 297 (D.C. Cir. 1981)[20]

[20] The Supreme Court's subsequent decision, however, reversing the holding in *Gottfried* undermines ARRS' contention in this regard. *See Community Television of Southern California v. Gottfried*, 51 U.S.L.W. 4134 (decided February 22, 1983).

21. *The 1981 Amendments Preclude Adoption of the Proposal*—The opponents dispute the view that Section 399B of the Act, which authorized remunerative activities by public stations, provided grounds on which the Commission could base the action proposed. According to the oponents, when Congress allowed a public broadcast station "to engage in the offering of services, facilities, or products in exchange for remuneration," it also specified that this activity was not to "interfere with the provision of public telecommunications services by such station." In their view, the term "public telecommunications services" means the entire range of noncommercial educational and cultural radio and television programs and related noncommercial instructional or informational material provided by such stations. They insist that Congress intended to preclude activities that undermined these purposes. They assert that there is no indication that Congress was concerned only with protecting the program offerings on the main channel. Rather, the opponents believe that Congressional concern extended to the other public telecommunications services being offered by these stations, including radio reading services. As they see it, if the intent were only to protect the main channel, the statute would not have referred to the use of "certain" facilities rather than all facilities. Thus, they do not read the 1981 Amendments to require or even suggest that there should be a curtailment of existing services, such as those now provided to the blind on subcarriers. In fact, they point to a rule adopted by NTIA to define when remunerative uses "interfere" with providing public telecommunications services. Under this rule, stations are allowed to use their facilities for remunerative purposes only when they are not needed for public telecommunications purposes.

C. Comments Relating to the Availability of Two Subchannels

22. Various parties address, both here and in BC Docket No. 82-536, the issue of expanding the FM baseband in order to make available an additional subcarrier channel. Nearly all of these parties support such expansion, but they differ considerably on how the two subchannels should be used—particularly with respect to whether one of the two subchannels should be reserved for public telecommunications services as a means of ensuring these services' continued viability.

23. NPR supports expansion of the FM baseband to 99 kHz. It contends this would make operation of a second subcarrier service feasible [21] and would avert any necessary conflict between commercial and noncommercial users because there would be a channel for each to use. NPR opposes, however, explicit reservation of a channel for specific uses. The Association of California Public Radio Stations ("ACPRS") argues that the Communications Act precludes the Commission from reserving even a portion of a station's capacity for a specific use and that, in any event, such reservation would represent poor public policy since it would substitute the government's value judgments for more efficient marketplace forces in determining subcarrier uses. Other public broadcast licensees also oppose reservation of one of two subcarrier channels for public telecommunication services, pointing out that such reservation would raise difficulties in defining these services and would result in inefficient use of the spectrum.

24. The Corporation for Public Broadcasting asserts, on the other hand, that reservation is necessary to assure that commercial subcarrier ventures do not interfere with the continued provision of public telecommunications services. CPB would, however, permit remunerative uses of the reserved channel on a temporary waiver basis if doing so is shown not to interfere with any existing or anticipated public telecommunications uses. Moreover, some public broadcasters did support setting aside a new 92 kHz channel for noncommercial educational use so that continued operation of radio reading services could be assured.

25. The West Virginia Educational Broadcasting Authority ("WVEBA") does not believe it is necessary to reserve a subcarrier channel for radio reading services use. WVEBA suggests instead that the Commission authorize a three year trial period during which unrestricted remunerative subcarrier use would be permitted. The Commission then would evaluate public broadcasters' performance in this area to determine whether further action was warranted to ensure the continued availability of radio reading services.

26. Although reading services support the proposed creation of a new 92 kHz channel, they believe that the existing 67

[21] These parties focus on operation at 92 kHz. Station WETA in Washington, D.C. conducted tests which lead it to conclude that such an expansion is feasible and that a second subchannel could be operated at 92 kHz without causing deleterious effects. However, as the *Report and Order* in BC Docket No. 82-536 points out, the opportunities for additional use of a station's subcarrier capacity are not limited to 92 kHz.

kHz channel should be reserved for radio reading services and other present users. Their preference for this channel stems from the fact that all of their investment is in equipment designed for use at 67 kHz. They assert that moving to 92 kHz would require substantial expenditures which they are in no position to undertake. Therefore, they do not believe that their needs would be fully addressed, even if access to a new 92 kHz channel were assured.[22]

III. Discussion

27. The comments in this proceeding and in BC Docket No. 82-536 have helped to focus the issues which require resolution in deciding whether it is in the public interest to authorize remunerative subcarrier use by public radio stations. Essentially, the Commission must determine whether such uses could make a valuable contribution to public stations' support, whether such uses are consistent with applicable statutory provisions, and how remunerative subcarrier activities can be conducted in accord with these stations' continued provision of radio reading services.

28. Before turning to these issues, we need to consider the implications of the actions taken today in BC Docket No. 82-536 for the issues in this proceeding. As a result of our decision in BC Docket No. 82-536 to broaden the FM baseband, public radio stations are no longer limited to a single subcarrier channel. Instead, each station will be able to conduct two subcarrier operations. Because of the sequence of events, the comments in this proceeding that addressed the consequences of having only one subcarrier channel available are no longer pertinent now that a second subcarrier channel has been authorized. However, comments remain here that anticipated our action in BC Docket No. 82-536 and dealt with its implications. Basically, these comments raise two issues. First, they express the preference of the radio reading services to continue to operate on 67 kHz even though a second subcarrier channel is made available. Most of this concern focuses on the cost of changing to a new channel.[23] NPR's substantial offer of assistance in offsetting such changeover costs, however, should meet this concern.[24] Thus, we see no reason to restrict licensee discretion in determining which subcarrier channel should be used in providing radio reading services. Second, they pose the fundamental question of how best to harmonize public stations' response to demands for both remunerative and radio reading service uses of their subcarrier channels. This question, of course, remains relevant whether one or two subcarrier channels are authorized and we will consider it below.

29. *Public Radio's Need for Expanded Subcarrier Authority.* Over the years public broadcasting has obtained its support from three major sources: governmental funding, underwriting and individual contributions. As the record amply demonstrates, new sources of funds need to be developed to replace the funds being cut from federal sources. In fact, the pressure to develop these new sources of funds is heightened because state and local funds are also being cut. Obviously, remunerative use of the subcarrier is not the only outlet for obtaining these funds. Many other steps can be and in fact are being taken, but subcarriers could provide an important boost to this effort.

30. In a major market, for example, traditional remunerative use of a subcarrier could yield as much as $5,000 per month or $60,000 per year. In a smaller market, the revenue potential would be lower, but often the budget is lower as well. Some of the new subcarrier uses authorized in BC Docket No. 82-536 have considerable revenue potential, perhaps greater than traditional uses. Either way, it is clear that remunerative use of the subcarrier can provide substantial support to the station and can be expected to contribute to improving and extending the station's service.

31. The comments clearly reflect a substantial demand for remunerative use of these subcarriers. This demand is not merely theoretical; public radio licensees already have been approached by prospective users.[25] In addition, National Public Radio is engaged in extensive planning for nationwide use of these channels for information delivery. Further, corporations already involved in subcarrier operations on commercial stations have expressed interest in using the capacity of public radio stations. Moreover, in some parts of the country (especially in Alaska), public radio stations are the only local stations that could be used to respond to the demand for subcarrier service. Thus, unless the current restrictions are deleted, there would be no way to provide the benefits that can be offered by using the subcarrier, including utility load management.

32. *Statutory Consistency and Policy Concerns.* Having concluded that there is a demand for remunerative subcarrier use that could make a valuable contribution to public radio service, we must consider whether such use is consistent with applicable statutory requirements and advisable as a matter of public policy. In this regard, there is considerable disagreement among the parties concerning the meaning of the 1981 Amendments. One side focuses on the language authorizing the use of facilities and the offering of services for remuneration. To them, this language means that the new provisions allow—perhaps even require—the Commission to authorize remunerative subcarrier uses. The other side emphasizes the statutory limitation that these activities must not interfere with the provision of public telecommunications service by the station. They stress Congressional expressions of support for service to the handicapped.

33. It is clear that the 1981 Amendments, and Section 399B in particular, are intended to authorize a range of remunerative endeavors in which public broadcasters could engage as a means of generating the additional income needed to offset declining federal support.[26] In enacting these

[22] In this regard, it is important to point out that the Commission received submissions from National Public Radio on the use of the 92 kHz channel by radio reading services. In these submissions, NPR agreed to reimburse radio reading services for the cost of changing from their present 67 kHz channel of operation to the new channel. NPR offered $3 million, if necessary, for this purpose, although it doubted that the full amount would be needed. As noted earlier, NPR also has offered $500 monthly to support radio reading services on eligible stations. CPB argues that the NPR assurances of support for the continuation of radio reading services do not satisfy the requirements of Section 399B. According to CPB, the NPR offer applies only in localities where an NPR-sponsored commercial subcarrier venture is conducted. In addition, CPB does not believe that the $500 that NPR would pay monthly to a station is sufficient to ensure the continuation of radio reading services.

[23] Reference was also made to technical distinctions between subcarrier channels. We recognize that the frequency of a subcarrier is one of the factors that determines the utility of a subcarrier channel. However, given the many choices of modulation and other system characteristics that may be employed in providing subcarrier service, we do not believe that this particular factor is of decisional significance in this proceeding.

[24] We note that NPR's offer would reach 90% of existing radio reading service subscribers and could encompass all such subscribers. In any event, if a public radio station, in pursuing its commercial subcarrier goals, elects to change the subcarrier channel available to existing radio reading services, it would be ultimately responsible for the costs of such relocation, including the costs of modifying the subcarrier receivers used by the handicapped listeners of such radio reading services.

[25] These early expressions are particularly striking because they came before the Commission proposed expanding the range of possible SCA uses

[26] For example, the House Committee on Energy and Commerce noted in its Report on the 1981 Amendments that "public stations must be free to generate substantial sums of additional revenue from the pursuit of commercial activities if the nation's public broadcasting system is to survive . . . ."

amendments, it is also clear that Congress intended that such endeavors should not result in a diminution of public telecommunications services provided by noncommercial broadcasters.[27] However, neither the express language nor the legislative history of Section 399B specifically addresses remunerative uses of ancillary capacity such as subcarriers. Therefore, the determination as to whether such uses are or should be permitted and, if so, what constraints on such uses might be appropriate, would appear to be a matter committed to our discretion. Nevertheless, in making this determination, we believe that the provisions of Section 399B offer useful, if not dispositive, guidance.

34. Given the broad nature of the language in Section 399B permitting the offering of "services, facilities, or products" on a for-profit basis, the plain intent of Congress to encourage public broadcasters' ability to generate self-supporting income and the clear capacity of commercial subcarrier use to help meet the demonstrated need of public radio stations for such income, we are convinced that, generically, remunerative use of subcarriers is not only consistent with the requirements and authorizations of the 1981 Amendments, but advisable as a matter of policy as well. Accordingly, we shall authorize public radio stations to engage in the same range of remunerative activities on their subcarriers as do commercial stations.[28] They shall be subject, as well, to the same technical standards as commercial stations.[29]

35. However, we also conclude that public radio stations subject to Section 399B that use subcarriers for remunerative activities must ensure that neither existing nor potential radio reading services for the blind are diminished in quantity or quality by the pursuit of commercial subcarrier undertakings. This public interest duty derives from Section 309 of the Communications Act, as instructed by the specific goals for public broadcasting stations set forth in Section 399B. Thus, we believe that a station utilizing one of its subcarriers for commercial purposes would be obliged to accommodate radio reading services on its other subchannel or to ensure the availability of alternative subchannel capacity for such services. We are confident that public broadcasters are cognizant of the importance of these services[30] and that they are well able to determine, and will determine, appropriate means by which to guarantee the compatability of their commercial and noncommercial ventures. We shall, therefore, leave to each licensee's discretion the decision as to how best to accommodate such uses. The availability, of course, of a second subcarrier channel, afforded by our action today in BC Docket No. 82-536, enhances the ability of licensees to make this accommodation. Among the alternatives which licensees might consider are, for example: (1) Reservation of one of the two available subcarrier channels for radio reading services; (2) a demand-based priority or preference system for such uses on one of the available channels [31]; or, (3) a guarantor approach, where the licensee undertakes to make available a suitable channel for such services on another market station. We stress that these approaches are not intended to be all inclusive. We are firmly convinced that this flexible approach will permit public broadcasters to maximize the benefits of remunerative subcarrier uses while ensuring that radio reading services will continue to be made available.

36. Licensees are not required to provide a subcarrier service of any kind nor must they bear the fixed or operating costs of a radio reading service should they provide one.[32] We emphasize the first point to make it clear that stations not using their subcarrier capacity for any purpose cannot be forced to do so. The new rules address only the situation where the licensee decides it does want to use this capacity. Once it has elected to use its subcarriers, the new rules would not permit the licensee to pursue its remunerative aims to the detriment of radio reading services. We believe that public radio licensees can be relied upon to meet this obligation. Thus, we do not see the desire to obtain revenues from subcarrier use as reflecting on licensees' commitment to public

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[27] Section 399B(c) specifically provides that "[a]ny such [remunerative] offering by a public broadcast station shall not interfere with the provision of public telecommunication services by such station." In this regard, the Committee Report notes that "the intent of this provision is that the use of facilities for other than public telecommunications services should not impair the quantity or quality of the services that would be expected of public broadcast stations had this modification of law not occurred."

[28] We are not persuaded that remunerative subcarrier use is precluded by the cited language in the Conference Committee Report regarding service to the blind. The Report does no more than express a hope that the Corporation for Public Broadcasting will give attention to the provision of such service by means other than public radio and television stations. Likewise, the language regarding serving the handicapped, quoted from the House Report, refers to CPB's obligations. Here, too, the language does no more than urge consideration of service to the handicapped by CPB. We do not believe that the language in the Conference Committee Report or the House Report can reasonably be read to refer to subcarrier obligations of public stations. Similarly, the apparently broader interpretation of the work "interfere" taken from the regulations of the National Telecommunications and Information Administration is not relevant here. It deals with whether facilities obtained under a federal grant can be diverted to commercial purposes to the detriment of a station's public broadcasting obligations. No such factors are involved in our decision in this proceeding.

[29] In this connection, §§ 73.594 and 73.595 of the Rules are being deleted in our action today in BC Docket No. 82-536. Public stations will now be governed by Sections 73.293 through 73.295.

[30] In this regard, we note specifically the comments of NPR and others which reflect a particular sensitivity to the need for, and the apparent commitment of, public stations to continue to provide radio reading services.

[31] The preemptible nature of any service which might be rendered on a subchannel subject to a demand-based preference for radio reading services clearly reduces the commercial value of that subchannel because of the uncertainty which it introduces. CPB recognized this fact in connection with its reservation proposal and suggested that this uncertainty could be cured by a Commission-administered waiver process. Under this approach, reservation could be waived for the remaining period of a station's license term upon a showing that no existing or known potential radio reading services would be disadvantaged thereby. Once the initial waiver lapsed, it could be renewed for another fixed period upon the licensee making a similar showing. CPB considered this temporary, renewable waiver procedure to be the best method of maximizing the commercial utility of noncommercial stations' subcarrier capacity while avoiding untoward effects on radio reading services. We agree that this procedure might permit noncommercial stations to extract additional commercial value from reserved subchannels. We do not believe, however, that such a procedure is advisable. To permit, in effect, both subchannels to be obligated for commercial use on a non-preemptible basis for substantial periods of time would not protect adequately, in our view, the public interest in ensuring the provision of radio reading services to the widest possible audience in need of such services. Our decision herein affords public radio stations substantial commercial possibilities. One full-service subcarrier channel will be available for unrestricted commercial use and preemptible commercial service can be provided on the remaining subchannel. Moreover, we do not intend that preemption of an existing commercial use must be immediate. Rather, we would consider it reasonable for a station, faced with a proper request for subcarrier capacity by radio reading services, to take up to one year to arrange termination of ongoing services and to provide the requested capacity. This should improve the saleability of preemptible subchannels by removing the threat of unduly abrupt displacement of commercial users of these subchannels. Further, of course, dedicated commercial use of both subcarrier channels would be permitted provided the station involved can ensure the availability of subchannel capacity for radio reading services by some other means. We believe that these arrangements best balance the need of public radio stations for access to income-generating activities with our concern for the continued provision and growth of radio reading services.

[32] Conversely, public radio stations providing radio reading services would be expected to do so on a not-for-profit basis. To do otherwise would be inconsistent with their duty to avoid adverse effects on radio reading services as a consequence of their commercial use of subcarrier capacity.

broadcasting's traditional pursuits. Rather, it simply reflects the vital need to provide support for public stations. We believe that the method chosen can respond to this need while assuring that stations will continue to provide radio reading services. In so doing we have responded to both of the underlying concerns of Section 399B and have done so in a way that balances the obligations undertaken in exchange for the benefits received.

37. Although spectrum efficiency was given little attention in the comments, the current restrictions have an important impact in this area. Currently, few stations use their subcarrier capacity, so this sizable potential for reaching specialized radio audiences and for other non-broadcast purposes is left virtually unused. The principal reasons for this are the limits on the kinds of material that can be offered, combined with the prohibition on operating on a profit making basis. Our action herein removing these restrictions should encourage stations to explore many new uses and thereby more effectively utilize their spectrum resources.

38. Accordingly, it is ordered That, § 73.593 of the Commission's Rules is amended effective July 5, 1983, as set forth in the attached appendix.

39. Authority for this action is contained in Sections 4(1), 303 and 399B of the Communications Act of 1934, as amended.

40. *Regulatory Flexibility Analysis*

I. Need For and Purpose of the Rule

The Commission has concluded that the present limitations of § 73.593 on the use of a noncommercial educational FM station's subcarrier can be removed. The relaxation is based on the conclusion that these stations need to use these subcarrier channels for remunerative purposes barred by the present rule.

II. Summary of Issues Raised by Public Comment in Response to the Initial Regulatory Flexibility Analysis, Commission Assessment, and Changes Made as a Result

A. Issues Raised

1. Parties representing public broadcast stations and organizations favored the proposal as a way of providing more of their own financial support.

2. Parties representing radio reading services for the blind opposed the proposal, fearing that such services would be displaced by commercial parties able to outbid them.

3. Several parties favored expansion of the FM baseband to accommodate an additional subcarrier channel, with radio reading services supporting the reservation of one channel for noncommercial educational uses including radio reading services. This issue is being resolved in another proceeding.

B. Assessment

The Commission concluded that the current restrictions were wasteful of spectrum space and also interfered with the need of public radio stations to generate more of their own financial support.

C. Changes Made as a Result

The Commission did not find the arguments against relieving the restrictions on subcarrier use to be persuasive. It did not agree that radio reading services necessarily would be displaced or that there should be a reservation of an subcarrier channel for such use if the FM baseband is expanded. Other means are available to provide services to the blind, which in any event would be allowed to continue to use subcarriers as they now do.

III. Significant Alternatives Considered and Rejected

Other than the expansion of the baseband, and issue resolved in BC Docket No. 82-536, no significant alternatives were raised. Our reasons for acting on those issues properly before the Commission in this proceeding are described above.

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

42. For further information concerning this proceeding, contact Jonathan David, Mass Media Bureau (202) 632-7792.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

PART 73—[AMENDED]

1. Section 73.593 is revised to read as follows:

§ 73.593 Subsidiary communications services.

The licensee of a noncommercial educational FM station is not required to use its subcarrier capacity, but if it chooses to do so, it is governed by §§ 73.293 through 73.295 of the Commission's Rules regarding the types of permissible subcarrier uses and the manner in which subcarrier operations shall be conducted; *Provided*, however, that remunerative use of a station's subcarrier capacity shall not be detrimental to the provision of existing or potential radio reading services for the blind or otherwise-inconsistent with its public broadcasting responsibilities.

Appendix B

Comments

Alaska Public Broadcasting Commission
American Council of the Blind
American Foundation for the Blind
Arkansas Radio Reading Service for the Blind, Inc.
Association of Radio Reading Services
Bonneville International Corporation
Robert E. Brooking
Capital Area Vocational Center
Central Piedmont Community College Radio Reading Service
Chicagoland Radio Information Services, Inc.
Christian Broadcasting Academy, Inc.
Cleveland Radio Reading Service
Corporation for Public Broadcasting
Erie County Branch, Pennsylvania Association for the Blind
Fort Wayne Bible College
General Broadcasting Company, Inc.
Gopher State Blind Associates
Greater Washington Educational Telecommunications Association, Inc.
Illinois Farm Bureau
Joint Comments (KQED, Inc., *et al.*)
Michigan State University (WKAR)
Minnesota Radio Talking Book Network
MUZAK, Division of Teleprompter Corp.
National Association of Public Television Stations
National Federation of Community Broadcasters
National Public Radio
National Radio Broadcasters Association
North Texas Radio Reading Service
Ohio Educational Broadcasting Network Commission
Pacific Lutheran University
Public Radio, Inc.
Radio Information Center for the Blind
Rocky Mountain Public Radio
Radio Reading Service of the Lackawanna Branch, Pennsylvania Association for the Blind
St. Cloud State University
Union College
United Blind of Minnesota, Inc.
University of Kansas Audio-Reader Network
University of Texas at Austin
Vedette Energy Research, Inc.
WBHM's Radio Reading Service, Birmingham, Alabama
Wisconsin Radio Reading Service
York County Blind Center

Reply Comments

American Foundation for the Blind
Association of Radio Reading Services
Corporation for Public Broadcasting
Minnesota Talking Book Network
MUZAK, Division of Teleprompter Corp.
National Public Radio

Appendix C

The following summarizes comments and reply comments filed in BC Docket No. 82-536 which address public telecommunications issues relevant to and resolved in this proceeding.

1. *Public Telecommunication Services*—An issue that resulted in substantial comment concerned the impact that authorizing non-broadcast services on subcarriers would have on current users, specifically, the radio reading services for the visually impaired. Several parties representing radio reading services filed comments requesting that, if the new services were permitted, some protection should be accorded existing users.[33] The Association of Radio Reading Services (ARRS) is concerned that adoption of the proposed rules without making explicit changes to protect and foster radio reading services would have an adverse impact upon the blind and persons similarly afflicted. To avoid this situation, which ARRS argues would be illegal for the Commission to allow, it offers several suggestions. It first recommends adoption of the proposed rules insofar as they would allow the use of a second subcarrier by noncommercial FM stations. One of the two subcarriers of these stations could then be reserved for nonprofit educational use in a manner not inconsistent with the purpose and operation of the station's main channel. ARRS further asks that the subcarrier at 67 kHz be reserved for their service since noncommercial programming is now being offered on that subchannel. Thus, it states, adverse financial and disruptive operational effects on organizations such as itself would be minimized. ARRS asserts that a volunteer nonprofit organization, such as itself, cannot outbid commercial users for subcarrier frequencies. It believes, therefore, that such competition would result in a loss of service to the blind and other handicapped people. According to ARRS, the Commission and all noncommercial public broadcasting licensees have a statutory duty to accommodate the needs of the handicapped whenever possible and to take affirmative action when necessary to ensure that these needs are met. It states that these legal obligations stem from Sections 307 and 309 of the Communications Act (47 U.S.C. 307, 309); Section 399B of the Communications Act (47 U.S.C. 399B); and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as interpreted by the Court of Appeals in *Gottfried* v. *F.C.C.*, 65 F.2d 297 (1981). ARRS claims that the only way the Commission can legally accomplish its goal of allowing public broadcasters to use their subcarrier frequencies for remunerative purposes is to expand the frequency band of subcarriers to 99 kHz and reserve the existing 67 kHz subcarrier for noncommercial use. Several of the radio reading services endorsed ARRS' comments.

2. On the other side of the issue, public broadcast licensees generally favor the proposals for non-broadcast uses of subcarriers. The Association of California Public Radio Stations (ACPRS) states its belief that authority to use subcarriers for non-broadcast purposes will increase supplier competition and consumer choice in information and entertainment fields other than broadcasting. The ACPRS notes that there has been concern expressed in some quarters that operation of a second subcarrier by noncommercial stations should be conditioned on the station's using at least one of its subcerriers for a specific purpose, such as a radio reading service or general noncommercial, educational broadcast activities. According to the ACPRS, these concerns are misplaced for several reasons. First, the ACPRS interprets the Communications Act to preclude the Commission from requiring broadcast stations to use even a portion of their channel capacity for a specific use. This same issue is raised by San Diego State University (KPBS) in their comments. Second, ACPRS argues that such a reservation of a subcarrier for a particular purpose would be bad policy. The reservation of a subcarrier for a particular purpose would impose the government's own value judgments upon the natural marketplace process whereby consumer demands and supplier capacities adjust to each other to provide optimal satisfaction. ACPRS states that the use of subcarriers by noncommercial, educational broadcasters would in no way detract from or even affect the use of the main channel for its prescribed purpose.

3. Greater Washington Educational Television Association (GWETA), Alaska Public Broadcasting Commission (APBC), the University of Texas at Austin (U of T), Ohio Educational Broadcasting Network Commission (OEBNC), KMCR-FM, WUOL-FM, the staff of KMUW (licensed to Wichita State University) and Noncommercial Educational Licensees [34] reject the proposal made by radio reading services to reserve one subcarrier (specifically at 67 kHz) for noncommercial services. GWETA urges that each licensee be given full discretion as to the nature of services they provide. These parties believe that current financial exigencies require that licensees be accorded the fullest freedom to use all available revenue producing devices that would not interfere with the public broadcast services they were created to provide. The *raison d'etre* of educational stations is public service. Therefore, these parties argue that great internal motivation will continue to exist to devote at least some subcarrier capacity to this type of operation. Noncommercial Educational Licensees and the KMUW staff indicate they are now facing a financial crisis and submit that their good intentions, as reflected in providing radio reading services, will be worthless if they are forced to leave the air due to lack of resources.

4. Compromise positions on this issue were offered by the West Virginia Educational Broadcasting Authority (WVEBA) and the Corporation for Public Broadcasting. The WVEBA indicates that it remains unalterably committed to providing radio reading services. Rather than "casting the proposal in cement," as a reserved subcarrier would do, WVEBA argues that a wiser course of action would be to provide for a trial period to ascertain whether further Commission action should be taken to assure that special services to the handicapped would continue to be provided. It proposes a three-year trial period to afford the Commission an opportunity to evaluate the operation of two subchannels by public broadcast licensees. During this period, licensees could continue to file a simplified subcarrier application so that the Commission could determine how many stations were operating subcarriers and the purposes for which they were being used.

5. The WVEBA also believes that public telecommunication services using the 67 kHz subcarrier should be continued. However, at times when this subcarrier is not used for public telecommunications services, licensees should be permitted to engage in revenue-generating activities.

6. The Corporation for Public Broadcasting (CPB) believes that certain modifications are necessary to ensure that commercial services on noncommercial stations do not interfere with the provision of public telecommunications services as stated in Section 399B of the Communications Act. CPB recommends that the Commission reserve one subcarrier channel for noncommercial purposes but leave any additional capacity created free of regulatory restrictions. With respect to the reserved channel CPB states that licensees should be permitted to apply to the Commission for permission to conduct commercial operations on that channel, if such operations would not interfere with their provision of public telecommunications services. In situations where commercial use of the reserved subchannel would not interfere with public telecommunications use, CPB believes that a temporary, renewable waiver of the reservation would be appropriate. These renewable waivers would be granted upon a showing that the proposed remunerative use would not interfere with existing or known potential noncommercial use. This reservation policy is preferable to what CPB calls the alternative—allowing licensees to offer commercial subcarriers so long as they are preemptible by public telecommunications users. According to CPB, this alternative would render commercial services vulnerable to eviction and would fail to provide adequate stability for long-term business relationships.

7. National Public Radio (NPR) asserts that too much subcarrier capacity exists for radio reading services and other public telecommunications services to be crowded out by the introduction of new services and that, in fact, the real danger stems from the

[33] These parties include: Association of Radio Reading Services, Utah Radio Reading Services, University of Kansas Audio Reader Network, Corporation for Public Broadcasting, Oklahoma Radio Reading Services, New Jersey Library for the Blind and Handicapped, The Washington Ear, Georgia Radio Reading Service, Inc., El Paso Lighthouse for the Blind, Radio Talking Books, Inc., Minnesota Radio Talking Book Network, Sun Sounds Radio Reading Service, Office of Handicapped Concerns, Radio Reading Services of Greater Cincinnati, Inc., Minnesota Public Radio, Broadcast Services for the Blind, Inc., Read Out, West Tennessee Talking Library, American Foundation for the Blind, York County Blind Center, WBHM Radio Reading Service; Kentuckiana Radio Information Service, Golden Triangle Radio Information Center, and Houston Taping for the Blind.

[34] KQED, Inc., The Ohio State University, State of Wisconsin-Educational Communications Board, The Board of Trustees of the University of Illinois and the University of Maine.

financial crisis affecting public radio stations. NPR states that it and its member stations have been and continue to be strong supporters of subcarrier programming for print handicapped persons. It has surveyed its member stations on the subject and NPR reports that not one station presently carrying print handicapped services on its subcarrier said that development and implementation of new services would interfere with provision of these specialized services. Supplemental comments filed by NPR also reported a new policy to provide significant incentives to NPR affiliate stations to continue to offer public telecommunications services, and to introduce new services in the future.[35] This policy was adopted by NPR's Board of Directors. Essentially, this policy provides for NPR to pay member stations continuing to provide a radio reading service (or other qualified public telecommunications services) $500 per month in order to encourage the retention of these services. Additionally, NPR will formulate its venture agreements with all public radio stations in a manner designed to discourage the termination of a radio reading service solely in order to provide new, commercial service. NPR states that it believes this policy would provide a degree of protection to public telecommunications services sufficient to warrant adoption of the Commission's subcarrier proposals.

8. The CPB supplemental comments responding to NPR's proposals outline its objections. CPB argues that the NPR proposal does not satisfy the requirements of Section 399B of the Communications Act. It also argues that only a few stations will be affected by NPR's economic incentives. According to CPB, the offer applies only in communities in which NPR engages in its commercial subcarrier ventures. Additionally, CPB argues that $500 is not an adequate incentive to ensure subcarrier availability to public telecommunications services. To ensure access of public telecommunication services to a subcarrier, CPB reaffirms its proposals for reserving a subcarrier for public telecommunications services while permitting the possibility of income generating activities.

[FR Doc. 83-15410 Filed 6-8-83; 8:45 am]
BILLING CODE 6712-01-M

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47 CFR Part 90

[Docket No. 18921; RM-1197; RM-1218; RM-1330; FCC 83-175]

New Practices and Procedures for Cooperative Use and Multiple Licensing of Stations in the Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has modified the regulations adopted in the *Report and Order* in Docket No. 19821 (47 FR 19527, May 6, 1982) to eliminate the restrictions on the securing of packaged services, and on the licensing of radio equipment suppliers to use the same base station facilities offered for multiple licensed use by other licensees. The Commission has also modified its regulations governing sharing arrangements to permit both non-profit sharing and private carrier service. The Commission took these actions in response to petitions for reconsideration objecting to the third party licensing restriction, and in response to recent amendments to the Communications Act. The Commission decided that these policies were overly restrictive and were not necessary to its regulatory objectives.

DATES: Effective July 11, 1983.

FOR FURTHER INFORMATION CONTACT: Eugene C. Bowler, Land Mobile & Microwave Division, Private Radio Bureau, Washington, D.C. 20554, (202) 634-2443.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Radio.

Memorandum Opinion and Order on Resonsideration (Proceeding Terminated)

In the matter of amendment of Parts 89, 91 and 93 of the Commission's rules and regulations to adopt new practices and procedures for cooperative use and multiple licensing of stations in the private land mobile radio services[1]; Docket No. 18921, RM-1197, RM-1218, RM-1330.

Adopted: April 27, 1983.

Released: June 2, 1983.

By the Commission. Commissioner Jones absent.

I. Preliminary Statement

1. We have before us petitions for reconsideration and clarification[2] of our *Report and Order* in the above captioned proceeding.[3] After carefully considering the concerns expressed in these petitions as well as reexamining the regulatory policies we adopted in this proceeding in light of the record, the NARUC decision (see n. 9) and the recent amendments to the Communications Act[4], we have decided to modify certain of the rules we earlier adopted. Accordingly, we are eliminating the restriction on the securing of packaged services. We are also modifying our sharing requirements to permit both non-profit cost sharing and for-profit private carrier service. Lastly, we are authorizing radio equipment suppliers to be licensed on the same base station facilities that they offer for use by other licensees.

II. Background

2. The proceedings in Docket No. 18921 began in 1970 with the release of our *Memorandum Opinion and Order and Notice of Proposed Rule Making.*[5] We had received several petitions for rule making from radio common carriers requesting that we adopt regulations substantially restricting the multiple licensing and cooperative sharing of radio stations in the private land mobile services.[6] The petitioners had argued that authorization of shared and multiple licensed transmitting facilities in the private land mobile radio services contravended Title II of the Communications Act and presented unfair and destructive competition to the radio common carriers. In our *Memorandum Opinion and Order, supra,* we stated we were not persuaded by the arguments made, and we did not view shared or joint use of private communications facilities as common carriage. We pointed out that this had been the Commission's determination for many years, and we concluded both shared and joint use of transmitters promoted the public interest by encouraging the larger and more effective use of radio in the public interest, as mandated by the Communications Act of 1934, as amended.[7] [8]

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[35] Late filed comments were submitted by NPR, CPB, ARRS, AFB and The Washington Ear. All these comments relate to the radio reading service issue and provide useful information on the subject. Accordingly, we have fully considered them in reaching our decision in this proceeding.

[1] Parts 89, 91 and 93 have been consolidated under new Part 90. *See* 47 CFR 90.1-90.657.

[2] A Petition for Reconsideration was filed by the General Electric Company (GE), Richardson Communications Company, C&E Service Co., AGS Electronics, Inc., Clark Communications, Inc. and Commercial Communications, Inc. essentially agreed with and supported the GE request. A Petition for Reconsideration And/Or Clarification also was filed by Telocator Network of America (TNA). TNA, however, subsequently filed a Notice of Withdrawal of Petition stating that the issues raised in the petition "are moot" because passage of new Section 331 of the Communications Act of 1934, as amended, "significantly alters the legal test of common carriage in the land mobile radio services." *See* Communications Amendments Act of 1982, 120(a), 47 U.S.C. 331. Replies to the petitions were filed by the National Association of Business and Educational Radio, Inc. (NABER) and Motorola, Inc.

[3] *See Report and Order,* Docket No. 18921, 89 F.C.C. 2d 766 (1982).

[4] See Appendix A.

[5] *Multiple Licensing—Safety and Special Radio Services,* Docket No. 18921, 24 FCC 2d 510 (1970).

[6] For a description of multiple licensing and cooperative sharing see *Report and Order,* Docket No. 18921, *supra,* and *Tentative Decision and Further Inquiry and Notice of Proposed Rule Making,* FCC 81-263; 46 FR 32039 (June 19, 1981).

[7] 47 U.S.C. 303(g).

[8] These conclusions have now been confirmed by the new legislation as set forth above

3. We did believe, however, that it was necessary to clarify the types of shared use arrangements we thought appropriate in the private services and we proposed rules with this goal in mind.

4. Concurrently with these deliberations, however, the dynamic state of growth in the land mobile services, both in terms of users and technologies, caused us, in a separate proceeding, to formulate a licensing approach for 800 MHz systems which permitted licensees to make private land mobile facilities available to multiple eligibles on a for-profit basis.[9] This decision and the appeals attendant thereon substantially delayed resolution of our proceeding in Docket No. 18921. When we again turned our attention to fashioning a regulatory plan for private shared use and multiple licensing arrangements below 800 MHz in our *Tentative Decision and Further Inquiry and Notice of Proposed Rule Making*, we adopted certain interim policies to avoid confusion, but we decided that interested parties should be given the opportunity to submit further comments on our proposals in light of the changes that had occurred and the staleness of the earlier comments. After reviewing the new comments, as well as the entire record in Docket No. 18921, we released our *Report and Order* in March, 1982. There we affirmed our earlier conclusions that shared use and joint licensing of private land stations did not constitute common carriage within the meaning of Title II of the Communications Act, and that authorization of these types of arrangements in the private land mobile services clearly was in the public interest because they "furthered the larger and more effective use of radio." We then adopted regulations clarifying the distinctions between multiple licensing and cooperative use arrangements and specifying how each was to be conducted.

5. However, in 1982 subsequent to our *Report and Order*, the Congress amended the Communications Act. It not only affirmed our earlier conclusions about multiple licensing and non-profit cooperative use, it also determined that for-profit shared use of private land mobile service facilities served the public interest and expressed the view that there should be minimal barriers to the ways licensees, equipment suppliers and other third parties are able to offer facilities and service to eligible users in the private services. While we had considered permitting licensees to profit in the bands below 800 MHz in our *Tentative Decision* and requested public comment thereon,[10] we did not adopt final rules authorizing such an approach in the bands below 800 MHz in our *Report and Order*, essentially because we were not persuaded of the need for such a regulatory approach here, and because the bands below 800 MHz were substantially occupied.[11] Thus, we continued, in this portion of the spectrum, to preclude licensees from profiting from the shared use of the facilities authorized to them.

Petitions for Reconsideration

6. In response to our *Report and Order* we received requests from the General Electric Co. and Telocator Network of America (TNA) to reconsider our decision. However on September 16, 1982, Telocator filed a Notice of Withdrawal of [its Reconsideration] Petition.[12]

7. We also received comments on the matters contained in the General Electric and Telocator petitions from the National Mobile Radio Association; Motorola, Inc.; Southeastern Electronics, Inc.; H.V. Church; PE, C&E Service Co.; Richardson Communications Co.; AGS Electronics, Inc.; Clark Communications; Communications Associated, Inc.; and Commercial Communications.

III. Discussion

Multiple Licensing—Payments Among Participants

8. While most of these parties endorsed the conclusions reached in the *Report and Order*, they generally felt our decision regarding the restriction on equipment suppliers operating on facilities they made available to others for multiple licensing was wrong.[13]

9. Commercial Communications, Inc., for example argued:

> For us to comply with these new restrictions would have a devastating effect on our operation, or put a serious burden on our clients, to whom we sold radio systems and the use of our repeater in good faith.
>
> If we are forced to vacate our frequency, then we will have to purchase a new repeater at a cost of thousands of dollars, which we simply cannot afford. This incidentally, would also involve our having to use another frequency pair of which there are few enough already. . . . We strongly urge the Commission to reconsider, and to not place this crushing burden on a small business (we are a three man operation) that is already having a hard enough time to survive.

10. Similar arguments were echoed by Clark Communications ("With the new ruling, operators will be forced to install mobile relays physically next to existing mobile relay equipment, even sharing the same frequencies as before. What a senseless duplication of equipment and cost burden.") and AGS Electronics, Inc. ("It will impose a considerable financial burden on any small business, such as ourselves, to have to vacate an existing Community Repeater and invest in expensive equipment purchases simply to have our own communications system, when one already exists and is available for our use").

IV. Decision

11. We have considered these arguments and we find them persuasive. Our concern, as expressed in the *Report and Order*, essentially turned on definitional purity (i.e. we thought the rule desirable to distinguish multiple licensed sharing arrangements from cooperative use, thereby drawing an absolute and very definitive line between the two). Cf. n. 13, *supra*. In considering this matter further, however,

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[9] *Land Mobile Radio Services, Second Report and Order*, Docket No. 18262, 46 FCC 2d 752 (1974); *reconsidered, Memorandum Opinion and Order*, Docket No. 18262, 51 FCC 2d 945 (1975); *aff'd sub nom. NARUC v. FCC*, 525 F.2d 630 (D.C. Cir. 1976); *cert. denied*, 425 U.S. 992 (1976).

[10] *"Third Party Licensing.* Would direct licensing of any entrepreneurs now providing equipment or services to cooperative and multiply licensed private radio systems be permissible as a matter of law? Is either mandatory or voluntary licensing of such entrepreneurs a policy that would benefit either the users of these systems or the public interest? What would be the advantages and disadvantages of allowing or requiring the provision of radio communications services to current users of cooperative and multiply licensed systems in a manner analogous to the rules applied now to the Specialized Mobile Radio Service above 800 MHz." *Tentative Decision and Further Notice of Inquiry and Notice of Proposed Rule Making*, para. 82 (footnote omitted).

[11] "We also decline to adopt rules at this time which would license third party providers of equipment and service in the bands below 800 MHz and the record of this proceeding does not definitely support a need for such a service in these bands" (footnote omitted). *Report and Order*, para. 9

[12] In withdrawing its petition, TNA stated that new amendments to the Communications Act rendered moot the arguments it made challenging our conclusions with respect to multiple licensing and licensee control when third party equipment suppliers provide radio equipment on a joint use basis.

[13] In our *Report and Order* we stated:

"We also proposed in 1970 to forbid payments between persons sharing common transmitting facilities under multiple licensing. This we thought desirable to distinguish multiple licensed sharing arrangements from cooperative use, thereby drawing an absolute and very definitive line between the two. This approach was opposed by several parties. They argued that in many instances persons furnishing service, *e.g.*, equipment companies, have legitimate communications requirements of their own. In such circumstances, the option would be for such equipment companies to build a second facility for use by their customers. Notwithstanding this effect we feel that licensees of community repeaters should not be permitted to profit from the furnishing of equipment or service to other licensees. Therefore, payments among persons sharing common transmitting facilities under multiple licensing will be prohibited." 89 FCC 2d at 791.

we find the hardships it imposes, particularly on small business, is not commensurate with the benefits gained. For years there was no prohibition against permitting equipment suppliers to be one of the licensees authorized to operate on a facility which they made available to others for multiple licensing. During this time no regulatory problems arose which necessitated the discontinuance of this practice because of adverse public interest effects. Moreover, the new amendments to the Act and the NARUC case make clear that profit to the licensee of a private system is not the test of common carriage. In light of these things therefore, we are modifying our *Report and Order* to eliminate this restriction. We conclude it unnecessarily burdens licensees, particularly small businesses, while not conferring a public interest benefit sufficient to justify this burden.

Packaged Service Prohibition

12. Also, on our own motion we have reconsidered our decision to preclude private land mobile services licensees and users of shared and multiple licensed stations from securing from the same third party a "packaged service" for radio equipment and dispatching.

13. Since the inception of this proceeding we have put into issue the question whether or not licensees of private systems of communication should be permitted to obtain both equipment and dispatching service from the same third party when the station they used was shared or multiple licensed. Our concern with the desirability of such a practice has been whether in such instances licensees would maintain proper control of their systems, or would cede control to the equipment supplier/dispatcher. A second consideration was the common carriers' arguments that such arrangements "so closely paralleled common carriage offerings as to be common carriage."[14]

14. In our *Tentative Decision, supra,* we held that packaged service arrangements were not illegal and did not contravene public policy. We noted that licensees of private systems use authorized radio facilities as a tool to carry out their primary activities and functions. We also recognized that they often contract both for the radio equipment they need to enable them to operate on their authorized channels, and for the dispatch service they require, when they cannot operate their control points themselves. We concluded that the fact that they contracted with the same entity for both services did not necessarily mean they would cease to exercise proper control of their stations. We also found there was no underlying regulatory objective that required the retention of the packaged service policy.

15. However, in our *Report and Order* we retained the packaged service prohibition. While we felt the provision of packaged service did not constitute common carriage, we were faced with the comments in the proceeding that argued that the prohibition of the offering of packaged service would aid the "Commission in identifying private shared stations which are functionally equivalent with regulated carriers."[15] We did recognize, however, that throughout the proceeding the private land mobile user community had opposed retention of the packaged service prohibition and had asserted we were being overly restrictive in adopting the rule, since it did not necessarily follow that merely because licensees and users of shared stations contracted with a single entity for the services they needed, and for services which the Commission had found were necessary and served the public interest, that they would abdicate system control.

16. Obviously, the question of contracting for both dispatching and radio equipment from a single third party when a private land station is shared or multiple licensed is a matter to which we have devoted considerable thought. On the one hand, we wished to assure that licensees retained control of the systems. On the other hand, we did not want to impose unnecessary restrictions on licensees in the terms and persons with whom they contracted in the public marketplace for goods and services. After considering this entire matter again, we believe that we were overly restrictive in retaining the packaged service prohibition. Abdication of system control is not the natural consequence of securing goods and services from a single entity, though it may occur in isolated instances. What is determinative is not that the land station is shared or multiple licensed or that one or two third parties are involved, but rather that the licensee in fact exercises the supervision the system requires. To the extent that abdication of control occurs, it can be dealt with on a case by case basis, it need not be anticipated in a generic rule prohibition on securing package service for shared or multiple licensed land stations.

17. In reconsidering this matter, therefore, we are eliminating any restrictions on the persons from whom private land mobile service eligibles using shared or multiple licensed stations may secure radio equipment and services.

For Profit Licensing Arrangements

18. In our *Report and Order* we also adopted rules that required sharing of transmitting facilities, as opposed to multiple licensing, to be on a prorated, cost-shared basis. To assure this, we adopted rules which required that all costs associated with the shared service must either be absorbed by the licensee on a no-charge basis to other participants or must be prorated among all participants in the cooperative sharing arrangement. Thus, we determined not to permit the so called "stage two" and "stage three" cooperatives which we had hereto allowed. See generally Docket No. 18921, *supra.* We stated that both in stage two and in stage three cooperatives oftentimes costs and services associated with the shared use of transmitters are not prorated and cost apportioned among participants. This we concluded was not desirable in consideration of our conclusion that costs should be equitably apportioned among eligible users when they sought to operate pursuant to the Commission's cooperative sharing arrangements for the private land mobile services. We have examined this conclusion again, however, both in light of the NARUC case and the Congressional intent for the private services, as expressed in the new amendments to the Act. Both NARUC and the new amendments affirm that the status of a private system is not affected when the licensee or a third party makes a profit from a system licensed in the private service. Indeed, the new legislation makes the manner of obtaining telephone service the only line of demarcation between private and common carrier land mobile service and encourages allowing maximum flexibility in permitting licensees, equipment suppliers and other third parties to offer their services and facilities to eligible users as marketplace forces may dictate.[16]

19. In light of the fact that as a matter of law, private land mobile licensees may profit from making facilities licensed to them available to other

[14] *Tentative Decision and Further Inquiry and Notice of Proposed Rule Making,* Docket No. 18921, *supra,* at para. 60 *See also, Multiple Licensing Safety and Special Radio Services,* 24 FCC 2d. 510, 519 (1970).

[15] *Report and Order,* Docket No. 18921, 89 F.C.C. 2d at 785–786. (1982).

[16] *Cf.* Joint Explanatory Statement of the Committee of Conference on the subject of the Private Land Mobile Services.

eligibles, there seems to be no reason (1) for limiting in our rules a licensee's ability to charge for shared stations operating in bands below 800 MHz or (2) for limiting the licensee's ability to structure the cost sharing arrangement as the licensee sees fit. This being the case, we are modifying our rules governing the sharing of private land mobile stations to allow all kinds of for profit and non-profit sharing arrangements, including Stage II and Stage III cooperatives.[17]

20. Accordingly, to the extent indicated the General Electric petition is granted and it is ordered that the Commission's Rules and Regulations are modified as set forth in Appendix B.

21. It is further ordered, that the Secretary shall cause a copy of this Order to be published in the **Federal Register.**

22. It is further ordered, pursuant to 47 U.S.C. §§ 154(i), 301, 303(r), That Title 47 of the Code of Federal Regulations is amended as set forth in Appendix B. These amendments shall become effective July 11, 1983.

23. It is further ordered this proceeding is terminated.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

SEC. 120. (a) Part I of Title III of the Communications Act of 1934 (47 U.S.C. 301 et seq.) is amended by adding at the end thereof the following new section:

"Private Land Mobile Services

SEC. 331. (a) In taking actions to manage the spectrum to be made available for use by the private land mobile services, the Commission shall consider, consistent with section 1 of this Act, whether such actions will—

"(1) promote the safety of life and property;

"(2) improve the efficiency of spectrum use and reduce the regulatory burden upon spectrum users, based upon sound engineering principles, user operational requirements, and marketplace demands;

"(3) encourage competition and provide services to the largest feasible number of users; or

"(4) increase interservice sharing opportunities between private land mobile services and other services.

"(b)(1) The Commission, in coordinating the assignment of frequencies to stations in the private land mobile services and in the fixed services (as defined by the Commission by rule), shall have authority to utilize assistance furnished by advisory coordinating committees consisting of individuals who are not officers or employees of the Federal Government.

"(2) The authority of the Commission established in this subsection shall not be subject to or affected by the provisions of part III of title 5, United States Code, or section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)).

"(3) Any person who provides assistance to the Commission under this subsection shall not be considered, by reason of having provided such assistance, a Federal employee.

"(4) Any advisory coordinating committee which furnishes assistance to the Commission under this subsection shall not be subject to the provisions of the Federal Advisory Committee Act.

"(c)(1) For purposes of this section, private land mobile service shall include service provided by specialized mobile radio, multiple licensed radio dispatch systems, and all other radio dispatch systems, regardless of whether such service is provided indiscriminately to eligible users on a commercial basis, except that a land station licensed in such service to multiple licensees or otherwise shared by authorized users (other than a nonprofit, cooperative station) shall not be interconnected with a telephone exchange or interexchange service or facility for any purpose, except to the extent that (A) each user obtains such interconnection directly from a duly authorized carrier; or (B) licensees jointly obtain such interconnection directly from a duly authorized carrier.

"(2) A person engaged in private land mobile service shall not, insofar as such person is so engaged, be deemed a common carrier for any purpose under this Act. A common carrier shall not provide any dispatch service on any frequency allocated for common carrier service, except to the extent such dispatch service is provided on stations licensed in the domestic public land mobile radio service before January 1, 1982.

"(3) No State or local government shall have any authority to impose any rate or entry regulation upon any private land mobile service, except that nothing in this subsection may be construed to impair such jurisdiction with respect to common carrier stations in the mobile service".

(b)(1) Section 3 of the Communications Act of 1934 (47 U.S.C. 153) is amended by adding at the end thereof the following new paragraph:

"(gg) 'Private land mobile service' means a mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.".

(2) Section 3(n) of the Communications Act of 1934 (47 U.S.C. 153(n)) is amended to read as follows:

"(h) 'Mobile service' means a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes both one-way and two-way radio communication services."

Appendix B

Part 90 of the Commission's Rules and Regulations is amended as follows:

PART 90—[AMENDED]

1. Section 90.7 is amended by the addition of the term "private carrier" to the list of definitions to read as follows:

§ 90.7 Definitions.

* * * * *

Person. An individual, partnership, association, joint stock company, trust or corporation.

Private carrier. An entity licensed in the private services and authorized to provide communications service to other private services on a commercial basis.

Radio call box. A transmitter used by the public to request fire, police, medical, road service, or other emergency assistance.

* * * * *

2. Section 90.35 is amended by revising paragrph (a)(6) to read as follows:

§ 90.35 Medical Services.

(a) * * *

* * * * *

(6) Physicians, schools of medicine, oral surgeons, and associations of physicians or oral surgeons.

* * * * *

3. Section 90.179 including the heading, is revised to read as follows:

§ 90.179 Shared used of radio stations.

Licensees of radio stations authorized under this rule part may share the use of their facilities. A station is shared when persons not licensed for the station control the station for their own purposes pursuant to the licensee's authorization. Shared use of a radio station may be on either a non-profit, cost shared basis or on a for-profit private carrier basis. Shared use of an authorized station is subject to the following conditions and limitations:

(a) Persons may share a radio station only on frequencies for which they would be eligible for a separate authorization.

(b) The licensee of the shared radio station is responsible for assuring that the authorized facility is used only by persons and only for purposes consistent with the requirements of this rule part.

(c) Participants in the sharing arrangement may obtain a license for their own mobile units (including control points and/or control stations for control of the shared facility), or they

[17] We address here solely profit which may be earned on the offering of shared radio facilities and do not reach issues which may arise if these facilities are interconnected with telephone service.

may use mobile stations, and control stations or control points authorized to the license.

(d) If the licensee shares the land station on a non-profit, cost shared basis to the licensee, this shared use must be pursuant to a written agreement between the licensee and each participant which sets out (1) the method of operation, (2) the components of the system which are covered by the sharing arrangements, (3) the method by which costs are to be apportioned, and (4) acknowledgement that all shared transmitter use must be subject to the licensee's control. These agreements must be kept as part of the station records.

(e) The licensee must keep an up-to-date list of persons who are sharing the station and the basis of their eligibility under Part 90 of the rules.

(f) If the land station which is being shared is interconnected with the public switched telephone network, the provisions of § 90.477 *et seq.* apply.

4. Section 90.185 is revised to read as follows:

§ 90.185 Multiple licensing of radio transmitting equipment in the mobile radio service.

Two or more persons eligible for licensing under this rule part may be licensed for the same land station under the following terms and conditions.

(a) Each licensee complies with the general operating requirements set out in § 90.403 of the rules.

(b) Each licensee is eligible for the frequency(ies) on which the land station operates.

(c) If the multiple licensed base station is interconnected with the public switched telephone network, the provisions of § 90.477 *et seq.* apply.

5. Section 90.129 is amended by revising paragraph (d) to read as follows:

§ 90.129 Supplemental information routinely to be submitted with application.

* * * * *

(d) Applicants proposing to share their authorized transmitters pursuant to § 90.179 shall so indicate in their application.

6. Section 90.443 is amended by the addition of new paragraph (e) to read as follows:

§ 90.443 Content of station records.

* * * * *

(e) For shared land stations, the records required by § 90.179.

[FR Doc. 83-15408 Filed 6-8-83; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 250

[Docket No. 30602-100]

Fisheries Loan Fund Procedures; Available Fisheries Loans and Open Season for Applications

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Rule-related notice.

SUMMARY: NOAA issues this notice that emergency loans from the Fisheries Loan Fund are available to qualified fishing vessel owners. Fishermen whose vessels are financed under the Fisheries Obligation Guarantee Program may apply at any time; however, *fishermen whose vessels are not financed under the Fisheries Obligation Guarantee Program may apply only during an open season from June 15 through July 29, 1983.* This notice will provide potential applicants with specific eligibility criteria and application instructions.

DATE: The deadline for applications is July 29, 1983.

ADDRESSES: Application instructions and information can be obtained from the nearest Regional Financial Services Branch of the National Marine Fisheries Service listed below:

Residents of New England, Mid-Atlantic, and Great Lakes areas, send to National Marine Fisheries Service, Northeast Region, Financial Services Branch, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; (617) 281-3600.

Residents of Gulf of Mexico, and South Atlantic, and Caribbean areas, send to National Marine Fisheries Service, Southeast Region, Financial Services Branch, 9450 Koger Boulevard, St. Petersburg, Florida 33702; (813) 893-3148.

Residents of California, Hawaii, American Samoa, and Guam send to National Marine Fisheries Service, Southwest Region, Financial Services Branch, 300 South Ferry Street, Terminal Island, California 90731; (213) 548-2478.

Residents of Washington, Oregon, and Alaska, send to National Marine Fisheries Service, Northwest Region, Financial Services Branch, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115; (206) 527-6122.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service (202) 634-7496.

SUPPLEMENTARY INFORMATION: $9.7 million is available for emergency loans from the Fisheries Loan Fund. The purpose of these loans is to enable fishermen to avoid default on vessel mortgages which financed the construction, reconstruction, or reconditioning of their fishing vessels.

$3.9 million is reserved for fishermen *whose vessels are financed under the Fisheries Obligation Guarantee Program.* These fishermen may apply at any time. Their applications should, however, be submitted as soon as possible because applications have to be processed and loans committed before September 30, 1983 (at which time the program ends). These fishermen should call their nearest Regional Financial Services Branch of the National Marine Fisheries Service to get application advice.

$5.8 million is reserved for fishermen whose vessels are not financed under the Fisheries Obligation Guarantee Program. *These fishermen may apply only during the application open season from June 15 through July 29, 1983. The rest of this notice establishes application instructions and qualification criteria only for those fishermen whose vessels are not financed under the Fisheries Obligation Guarantee Program.*

This action has been submitted to Office of Management and Budget under the Paperwork Reduction Act.

What is available.

(1) $1.16 million in emergency loan funds are available to residents of each of the following areas:

(a) New England, Mid-Atlantic, and Great Lakes.

(b) Gulf of Mexico, South Atlantic, and Caribbean.

(c) California, Hawaii, American Samona, and Guam.

(d) Washington and Oregon.

(e) Alaska.

(2) Interest rate is 3 percent.

(3) Repayment maturity is up to 10 years.

To whom loans available.

(1) You must be a U.S. citizen.

(2) You must own a commercial fishing vessel of at least 5 net tons.

(3) You must be in jeopardy of defaulting on a mortgage which financed the above vessel's construction, reconstruction, or reconditioning.

(4) You must personally skipper and own the vessel whose mortgage you are in jeopardy of defaulting (vessels with hired skippers do not qualify).

(5) You must have at least 5 years experience as a skipper of vessels you owned.

(6) You must have made a profit during at least 2 of the 5 years above.

(7) You cannot be in bankruptcy.

(8) Your mortgate cannot already be in process of foreclosure.

(9) You cannot have any other assets capable of generating the funds for which this loan is sought.

(10) Your vessel must have a sufficient debt-to-equity ratio and insurable value to safely secure the loan amount requested (maximum loan amount is 1 year's mortgage debt service, but all loans will be kept as small as possible).

(11) Your situation must be such that the requested loan, if approved, will result in a strong assurance of continued operation and repayment of the loan.

(12) Only the owner of the vessel himself may apply (do not have someone apply on your behalf).

(13) Applications which are not materially complete at the time of our receipt will be returned.

(14) Do not apply unless you meet all the above requirements.

How loan will be made available.

(1) Applications submitted before or after the open season will not be accepted.

(2) Applications will be considered in the order of their receipt by us.

(3) Qualified applications will be approved in the order of their receipt until available funds are exhausted.

What must be included in applications. (Since no application form is available, send the following information in the order indicated).

(1) *Personal.*

(a) Name.

(b) Address.

(c) Telephone number.

(d) Marital status.

(e) Social security number.

(f) IRS taxpayer number.

(g) Complete biography. Include age, place of birth (proof of naturalization if naturalized), health, experience, references, operating history, accomplishments, etc. Be *specific* about what fishing vessels you owned and skippered, what they fished for, when you owned and skippered them, etc.

(h) Balance sheet for yourself (current within 60 days of application). All personal debts must be disclosed, with the amount and frequency of repayment requirements. List acquisition cost and market value for all non-cash assets. All items must be described thoroughly to permit our verification. Give names, addresses, and telephone numbers of each person you owe money to and each person who owes money to you.[1]

(i) Federal income tax returns for yourself for the last 5 years.[1]

(2) *Loan purpose.*

(a) Amount of loan requested (maximum is one year's debt service on mortgaged vessel).

(b) What loan will be used for (who it will be paid to and for what).

(c) Why a lesser amount would not be enough.

(d) Why the amount requested will assure your ability to continue in operation and repay the loan (be specific).

(e) Letters from two banks declining to loan the money you are requesting from the Fisheries Loan Fund Program.

(3) *Financial information.*

(a) Balance sheet for your vessel's business (this must be current within 60 days of application and must be for the vessel whose mortgage is in jeopardy of default). All vessel debts must be disclosed, with the amount and frequency of repayments. List acquisition cost and market value for all non-cash assets. All items must be described thoroughly enough to permit our verification. Give names, addresses, and telephone numbers of each person you owe money to and each person who owes you money.[1]

(b) Profit and loss statement for your vessel during last 12 months (this must be current within 60 days of application and must be for the vessel whose mortgage is in jeopardy of default). Please be specific about all items of profit and loss.

(c) Federal income tax returns for your vessel business for the last 5 years.[1]

(d) Trip settlement sheets for the past 90 days (for the vessel whose mortgage is in jeopardy of default).

(e) Current balance sheet and profit and loss statement for any other business you own.

(f) Name, address, and telephone number of your bookkeeper and your attorney.

(g) Name, address, and telephone number of the principal people who buy your vessel's catch and the principal people who sell supplies and services to your vessel.

(4) *Vessel information* (for the vessel whose mortgage is in jeopardy of default).

(a) Copy of all vessel mortgages (include names, addresses, and phone numbers of mortgagees and present outstanding balance of each mortgage).

(b) Current U.S. Coast Guard form 1330 (certificate of ownership).

(c) Recent photograph of vessel.

(d) Inventory of vessel equipment and description of vessel's rigging.

(e) Survey report for vessel (no older than 1 year).

(f) Copy of vessel's insurance policy (plus name, address, and telephone number of agent).

(g) Number of engine hours and date of last engine overhaul.

(h) Date of last vessel dry dock.

(i) Vessel acquisition cost and present market value.

(j) Complete disclosure of all lienable vessel debt.

[1] If you own the vessel as a sole proprietor, you need send only your personal balance sheet and tax returns. If you own the vessel through a corporation or partnership, you must send both your personal balance sheet and tax returns and those for the corporation or partnership.

List of Subjects in 50 CFR Part 250

Fishing vessels, Loan programs—business.

(16 U.S.C. 742a–742k)

Dated: June 3, 1983.

Carmen J. Blondin,

Acting Deputy Assistant Administrator for Fisheries Resource, National Marine Fisheries Service.

[FR Doc. 83-15380 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 48, No. 112
Thursday, June 9, 1983

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 23494; Notice No. CE-83-1A]

Small Airplane Airworthiness Review Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of reopening of proposal period.

SUMMARY: This notice reopens the period for interested persons to submit proposals for consideration concerning the Small Airplane Airworthiness Review Program, Notice No. CE-83-1 (48 FR 4290; January 31, 1983). The program objective is to provide public participation in improving, updating and developing the airworthiness standards applicable to small airplanes as set forth in Part 23 of the Federal Aviation Regulations (FAR).

DATE: Proposals must be received on or before May 3, 1984.

ADDRESS: Proposals prepared in response to this notice should be mailed or delivered in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, ACE-7, Attn: Rules Docket Clerk, Docket No. 23494, Room 1558, Federal Building, 601 East 12th Street, Kansas City, Missouri 64106. All proposals must be marked: Docket No. 23494. Proposals may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: William Olson, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Central Region, Federal Aviation Adminstration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5688.

SUPPLEMENTARY INFORMATION:

Proposals Invited

Interested persons are invited to participate in the Small Airplane Airworthiness Review Program by submitting any proposal deemed appropriate as an amendment to Part 23 of the FAR. All proposals submitted should be in the format, including all of the information requested, in the required, FORMAT AND INFORMATION paragraph of notice CE-83-1. All proposals received on or before the closing date will be considered before taking further action on the Small Airplane Airworthiness Review Program. All proposals submitted will be available, both before and after the closing date in the Rules Docket, for examination by interested persons. Persons wishing the FAA to acknowledge receipt of their proposals submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Proposal to Docket No. 23494." The postcard will be date/time stamped and returned to the person submitting the proposal.

Availability of Notice

Any person may obtain a copy of notice CE-83-1 by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Requests must identify the notice number. Persons interested in being placed on a mailing list for future notices and Notices of Proposed Rulemaking (NPRM) related to this Review Program should also request a copy of Advisory Circular No. 11-2, which describes the application procedures.

Reopening of Period for Submitting Proposals

The FAA has determined that it is in the public interest to reopen the response period for Notice No. CE-83-1 to afford the public and the aviation industry sufficient time to review Part 23 of the FAR and submit proposals deemed appropriate as an amendment to Part 23.

Accordingly, the proposal period for Notice No. CE-83-1 is reopened to close on May 3, 1984.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Safety, Air transportation, Tires.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421 and 1423) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c))

Issued in Kansas City, Missouri on May 26, 1983.

Murray E. Smith,

Director, Central Region.

[FR Doc. 83-15469 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 210

[Release Nos. 33-6469; 34-19834; 35-22960; S7-956]

Oil and Gas Producers—Full Cost Accounting Practices; Proposed Amendment of Rules

AGENCY: Securities and Exchange Commission.

ACTION: Re-opening of period for comment.

SUMMARY: The Commission announces that it is re-opening the period during which comments should be received on proposed amendments to its rules for application of the full cost method of accounting by oil and gas producers. The Commission is re-opening the comment period because of the substantial proportion of comments received subsequent to the original deadline.

DATE: Comments should be received by the Commission on or before June 30, 1983.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. Comment letters should refer to File No. S7-956. All comments will be available for public inspection at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: M. Elizabeth Rader or John W. Albert, (202) 272-2130, Office of the Chief Accountant, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On December 21, 1982, the Commission

proposed amendments to its rules for application of the full cost method of accounting by oil and gas producers by issuing Release No. 33–6445 (December 30, 1982; 47 FR 58281). These amendments consisted of two alternative sets of rules for determining when capitalized costs may be excluded from immediate amortization and invited public comment by April 30, 1983. Because of the substantial proportion of comments received subsequent to that date, the Commission is re-opening the comment period on these proposed rules to inform all interested parties that comments will be considered if received on or before June 30, 1983.

By the Commission.

Dated: June 1, 1983.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-15386 Filed 6-8-83; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

Public Comment Period and Opportunity for Public Hearing on Proposed Condition of Approval to the Virginia Permanent Regulatory Program

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing a public comment period and opportunity for public hearing on a proposed action to impose a new condition on the Secretary of the Interior's approval of the Virginia Permanent Regulatory Program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed condition relates to the authority of the State to deny an application for a permit or permit renewal unless the applicant submits proof that all required Federal reclamation fees have been paid.

This notice sets forth the times and locations that the Virginia program is available for public inspection, the comment period during which interested persons may submit written comments on the proposed action, and information pertinent to the public hearing.

DATES: Written comments, data or other relevant information relating to the imposition of the condition to the Virginia program not received on or before 4:00 p.m. on July 11, 1983, will not necessarily be considered.

A public hearing on the proposed modifications has been scheduled for June 27, 1983, at the address listed under "ADDRESSES."

Any person interested in making an oral or written presentation at the hearing should contact Mr. Ralph Cox at the address or phone number listed below by June 21, 1983. If no one has contacted Mr. Cox to express an interest in participating in the hearing by the above date, the hearing will not be held. If only one person has so contacted Mr. Cox by the above date, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: Ralph Cox, Director, Virginia Field Office, Office of Surface Mining Reclamation and Enforcement, Highway 23, South, P.O. Box 626, Big Stone Gap, Virginia 24219.

The public hearing will be held in the Conference Room of the Lebanon Area Office, Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll, Streets, Lebanon, Virginia 24266.

Copies of the Virginia program, a listing of any scheduled public meetings and all written comments received in response to this will be available for review at the OSM and State regulatory authority offices listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5315, 1100 "L" Street, N.W., Washington, D.C. 20240

Office of Surface Mining Reclamation and Enforcement, Highway 23, South, Big Stone Gap, Virginia 24219

Office of Surface Mining Reclamation and Enforcement, Flannagan and Carroll Streets, Lebanon, Virginia 24266

Virginia Division of Mined Land Reclamation, 622 Powell Avenue, Drawer U, Big Stone Gap, Virginia 24219

FOR FURTHER INFORMATION CONTACT: Ralph Cox, Director, Virginia Field Office, Office of Surface Mining, P.O. Box 626, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION: The Virginia program was conditionally approved by the Secretary of the Interior on December 15, 1981 (46 FR 61088–61115). Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Virginia program can be found in the December 15, 1981 **Federal Register.**

Background

Sections 510(b) and 510(c) of SMCRA limit the issuance of new permits and permit renewals to those applicants who are in compliance with the requirements of SMCRA. As specified in section 402 of SMCRA and Subchapter R of 30 CFR, the operators of coal surface mines are to pay reclamation fees to the Secretary of the Interior. Further, section 402(f) of SMCRA specifically mandates full cooperation with the Secretary by all Federal and State agencies in the enforcement of this provision.

Recently it was brought to the Secretary's attention that the Virginia program does not contain regulatory language consistent with 30 CFR 786.19(h) which requires the State to deny permit applications and permit revision applications unless the applicant has submitted proof that all Federal reclamation fees required under 30 CFR Subchapter R have been paid.

To resolve this issue, on January 4, 1983, the Director, OSM, sent a letter to Virginia to request that Virginia either voluntarily amend its program to add a regulation consistent with 30 CFR 786.19(h), or revise its permitting procedures to ascertain such information prior to approving a permit application. To date, Virginia has not formally responded to the January 4 letter.

Therefore, the Secretary proposes to add a new condition to the Virginia program requiring the State to amend its program by a specified date to incorporate requirements no less effective than 30 CFR 786.19(h). The Secretary requests public comment on this proposed action.

Pursuant to 30 CFR 732.17(e), the Secretary notified Virginia by letter of June 1, 1983, that a State program amendment is required because conditions or events indicate that the approved State program no longer meets the requirements of SMCRA and the Federal regulations. Therefore, pursuant to 30 CFR 732.17(f)(1), Virginia shall submit to the Secretary within 60 days of receipt of notification either a proposed written amendment or a description of an amendment to be proposed that meets the requirements of SMCRA and the Federal regulations, and a timetable for enactment which is consistent with established

administrative or legislative procedures. Failure of the State to submit the proposed amendment or description and the enactment timetable within the prescribed 60 days, or subsequent failure to comply with the submitted timetable, or disapproval by the Secretary of the amendment, could result in proceedings under 30 CFR Part 733 to either enforce that part of the State program affected or withdraw approval, in whole or in part, of the State program and implement a Federal program.

Additional Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to Section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared for this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSM is exempt from the requirement to prepare a Regulatory Impact Analysis and this action does not require regulatory review by OMB.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act.* This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 946

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

Accordingly, 30 CFR 946.11 is proposed to be amended as set forth herein.

Dated: June 1, 1983.

J. R. Harris,

Director, Office of Surface Mining.

Authority: Pub. L. 95-87, Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*)

PART 946—VIRGINIA

30 CFR 946.11 is proposed to be amended by adding paragraph (t) to impose an additional condition as follows:

§ 946.11 Conditions of State regulatory program approval.

* * * * *

(t) Termination of the approval found in Section 946.10 will be initiated on ————, unless Virginia submits to the Secretary by that date a copy of promulgated regulations or otherwise amends it program to contain provisions no less effective than 30 CFR 786.19(h) to require the State to deny permit applications and permit revision applications unless the applicant has submitted proof that all Federal reclamation fees required under 30 CFR Subchapter R have been paid.

[FR Doc. 83-15492 6-8-83; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD 08-83-02]

Drawbridge Operation Regulations; Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the coast Guard is considering changing the regulations governing nine LDOTD low level drawbridges in Louisiana.

This proposal is being made because of the infrequent requests for openings of the draws during the periods specified for advance notice. This action is designed to relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before July 25, 1983.

ADDRESS: Comments should be submitted to and are available for examination from 9:00 a.m. to 3:00 p.m., Monday through Friday except holidays, at the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, 500 Camp Street, New Orleans, Louisiana 70130. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: Joseph Irico, Chief, Bridge Administration Branch, at the address given above (504) 589-2965.

SUPPLEMENTARY INFORMATION: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is considering changing the regulations governing nine LDOTD low level drawbridges to provide the following:

(1) Require that at least four hours advance notice be given for an opening of the draw at all times, for the:

Swing span bridge, Amite River, mile 6.0, LA 22 at Clio, Livingston Parish.

Pontoon bridge, Belle River, mile 43.5, LA 70 near Belle River, Assumption Parish.

Pontoon bridge, Lower Grand River, mile 25.9, LA 977 at Pigeon, Iberville Parish.

Swing span bridge, Pierre Pass, mile 1.0, LA 70 at Pierre Part, Assumption Parish.

Swing span bridge, Plaquemine Bayou, mile 6.5, Spur 3066 at Indian Village, Iberville Parish.

Lift span bridge, West Pearl River, mile 7.9, U.S. 90 near Pearlington, St. Tammany Parish.

All of these bridges presently are required to open on signal at any time, except the bridges over the Amite and West Pearl Rivers. These two are required to open on signal from 5:00 a.m. to 9:00 p.m. and on a 12-hour advance notice otherwise at all times.

(2) Require that at least four hours advance notice be given for an opening of the draw from 9:00 p.m. to 5:00 a.m. and to open on signal otherwise at all times, for the:

Swing span bridge, Kelso Bayou, mile 0.7, LA 27 at Hackberry, Cameron Parish.

Swing span bridge, Mermentau River, mile 7.1, LA 82 at Grand Chenier, Cameron Parish.

These two bridges presently are required to open on signal at any time.

(3) Require that at least four hours advance notice be given for an opening of the draw from 6:00 p.m. to 6:00 a.m. and to open on signal otherwise at all times, for the:

Swing span bridge, Superior Oil Company Canal, mile 6.3, LA 82, Cameron Parish.

This bridge presently is required to open on a 12-hour advance notice from 9:00 p.m. to 5:00 a.m. and to open on signal otherwise at all times.

Interested parties are invited to participate in this propsed rule making by submitting written views, comments, data or arguments. Persons submitting comments should include their name and address, identifying the bridge, and

give reasons for concurrence with or any recommended change in the proposal. Persons desiring acknowledgement that their comments have been received should enclose a stamped self-addressed post card or envelope.

The Commander, Eighth Coast Guard District, will evaluate all communications received and determine a final course of action on this proposal. The proposed regulation may be changed in the light of comments receive.

Drafting Information

The principal persons involved in drafting this proposal are: Josep Irico, Project Manager, District Operations Division, and Steve Crawford, General Attorney, District Legal Office.

Discussion of the Proposed Regulations

Vertical clearances of the nine bridges in the closed to navigation position range from 0.0 feet at the pontoon bridges to 13.0 feet at the Mermentau River swingspan bridge. Navigation through the bridges consists in whole or in part of commercial shrimpers/fishers, barges, crew boats and pleasure craft. Data submitted by the LDOTD for the entire year 1982 indicate that there is infrequent traffic through the bridges, during the proposed respective advance notice periods, as reviewed below:

(1) Bridges with proposed four hour notice at all time:

Amite River. In 1982, there were no openings for navigation between 8:00 p.m. and 6:00 a.m. Between 6:00 a.m. and 8:00 p.m. the average monthly openings by the hour ranged from 0.2 to 4.7, with an average daily opening of 0.92.

Belle River. In 1982, the average monthly openings by the hour range from 0.8 to 6.3, with an average daily opening of 2.38.

Lower Grand River. In 1982, the average monthly opening by the hour ranged from 1.0 to 4.8, with an average daily opening of 2.21.

Pierre Pass. In 1982, the average monthly openings by the hour ranged from 0.1 to 4.2, with an average daily opening of 1.56.

Paquemine Bayou. In 1982, there were virtually no openings for navigation between 10:00 p.m. and 7:00 a.m. Between 7:00 a.m. and 10:00 p.m. the average monthly openings by the hour ranged from 0.4 to 2.7, with an average daily opening of 0.84.

West Pearl. In 1982, there were virtually no openings for navigation between 9:00 p.m. and 5:00 a.m. Between 5:00 a.m. and 9:00 p.m. the average monthly openings by the hour ranged from 0.1 to 1.4, with an average daily opening of 0.39.

(2) Bridges with proposed four hour notice at certain period at all times:

Kelso Bayou. In 1982, during the proposed advance notice period between 9:00 p.m. and 5:00 a.m., the average monthly openings by the hour ranged from 2.6 to 5.3, with an average daily opening of 0.92.

Mermentau River. In 1982, during the proposed advance notice period between 9:00 p.m. and 5:00 a.m., the average monthly openings by the hour ranged form 1.5 to 9.0, with an average daily opening of 1.27.

Superior Oil Company Canal. In 1982, during the proposed advance notice period between 6:00 p.m. and 6:00 a.m., the average monthly openings by the hour ranged from 0.0 to 6.6, with an average daily opening of 0.92.

The advance notice for opening the drawbridges would be given by placing a collect call at any time from ashore or afloat, as follows:

Bridge location	From ashore call	From afloat call
Amite River.	Hammond (504) 345-7390	Slidell Public Coast Station KUZ 557, VHF Channel 84.
Belle River.	Baton Rouge (504) 925-6786	Baton Rouge Public Coast Station KKM 648, VHF Channels 27 & 86.
Kelso Bayou.	Lake Charles (318) 439-2406	Cameron Public Coast Station KQU 437, VHF Channel 24.
Lower Grand River.	Baton Rouge (504) 925-6786	Baton Rouge Public Coast Station KKM 648, VHF Channels 27 & 86.
Mermentau River.	Lake Charles (318) 439-2406	Cameron Public Coast Station KQU 437, VHF Channel 24.
Pierre Pass.	Baton Rouge (504) 925-6786	Baton Rouge Public Coast Station KKM 648, VHF Channels 27 & 86.
Plaquemine Bayou.	Baton Rouge (504) 925-6786	Baton Rouge Public Coast Station KKM 648, VHF Channels 27 & 86.
Superior Oil Company Canal.	Lake Charles (318) 439-2406	Cameron Public Coast Station KQU 437, VHF Channel 24.
West Pearl River.	Hammond (504) 345-7390	Slidell Public Coast Station KUZ 557, VHF Channel 84.

Considering the few openings involved and the provision for a four hour advance notice in all cases, the Coast Guard feels that the proposed regulations should relieve the bridge owner of the burden of having a person constantly available at the bridge to open the draw, while still providing for the reasonable needs of navigation.

Economic Assessment and Certification:

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-80). An economic evaluation has not been conducted since the impact is expected to be minimal. In accordance with Section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that this rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.540 [Amended]

In consideration of the foregoing, the Coast Guard proposes to amend § 117.540, Part 117, Title 33 Code of Federal Regulations, as follows:

Remove from § 117.540(b) the West Pearl River, mile 7.9, U.S. 90 highway drawbridge near Pearlington; Amite River, mile 6.0, S-22 highway drawbridge at Clio, and Superior Oil Company Canal, mile 6.3, S-82 highway drawbridge in Cameron Parish.

Redesignate § 117.540(c) and (d) as § 117.540(f) and (g), respectively.

Add new § 117.540(c), (d) and (e) immediately after § 117.540(b) to read:

* * * * *

(c) The draws of the bridges listed below shall open on signal if at least four hours notice is given.

Amite River, mile 6.0, LA 22 highway drawbridge at Clio, Livingston Parish.

Belle River, mile 43.5, LA 70 highway drawbridge near Belle River, Assumption Parish.

Lower Grand River, mile 25.9, LA 977 highway drawbridge at Pigeon, Iberville Parish.

Pierre Pass, mile 1.0, LA 70 highway drawbridge at Pierre Part, Assumption Parish.

Plaquemine Bayou, mile 6.5, Spur 3066 highway drawbridge at Indian Village, Iberville Parish.

West Pearl River, mile 7.9, U.S. 90 highway drawbridge near Pearlington, St. Tammany Parish.

(d) The draws of the bridges listed below shall open on signal from 5:00 a.m. to 9:00 p.m. From 9:00 p.m. to 5:00 a.m. the draws shall open on signal if at least four hours notice is given.

Kelso Bayou, mile 0.7, LA 27 highway drawbridge at Hackberry, Cameron Parish.

Mermentau River, mile 7.1 LA 82 highway drawbridge at Grand Chenier, Cameron Parish.

(e) The draws of the bridges listed below shall open on signal from 6:00 a.m. to 6:00 p.m. From 6:00 p.m. to 6:00

a.m. the draws shall open on signal if at least four hours notice is given.

Superior Oil Company Canal, mile 6.3, LA 82 highway drawbridge, Cameron Parish.

[33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(g)(3)]

Dated: May 24, 1983.

J. M. Fournier,

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

[FR Doc. 83-15497 Filed 6-8-83 8:45 am]

BILLING CODE 4910-14-M

VETERANS ADMINISTRATION

38 CFR Part 17

Unauthorized Medical Services

AGENCY: Veterans Administration.

ACTION: Proposed regulations.

SUMMARY: The Veterans Administration is amending its medical regulations (38 CFR Part 17), to define the point in time when an emergency ends, for the purpose of approval of claims by veterans for payment and reimbursement of the expenses of emergency hospital care and medical services not previously authorized.

DATES: Comments must be received on or before July 11, 1983. It is proposed to make this amendment effective the dae of final approval.

ADDRESS: Interested persons are invited to submit written comments, suggestions, or objections regarding this proposed regulation to: Administrator of Veterans Affairs (271A), 810 Vermont Avenue, N.W., Washington, D.C. 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132, of the above address, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 25, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph F. Fleckenstein, (202) 389-3785.

SUPPLEMENTARY INFORMATION: Existing regulations specify the criteria for approval of claims by certain veterans for payment and reimbursement of the expenses of hospital care and medical services not previously authorized. One of the prerequisites is that the veterans must have received the care and services in a medical emergency of such nature that delay would been hazardous to life or health. However, there is no termination point defined for the emergency.

The new regulation accomplishes this. This action will correct an inequity which grants a greater benefit to veterans who file claims for payment or reimbursement for the expenses of non-VA hospital care or medical services not previously authorized than for veterans who request and receive prior authorization for such care. In the latter cases, the termination point for VA payment of costs of the emergency hospital care is already clearly defined. The Administrator has determined that this amendment to VA regulations is considered nonmajor under the criteria of Executive Order 12291 on Federal regulations. It will not have an annual effect on the economy of $100 million or more; it will not result in major increases in costs for consumers, individual industries, Federal, State or local government agencies, or geographic regions, nor will it have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The Administrator of Veterans Affairs certifies that this amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirments of sections 603-604. The reasons for this certification are as follows: This change will directly regulate only the entitlement of individual veterans and their beneficiaries. Any economic impact on small entities would be indirect and small because of the minimal part of their overall operation and income which this activity represents. Moreover, it has been a long-standing policy of the VA to authorize payment for treatment of certain eligible veterans admitted to non-Federal health care facilities in an emergency, for the period of the emergency following which, when appropriate, transfer to an appropriate VA health care facility may be carried out. Veterans Administration will enforce this policy in claims for payment or reimbursement of the expenses of emergency hospital care and medical services received without prior VA authorization. In some cases, it will reduce payment or reimbursement where the veteran's transfer could have been, but was not, carried out. It will encourage non-VA health care facilities to contact VA immediately to seek authorization for payment rather than await the veteran's discharge, to file claim for payment. The Catalog of Federal Domestic Assistance Program numbers are 64.009 and 64.011.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grants programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Veterans.

Approved: May 25, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 17—[AMENDED]

38 CFR Part 17, *Medical*, is amended by adding a new § 17.80a to read as follows:

§ 17.80a Limitations on payment for emergency hospital care and medical services not previously authorized.

The VA will not reimburse a veteran for the costs of emergency hospital care or medical services for any period beyond the date on which the medical emergency ended. For the purpose of payment or reimbursement of the expense of emergency hospital care or medical services not previously authorized, an emergency shall be deemed to have ended at that point when a VA physician has determined that, based on sound medical judgment, a veteran:

(a) Who received emergency hospital care could have been transferred from the non-VA facility to a VA medical center for continuation of treatment for the disability, or

(b) Who received emergency medical services, could have reported to a VA medical center for continuation of treatment for the disability.

From that point on, no additional care in a non-VA facility will be approved for payment by the VA. (38 U.S.C. 210(c)(1))

[FR Doc. 83-15444 Filed 6-8-83; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 66 and 67

[OLEC-FRL 2235-5]

Assessment and Collection of Noncompliance Penalties by EPA and Approval of State Noncompliance Penalty Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed interpretive rulemaking.

SUMMARY: On July 28, 1980, the Environmental Protection Agency ("EPA") promulgated rules for the assessment and collection of noncompliance penalties pursuant to Section 120 of the Clean Air Act, 42 U.S.C. 7420. (See 45 FR 50086.) One of the issues discussed in the preamble to the final regulations concerned the relationship between Section 120(g) and Section 172(a)(2) of the Clean Air Act. Section 120(g) provides that new or more stringent state implementation plan requirements become enforceable for Section 120 purposes no later than three years after they are approved or promulgated. Section 172(a)(2) allows such plans in some circumstances to provide for final compliance as late as 1987 (if approved) as long as the implementing regulations are submitted by July 1982. If such a revision were approved in 1983, Section 120(g) would appear to require enforcement of such revision in 1986 even against sources which are not required to comply until 1987. This anomaly was described but not resolved in the 1980 rulemaking. The preamble to the final Section 120 rules stated that EPA would separately announce a final interpretation and policy on this question.

This notice announces, for the purpose of obtaining public comment, the Agency's interpretation and policy on this issue. It states that EPA considers Section 172 to be the controlling provision. In the cases of SIP requirements that properly require compliance more than three years after they are approved or promulgated, EPA therefore will only seek Section 120 penalties for a violation after a source is required to be in compliance.

This policy represents a reversal of the Agency's analysis described in the preamble and a return to the Agency's analysis described in the rules as proposed (see 44 FR 17310). EPA proposes to make this interpretation, if adopted, effective immediately upon adoption.

DATES: Comments must be received on or before July 11, 1983.

ADDRESS: Comments should be addressed to U.S. Environmental Protection Agency, Control Docket Section, Docket No. EN–79–1, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Christopher C. Herman (202) 382–7630.

SUPPLEMENTARY INFORMATION: Section 120 of the Clean Air Act, added in 1977, authorizes EPA to assess and collect a penalty from designated sources no less than the economic value of delaying compliance with applicable legal requirements. Section 120(g) states that with respect to emission limitations which become final after the effective date of the 1977 amendments (August 7, 1977), the penalty shall be imposed on the later of two dates—either July 1, 1979 or the date on which a source is required to be in compliance. Section 120(g) adds that in no event is imposition to be delayed more than three years from the date the new limitations become final.

Section 172 of the Clean Air Act, also added in 1977, deals with state implementation plans to achieve and maintain national ambient air quality standards (NAAQS). It was designed to address the problems of states which did not achieve primary NAAQS by the statutory attainment date, generally 1975. Such nonattainment areas were allowed an extension to December 1982. Areas which could not achieve the NAAQS for ozone and carbon monoxide by that date could request and obtain an attainment date extension to not later than December 1987. Areas seeking extensions are required to submit a plan by July 1982 containing enforceable measures which provide for attainment no later than December 1987. Section 172(c).

The provisions of Section 120(g) and 172(a)(2) appear to be in conflict. Strict application of Section 120(g) could create anomalous results for some sources in areas receiving extensions beyond 1982. For example, a SIP revision for an extension area could contain compliance dates as late as December 1987. If that plan has been submitted by July 1, 1982, it could have been approved and in effect by December 31, 1982. Section 120(g) would seem to require EPA to enforce the Section 120 penalty against sources subject to more stringent new SIP requirements no later than three years after the SIP revisions became final, which in this example would be December 31, 1985, i.e., two years prior to the date on which the source is required to be in compliance under the applicable SIP.

In its proposed rulemaking on Section 120, EPA stated that it believed no penalty could be imposed until the compliance date specified in the approved SIP. 44 FR 17310. In its final rulemaking, the Agency discussed the question further. It stated that the provisions may mean that: (i) No major source regulated under a July 1982 SIP for an extension area may legally have a compliance date later than three years from SIP approval or promulgation; (ii) a source may have a lengthier compliance schedule but must be assessed the value of savings accruing after the third year; or (iii) penalties may not be imposed against a source three years after the SIP becomes final if a source has a lengthier SIP compliance schedule, provided the source is in compliance with any interim requirements. 45 FR 50086.

Upon further consideration, EPA has decided that, where SIPs in extension areas include compliance schedules extending beyond 1982 which are more than three years in length, Section 120 penalties should not be imposed until after the compliance date as long as the source complies with any interim requirements. Such sources will not be liable for a Section 120 penalty merely by virtue of the fact that a SIP requirement approved or promulgated under Section 172(c) allows compliance more than three years after approval or promulgation.

EPA sees no basis for imposing a penalty where no plan requirement has been violated. This reconciliation avoids inappropriate reference to Section 120(g) in developing compliance schedules for plans submitted for extension areas under Section 172(a)(2). This does not, of course, in any way alter the liability of sources subject to SIP requirements after the final compliance date required in the SIP whether more or less than three years from the date the requirement becomes final.

Public Comment

Public comment on this interpretive rule will be accepted until July 11, 1983. Since the interpretation involves a question of statutory construction rather than one of fact the only documents are those discussed above, all of which are in the public record.

This interpretation will be subject to the review provisions of Section 307(b) after EPA issues its final interpretative rule. Interested persons are reminded that Section 307(d)(7)(B) of the Clean Air Act provides that objections to proposed actions must be raised with reasonable specificity for those objections to be cognizable during judicial review.

List of Subjects

40 CFR Part 66

Administrative practice and procedure, Air pollution control, Penalties.

40 CFR Part 67

Air pollution control, Intergovernmental relations, Penalties.

Dated: June 2, 1983.

William D. Ruckelshaus,

Administrator.

[FR Doc. 83-15439 Filed 6-8-83; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 1E2565/P295; PH-FRL 2363-2]

N-(Mercaptomethyl) Phthalimide S-(O,O-Dimethyl Phosphorodithioate); Proposed Tolerance

Correction

In FR Doc. 83-13061 beginning on page 22337 in the issue of Wednesday, May 18, 1983, make the following correction.

On page 22337, third column, sixth line of the "**SUPPLEMENTARY INFORMATION**" paragraph, "4 CFR" should read "40 CFR".

BILLING CODE 1505-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6505]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This documents corrects a notice of Proposed Modified Determinations of base (100-year) flood elevations previously published at 48 FR 16082 on April 14, 1983. This correction notice provides a more accurate representation of the revised Flood Insurance Rate Map for the Township of Center, Indiana County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Modified Determinations of base (100-year) flood elevations for selected locations in the Township of Center, Indiana County, Pennsylvania, previously published at 48 FR 16082 on April 14, 1983, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added Section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

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

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

Due to a clerical error, the Notice of Proposed Base Flood Elevations was not published in its entirety. The Source of Flooding of Yellow Creek and several location descriptions under Two Lick Creek were omitted. The following location descriptions and their corresponding existing and modified base flood elevations more accurately reflect the Flood Insurance Rate Map and Flood Insurance Study for the Township of Center. The remainder of the Notice of Proposed Base Flood Elevations remains unchanged.

Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
		Existing	Modified
Two Lick Creek	Downstream corporate limits of Homer City.	*1,004	*1,005
	Upstream State Route 56.	*1,011	*1,015
	Upstream Main Street.	*1,016	*1,019
	Upstream CONRAIL (first crossing).	*1,037	*1,041
	Approximately 3,450 feet upstream of State Route 119.	*1,048	*1,050
Yellow Creek	Upstream corporate limits of Homer City.	*1,021	*1,024
	Approximately 450 feet upstream of Legislative Route 32134.	*1,033	*1,029

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001-4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 23, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-15454 Filed 6-8-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6470]

National Flood Insurance Program; Proposed Flood Elevation Determinations; correction

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects a Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Village of Wyocena, Columbia county, Wisconsin, previously published at 45 FR 57079 on December 22, 1982.

EFFECTIVE DATE: June 9, 1983.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the correction to the Notice of Proposed Determinations of base (100-year) flood elevations for selected locations in the Village of Wyocena, Columbia County, Wisconsin previously published at 45 FR 57079 on December 22, 1982, in accordance with Section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a)).

The Base Flood Elevation Determination on Duck Creek, which reads, Just upstream of Breached Dam, has been changed from, Just upstream of Breached Dam to Just upstream of Dam and 799 feet to 800 to show the revised hydraulic analysis that includes the Duck Creek Dam.

Pursuant to the provisions of 5 U.S.C. 605(b), the Associate Director, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies

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

List of Subjects in 44 CFR Part 67

Flood insurance, Flood Plains.

The listing appears correctly as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Wisconsin	(V) Wyocena, Columbia County	Duck Creek	Just upstream of Private Drive	*794
			Just downstream of Dam	*795
			Just upstream of Dam	*800
			At upstream corporate limits	*803

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 23, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-15455 Filed 6-8-83; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

[Docket No. FEMA-6532]

National Flood Insurance Program; Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Propsed rule.

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

DATES: The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Engineering Branch, Natural Hazards Division, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287–0230.

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

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

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

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

The proposed modified flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Missouri	(C) Sarcoxie, Jasper County	Center Creek	About 2,200 feet downstream of Business Loop 44	*1,082	*1,083
			About 2,500 feet upstream of Business Loop 44		*1,089
		Swifty Creek	About 1,050 feet downstream of Reed Avenue	*1,082	*1,083
			Just upstream of Cross Street	1,090	1,092
			About 550 feet upstream of the St. Louis-San Francisco Railway	1,108	1,111
Maps available for inspection at 111 North Sixth Street, Sarcoxie, Missouri.					
Send comments to Honorable Warren Zimmerman, Mayor, City of Sarcoxie, 111 North Sixth Street, Sarcoxie, Missouri 64862.					
North Dakota	Township of Burlington, Ward County.	Des Lacs River	Intersection of river with upstream township boundary	*1,581	*1,581
		Souris River	Intersection of river with downstream township boundary.	*1,572	*1,572
Maps available for review at City Hall, 225 Wallace Street, Burlington, North Dakota.					
Send comments to the Honorable Jack Bender, Mayor, Township of Burlington, P.O. Box 159, 225 Wallace Street, Burlington, North Dakota 58722.					
North Dakota	Ward County (Unincorporated Areas).	Des Lacs River	Intersection of river and center of U.S. Highway 52	*1,784	*1,784
		Souris River	Intersection of river and center of Soo Line Railroad near City of Sawyer.	*1,529	*1,529
Maps are available for review at the Auditors Office, Ward County Courthouse, Minot, North Dakota.					
Send comments to Mr. G. G. Hemme, Chairman, Board of County Commissioners, Ward County Courthouse, Minot, North Dakota 58701.					
Oregon	City of Ione, Morrow County	Willow Creek	259 feet west of the intersection of Willow and Main Streets.	*1,072	*1,071
			At easternmost corporate limit crossing	*1,100	*1,100
Maps are available for reviewat City Hall, Ione, Oregon.					
Send comments to the Honorable Linda LaRue, City Hall, P.O. Box 361, Ione, Oregon 97843.					
South Carolina	(C) Conway, Horry County	Waccamaw River	About 0.7 mile downstream of U.S. Highway 501	None	*10
			At the confluence of Kingston Lake Swamp	*13	*14
		Kingston Lake Swamp	At mouth at Waccamaw River	*13	*14
			About 1.6 miles upstream of the Seaboard Coast Line Railroad.	*13	*14
		Crab Tree Swamp	Just downstream of Long Avenue	*13	*14
			About 2,200 feet upstream of Oak Street	*13	*14
Maps available for inspection at P.O. Drawer 1075, Conway, South Carolina.					
Send comments to the Honorable Kenneth S. Holt, Mayor, City of Conway, P.O. Drawer 1075, Conway, South Carolina 29526.					
Vermont	Moretown, Town, Washington County.	Winooski River	Downstream corporate limits	*430	*428
			Upstream of U.S. Route 2	*448	*447
			Upstream of State Route 100B	*500	*501
		Crossett	Approximately 2,700 feet upstream of State Route 100	None	*452
Maps available for inspection at the Town Hall, Route 100B, Moretown, Vermont.					
Send comments to the Honorable Douglas Finlay, Chairman of the Moretown Board of Selectmen, Route 100B, Box 533, Moretown, Vermont 05660					
Washington	City of Tumwater, Thurston County.	Outlet of Black Lake	100 feet upstream of centerline of Burlington Northern Railroad.	*115	*114
		Percival Creek	At corporate limits, 1,500 feet upstream from Sapp Road.	*141	*141
		Trosper Lake	1,600 feet southwest of the intersection of Trosper Road and Louise Street.	(1)	*158
Maps are available for review at the Planning Department, City Hall, 2nd & Bates, Tumwater, Washington.					
Send comments to the Honorable Philip Schmidt, Mayor, City of Tumwater, 2nd & Bates, Tumwater, Washington 98502.					

[1] Area of minimal flooding.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; Executive Order 12127, 44 FR 19367; and delegation of authority to the Associate Director)

Issued: May 20, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-15456 Filed 6-8-83; 8:45 am]

BILLING CODE 6718-03-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 125 Through 136

[CGD 82-004]

Offshore Supply Vessel Regulations

AGENCY: Coast Guard, DOT.

ACTION: Extension of comment period.

SUMMARY: In the **Federal Register** of February 14, 1983, the Coast Guard proposed regulations for new offshore supply vessels. The public comment period was due to close on June 14, 1983. This notice extends the comment period to September 12, 1983.

DATE: Comments on the proposed regulations must be received on or before September 12, 1983.

ADDRESSES: Comments should be mailed to Commandant (G-CMC/44) (CGD 82-004), U.S. Coast Guard, Washington, D.C. 20593. The comments and materials referenced in the notice of

February 14, 1983, will be available for examination and copying between 8 a.m. and 4 p.m., Monday through Friday,except holidays, at the Marine Safety Council (G-CMC/44), Room 4402, Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593. Comments may also be hand delivered to this address.

FOR FURTHER INFORMATION CONTACT: LCDR Kevin V. Feeney (202) 426-2187.

SUPPLEMENTARY INFORMATION: The proposed regulations were published as an advance notice of proposed rulemaking (ANPRM) beginning at page 6636 of the **Federal Register** of February 14, 1983 (48 FR 6636). As stated in the ANPRM, the proposed regulations would apply to new offshore supply vessels in lieu of other existing regulations. The proposal contains many changes and relaxations to standards presently applied to existing offshore supply vessels. The purpose of the ANPRM is to solicit comments on both the technical merits of the proposal and its probable economic effect. All comments received will be considered in preparing the Notice of Proposed Rulemaking.

Drafting Information

This document was drafted by LCDR K.V. Feeney, Office of Merchant Marine Safety. Mr. W. R. Register, Office of the Chief Counsel, provided assistance.

Discussion

The Offshore Marine Services Association (OMSA) has submitted a request for a public hearing and a 45 day extension of the comment period. In support of the request, OMSA states that it needs additional time to fully review the proposed regulations and expresses concern that smaller operators not affiliated with OMSA may be unaware of the proposed regulations. The Coast Guard agrees that the additional time would be beneficial and has decided to extend the comment period for 90 days. Notice of the extension will be given wide distribution in order to ensure that small operators are aware of the proposed regulations. This ninety day extension should provide adequate time to distribute the notice and submit comments and, accordingly, a public hearing on the ANPRM is not being planned. However, a hearing may still be scheduled after publishing the Notice of Proposed Rulemaking if sufficient requests are received to warrant one.

Sec. 2, 87 Stat. 418 (46 U.S.C. 86); Sect. 2, 49 Stat. 888 as amended (46 U.S.C. 88a); R.S. 4405, as amended (46 U.S.C. 375); Sec. 3, 70 Stat. 152 as amended (46 U.S.C. 390b); Pub. L. 96-378, 94 Stat. 1513 (46 U.S.C. 404-1); R.S. 4462, as amended (46 U.S.C. 416); Sec. 6, 80 Stat. 938 (49 U.S.C. 1655(b)); E.O. 12234, 45 FR 58801; 49 CFR 1.46)

Dated: June 2, 1983.

Clyde T. Lusk, Jr.,

Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc. 83-15498 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket No. 78-72; Phase III; FCC 83-178]

MTS and WATS Market Structure

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This notice proposes adoption of rules and requirements to complement the adoption of access charges in Phase I of this proceeding, and the revised telecommunications industry structure which will result from implementation of the Modification of Final Judgment (Consent Decree) governing AT&T and the Bell Operating Companies. Comment is sought in three major areas: (1) A proposal that interconnection ("access") obligations be imposed on Independent telephone companies which are analogous to those imposed in the Modification of Final Judgment on the Bell Operating Companies; (2) a proposal that interconnection offerings by exchange carriers be made in the access tariffs required to be filed with the FCC as a result of Phase I of this proceeding; and (3) a proposal that limited joint planning among exchange carriers, with participation in the process by others, be sanctioned by the FCC with limited involvement by the FCC and its staff.

The proposals are made necessary by the substantial changes now underway in the industry, through increasing competition and divestiture by AT&T of the Bell Operating Companies, and the requirement that important policies of the Communications Act continue to be served. The intended effect of the proposals is to ensure that nationwide service continues to be promoted, and that long-established interconnection requirements continue in effect.

DATES: Comments must be received on or before August 8, 1983 and Reply Comments must be received on or before October 7, 1983.

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

FOR FURTHER INFORMATION CONTACT: Michael S. Slomin or John Cimko, Common Carrier Bureau, Federal Communications Commission, Washington, D.C. 20554; (202-632-9342).

SUPPLEMENTARY INFORMATION: *See:* Third Report and Order, CC Docket No. 78-72 Phase I, 48 FR 10319 (March 11, 1983); *United States* v. *Am. Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982) (order entering the Modification of Final Judgment and text of the revised Consent Decree governing AT&T and the Bell Operating Companies).

List of Subjects in 47 CFR Part 69

Access charges Exchange Carriers Association, Tariffs Technical and operational details of interconnection.

Notice of Proposed Rulemaking

In the matter of MTS and WATS Market Structure, Phase III: establishment of Physical connections and through routes among carriers; establishment of physical connections by carriers with non-carrier communications facilities; planning among carriers for provision of interconnected services, and in connection with national defense and emergency communications services; and regulations for and in connection with the foregoing, CC Docket No. 78-72, Phase III.

Adopted: April 27, 1983.

Released: May 31, 1983.

By the Commission: Commissioner Fogarty issuing a separate statement; Commissioner Jones absent.

I. Introduction

1. Interstate and foreign communications provided by common carriers have historically been offered through electrical connection ("interconnection") of communications facilities operated by different entities. In decisions tracing virtually to the inception of the FCC in the 1930's, we have addressed carriers' obligations to interconnect their facilities with one another, and with non-carrier facilities (*e.g.*, Private communications channel facilities and terminal equipment). The development of Commission policies relating to carriers' interconnection obligations is complex. We summarize our current policies below, as they relate to this proceeding.

2. As a general proposition, carriers today are under a legal obligation to offer interconnection (both to other carriers, and to noncarrier facilities and equipment) under tariffs which are subject to FCC regulation. There are normally two basic dimensions to carriers' interconnection obligations. First, arrangements are required to compensate a carrier offering interconnection for use of its facilities in

interconnected service. Second, physical, technical and operating arrangements are required to ensure that interconnection is feasible and workable, and that such interconnection does not create unacceptable levels of interference or harm to service.

3. In view of the wide range of different service offerings which are subject to the Communications Act of 1934 as amended (the "Act"), we have appropriately tailored our interconnection regulation in each instance to the specific carriers and services involved. For example, in the traditional telephone service field, compensation and physical arrangements for carrier-to-carrier interconnection historically were largely worked out by the industry itself without direct regulatory intervention. The FCC served primarily as a forum for complaints concerning issues which could not satisfactorily be resolved by the carriers through negotiation, and as a forum for resolving issues of jurisdictional cost and revenue apportionment ("separations") which had bearing upon provision of interconnected telephone services. With the advent of new entry by competitive common carriers, this Commission was called upon to take a more active regulatory role with respect to carrier-to-carrier interconnection for telephone services.

4. In the telegraph and record service field, under provisions of 1943 legislation permitting Western Union to acquire Postal Telegraph's facilities,[1] the Commission was required specially to regulate compensation and traffic division arrangements for traffic involving interconnection of Western Union's domestic facilities with the international facilities of international record carriers ("IRCs").

5. Other communications services have directly or indirectly involved interconnection of carriers' facilities to those of one another or to non-carrier facilities, including domestic satellite services, microwave radio services and video services. Here too, we have addressed the compensation and physical arrangements for such interconnection.

6. In some of the foregoing interconnection circumstances, we have merely clarified that a legal obligation to offer interconnected service exists, and have allowed the carriers themselves in carrier-initiated tariffs (or private contracts in some circumstances) to determine the arrangements for interconnection. This largely was the historic pattern for traditional telephone services provided jointly by the integrated Bell System and the Independent telephone companies. The involved carriers had great incentives to interconnect with one another and the details, while sometimes controversial, could usually be worked out by the involved carriers without regulatory intervention. The American Telephone and Telegraph Company ("AT&T") controlled (and controls) the great bulk of all telephone facilities in this nation, through direct control of long distance facilities by its Long Lines Department, and through indirect control through ownership of the associated Bell Operating Companies ("BOCs"). The BOCs access approximately 80% of the nation's telephones (and approximately 50% of the land area of the nation). Quite naturally, with this degree of direct and indirect control, AT&T largely could itself determine the evolution of telephone service, including the terms of interconnection. Moreover, even without such control, the research and development resources of AT&T (primarily in the Bell Telephone Laboratories and in Western Electric Company, and to some extent in AT&T's General Department) effectively could exercise strong influence over the evolution of telephone servies, including interconnection.

7. Moreover, AT&T's strong influence over interconnection has not been limited to traditional telephone services, as many non-telephone common carrier services have required interconnection to AT&T or BOC facilities. For example, while Western Union itself has the right to construct long distance and local telegraph facilities (a right which predates the development of the telephone and of AT&T), in fact Western Union almost exclusively employs local telephone facilities to reach its subscribers. Similarly, while we have authorized the provision of specialized and domestic satellite services by new entrants since the late 1960's, because of spectrum congestion the carriers involved have been unable to bring their services directly to their subscribers in urban areas, and have been required to use local telephone facilities on an interconnected basis to reach their urban subscribers.[2] Again, given AT&T's predominant control of such facilities, AT&T has largely determined the evolution of these interconnection offerings, subject to regulatory contraint.

8. Finally, the Act itself has of course, affected this Commission's historic role with respect to interconnection. For example, all carriers engaged in the provision of interstate and foreign communications, including carriers which do so solely by virtue of interconnection, are subject to Sections 201 through 205 of the Act, which provisions include interconnection requirements. However, under Sections 2(b) and 221(b), the states and not the FCC regulate the offering of local (*i.e.*, exchange) services to carriers' subscribers. Where carrier-to-carrier interconnection for provision of interstate and foreign services is involved, this commission's authority over all interconnection arrangements, including compensation arrangements, is preeminent. But, where interconnection of carriers' local facilities to those of non-carriers is involved (*i.e.*, for interconnection of terminal equipment, or of non-carrier private communications facilities), we have limited our role to one of assuring that interconnection is made available without discrimination, but without otherwise regulating local service compensation arrangements.[3]

A. Changes Necessitating Action

9. A number of recent major events are causing us to examine comprehensively issues which bear upon carriers' interconnection offerings. First, we recently adopted a *Third Report and Order* in this proceeding, —— FCC 2d ——, FCC 82-579, released Feb. 28, 1983 (hereafter, "Third Report"), addressing access charges. In the Third Report we, examined the more competitive nature of communications, and unreasonable and discriminatory ratemaking practices which existed in connection with provision of interstate and foreign services on a direct and interconnected basis. We concluded that the historic traditional telephone industry revenue division practices must be replaced by a system of access charges (*i.e.*, new arrangements for compensating carriers for use of their facilities when providing service on an interconnected basis). In part, this was the result of the increasingly competitive nature of telecommunications, and various forms of disparate treatment of service offerings and interconnection offerings made to other carriers and to subscribers by carriers. In part, this was

[1] These provisions were formerly in Section 222 of the Act, and were recently supplanted by the Record Carrier Competition Act of 1981, Pub. L. 97-130, 95 Stat. 1687, Dec. 29, 1981 ("RCCA").

[2] Such facilities have been termed "entrance facilities."

[3] *See, e.g.*, Carterfone, 13 FCC 2d 420, recon. denied, 14 FCC 2d 571 (1968); North Carolina Utilities Comm'n v. FCC., 537 F. 2d 787 (4th Cir.), cert. denied, 429 U.S. 1027 (1976) ("NCUC I"); North Carolina Utilities Comm'n v. FCC 552 F. 2d 1036 (4th Cir.), cert. denied, 434 U.S. 874 (1977) ("NCUC II").

a response to changes, discussed below, which are likely to flow from the revised antitrust decree governing AT&T and the BOCs. While our Third Report revises, on a nationwide basis, the compensation arrangements for interconnected service, it does not address the physical, technical and operational details of such interconnection. We believe that such matters are important, that they similarly should be addressed, and we propose to do so in these further proceedings.

10. Second, on August 24, 1982, the United States District Court for the District of Columbia entered a Modification of Final Judgment ("MFJ") in *United States* v. *Am. Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), 1982–2 Trade Cas. (CCH) ¶ 64,979, *aff'd sub. nom., Maryland* v. *United States*, —— U.S. ——, 51 U.S.L.W. 3628 (U.S., Mar. 1, 1983), requiring AT&T to divest the BOCs no later than eighteen months from entry, and establishing constraints and obligations on the subsequent activities of AT&T and the divested BOCs. Bearing most importantly on provision of interstate and foreign services through interconnection is a requirement in Section II of the MFJ, and related Appendix B, that each BOC:

> Provide to all interexchange carriers and information service providers exchange access, information access, and exchange services for such access on an unbundled tariff basis, that is equal in type, quality, and price to that provided to AT&T and its affiliates.

As noted, the Third Report in this proceeding addresses the "price" aspects of the BOCs' access and service provision obligations uder the MFJ, but it does not address directly the physical, technical and operating arrangements for such interconnection.[4]

11. To some extent, these issues are addressed in the MFJ. For example, Appendix B acknowledges that equal treatment of access will require a phasing-in during 1984–86, and even thereafter in the case of smaller, older central offices upon an appropriate showing to the court. However, the MFJ is silent with respect to interconnection obligations which might govern AT&T after diverstiture of the BOCs. Moreover, the exchange access provisions of the MFJ apply generally to provision of interconnection by the BOCs to "interexchange carriers" and, except with respect to provision of information access, the decree is silent as to an obligation of the BOCs to offer interconnection to facilities of non-carriers. These interconnection issues are important, and have been addressed by this Commission in the past. For that reason, we believe it appropriate to clarify their treatment in the changing industry structure.

12. Third, the industry structure that would result from implementation of the MFJ would, through the provisions of the MFJ, create specifically detailed arrangements for access to the BOCs' subscribers (as noted, approximately 80% of the nation's telephones), but not to the subscribers of non-Bell Independent telephone companies. We believe that the purpose of the MFJ is consistent with regulatory policy of this Commission to create, on a nationwide basis, opportunities for competitive providers of interstate and foreign services to access their subscribers through interconnection with local telephone companies' facilities. The FCC and the courts have explicitly imposed such interconnection obligations on all local telephone companies, BOCs and Independents, and as noted we have addressed the compensation aspects of such interconnection in the Third Report herein.

13. In the altered industry structure of the MFJ, competitive interexchange carriers will have a detailed blueprint for interconnection to facilities for access to BOC subscribers (through the provisions of the MFJ), but not for subscribers in Independents' service areas. The object of the MFJ under the antitrust laws is creation of a competitive telecommunications marketplace nationwide, which is complementary to our mandate under the Act to ensure the availability of rapid, efficient communications with adequate facilities at reasonable charges, also on a nationwide basis. We have fostered the development of nationwide services in the past, and we believe it important to continue to do so upon implementation of the MFJ. For that reason, we propose generally to require, pursuant to our authority under the Act, that the Independent telephone companies offer interconnection (or in MFJ terms, exchange and information access) on a basis similar to that of the divested BOCs, in order that interstate and foreign services may be planned and offered on a reasonably uniform basis nationwide.

14. Fourth, the physical, technical and operational details of interconnection have increasingly become controversial in recent years, across a broad range of services and carriers. In some cases, we have been required to adopt specific regulations governing interconnection, *e.g.*, regulations in Part 68 of our rules governing interconnection of terminal equipment, wiring, and protective apparatus. In other cases, we have adopted specific tariff-prescribing orders governing carriers' interconnection offerings, *e.g.*, our original *Carterfone* decisions,[5] our "piece out" decision,[6] and our decisions implementing the Record Carrier Competition Act of 1981.[7] In other cases, we have served as a forum for carriers themselves to negotiate interconnection arrangements.[8]

15. While we have no desire unnecessarily to extend direct and active regulation to activities which satisfactorily may be resolved without or with reduced regulatory intervention, it is clear that in a more fragmented and competitive telecommunications industry the interconnection "ground rules" must be set at the outset, particularly inasmuch as interconnection often represents the sole means for competitive carriers (and providers of equipment and facilities) to access their customers. When Congress considered this issue recently in the context of enacting the RCCA it recognized that the record carriers'

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[4] The entered Modification of Final Judgment is reproduced in United States v. Am. Tel. and Tel. Co. *supra.*, and parties may refer thereto in formulating their comments in this proceeding. Furthermore, if less than equal access is provided by a BOC, it is permitted to file access tariffs reflecting the lesser cost of such access, section VIII.F of the MFJ. This BOC tariff filing obligation does not affect the authority of regulators subsequently to prescribe the rates, terms and conditions of such access (or, in the terms of this notice, "interconnections").

[5] Carterfone, supra. n.3.

[6] Am. Tel. and Tel. Co., 60 FCC 2d 939 (1976) ("Piece out"); *see also* Am. Tel. and Tel. Co., 71 FCC 1 (1979) ("ARINC").

[7] Interconnection Arrangements Between and Among Domestic and International Record Carriers, 89 FCC 2d 988 (1982) ("Interim Order"), —— FCC 2d ——, FCC 82–264, released June 11, 1982 ("Rejection Order"), —— FCC 2d ——, 48 FR 12372 (Mar. 24, 1983) ("Store-and-forward and TWX/Telex Conversion").

[8] E.g., AT&T (Facilities for Use by Other Common Carriers), 52 FCC 2d 727 (1975) ("Docket 20099") and Exchange Network Facilities for Interstate Access, 71 FCC 2d 440 (1979) ("ENFIAA"). While these proceedings were resolved to some extent through informal carrier negotiation under FCC auspices, it should be noted that subsequent thereto, compensation issues have remained controversial, and we have been almost continuously called upon to interpret their results and to rule on proposed tariffs which affect or change their results. Thus, even where carrier agreements in lieu of direct FCC regulatory intervention have been employed, the net result has largely been one of FCC regulation in any event, with respect to compensation.

Conversely, technical, operational, maintenance and administrative issues have largely been resolved by the affected carriers informally during the course of periodic public meetings among the carriers, under the supervision of the Common Carrier Bureau, *see*, 52 FCC 2d at 733, to address such issues, as they arose in implementation of the Docket No. 20099 and ENFIA settlement agreements.

interconnection practices largely would determine the extent of competition. For this reason, the FCC was directed to prescribe record carriers' interconnection arrangements if the carriers could not themselves reach a voluntary agreement (which, in fact they were unable to do). This principle is not limited to record services, and in our view applies to all interconnection in a more fragmented and competitive telecommunications environment.

16. Moreover, we believe that the developing pattern of AT&T no longer unilaterally controlling the planning and evolution of communications services in this nation, which pattern was developing as a consequence of competition and new entry, will likely be accelerated upon implementation of the MFJ. While AT&T will continue itself to control a very large portion of this nation's long distance facilities, over time it is likely that the scope of this control may well diminish as competition continues to develop, which well impair AT&T's ability itself to implement its planning decisions. Concommitantly, AT&T will be divested of the BOCs and will lose the ability directly to mandate implementation of much such planning.

17. Our policies are to promote the ability of competitive carriers (and non-carriers through use of private facilities) to innovate and to offer diverse communications services, a result which may have to some extent been impeded in the past by AT&T's control over telecommunications planning and evolution. Such innovation is a positive benefit of competition and new entry. However, we cannot fail to recognize that we have a statutory mandate to foster the development of nationwide (and worldwide) services; at some point, if communications becomes too "balkanized" this mandate might be frustrated. Furthermore, communications is a capital-intensive industry which often involves relatively long planning periods for construction of new facilities (measured in years and in some cases in decades). AT&T in the past was a forum for amalgamation of various carriers' and subscribers' future communications needs for service, and for synthesis of appropriate advance construction plans. In the more competitive telecommunications industry which is evolving, and with divestiture by AT&T of the BOCs, and alternative advance planning mechanism to that traditionally performed by AT&T would appear to be required, and we are proposing in this proceeding to establish such a mechanism.

18. Finally, some forms of planning among carriers will be required to fulfill mandates of the Communications Act other than those related to nationwide service, most notably creation of administrative mechanisms and standby capabilities to support emergency communications bearing upon national defense and safety of life and property (national security and emergency preparedness, or "NSEP," communications capabilities). Here too, AT&T has generally coordinated the telephone industry's role in such matters in the past and upon implementation of the MFJ alternatives may be required.[9] In this Notice, we are proposing the creation of appropriate mechanisms to address advance planning of interconnection by carriers, and we envision that these mechanisms will be useful both for planning associated with provision of routine services, and for NSEP communications. With respect to the latter, it should be noted that we are proposing in this proceeding to create a framework for planning which might involve NSEP implementation, but we are not addressing the important issues of what planning will be required, and the voluntary and regulatory administrative and other mechanisms which may prove necessary to carry out such planning.[10]

19. Furthermore, while we are proposing in this Notice creation of a framework for advance planning by carriers, we do so in full awareness that such planning among competitors (and potential competitors) must be limited to the absolute minimum consistent with achievement of our statutory mandate, to minimize any distortion of competition. As is discussed below, in addressing limited joint planning generally, and planning in behalf of NSEP communications specifically, we propose to be guided by analogous statutory provisions which have been in force since the early 1950's and which appear to achieve an appropriate balance between competition objectives and emergency planning objectives.

[9] Under the MFJ, the divested BOCs are required to establish a single point of contact organization for these emergency services, to coordinate and to direct provision by the BOCs of NSEP services. However, it is unclear how this point of contact organization will relate to planning for administrative mechanisms and standby facilities arrangements involving AT&T and other interexchange carriers, or to such arrangements involving non-BOC Independent telephone companies.

[10] Thus, we conclude that other planning issues, which are focused primarily on exchange carriers' interconnection offerings, and which are involved in the proposals in this proceeding, are sufficiently related to planning for NSEP capabilities to justify our proposing that the planning addressed herein include NSEP.

B. Summary of Proposals

20. We view this proceeding as complementary both to the Third Report addressing access compensation arrangements, and to the provisions of the MFJ addressing certain BOC interconnection obligations. With respect to the former, we are proposing to address the physical, technical and operational details of interconnection among carriers' facilities and between carriers' facilities and those of non-carriers, generally through a proposed requirement that such details be addressed in carriers' exchange access tariffs subject to FCC regulation. With respect to the latter, we are proposing to extend to all carriers interconnection requirements analogous to those of the MFJ (the latter of which is limited solely to the BOCs), and to clarify that such interconnection obligations apply both to interconnection with other carriers' facilities and to interconnection with non-carrier communications facilities.[11] Finally, we are proposing to create carefully circumscribed mechanisms for the planning by carriers for the provision of interconnected services.

II. Discussion of Specific Proposals

A. Interconnection by Independent Telephone Companies

21. As noted, if the MFJ is implemented in its present form,[12] the BOC facilities which offer access to approximately 80% of the nation's telephone subscribers will be required

[11] To the extent that exchange services may be involved in the offering of interconnection to subscribers' terminal equipment or private communications facilities, we shall limit our consideration solely to the physical, technical and operational details of such interconnection, and not to the exchange rates themselves, consistent with the provisions of Sections 2(b) and 221(b) of the Act and NCUC I, 537 F.2d at 793–95 and NCUC II, 552 F.2d at 1045–48, supra, n. 3. It is our intent in this proceeding neither to seek to extend, nor to contract, our limited interconnection jurisdiction over exchange offerings which, through interconnection, support the provision of interstate and foreign services.

[12] Implementation of many aspects of the MFJ is subject to approval by the Commission. It might be noted that the Commission has expressed general approval of the MFJ in its *amicus* comments to the federal district court during the course of the court's Tunney Act proceeding on the public interest implications of the MFJ. *See*, United States v. AT&T, 552 F.Supp. at 211. In such circumstances, it is reasonable to explore in this proceeding extension of the overall principles of the MFJ to other carriers (e.g., non-Bell telephone companies) or to other circumstances not specifically addressed therein (e.g., interconnection with non-carrier facilities) subject to the outcome of any FCC approval proceedings on the MFJ itself. The instant proceeding may prove lengthy, and we conclude, consistent with the provisions of Section 4(j) of the Act, that such an approach is warranted to permit this proceeding to proceed to conclusion prior to full implementation of the MFJ.

to be made available for interconnection under the exchange and information access provisions of the MFJ. These obligations are addressed variously in the MFJ, using concepts which are complementary to, but somewhat different than, concepts employed by the Commission in addressing analogous interconnection issues in the past. While we do not disagree with the structure envisioned by the MFJ, we believe it important to clarify the following discussion by identifying differences between the access structure of the MFJ and the jurisdictional split between intrastate offerings, and interstate and foreign offerings, in the Communications Act, as our proposals in this proceeding are pursuant to our authority under the Act.

1. Access Jurisdiction

22. Under the Act, the FCC is granted jurisdiction over interstate and foreign communication by wire and radio generally, but jurisdiction is reserved to the states over intrastate and exchange communications. Initially, under this jurisdictional split of regulatory authority, we regulated rates, tariffs and associated practices governing interstate and foreign services alone. However, often the same facilities are employed both for provision of interstate and foreign communications subject to our direct jurisdiction, and for the intrastate and exchange services over which state authority is reserved. In such circumstances, under developed case law [12] the FCC has plenary jurisdiction over interconnection even to exchange facilities, where such interconnection is required for interstate and foreign communications to proceed. However, we have not exercised jurisdiction over the rates for the intrastate toll and exchange offerings made over such facilities, and have limited our exercise of ratemaking jurisdiction to use of such facilities for interstate and foreign calling. In sum, under the Act there is a division of regulatory responsibilities between the commission and the states with respect to ratemaking, and there is preemptive federal authority over the tariffs and associated practices governing interconnection. Where ratemaking authority is so divided, the division is between intrastate and exchange services on the one hand, and interstate and foreign services on the other.

23.The MFJ also establishes market definitions, for division of responsibilities and opportunities for AT&T and the BOCs. Rather than using the state line boundaries used primarily in the Act, the MFJ appears generally to seek a division between those local service undertakings which are implemented using exchange-like facilities, and those service undertakings which are implemented using long distance facilities which connect groups of exchanges with one another. The basis analytic distinction in the MFJ is between a species of exchange service (which may encompass more than than "telephone exchange service" definition of Section 3(r) of the Act), and interexchange service. Under the MFJ, the BOCs are limited to provision of the former (*i.e.*, exchange-like services) and are not permitted to offer the latter (*i.e.*, interexchange services). They are, however, permitted and indeed required to participate in the provision of interexchange services by others on an interconnected basis (deemed "access" in the MFJ).

24. To describe the exchange-like offerings which may be made by the BOCs under the MFJ, and the concommitant interconnection ("access") obligations of the BOCs, the term Local Access and Transport Area ("LATA") has generally been employed to distinguish the exchange-like services of the MFJ from the traditional "exchange" and "toll" classifications used in regulatory statutes such as the Communications Act.[13]

25. While the BOCs are limited to provision of communications within such a LATA, and are prohibited from offering communications between LATAs, they are required to offer interconnection to others so that such others may provide inter-LATA and information services to the BOCs' subscribers. As is discussed below, we are proposing to impose on non-Bell telephone companies interconnection obligations patterned after those of the MFJ. However, in pursuing such an approach, we must be mindful of the differences between the jurisdictional divisions of the Act, and the interexchange/LATA distinctions employed in the MFJ. Interstate and foreign communications are subject to our jurisdiction regardless of whether the interexchange or LATA classifications of the MFJ are applicable to such communications. Conversely, intrastate toll and exchange communications are not (except with respect to interconnection to facilities used in common for such state-regulated offerings and interstate or foreign communications), even if within the competitive inter-LATA category of the MFJ (for which interconnection by the BOCs is mandated under the MFJ).

26. In sum, because the jurisdictional divisions of the Act are somewhat different than the distinctions of the MFJ, we must of necessity decouple from the interexchange/LATA distinctions of the MFJ. To the extent that a LATA crosses state boundaries, interstate services within such a LATA may be subject to full Commission regulatory authority (if such service is not "exchange" service within the meaning of Sections 3(r) and 221(b) of the Act).[14] Conversely, AT&T has proposed establishment of multiple LATAs in many states. Service between such LATAs, while "interexchange" within the meaning of the MFJ and invoking the "access" obligations of the MFJ, is intrastate toll service under Section 3(s) of the Act and not necessarily subject to full Commission jurisdiction. As a practical matter, it would be desirable for local telephone companies to interconnect with intrastate toll services on the same basis as they might with the interstate and foreign services subject to our direct jurisdiction. Such an approach would promote technical uniformity, and potentially might well contribute to telecommunications efficiency. Indeed, because unitary exchange facilities have historically been interconnected both with intrastate and interstate (and foreign) toll facilities on the same basis,

[12] *E.g.*, NCUC I and NCUC II, n. 3 supra.

[13] The "LATA" does not appear in the MFJ; it has been used by various parties in their filings with the district court to avoid confusion. What is now generally termed a LATA is defined in Section IV.G of the MFJ as an "exchange area" or "exchange." Absent court approval, such a LATA is confined to the boundaries of a single state, and encompasses contiguous local exchange areas (presumably, in the traditional regulatory sense) which serve common social, economic, and other purposes. With court approval, a LATA may extend across a state boundary (somewhat similar to exchanges under Section 221(b) of the Act). Also, with court approval, a LATA may include multiple standard metropolitan statistical areas (or consolidates statistical areas in the case of densely populated states), but otherwise. Also, the MFJ utilizes a facilities split between "class 4" and "class 5" switching facilities; groups of "class 5" facilities may be accessed in common for "acess" under the MFJ.

These definitions do not preclude the creation of geographically very large LATAs, and indeed in its filings with the federal district court AT&T had sought to treat whole states as single LATAs, notwithstanding that much communication within such a large LATA would be viewed as intrastate toll service, and not exchange service, under traditional regulatory classifications such as those of Sections 3(r) and 3(s) of the Act. Certain of these were approved by the district court. United States v Am. Tel. and Tel. Co., No. 82-0192, slip op. at 141-45 (D.D.C. Apr. 20, 1983.)

[14] AT&T had sought from the district court exemptions from the provisions of Section IV.G of the MFJ to configure certain interstate LATAs, and in its recent decision addressing AT&T's LATA proposals, the district court has approved many LATAs which cross state boundaries. *See*, United States v. Am. Tel. and Tel. Co., slip op. at 23-24, n. 13 supra.

disparate interconnection arrangements for the two groups of services may not be feasible. However, in this proceeding we shall address solely interconnection to exchange facilities to provide interstate and foreign communications. We do not at this time propose either expansion, or contract, of our regulatory authority over such interconnection.[15]

2. Access Offerings of Independent Telephone Companies

27. We propose in this section to extend, pursuant to our regulatory authority under the Act, to non-Bell (independent) telephone carriers interconnection obligations patterned after those which will govern the BOCs under the MFJ. Independent telephone companies currently are required to interconnect their exchanges with terminal equipment, with non-carrier communications facilities, and with competitive interstate carriers' facilities, pursuant to decisions of this Commission and of the courts.[16] However, as was the case of interconnection to the BOCs' facilities prior to adoption of the MFJ, the Independents' interconnection obligations have not been fully described and "fleshed out" in the past. Rather, we have reacted to specific complaints and have resolved controversies which have arisen.[17]

28. What is altered in the environment of implementation of the MFJ is that under the provisions of the decree, competitive providers of interexchange services will in the future have a detailed "blueprint" for interconnection to the BOC's exchange facilities. In these circumstances, we believe it most appropriate, in view of our statutory mandate to promote the development of efficient and broadly available service on a nationwide basis, to ensure the establishment of a similarly detailed "blueprint" for interconnection to the Independents' facilities. However, in so doing, we must be mindful that truly equal access to carriers' exchange facilities is not immediately possible in the BOC's service areas, and that it may be less so in the Independents' areas because of intrinsic limitations of existing facilities. We discuss below the treatment in the MFJ of transition towards interconnection equality for the BOCs, and our proposals to address these issues analogously in the context of interconnection to the Independents' facilities.

29. The facilities of neither the BOCs nor the Independent telephone companies are homogeneous. Both include central offices which range from relatively older electro-mechanical (*e.g.*, step-by-step, crossbar and panel) offices which are inflexible in their capabilities, to modern stored-program controlled electronic offices the capabilities of which may be changed (consistent with the limitations of the overall hardware) through software modifications. Both the relatively inflexible older offices and the more flexible newer electronic offices were designed in a monopoly environment to perform switching within a single supplier's central office and to perform switching to a single supplier of intrastate, interstate, and foreign long distance services. As interstate service competition was introduced in the recent past, an issue of significant controversy has concerned whether and to what extent other (interstate) long distance service providers may achieve access to telephone companies' central offices which is equal to that provided the traditional single supplier. It generally was claimed that equal access was not feasible because of the inherent design of the existing central office facilities, and for that reason interconnection has not been equal. Several remedies for this unequal access have been proposed, including a requirement that the inequality be minimized to the extent feasible, and proposals have been made that those who obtain better access should provide more compensation than others. We shall not address the latter remedy in these proceedings, as this "compensation" issue has been addressed in the Third Report and Order. Rather, we shall confine our proposals to ones which minimize, to the extent feasible, any interconnection inequality.

30. The MFJ represents one approach to the difficult issues surrounding the inability of existing non-electronic central offices, as a practical matter, to support truly equal access. First, as was noted previously, the MFJ contains phasing-in procedures to provide the BOCs an opportunity to replace with newer stored-program controlled switches many of the older central offices to which equal access will be sought. Equal access overall is not required until 1986 under the phasing-in schedule of the MFJ. Second, the MFJ contains exception provisions under which the BOCs may refuse provision of equal access in older and smaller central offices. The specific mechanism of the MFJ is to create a defense for the BOCs for failure to make equal access available in such offices in the event that an interexchange carrier complains to the district court of a refusal to provide equal access.

31. Broader transitional procedures are also specified in the MFJ. For example, until such time as the nationwide numbering plan is revised, access to all long distance service providers under the MFJ need not be on the same dialing basis. A customer may be permitted to access one service provider without dialing extra digits, although extra digits may be required to access other suppliers' services. However, the BOCs must give each of their subscribers the opportunity to preselect *which* interexchange service provider will automatically be accessed without dialing extra digits. When the nationwide numbering plan ultimately is revised, access to all interexchange carriers' services is to be placed on the same basis.

32. We tentatively conclude that the approach of the MFJ as a general matter would be workable if applied to the Independent telephone companies. However, we must acknowledge that the Independents' central offices may be statistically weighted more towards the less flexible older electro-mechanical switching facilities than are those of the BOCs. In the MFJ, there is an exception mechanism applied to the BOCs for such cases. If the Independents' facilities

[15] As an example of the circumstances which require such a decoupling, and without our reaching a judgment on the desirability of such an example, AT&T had sought from the district court authority to include an entire state, Delaware, in a Pennsylvania LATA. The FCC has authorized competitive provision of interstate service, which authorization would include service between Delaware and portions of Pennsylvania in this LATA. While the district court has sought to ensure that competitive interexchange service providers are not disadvantaged by this arrangement, which it approved, United States v. Am. Tel. and Tel. Co., slip op. at 72–76, n. 13 *supra*, the interconnection obligations of the MFJ are addressed generally to provision of interconnection to facilitate inter-LATA service, not intra-LATA service as might be involved in Delaware to Pennsylvania calling. Thus, a "gap" could be created between the interconnection "blueprint" of the MFJ and the less detailed existing federal interconnection requirements for such interstate services. Similar such circumstances might arise elsewhere, where portions of states have been included in interstate LATAs, *supra* n. 14, and interstate service not qualifying for "exchange" treatment under Section 221(b) of the Act is involved. It is important that our pro-competitive interstate service policies not be frustrated, directly or indirectly, by the failure of the MFJ more explicitly to address such interconnection.

[16] *E.g.*, Interstate and Foreign Message Service, 56 FCC 2d 593 (1975), 57 FCC 2d 1216, 58 FCC2d 736, 59 FCC 2d 83 (1976), *aff'd sub. nom.* North Carolina Utilities Comm'n v. FCC ("NCUC II"), *supra*. n. 3; AT&T (Piece out) and AT&T (ARINC), *supra*. n. 6; Specialized Common Carrier Services, 24 FCC 2d 318 (1970), *aff'd sub. nom*, Washington Utilities & Transportation Comm'n v. FCC, 513 F.2d 1142 (9th Cir.), cert. denied, 423 U.S. 836 (1975), *see also*, Bell Tel. Co. of Penn. v. FCC, 503 F.2d 1205 (3d Cir. 1974), *cert. denied*, 422 U.S. 1026 (1975); Lincoln Telephone and Telegraph Co., 72 FCC 2d 724, 74 FCC 2d 196 (1979), 78 FCC 2d 1219 (1980), *aff'd*, 659 F.2d 365 (D.C. Cir. 1981); MCI Telecomm'ns Corp. v. FCC, 561 F.2d 365 (D.C. Cir. 1975), *cert. denied*, 434 U.S. 1040 (1978) ("Execunet I"), 580 F.2d 590 (D.C. Cir.), *cert. denied*, 439 U.S. 980 (1978) ("Execunet II"), and Order reproduced in appendix to Lincoln Telephone, 659 F.2d 365, *supra*. ("Execunet III").

[17] *E.g.*, Lincoln Telephone and Telegraph Co., *supra*.; United Tel. Co., 77 FCC2d 1015 (1980).

more commonly would qualify for such exception treatment than those of the BOCs, the exception could well become the rule. The specific approach of the MFJ is to permit the BOCs to refuse equal access to these exceptional cases, and the BOCs are provided a defense before the district court. Such an administrative approach may be warranted for truly exceptional cases, but in our view it could prove unworkable if such situations were common, as may prove to be the case of the Independents' central offices.

33. It should be noted that access to interstate services is required to be offered pursuant to access tariffs which are subject to our regulatory review and jurisdiction, under principles adopted in the Third Report and Order, and as is discussed below, we are proposing that interconnection be offered generally in the access tariffs. In view of this, we believe it reasonable to utilize such tariffs as an appropriate administrative mechanism for addressing unequal interconnection offerings by Independents. We tentatively conclude that the issues of unequal access may best be addressed by adopting principles in this proceeding governing tariffs which are to be filed, and we propose to do so herein. As an express goal of this proceeding, we are seeking to address all major possibilities which may arise. But, to the extent that a given Independent telephone company might wish to raise special circumstances not previously addressed or accommodated in the principles which might be adopted, we believe that flexible treatment might be warranted, in view of the disparities in size, resources, and facilities, which may exist among various Independent telephone companies. Thus, a given company should be free to do so upon an appropriate showing that special treatment is warranted.

34. Specifically, we propose to adopt principles requiring that interconnection be offered by the Independents in their access tariffs, to be filed subject to our regulatory jurisdiction in accordance with the Third Report and Order. Furthermore, we propose to review such tariffs initially under principles patterned generally after the substantive "access" requirements of the MFJ, as follows:

a. *Access to existing stored-program controlled central offices.* Programming of existing stored-program controlled central offices shall be modified, during a three year period,[18] to support access to the services of all interexchange carriers which is equal in all respects, except that the minimum number of digits necessary to reach other than a carrier pre-selected by the subscriber may be utilized until such time as the nationwide numbering plan is changed. At such time as the central office modification is completed, existing subscribers shall be given an option to pre-select a specific interexchange carrier which is interconnected with the exchange, and no additional digits shall be required for the subscriber to reach the services of that carrier. Thereafter, new subscribers shall be given this choicd at the time when service is initially arranged. In both cases, the selection may subsequently be changed by the subscriber at his or her option. Until such time as access is provided under this subparagraph, access shall be made available in accordance with subparagraph c. below.

b. *Access to newly-installed stored-program controlled central offices.* Within two years,[19] all new stored-program controlled offices shall be initially deployed with the capabilities required under subparagraph a. above.

c. *Access to existing electro-mechanical central offices (e.g., step-by-step, crossbar and panel).* To the extent feasible, such offices shall be modified to offer the capabilities identified in subparagraph a. above, utilizing techniques such as interconnection on a tandem basis where common equipment is capable of supporting such operation. If ANI (automatic number identification) capabilities or subscriber billing capabilities are capable of being made available to more than one interexchange carrier, to the extent the same is requested by such carriers they shall be made available in the same manner as is specified in the MFJ. If preselection of a particular carrier which might be accessed without dialing additional digits is not possible because of inflexibility of the electro-mechanical switching facilities, at minimum the exchange carrier must make available seven digit local telephone number access, with facilities and capabilities no worse than those provided in connection with PBX trunk service by the carrier. The carrier must make available transmission capabilities (as opposed to switching and billing) which are no worse than those provided the traditional interexchange service provider accessing its office, and it shall provide access, to the extent possible, which uses the minimum number of accessing digits, and which makes possible access from rotary dial equipment to the services of each interexchange carrier.[20]

35. To ensure that the foregoing principles, or alternatives which may be adopted as a result of these proceedings, are complied with, and to fulfill the substantive requirements of Sections 202(a) and 203(c) of the Act, as noted we are proposing to utilize the vehicle of access tariffs for carriers to make known the basis upon which interconnection will be offered to interexchange carriers. However, we wish to minimize our regulatory role over such offerings, and to encourage, to the maximum extent feasible, voluntary resolution by the affected interexchange and exchange carriers of any disputes which may arise. We believe that one method of achieving this result might be to require the access tariff filings to indicate whether there has been precoordination of the filing with interexchange carriers, as a means of "flagging" to our staff and to interested interexchange carriers the filings which will not be controversial. Furthermore, to the extent that exchange carriers may file joint or common access tariffs (i.e., through the Exchange Carriers Association procedures in the Third Report and Order) it would be desirable to create a mechanism under which individual carriers might continue to concur in joint or common access tariffs, but still indicate their particularized interconnection offerings. We invite comment on procedural and

[18] The BOCs will have had approximately three years from initial adoption of the MFJ to relatively full implementation, and this strongly suggests that a three year period for the Independents to make similar programming modifications to their existing stored-program control switching facilities is reasonable. We specifically invite comment on the reasonableness of this proposed period, and on whether different periods may be appropriate for different types or units of stored-program control central office switching equipment.

[19] It is assumed that suppliers of central office switches which are to be newly deployed will be able to create programming to support equal access more expeditiously for new equipment (i.e., in two years) than might be the case for programming modifications to existing switches (i.e., the three year period proposed in the previous subparagraph). Furthermore, it would appear that such suppliers would have great incentives to do so, if they wish to seek to supply new central office switches to the BOCs. However, we specifically invite comment on the reasonableness of the proposed two year period.

[20] We recognize that there is wide variability in deployed electro-mechanical central office switching equipment, and in proposing adoption of the principles in subparagraph c. we have sought to differentiate dialing and billing capabilities, to which equal access may be impracticable, from communications channel capabilities (e.g., gain, linearity, noise characteristics, etc.), to which equal access would appear practicable without material modifications. Our guiding principle in phrasing the proposed requirements is that any inequality in the treatment of interexchange carriers must be minimized to the extent practicable. We invite specific comment on our proposed formulation, and upon alternatives which might be more reasonable or more practicable.

administrative mechanisms to achieve these results, and which minimize, to the extent possible, the flow of unnecessary paper. In any event, it might be noted that the administrative framework which we are proposing to accommodate offerings of unequal access is somewhat different than the exception approach of the MFJ, but in view of the possibility that unequal access will be more common in the Independents' service areas than those of the BOCs, we believe that it better will comport with the requirements of Sections 202(a) and 203(c) of the Act.[21]

C. Interconnection of Exchange Carrier's Facilities With those of Non-Carriers, and Related Tariff Issues:

36. Our considerations here are related to, but somewhat different than, those involved in the previous section. There, we have clarified that existing interconnection policies remain applicable to Independent telephone companies, but we have, to some extent, proposed that additional interconnection capabilities which are not necessarily being made available currently be made available by the Independents in the future. Here, we are addressing solely existing interconnection obligations of the Independents and the BOCs, and we are proposing merely to clarify how these offerings are to be made to the public, as a matter of tariff policy, in the future.

37. Specifically, in the past the Commission has mandated interconnection to non-carrier communications facilities and premises terminal equipment through orders and rules in Part 68 of the Commission's rules which prescribed provisions in AT&T's interstate tariffs, and which also effectively prescribed the terms of exchange carriers' offerings. This use of our prescriptive authority over the interstate tariffs subject to our direct jurisdiction under the Act ensured that all telephone companies would be bound by our specific prescribed requirements, since all telephone companies concurred in AT&T's tariffs in the monopoly supply environment of the past.

38. However, telecommunications is changing. First, it is unclear whether local telephone companies will continue to concur in tariffs of a single entity, AT&T, for the provision of interstate and foreign services in the future. An end-on-end tariff environment, with separate tariffs for the exchange access portion and for the long distance service portion, may become possible or desirable in the increasingly competitive telecommunications industry. Second, AT&T is no longer the sole long distance service provider. To maintain the obligation of exchange carriers to interconnect with non-carriers' facilities to facilitate interstate and foreign communications in a manner consistent with that of the past, it might prove necessary to prescribe terms of interstate and foreign service tariffs of entities other than AT&T. But, as competition develops, the present requirement for such tariffs might prove unnecessary.

39. While we believe that Part 68 of our rules will continue to govern exchange carriers, independently of whether they do or do not concur in interstate tariffs which reference or incorporate these rules, we conclude that any potential confusion on this point should be resolved now.[22] We have an appropriate vehicle to do so, namely the exchange access tariffs which will govern participation in interstate and foreign service of all exchange carriers, Independents and BOCs, and which will be subject to our direct jurisdiction. Accordingly, we hereby propose to require that interconnection to non-carrier facilities (i.e., communications systems and terminal equipment) be offered in each exchange access tariff, with an appropriate reference to Part 68 of our rules in each such tariff. As was the case in our discussion of analogous tariff requirements in para. 35 above, we invite comment on how best to implement such a requirement in a manner which minimizes the flow of unnecessary paper.

40. A requirement that interconnection to non-carrier facilities and terminal equipment be offered in exchange access tariffs also will have the effect of addressing several issues concerning the BOCs which arose during the course of the district court's Tunney Act proceeding,[23] but which were not explicitly resolved in the MFJ. First, the MFJ as initially proposed would have barred the BOCs from providing terminal equipment. Since they could not do so, it had the effect of ensuring that others' terminal equipment could be interconnected with the BOCs' exchange facilities on a fair basis, else the BOCs could not provide service. But, as ultimately modified during the course of the Tunney Act proceeding, the MFJ now permits the BOCs to supply (but not manufacture) terminal equipment. Specific reference in the BOCs' tariffs to Part 68 of our rules will ensure that they do not discriminate in their treatment of others' terminal equipment as opposed to their own. Second, the MFJ contains provisions which address interconnection of other carriers' facilities and, to some extent, terminal equipment, to exchange facilities. It does not explicitly address interconnection with non-carrier communications systems or facilities. An offering of such interconnection in the BOCs' exchange access tariffs, in accordance with the Commission's decision in *AT&T (ARINC)*, 77 FCC2d 1 (1978) and its decision interpreting the requirements of Part 68 of the rules, *Memorandum Opinion and Order*, 59 FCC2d 83, 86 (1976), will clarify to the public that the BOCs' established obligation to provide such interconnection will continue to be discharged.[24] [25] Such a clarification is similarly desirable for subscribers of non-Bell Independent telephone companies.

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[21] Of course, the BOCs will remain bound by the exception requirements of the MFJ. Furthermore, identification in their tariffs by the BOCs of locations where equal access will not be made available would similarly comport with the requirements of the Communications Act, and for that reason our proposal in this regard is not limited to the Independent telephone companies.

[22] Furthermore, even currently not all forms of interconnection which have been sanctioned or required by this Commission are prescribed in Part 68 of our rules; forms of interconnection are authorized under the tariffs which are not explicitly addressed in the rules because in certain circumstances it has proven more desirable and flexible to utilize tariffs.

[23] Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the "Tunney Act"), the district court examined the public interest ramifications of the settlement agreement between AT&T and the Department of Justice as a prelude to entering the MFJ.

[24] In its decision approving the MFJ, the district court assumed that the BOCs will continue to be obliged to offer interconnection to others' terminal equipment and communications facilities. *See*, 552 F. Supp. at 191–93. Furthermore, under the MFJ the BOCs will be under an overriding obligation not to discriminate in their treatment of terminal equipment provided by AT&T and by others. It is to be expected that the BOCs will permit full access to their facilities of equipment provided by AT&T, which would trigger this obligation to similarly treat others.

[25] We believe that two related interconnection offerings should also be made, where appropriate, in access tariffs. First, in circumstances addressed in our AT&T (Piece out) and AT&T (ARINC) decisions, supra, n. 6, AT&T itself is obliged to offer interconnection to its facilities. Upon implementation of the MFJ, to the extent that AT&T might discharge this obligation through the use of interposed exchange facilities provided by the BOCs, we believe the latters' access tariffs should offer such interconnection. To the extent that AT&T may be authorized to provide service directly to subscribers' premises, AT&T's own tariffs should offer such interconnection. Second, the status of resellers under the MFJ is unclear. The MFJ establishes specific exchange access requirements for access by interexchange carriers to the BOCs' facilities, but it is unclear whether resellers are to be treated as carriers for this purpose. To the extent that interconnection is to be offered to resellers, we tentatively conclude that such interconnection be offered in the access tariffs. We invite comment on the foregoing proposals.

D. Planning

41. As was noted in the introduction to this Notice, forms of joint action by carriers, in some cases under this Commission's sponsorship, and in many cases by the carriers themselves, have historically proved necessary in telecommunications to achieve important objectives: development of industrywide technical standards, operating principles, administrative procedures and maintenance procedures; informal resolution of service and maintenance disputes which may arise where there is divided responsibility for elements of a joint through service; development of standby procedures and facilities to support extraordinary communications requirements (*e.g.*, NSEP communications); and development of appropriate forecasting and circuit requirements amalgamation procedures to facilitate planning for construction of new facilities with relatively long "lead" times. Because of AT&T's preeminence, many of these activities were performed or sponsored by AT&T, and because of its ownership of the BOCs, AT&T was able to ensure that the results of these activities would be carried out.

42. With divestiture of the BOCs, and the more competitive nature of telecommunications, it is apparent that dominance over such activities by a single firm, AT&T, is neither likely nor desirable. Concerted action by competitors may, if carried too far, be anticompetitive and inimical to the pro-competitive policies of this Commission. However, many forms of planning are not necessarily anticompetitive, and indeed may be desirable. Moreover, the fact is that such planning has proceeded for over a century, and immediate discontinuance of all such planning could disrupt the provision of service to the public.

43. We propose below to establish limited joint planning procedures to ensure continued attainment of important efficiency, service, defense, and emergency communications objectives under the Act, but in full awareness of the requirement that such activity not frustrate our pro-competitive policies. We shall carefully consider the competitive implications of any planning which is to be sanctioned, and we make tentative proposals below which, in our view, will ensure that anticompetitive problems will not arise.[27]

1. Basis for Proposing Limited Joint Planning

44. Limited joint planning among exchange carriers for interconnection arrangements offers several advantages as a means of assisting carriers in meeting interconnection obligations and carrying out the purposes of the Act.[28] Joint planning is an effective means of standardizing equipment and system design and functions at the point of interconnection (but not necessarily the internal design of equipment and facilities). This standardization, and the resulting compatibility among equipment and systems used by different carriers and other users, promotes the efficient operation of the telecommunications system. This efficiency has attendant advantages for subscribers to carrier services. As we previously have noted, planning among carriers also is an important means of securing appropriate standby communications capabilities to serve the NSEP needs of the Nation.[29]

45. The development of competition among long distance carriers raises the possibility that joint planning among exchange carriers for interconnection with the competitive long distance carriers will become increasingly necessary in order to ensure efficient operations. As the number of competing carriers increases, it is possible that the risks of inefficiency also will increase if the various carriers employ incompatible designs and functions for interconnected equipment.[30] It should be noted, however, that any such inefficiencies would diminish (and the need for joint planning consequently could decrease) if technological developments evolve in the direction of telecommunications systems which operate independently, and for which interconnection is neither necessary nor desirable.

46. In the past, AT&T has been the locus of joint planning for interconnection arrangements. AT&T's control of the BOCs, and its working relationships with the Independent telephone companies, has enabled AT&T to initiate and oversee joint planning in a manner which has been sufficient to mitigate any need for this Commission to take an active role in providing structures for this planning. Because of this preeminence AT&T has also largely served as a locus for accommodation by the traditional telephone carriers of the needs of other carriers as well (*e.g.*, specialized carriers, record carriers). AT&T's role, however, necessarily will be altered by the divestiture to be carried out in accordance with the MFJ.[31] Although the long-term effects of the divestiture on joint planning cannot be assessed with certainty, it is reasonable to conclude that short-term dislocations are likely to occur if joint planning is disrupted during the period following divestiture. Further, since AT&T is proposing that the divestiture be effected on January 1, 1984,[32] there may not be sufficient time for carriers to work out planning arrangements to replace the existing structure, in the absence of action by this Commission.

47. Although there are benefits to be gained from joint planning for interconnection arrangements, it should be recognized that joint planning poses two sets of potential risks. Product and service innovation generally can be expected as a by-product of competition,[33] and innovation usually results in benefits to the public in the form of quality improvements and cost reductions. If, however, joint planning for interconnection results in excessive standardization of design and operational specifications at the point of interconnection, then this very success could have a dampening effect on innovation. As connectivity tolerances

[27] It might be noted that Commission sanctioning of joint planning by carriers has been sought in a pending petition by the National Telecommunications and Information Administration which predated the structural industry changes addressed in this Notice. *See*, Petition for Notice of Inquiry and Proposed Rulemaking, Oct. 10, 1980, RM-3781. A basis was shown in that petition for Commission sponsorship of limited joint planning among carriers even in the absence of the major changes now underway, and, as is discussed below, we believe that there is even more of a basis for limited joint planning now. In view of the substantial changes in the predicate for any such planning, we shall merge the record therein with this proceeding.

[28] These interconnection obligations have been addressed in the previous sections of this Notice.

[29] See para. 18, *supra*.

[30] *See* Lavey, *Joint Network Planning in the Telephone Industry*, 34 Fed. Comm. L.J. 345, 348 (1982) (hereinafter cited as Lavey).

[31] See para. 16 *supra*.

[32] Plan of Reorganization of AT&T in United States v. AT&T at 5 (D.D.C., filed Dec. 10, 1982) (hereinafter cited as Plan of Reorganization). In any event, the divestiture must take place not later than February 24, 1984, in accordance with Section I.A of the MFJ. *See also*, n. 12 *supra*, relating to FCC approval.

[33] *See* Specialized Common Carrier Services, 24 FCC 2d 318, 333 (1970). It has been noted, as a general matter, that "freedom of entry and competition [serve] as a device for innovation—for encouraging the development of new and different services and for assuring the optimal development and exploitation of new technology." 2 A. Kahn, *The Economics of Regulation: Principles and Institutions* 149 (1971) (footnote omitted). It also has been argued that this general principle applies in the communications industry: "[T]here are concrete evidences of the contribution competitive innovation can make in communications where it has had an opportunity to work * * *. The revolutionary development in the last decade of microwave and satellite communications, the burgeoning of user-owned attachments and in particualr those associated with the use of shared computer facilities * * * have * * * been vigorously pressed not only by large users and independent entrepreneurs in communications but also, at least with equal vigor, by competing manufacturers of equipment." *Id.* at 304 (footnote omitted).

are narrowed through standardization, design and operational variations which would result from innovation could become dysfunctional. Thus, the incentives for innovation could diminish to the extent that carriers and equipment vendors opted to take advantage of the benefits of standardization.[34] It must be stressed, however, that the joint planning we are proposing involves the achievement of standardization and compatibility *only* at the point of interconnection. Innovation in overall system design and operation, which would be fostered by competition among long distance carriers and among equipment vendors, should not be seriously affected by this limited form of standardization in most cases. However, there might be circumstances in which a particular innovation (*e.g.*, digitized voice transmission at less than 64 kbits/sec) might be adversely affected by a standard which did not accommodate that innovation. We are interested in comments on how best to balance this potential effect in formulating our approaches herein.

48. A second set of potential risks posed by joint planning involves the possibility of abuse of the joint planning mechanism. Various types of anticompetitive practices—including price-fixing, market and capacity allocation, exclusionary standard-setting—can be germinated through joint planning activities. The rules proposed here will seek to confront these potential abuses and establish requirements and constraints intended to prevent them from occurring.[35]

49. A decision regarding the efficacy of joint planning for interconnection involves a balancing of the advantages and risks which we have outlined. It is our tentative conclusion that the advantages to be gained from joint planning, as well as the short-term dangers posed by disruptions in this planning, outweigh the potential risks involved and point toward a conclusion that joint planning under the aegis of this Commission will serve the public interest.

2. Authority of Commission To Require Limited Joint Planning

50. Federal agencies, in the absence of specific statutory prohibitions, have authority to require concerted action on the part of private entities subject to their regulatory authority if this concerted action is necessary or appropriate to further the statutorily established goals and functions of the agencies. Such authority, in fact, has been exercised by this Commission in this proceeding.[36] Section 222 of the Act, as amended by RCCA, provides a recent example of the imposition of negotiation requirements upon carriers.[37] Negotiations to arrive at the Docket No. 20099 Settlement Agreement and thereafter[38] and the ENFIA negotiations[39] are further examples of carrier negotiations conducted under our aegis.

51. There is ample authority in the Act to support the establishment of joint planning requirements by this Commission. Section 1 of the Act, 47 U.S.C. 151, provides that this Commission was established "[f]or the purpose of * * * [making] available * * * to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges * * *." Since we perceive the goal of joint planning for interconnection to be the promotion of efficiency, with the resulting provision of adequate facilities at reasonable charges, we conclude that a rulemaking to provide for joint planning is within our statutory authority. A further basis for Commission action is found in Section 201(a) of the Act, 47 U.S.C. 201(a), which requires carriers to furnish service upon reasonable request, to establish physical connections with other carriers, and to establish through routes. Joint planning for interconnection arrangements can be viewed as an appropriate means for enabling carriers to comply with these requirements of Section 201(a). Section 201(b) of the Act, 47 U.S.C. 201(b), requires all carrier practices relating to the provision of service and the establishment of physical connections and through routes to be just and reasonable. Furthermore, certain communications facilities require authorization by this Commission under the provisions of Section 214(a) of the Act, 47 U.S.C. 214(a). Limited joint planning by carriers under our aegis has proven useful as a mean of aiding us in carrying out our responsibilities under Section 214(a). Moreover, Section 214(d) of the Act, 47 U.S.C. 214(d), authorizes this Commission to require any carrier "to provide itself with adequate facilities for the expeditious and efficient performance of its service as a common carrier * * *." It is our view that this Commission can further the goals expressed in Section 214(d) by establishing joint planning procedures.[40] Also, Section 218 of the Act, 47 U.S.C. 218, mandates that we be informed of the manner in which service is rendered; planning under our sponsorship is an appropriate mechanism to discharge this Section 218 mandate. Further, Section 4(i) of the Act, 47 U.S.C. 154(i), grants this Commission broad authority to carry out its responsibilities under the Act.[41] We conclude that the

[34] This Commission has taken notice of this disadvantage of central planning in a different context: "Implicit in the central planning approach to designing and engineering the telephone network is the assumption that the planners know what is best for the customers. However, in the present era of rapid technological change and computerization of communications functions, it is difficult if not impossible for a centralized planning system to detect and respond to the many diverse needs of customers who continually seek to make more efficient use of the telecommunications system." Economic Implications and Interrelationships Arising From Policies and Practices Relating to Customer Interconnection, Jurisdictional Separations, and Rate Structures (Docket No. 20003), 75 FCC 2d 506, 547 (1980) (discussing the appropriateness of integrated control and planning regarding specialized private line services).

[35] See para. 59, *infra*.

[36] Third Report at paras. 399-44 (establishment of an intra-industry association to carry out tariff filing and pool distribution functions under the access charge system). We have rejected the notion that we lack authority to provide for the establishment of a private association which would engage in joint actions. Third Report at para. 343. We have noted, in addressing the issue of joint planning in an earlier phase of this proceeding, that we have sufficient authority to require exchange carriers "to acquire facilities and to adopt design criteria that will make interconnection effective." MTS and WATS Market Structure, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177, 207 (1980).

[37] Section 222(c)(3)(A) of the Act, 47 U.S.C. 222(c)(3)(A), required this Commission to convene meetings of IRCs for purposes of negotiating an interconnection agreement.

[38] Paragraph 16 of the Settlement Agreement provided as follows: "16. The parties agree that on the second Monday of each month after the effective date of this Settlement Agreement, or on such other day as the parties may from time to time determine, they shall meet under aegis of the Commission's Common Carrier Bureau to review the progress made in implementing this agreement. In addition, subcommittee meetings between Bell System company and OCC representatives will be held during the Interim Period with respect to technical, engineering, maintenance and test procedures." American Telephone & Telegraph Co., [Offer of Facilities for Use by Other Common Carriers], 52 FCC 2d 727, 742 (1975). The parties conducted meetings over a period of approximately 15 months and reached agreement regarding principles of interconnection, organization, operations, administrative matters, interconnection facilities and arrangements, and other matters, and pursuant to the settlement agreement and the Commission's acceptance, they have done so on a continuing basis since. *See also*, Interconnection Between Wireline Telephone Carriers and Radio Common Carriers Engaged in the Provision of Domestic Public Land Mobile Radio Service under Part 21 of the Commission's Rules, 63 FCC 2d 87, 89 (1977).

[39] Exchange Network Facilities for Interstate Access (ENFIA), 71 FCC 2d 440 (1979).

[40] Consistent with these mandates, under Sections 214(a) and 214(d), we have sponsored facilities planning by United States international carriers and have accommodated the views of their foreign correspondents through a related consultative process.

[41] Section 4(i) of the Act, 47 U.S.C. 154(i), provides that "[t]he Commission may perform any and all acts * * * as may be necessary in the execution of its functions."

establishment of joint planning procedures by this Commission falls within the ambit of the authority established in Section 4(i) of the Act. Finally, we believe that the flexibility accorded us in ordering our procedures under Section 4(j) of the Act, 47 U.S.C. 154(j), permits us to sponsor activity of this nature to carry out the express goals of the Act. We conclude that limited joint planning is, as constrained below, an appropriate mechanism for ensuring the just and reasonable administration of interconnection arrangements.

3. Structure for Limited Joint Planning

52. It is our tentative belief that the carrier association established by the Third Report [42] affords an appropriate structure for limited joint planning. The Third Report found that a carrier association is necessary to prepare and file joint tariffs and to administer distributions from a joint revenue pool because AT&T cannot be called upon to perform such a role in the post-divestiture environment. The Third Report further found that action by this Commission to mandate creation of the association is necessary because there is not sufficient time to permit institutional arrangements among carriers for these purposes to develop spontaneously. Under the framework established in the Third Report, the association will be comprised only of exchange carriers participating in access charge revenue pools administered by the association. This Commission subsequently will adopt a supplemental order establishing membership rules providing for appropriate representation of different classes of exchange carriers.[43] The association is barred from engaging in any activity not related to the preparation or filing of access charge tariffs or the collection and distribution of access charge revenues, unless the additional activity is approved by this Commission.

53. We tentatively conclude that the association established by the Third Report is a readily available mechanism for joint planning, and that there is no need to establish some form of parallel organization the membership of which would overlap extensively with the membership of the established association. The association already will be involved with access issues as a result of the functions assigned to it by the Third Report, and it thus becomes logical to extend these functions to include the administrative, technical, and operational aspects of interconnection planning which are involved in this Notice. We propose to impose procedural requirements and guidelines which will have application only in the context of the joint planning activities of the association and not in the context of other activities carried out in accordance with the Third Report, but it is our preliminary belief that this bifurcated approach to the operational rules of the association should not hamper its ability to carry out any of the functions assigned to it. Further, the fact that the association will be performing tariff preparation and revenue collection and distribution functions in addition to the joint planning functions we are here proposing will not, in our preliminary view, increase the potential for the development of anticompetitive practices to which we previously alluded.[44] In this respect it should be emphasized that the interexchange carriers which are in direct competition will not be members of the association. Their projections and other information will be considered by the association for planning purposes, but, as is discussed below, we propose to prohibit such information from being disseminated except in amalgamated form.

54. We tentatively have concluded that the membership of the association, as established in the Third Report, is suitable for the joint planning functions which we envision. It is our preliminary belief that it is appropriate to exclude representatives of this Commission, representatives of State public utility commissions, members of the general public, and interexchange carriers from membership on the association for joint planning purposes. However, as will be discussed subsequently,[45] it is our tentative belief that this Commission should be assigned responsibilities and functions regarding the joint planning activities of the association which are designed to ensure that the association does not operate in a manner which frustrates the goals and policies which we are establishing. This result can be achieved without requiring that this Commission be given membership on the association. A main objective of our proposals is to ensure the continuation of joint planning activities regarding interconnection which presently are being carried out on an informal basis, largely through the efforts and under the auspices of AT&T, but which may be seriously disrupted in the post-divestiture period if we do not act to establish a structure for planning. We are preliminarily satisfied with the assumption that this continuity can be achieved without carving out a direct role for this Commission in the planning functions of the association. It does not seem to us to be appropriate to propose that this Commission should take an active policymaking or management role in the planning negotiations of the association—such a role appears to be unnecessary and would constitute a departure from the manner in which joint planning historically has been carried out.[46]

55. As to representation of State public utility commissions and the general public on the association for joint planning purposes, we tentatively reiterate our finding in the Third Report that the interests of the State commissions and the public are amply protected by safeguards already established in the Act.[47] With repect to public representation, it is our further view that the technical nature of the interconnection planning deliberations to be conducted by the association are such that a direct decision-making role for representatives of the general public does not seem apt. Membership for interexchange carriers on the association for joint planning purposes, in our tentative view, would pose special problems sufficient to warrant the conclusion that interexchange carriers should be excluded from membership. At least for the foreseeable future, local exchange service and exchange access will be provided by exchange carriers which are regulated monopolies in their service areas.[48] This fact in itself lends credence to the argument that an assoiation of local carriers for joint planning purposes will not pose serious anticompetitive risks. Stated another way, anticompetitive conduct by local carriers will increase in likelihood only as competitive forces are sought to be introduced in the local exchange and local access markets. The

[42] See note 36, *supra*.

[43] See Third Report at para. 346.

[44] See para. 48, *Supra*.

[45] See paras. 61, 62, and 64, *infra*.

[46] This Commission has taken a similar approach regarding the general area of network planning: "[P]lanning of the nationwide network has been and remains today primarily a private activity. While * * * we intend to monitor the network to ensure it is not designed in a manner that forecloses entry, technical and design disputes among the different entities who comprise the network largely have been resolved without Commission intervention." In re Applications of Winter Park Tel. Co. and Orange City Tel. Co., 84 FCC 2d 689, 696 (1981).

[47] Third Report at para. 345 (citing Fourth Supplemental Notice of Inquiry and Proposed Rulemaking, 90 FCC 2d 135, 150 (1982)).

[48] *See* Majority Staff of Subcomm. on Telecommunications, Consumer Protection, and Finance of House Comm. on Energy and Commerce, *Telecommunications in Transition: The Status of Competition in the Telecommunications Industry*, 97th Cong., 1st Sess. 228 (1981).

situation with respect to interexchange carriers, however, is different. The interexchange market is increasingly becoming subject to competition.[49] Interexchange carriers operating in a competitive environment might sieze upon their membership on the association as a device for effecting exclusionary and other anticompetitive interconnection practices. Since interexchange carriers obviously are affected by interconnection planning, it is important that they be allowed to play some role in this planning.[50] It is our preliminary belief, however, that this role should stop short of membership on the association.[51]

56. We seek comments on the following issues regarding the structure for joint planning arrangements and our proposal thereupon set out in this section. First, should a framework other than the association established by the Third Report be utilized for this joint planning? Are these alternative existing structures which could be better utilized for this purpose? Would it be more appropriate to establish a new organization for the exclusive purpose of engaging in joint planning for interconnection arrangements? Second, if the association established by the Third Report is used for this joint planning, should we modify our tentative conclusions regarding representative of State public utility commissions, the general public, and interexchange carriers as members of the association? We also request comments regarding whether other groups should be represented as members of the association for joint planning purposes, or, in the alternative, whether and how others might best participate in the planning process, but short of actual membership. Finally, we would like the parties to comment upon whether we should modify our tentative conclusion regarding membership of this Commission on the association with respect to its planning activities.

[49] United States v. AT&T, 552 F. Supp. at 171. In 1980, revenues earned by specialized common carriers constituted 1.3 percent of the toll service revenues of the telephone industry and their plant had 0.5 percent of the value of the gross communications plant of the telephone industry. Lavey, *supra* note 30, at 367.

[50] See para. 63, *infra*, for a discussion of our tentative conclusions regarding the nature of this role.

[51] We recognize, however, that certain larger independent telephone companies will perform the dual role of being exchange and interexchange service providers. In present circumstances, however, they would not appear to have sufficient market power to change our belief that the proposed structure is appropriate. Parties may wish to comment on this.

4. Functions of Association[52]

57. It is our preliminary belief that the joint planning functions of the association should be grouped into three areas. First, the association should conduct advance planning regarding administration of interconnection procedures, technical standards for the provision of interconnection, design and operational standards relating to interconnection equipment and systems and related administrative and maintenance procedures. The primary purposes of this planning should be to make adjustments to interconnection processes on an ongoing basis in order to achieve operational efficiency, to promote nationwide compatibility, and to anticipate future needs and problems so that adjustments can be planned and carried out on the basis of these projections. It should be stressed that it is our tentative conclusion that these functions of the association shouold be limited to the point of interconnection. Interexchange network design and planning will be beyond the scope of the association's activities. Second, it is our tentative veiw that the association should be involved in the collection of information to be used in connection with short- and long-term forecasting regarding patterns of interconnection demand and construction needs. Necessary exchange facilities to meet interexchange carrier's needs often requir long periods for construction and deployment. The efficiency with which exchange carrier are able to provide interconnection servies is in some measure dependent upon the carriers' accuracy in assessing trends in the level and nature of demand for these services. The rapid pace of technological developments in this field, and the impact of these developments on interconnection demand, places, a premium upon the need for effective forecasting. It is our preliminary belief that the effectiveness of this forecasting can be maximized if it is performed on a central basis.

58. The structure of the association would enable it to collect and collate data from exchange carriers, to review and analyze this information, and to arrive at planning decisions based upon these analyses. It is our tentative view that the association should develop alternative plans for responding to projected demand, study these options in order to select the most appropriate plan, and carry out reviews of the implementation of the selected plan. In this way, interconnection procedures and standards would be responsive to changing needs. However, we propose to restrict dissemination to interexchange carriers of forecasting information except in amalgamated form in order to ensure that the projections themselves do not become a mechanism for impermissible concerted action by the competitive interexchange carriers.[53] Third, it is our preliminary view that NSEP planning functions could be carried out by the association.[54] Concern has arisen over a claim that the divestiture, and the attendant changes in AT&T's emergency planning role,[55] could result in the disruption of telecommunications functions which are deemed critical to the Nation's defense and emergency communications capabilities.[56] Although the MFJ requires the BOCs to establish a point of contact for NSEP purposes,[57] it is our tentative

[52] For the convenience of discussion, our subsequent comments make reference to the "association" based upon our tentative conclusion that the association created by the Third Report is the proper structure for interconnection planning. These references, however, should not be construed to preclude designation of one or more different entities to carry out these planning functions.

[53] *See, e.g.*, Maple Flooring Manufacturers Ass'n v. United States, 268 U.S. 563 (1925); United States v. American Linseed Oil Co., 262 U.S. 371 (1923); American Column & Lumber Co. v. United States, 257 U.S. 377 (1921).

[54] The important role played by communications carriers in connection with NSEP often has been recognized. *See* Section 1 of the Act, 47 U.S.C. 151; Section I.B. of the MFJ; H.R. Rep. No. 1252, pt. 1, 96th Cong., 2d Sess. 90 (report on H.R. 6121, Telecommunications Act of 1980) ("It is important and valuable to the Nation that carrier networks be interconnected (or capable of interconnection) and capable of interoperation in emergencies * * *."); S. Rep. No. 170, 97th Cong., 1st Sess. 52 (1981) (report on S. 898, Telecommunications Competition and Deregulation Act of 1981).

[55] For an example of the role AT&T has played in meeting national defense needs, see Bell Telephone Laboratories, Inc., *A History of Engineering and Science in the Bell System* 232–38 (1978).

[56] *See, e.g.*, In the Matter of MTS and WATS Market Structure, Report and Third Supplemental Notice of Inquiry and Proposed Rulemaking, 81 FCC 2d 177, 206–07 (1980). After divestiture an AT&T government communications organization will act as the point of contact between AT&T and the government for NSEP purposes, including NSEP technical standards, NSEP network planning, and all other aspects of AT&T's role (as an interstate regulated entity) in nationwide NSEP planning or exercises. AT&T has indicated that: "AT&T will retain ijs network operations center and established NSEP relocation sites, which will continue to perform, among other things, NSEP alerting services with respect to AT&T's network and interconnected carrier networks, if those carriers and the government so desire." Consolidated Application of American Telephone & Telegraph Company and Specified Bell System Companies, In the Matter of AT&T (Consolidated Applications), No. W–P–C–4955, at 74 (FCC, filed March 1, 1983).

[57] Section I.B of the MFJ requires a BOC single of contact for NSEP purposes. Under the Plan of Reorganization submitted by AT&T, the BOCs will establish a specialized government communications group within the Central Staff Organization in order to comply with this MFJ requirement. The functions of this group will include: (1) The development of

view that the MFJ requirements should be supplemented, to the extent necessary or desirable, by a limited planning process involving all exchange carriers, to minimize disruptions in emergency communications by all involved sectors of the industry.

59. Furthermore, we propose that explicit restrictions be placed upon the functions of the association in order to eliminate any potential anticompetitive problems which might be an outgrowth of the association's activities. The Third Report achieves this result in a general sense by barring any additional activities by the association unless these activities have been approved by this Commission.[58] It is our preliminary conclusion that the rules of this Commission also should specify that the association may not, in connection with the planning activities addressed in this Notice, collect or share any information relating to pricing[59] or procurement,[60] and that the association may not take any action which is intended to allocate, or has the effect of allocating, any markets or facilities. These rules should provide that information which the association is authorized to collect and collate may be disseminated to interexchange carriers only in amalgamated form in order to prevent any possibility of anticompetitive collusion by these carriers. Further, these rules should require that interconnection standards and procedures must be established by the association on an objective basis, so that the standards and procedures do not amount to anticompetitive devices for excluding potential competitors.[61]

60. With respect to the functions of the association, we request the parties to comment on the nature and scope of the functions which we have outlined, with particular attention to whether these functions are necessary or appropriate functions for the association to perform. We also seek comment regarding whether other functions should be assigned to the association, either in lieu of or in addition to the functions we have outlined. We further would like the parties to comment on the limitations we tentatively have decided to place upon the activities of the association. Again, we seek comment regarding whether these limitations are necessary or appropriate and regarding whether other limitations should be established. Finally, we request comments regarding the nature of the relationship, if any, which should be established between the association, the BOC point of contact for NSEP purposes to be created under the MFJ, and other carriers' administrative elements with NSEP communications responsibilities. In this regard, we seek comments on the following questions: What should be the nature and extent of coordination between these entities? Should any such entity have any "veto" authority over the decisions of the others?

5. Procedures of Association

61. It is our tentative view that procedures applicable to the operation of the association should serve three primary objectives. First, the public should be given ample opportunity to observe the processes of the association and to examine the decisions and other actions of the association. Second, this Commission should reserve sufficient authority to oversee the operations of the association in order to ensure that actions taken by the association are consistent with the policies of the Act and any rules we may adopt herein. And third, sufficient flexibility should be incorporated in the procedures of the association to enable it to carry out its planning functions efficiently and effectively. It should be noted that the procedures which we tentatively are proposing, in seeking to meet these and other objectives herein, have been drawn in large measure from provisions contained in Section 708 of the Defense Production Act of 1950, 50 U.S.C. App. section 2158, which addresses analogous issues.

62. We propose that the association be governed by bylaws submitted to, and approved by, this Commission. We propose that the chairman of the association be selected from among its membership and serve for a term to be fixed by the members in the bylaws of the association. Meetings for planning

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technical standards for use by the BOCs; (2) operations as a single point of contact for alerting BOCs in emergency situations; and (3) cooperation "with AT&T and its affiliates and other carriers to effectuate NSEP communications requirements * * *." Plan of reorganization, *supra* note 32, at 418.

The Plan of Reorganization describes the manner in which the communications group will coordinate with interexchange carriers and other vendors in the following terms:

[T]he BOCs and the centralized government communications group will cooperate fully with the interexchange carriers and equipment vendors involved to provide efficient service. Specifically, the centralized group will, if the government desires, serve as a point of contact for other carriers and vendors to arrange for the installation, joint testing, maintenance, restoration, repair and all other operational aspects of BOC-provided NSEP services that are interconnected with services provided by other carriers.

Id. at 421. It should be noted that the arrangements described in the Plan of Reorganization do not appear to include coordinated planning and do not appear to involve Independent telephone companies. *See* Comments of United States Independent Telephone Association on the Plan of Reorganization, at 4 (D.D.C., filed Feb. 16, 1983).

AT&T in materials filed with this Commission subsequent to the filing of the Plan of Reorganization with the District Court of the United States for the District of Columbia, has alluded to the possibility of coordinated planning between the BOCs and other carriers for NSEP purposes.

[T]he CSO [the central staff organization for the BOCs] would, if requested by the government, act as the point of contact for other carriers to coordinate the installation, joint testing, maintenance, restoration, repair, and all other operational aspects of BOC-provided intraLATA NSEP services that are interconnected with services provided by other carriers and terminal equipment vendors. To effect this coordination, it is assumed that the involved carriers, including the independent telephone companies, would designate NSEP coordinators and would be in communication with CSO's national alert center. Neither the BOCs nor the government communications groups in the CSO will select interexchange carriers or terminal equipment vendors for the government.

Consolidated Application of American Telephone Telegraph Company and Specified Bell System companies, In the matter to AT&T (Consolidated Applications), No. W-P-C-4955 at 78 (FCC, filed March 1, 1983). The Department of Justice had indicated to the district court that it would require the Plan of Reorganization to be amended to clarify that the central staff organization will have authority to "require" that the BOCs carry out NSEP activities on a coordinated basis, and that the central staff organization would bill and collect from federal agencies on a centralized basis. These changes have been accepted.

[58] Third Report at para. 344.

[59] The exchange carrier association is necessarily involved in the collection and sharing of pricing information in connection with its preparation of access tariffs. Third Report at para. 348. The pricing restrictions we propose to establish here relate exclusively to the planning activities of the association and would in no way constrain or impair the functions established in the Third Report.

[60] We recognize that the functions of the association in establishing technical interconnection standards, see para. 57, *supra*, may pose the risk that technical standards might be adopted which indirectly lead to creation of procurement guidelines. That is, technical standards could be fashioned in a way that would tend to favor the facilities and equipment of certain vendors. However, our goal is to delineate the functions of the association and restrictions applicable to its activities in a manner which minimizes this risk, while maintaining the potentially desirable goal of permitting operational problems to be avoided through the use of appropriate technical standards. We seek comments regarding possible ways in which reconciliation of these goals may appropriately be achieved.

[61] The Supreme Court, in holding that an industry standard-setting organization is civilly liable under antitrust law for antitrust violations of its agents acting with apparent authority, noted that:

[A] standard-setting organization like ASME can be rife with opportunities for anticompetitive activity. Many of ASME's officials are associated with members of the industries regulated by ASME's codes * * *. [S]ame may well view their positions with ASME, at least in part, as an opportunity to benefit their employers. When the great influence of ASME's reputation is placed at their disposal, the less altruistic of ASME's agents have an opportunity to harm their employers' competitors through manipulation of ASME's codes.

Americam Society of Mechanical Engineers, Inc. v. Hydrolevel Corp., 50 U.S.L.W. 4512, 4516 (U.S. May 17, 1982) (footnote omitted). *See*, Radiant Burners, Inc. v. People Gas Light & Coke Co., 364 U.S. 656 (1961) for a discussion of the unlawfulness of exclusionary standard-setting.

purposes will be held at the call of the chairman or upon the request of a majority of the membership, and reasonable public advance notice of meetings must be given by the association. The association will have the discretion to establish permanent or ad hoc subcommittees to be responsible for various aspects of the association's planning activities. This Commission will have authority to monitor the activities of the association by sending an official representative to its meetings. The Commission representative will have authority to require the association to terminate any particular proceeding if he concludes that actions taken in the proceeding, or the manner in which the proceeding is being conducted, violate the Act or the rules established by this Commission. We propose that the representive may exercise this authority without being required to obtain any further approval from the Commission. If the representative terminates a meeting, then the association may not reconvene to discuss the topic which caused such termination without the express prior approval of the Commission.[62] Meetings of the association will be open to the public, unless the association determines (by majority vote of those members of the association who are present) that matters to be discussed at the meeting are within the purview of matters described in paragraph (1), (3), (4) of subsection (b) of Section 552 of Title 5, United States Code.[63] The association will be required to keep minutes of its meetings. These minutes must be filed with this Commission and made available for public inspection, except that information in the minutes pertaining to matters described in paragraph (1), (3), or (4) of subsection (b) of Section 552 of Title 5, United States Code, would not have to be disclosed to the public.[64]

63. The procedures we are proposing also would require the association to permit interexchange carriers (including voice and data communications carriers) and other users of exchange access facilities to make written and oral presentations to the association regarding interconnection planning matters under consideration by the association.[65] The rules we are proposing will not specify the extent to which the association must take these presentations into account in arriving at planning decisions, but we note that it is not our intent that participation by interexchange carriers and other users force the deliberations of the association to take on the strictures of an adversary proceeding. Rather, it is our tentative view that these carriers and other users will be in a position to assist the association, and to affect the decisions of the association in a positive way, through the provision of information and comments to the association. It is our opinion that, by barring interexchange carriers and other users from playing an active role in the decision-making of the association, the proposed rules will mitigate the types of anticompetitive problems we previously have discussed.[66] Furthermore, it would appear that equipment manufacturers would have an interest in, and the ability to contribute to, deliberations concerning technical standards. Thus, we would propose that such entities also have the right to make presentations to the association with respect to standards.

64. The proposed rules also would require the association to disseminate information regarding its interconnection decisions and policies in a manner which is sufficient to keep the industry and the public adequately informed of association actions.[67] Further, we propose that the association be required to file planning decisions and related information with this Commission.[68]

65. We request parties to comment generally regarding the procedural requirements we are proposing, and we would like the parties to suggest additional or alternative procedural requirements. We also seek comments regarding the following specific issues: First, is the role we have outlined for this Commission appropriate, or should it be modified? Should the Commission role be narrowed (*e.g.*, by eliminating the monitoring function)? Or should the Commission role be expanded (*e.g.*, by making a Commission representative a member of the association, by authorizing this Commission to screen interconnection planning topics in advance of meetings, or by barring planning decisions from taking effect unless they specifically are approved by this Commission)? Second, should the proposed rules require this Commission to oversee the implementation of association decisions after they have been made? This Commission has general authority under the Act to prohibit interconnection policies and actions which are not consistent with the Act, but we request comments regarding whether the proposed rules should formalize this function of this Commission by setting up specific monitoring procedures and requirements. Third, should modifications be made in the role established for interexchange carriers, other users of exchange access facilities, and equipment manufacturers, under the proposed rules? For example, should these interests to given any decision-making authority regarding the planning activities of the association? [69] Should these interests be permitted to propose or to initiate planning topics for consideration and action by the association, or should their role be limited to commenting upon planning activities initiated by the association?

66. Fourth, should the role of the general public in the proceedings of the association be expanded, with due regard to procedures to accommodate classified information (*e.g.*, by permitting members of the public to make oral or written presentations, or both)? Or should the public role be restricted (*e.g.*, by barring public attendance at association proceedings)? Fifth, we invite comment regarding whether the proposed rules should address informal planning contacts and other arrangements among exchange carriers. Up to this point, our discussion has focused on more formal carrier

[62] See Section 708(d) of the Defense Production Act of 1950, 50 U.S.C. App. section 2158(d).

[63] See Section 708(e)(3)(D) of the Defense Production Act of 1950, 50 U.S.C. App. section 2158(e)(3)(D). Paragraph (1) of subsection (b) of Section 552 of Title 5, United States Code, relates to information classified as nonpublic under Executive orders; paragraph (3) relates to information which is exempted from disclosure by statute; and paragraph (4) relates to trade secrets and commercial or financial information which is privileged or confidential. It should be noted that the exclusions established in Section 708(e)(3)(D) of the Defense Production Act of 1950 embrace only the information described in paragraphs (1) and (3).

[64] See Section 708(d) of the Defense Production Act of 1950, 50 U.S.C. App. section 2158(d).

[65] This Commission, in discussing the overall network planning process, has noted that:

[T]he public is well served when * * * users and constituents of the network also are involved in the planning process. Joint planning introduces more directly the perspective and experience of other responsible entities, bringing to light viewpoints that might otherwise go unnoticed. We expect that a broader planning perspective will lead to the consideration of alternative plans and ultimate improvement of the network.

In re Applications of Winter Park Tel. Co. and Orange City Tel. Co., 84 FCC 2d 689, 697 (1981).

[66] See para. 48, *supra*.

[67] It is useful to note that section II.B.2 of the MFJ requires the BOCs to establish and disseminate "technical information and * * * interconnection standards."

[68] See Section 708(e)(3)(F) of the Defense Production Act of 1950, 50 U.S.C. App. section 2158(e)(3)(F). It should be noted that, in the area of telecommunications network planning, requirements have not been established for the systematic filing of planning decisions. Lavey, *supra* note 30, at 346.

[69] See para. 56, *supra*, for a decussion of whether interexchange carriers should be represented as members of the association.

arrangements for interconnection planning through the association established in the Third Report and through subcommittees which may be established for planning purposes by the association. We note, however, that exchange carriers engage in a variety of informal contacts relating to interconnection planning,[70] and it is appropriate to conclude that these contacts may make important contributions to the efficiency of interconnection planning. We are interested in receiving the views of the parties regarding whether it is appropriate for the proposed rules to be applicable to these informal contacts and, if so, the nature of procedures and requirements which would have the most utility in this informal setting. In this regard, we should note our particular concern that these informal contacts should not become a vehicle through which competing interexchange carriers obtain information which may be used in connection with their competitive activities. Finally, we seek comments regarding the proposed requirement that minutes of association meetings be kept and filed with this Commission. Specifically, would such a requirement prove to be an undue constraint upon planning negotiations? Or should the requirement be strengthened (*e.g.*, by requiring transcripts, rather than minutes) as a means of further ensuring against anticompetitive activities?

6. Antitrust Considerations

67. It is our conclusion that the interconnection planning activities and the organizational structure for this planning which we are proposing in this Notice are consistent with the antitrust laws. The Third Report, in fact, already has rejected arguments that the access charge functions of the association pose antitrust problems, noting that "[t]he Sherman Act does not prohibit concerted activities, it merely prohibits concerted activities that are likely to produce an unreasonable restraint of trade." [71] It has been our intent in fashioning our proposals herein to assign to the association functions which are important for the provision of efficient planning but which will not create a basis for anticompetitive conduct. We also have proposed restrictions upon association activities as a means of protecting competition.[72] Finally, we have proposed procedural requirements which will act as a further bar against anticompetitive activities. It also should be noted that, although it is true that competition is an important factor which should be given weight in the administration of the Act,[73] this Commission also is required by the public interest standards of the Act to consider factors other than competition, such as the efficiency of the communications network, the provision of reliable service to the public, and the future needs of carriers and users.[74] In sum, we believe that we have sufficient authority under the Act to sponsor procedures as outlined, and that use of such procedures would not raise antitrust issues. Of course, in formulating final rules and requirements herein, we will give weight to the views of the Attorney General of the United States regarding any aspects of the association's activities which may have anticompetitive effects.

IV. Regulatory Flexibility Act Analysis

68. We have found at an earlier stage of this proceeding that the Regulatory Flexibility Act is not applicable to this proceeding because no local exchange carrier falls within the definition of "small entity" for purposes of that Act. Third Report at paras. 358–62. We noted in the Third Report, however, that the policy objectives of the Regulatory Flexibility Act are also encompassed in Sections 2(b) and 203(a) of the communications Act of 1934, the provisions of which are intended to relieve many small telehpone companies from various reporting and other requirements established in the Communications Act. Any recordkeeping and other requirements (*e.g.*,tariff requirements) imposed by any final decision in this proceeding would be applicable to all exchange telephone companies, regardless of their size. See paras. 27–40, *supra*, for a detailed discussion of the proposed requirements. However, it is important to note that in fashioning these proposals, we have been cognizant of the differences in resources availble to the BOCs and the larger Independent telephone companies, on the one hand, and the smaller Independents, on the other, and we have sought to tailor our proposed requirements to accommodate the limited resources of the smaller companies. We specifically request small Independent telephone companies, their trade associations and others which may represent their interests, to comment on the implications of these requirements in the light of their operations, and to propose appropriate administrative mechanisms which will minimize the flow of unnecessary paperwork.

V. Ordering Clauses

69. It is hereby ordered, pursuant to Section 1, 4(i), 4(j) 201–205, 214, 218 and 403 of the Communication Act of 1934, and 5 U.S.C. 553, That notice is hereby given of the proposed adoption of rules in part 69 of title 47 of the Code of Federal Regulations, in accordance with the discussion and delineation of the issues and the specific proposals made herein.

70. It is further ordered, pursuant to § 1.419 of the Commission's Rules, 47 CFR 1.419, That an original and five copies of comments may be filed with the Secretary, Federal Communications Commission, Washington, D. C. 20554 on or before August 8, 1983, and that replies may be filed on or before October 7, 1983. In reaching its decision in this proceeding, the Commission may take into consideration 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 relince on such information is noted in the Report and Order.

71. It is further ordered, pursuant to § 1.2 of the Rules of the Commission, 47 CFR 1.2, and authority delegated under Section 0.291 of the Rules of the Commission, 47 CFR 0.291, That meetings among carriers, under the aegis of the Common Carriers Bureau, may continue during the pendency of this proceeding pursuant to the decision of the commission in *American Telephone and Telegraph Company (office of Facilities for Use by Other Common Carriers)*, Docket No. 20099, 52 FCC 2d 727, 733 (1975).

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[70] *Cf. Hearings on S. 898 Before the Senate Comm. on Commerce, Science, and Transportation*, 97th Cong., 1st Sess. 445 (1981) (testimony of T. Brophy, Chairman and Chief Executive Officer, GTE Corp.) (informal contacts among telephone companies regarding planning for toll switching and transmission facilities), *cited in* Lavey, *supra* note 30, at 378 n.126.

[71] Third Report at para. 333.

[72] *See* para. 59, *supra*.

[73] FCC v. RCA Communications, Inc., 346 U.S. 86, 94 (1953). The Court also noted, in the *RCA* case, that "encouragement of competition as such has not been considered the single or controlling reliance for safeguarding the public interest." *Id.* at 93 (footnote omitted).

[74] Phonetele, Inc. v. American Tel. & Tel. Co., 664 F.2d 716, 722 (9th Cir. 1981), *cert. denied*, 51 U.S.L.W. 3533 (U.S. Jan. 17, 1983) (No. 81–2359). We do not find it necessary here to address the question of whether the planning requirements which would be imposed upon exchange carriers under our proposed rules would have the effect of establishing any antitrust immunity for such carriers, although we do note the general principle that "[a]ctivities which come under the jurisdiction of a regulatory agency nevertheless may be subject to scrutiny under the antitrust statutes." Jarvis, Inc. v. American Tel. & Tel. Co., 481 F. Supp. 120, 123 (D.D.C. 1978) (citing Otter Tail Power Co. v. United States, 410 U.S. 366, 372 (1973)).

72. It is further ordered, That this proceeding shall be continued as a non-restricted notice and comment rulemaking proceeding, 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. 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 covered fully 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*, § 1.1231 of the Commission's rules, 47 CFR 1.1231.

73. And, it is further ordered, That the Secretary shall cause a copy of this Notice of Proposed Rulemaking to be published in the **Federal Register.**

(Secs. 1, 2, 4, 201–205, 208, 215, 218, 313, 314, 403, 404, 410, 602; 48 Stat as amended; 1064, 1066, 1070, 1071, 1072, 1073, 1076, 1077, 1087, 1094, 1098, 1102; 47 U.S.C. 151, 152, 154, 201–205, 208, 215, 218, 313, 314, 403, 404, 410, 602)

Federal Communications Commission.

William J. Tricarico,

Secretary.

Separate Statement of Commissioner Joseph R. Fogarty

In Re: MTS and WATS Market Structure, CC Docket No. 78–72, Phase III, Notice of Proposed Rulemaking on Interconnection in the Wake of Access Charges and Implementation of the MFJ.

I am pleased to see that the Regional Bell Operating Companies and the major Independent exchange carrier companies have already begun to form an association of exchange carriers for the specific purpose of structuring, planning, and formulating telephone network standards in the coming post-divestiture era.* Such an industry planning organization is, in my judgment, absolutely vital for this nation's national defense and emergency preparedness, as well as the basic integrity and viability of our national telecommunications network. I am also pleased that this *Notice* promises that the Commission's public interest imprimatur will be given to an industry planning body in the performance of its appointed interconnection and exchange access tasks.

[FR Doc. 83-15409 Filed 6-8-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 97

[PR Docket No. 83-524; FCC 83-250]

Amendment of the Commission's Rules To Make Additional Frequencies Available to the Radio Amateur Civil Emergency Service During Declared National Emergencies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to amend Part 97, Amateur Radio Service, to make additional frequencies available to the Radio Amateur Civil Emergency Service (RACES) during emergency periods when the President's War Emergency Powers have been invoked. The Department of Defense has requested additional Amateur Radio Service frequencies for use by RACES under war emergency conditions.

DATES: Comments are due by August 2, 1983 and replies by September 1, 1983.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James D. McGrath, Private Radio Bureau, Special Services Division (202) 632–4964.

List of Subjects in 47 CFR Part 97

Civil defense, Defense communications, Radio.

Notice of Proposed Rulemaking

In the matter of amendment of the Amateur Radio Service Rules, Part 97, to make additional frequencies available to the Radio Amateur Civil Emergency Service during declared national emergencies, PR Docket No. 83–524.

Adopted: May 26, 1983.

Released: June 3, 1983.

By the Commission: Commissioner Fogarty not participating; Commissioner Sharp absent.

Introduction

1. Notice of Proposed Rulemaking in the above-captioned matter is hereby given.

2. The Commission is proposing to amend Part 97 to make additional frequencies available to the Radio Amateur Civil Emergency Service (RACES) in the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of Section 606 of the Communications Act of 1934, as amended. Changes in the rules to govern operations on these frequencies are also proposed.

Background

3. The National Telecommunications and Information Administration (NTIA), United States Department of Commerce, has requested that additional frequencies be made available to RACES during declared national emergencies. NTIA, with the assistance of the Interdepartment Radio Advisory Committee (IRAC), acting on a request by the Department of Defense (DOD) that additional frequencies be authorized for use by RACES under war emergency conditions, has completed a review of those frequency resources identified in Part 97 of the Commission's Rules for RACES.[1]

4. The Department of Defense, in support of the need for additional frequencies, stated:

a. "Frequency bands now authorized for RACES use in wartime have proved inadequate during peacetime disasters. As such, we conclude that the situation under conditions of war would be completely unsatisfactory."

b. "Many more amateur equipments, especially repeaters, are now available for use than was the case when RACES was established. These assets, which would be most valuable to civil defense needs, operate on frequencies which are not presently assigned to RACES."

c. "From an operational standpoint, it is important to be able to use existing amateur configurations without change when RACES is activated under war emergency conditions on short notice. This includes use of existing frequencies employed by HF emergency nets as well as repeaters in higher bands."

5. NTIA concurs with the assessment made by DOD and the Federal Emergency Management (FEMA)[2] that

*See Telecommunications Reports, Vol. 49, No 16, at 44 (April 25, 1983), "Washington Legislative Council Members Move on Group to Set Network Standards."

[1] Part 97, Subpart F, § 97.185 of the Commission's Rules.

[2] FEMA is responsible for the management of RACES during declared national emergencies, see Executive Order 12148, 44 FR 43239 (1979).

frequencies now allocated to the Amateur Radio Service should be made available to RACES during declared national emergencies.

6. We agree that there is merit in making additional amateur radio frequencies available to RACES during declared national emergencies so that wartime communication capabilities would be enhanced.

7. We propose herein to make such additional frequencies available and to make appropriate changes in the operational rules governing RACES. The proposed operational limitations would provide protection from inteference by RACES stations to the Government radiolocation service, the aeronautical radionavigation service and to Canadian radio services. Additional Amateur Radio Service frequencies may also be considered, in the 10 MHz and 18 MHz frequency bands, if during this rule making proceeding, the United States ratifies the final acts of the World Administrative Radio Conference (WARC), 1979.[a]

8. We propose that § 97.185(c)(2) limiting the use of certain frequency bands by RACES to thirty days, during periods of actual civil defense emergency, unless otherwise ordered by the Commission, be deleted. No useful function is performed by requiring Commission approval to extend the thirty day limitation for RACES operations because Commission approval would be routinely granted if the emergency situtation continued beyond the thirty day period.

9. We propose that § 97.185(c)(4) limiting the use of frequencies assigned to RACES to specific geographical areas, during declared national emergencies, be deleted. With the availability of additional frequencies to RACES stations during these emergency periods it is unnecessary to continue to limit RACES operations to these areas.

Conclusion

10. Notice is hereby given that it is proposed to amend 47 CFR Part 97 in accordance with the proposed rules set forth in the attached Appendix.

Procedural Matters

11. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the time a public notice is issued stating that a substantive disposition of the matter is to be considered at a forthcoming meeting or until a final Order disposing of the matter is adopted by the Commission, whichever is earlier. In general, 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. A summary of the Commission's procedures governing *ex parte* contacts in informal rule making proceedings is available from the Commission's Consumer Assistance Office, FCC, Washington D.C. 20554; (202) 632–7000.

12. Authority for issuance of this Notice is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to applicable procedures set forth in § 1.415, of the Commission's Rules, 47 CFR Part 1415, interested persons may file comments on or before August 2, 1983 and reply comments on or before September 1, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information, or a writing indicating the nature and source of such information, is placed in the public file, and provided further that the fact of the Commission's reliance on such information is noted in the Report and Order.

13. In accordance with § 1.419 of the Commission's Rules, 47 CFR Part 1.419, formal participants must file an orginal and five copies of their comments and other materials. Participants who wish each Commissioner to have a personal copy of their comments should file an original and eleven copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. Each set of comments must state on its face the proceeding to which it relates (PR Docket Number) and should be submitted to: The Secretary, Federal Communications Commission, Washington, D.C. 20554. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

14. The Commission has determined that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) do not apply to this rule making proceeding since this proposal would simply allow the use of additional frequencies by RACES licensees during declared national emergencies. No RACES licensees would be compelled to purchase new radio equipment. Consequently, there would be no significant economic impact on a substantial number of small entities.

15. It is ordered, That the Secretary shall cause a copy of this Notice to be served upon the Chief Counsel for Advocacy of the Small Business Administration and that the Secretary shall also cause a copy of this Notice to be published in the **Federal Register.**

16. For information concerning this proposal, contact James D. McGrath, Federal Communications Commission, Private Radio Bureau, Personal Radio Branch, Washington, D.C. 20554; (202) 632–4964

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

It is proposed to amend Part 97 of the Commission's Rules, 47 CFR Part 97, as follows:

PART 97—[AMENDED]

1. Section 97.185 would be revised to read as follows:

§ 97.185 Frequencies available.

(a) All of the authorized frequencies and emissions allocated to the Amateur Radio Service are also available to the Radio Amateur Civil Emergency Service on a shared basis.

[a] WARC, Geneva, 1979, allocated additional frequencies in the 10 MHz and 18 MHz frequency bands to the Amateur Radio Service.

(b) In the event of an emergency which necessitates the invoking of the President's War Emergency Powers under the provisions of Section 606 of the Communications Act of 1934, as amended, unless otherwise modified or directed, RACES stations and amateur radio stations participating in RACES will be limited in operation to the following:

FREQUENCY OR FREQUENCY BANDS

	Limitations [1]
kHz:	
1800 to 1825	1
1975 to 2000	1
3500 to 3550	
3930 to 3980	
3984 to 4000	
3997	2
7079 to 7125	
7245 to 7255	
14047 to 14053	
14220 to 14230	
14331 to 14350	
21047 to 21053	
21228 to 21267	
MHz:	
28.55 to 28.75	
29.237 to 29.273	
29.45 to 29.65	
50.35 to 50.75	
53.30	2
53.35 to 53.75	
145.17 to 145.71	
146 to 148	3
220 to 225	5
420 to 450	4, 5, 6
1240 to 1300	4
2390 to 2450	4

[1] See paragraph (c).

(c) Limitations:

(1) Use of frequencies in the band 1800–2000 kHz is subject to the priority of the LORAN system of radionavigation in this band and to the geographical, frequency, emission, and power limitations contained in § 97.61 governing amateur radio stations and operators (Subparts A through E of this part).

(2) For use in emergency areas when required to make initial contact with a military unit; also, for communications with military stations on matters requiring coordination.

(3) Those stations operating in the bands 420–450, 1240–1300 and 2390–2450 MHz shall not cause harmful interference to, and must tolerate any interference from, the Government radiolocation service; and also the aeronautical radionavigation service in the case of the 1240–1300 MHz band.

(4) Those stations operating in the band 220–225 MHz shall not cause harmful interference to, and must tolerate any interference from, the Government Radiolocation Service until January 1, 1990. Additionally, the Fixed and Mobile Services shall have equal right of operation.

(5) In the band 420–430 MHz, no station shall operate North of Line A. Line A begins at Aberdeen, Washington running by great circle arc to the intersection of 48° N., 120° W., thence along parallel 48° N., to the intersection of 95° W., thence by great circle arc through the southernmost point of Duluth, Minn., thence by great circle arc to 45° N., 85° W., thence southward along meridian 85° W., to its intersection with parallel 41° N., thence along parallel 41° N., to its intersection with meridian 82° W., thence by great circle arc through the southernmost point of Bangor, Maine, thence by great circle arc through the southernmost point of Searsport, Maine at which point it terminates.

(6) In the band 420–450 MHz and within the following areas, the DC plate power input to the final stage of a transmitter employed in the amateur service shall not exceed 50 watts, unless expressly authorized by the Commission after mutual agreement, on a case-by-case basis, between the Federal Communications Commission Engineer in Charge at the applicable District Office and the Military Area Frequency Coordinator at the applicable military base:

(i) Those portions of Texas and New Mexico bounded on the south by latitude 31° 45′ North, on the east by 104° 00′ West, on the North by latitude 34° 30′ North, and on the west by longitude 107° 30′ West;

(ii) The entire State of Florida including the Key West area and the areas enclosed within a 200-mile radius of Patrick Air Force Base, Florida (latitude 28° 21′ North, longitude 80° 43′ West), and within a 200-mile radius of Eglin Air Force Base, Florida (latitude 30° 30′ North, longitude 86° 30′ West);

(iii) The entire State of Arizona;

(iv) Those portions of California and Nevada south of latitude 37° 10′ North, and the areas enclosed within a 200-mile radius of the Pacific Missile Test Center, Point Mugu, California (latitude 34° 09′ North, longitude 119° 11′ West).

(v) In the State of Massachusetts within a 160-kilometer (100 mile) radius around locations at Otis Air Force Base, Massachusetts (latitude 41° 45′ North, longitude 70° 32′ West).

(vi) In the State of California within a 240-kilometer (150 mile) radius around locations at Beale Air Force Base, California (latitude 39° 08′ North, longitude 121° 26′ West).

(vii) In the State of Alaska within a 160-kilometer (100 mile) radius of Clear, Alaska (latitude 64° 17′ North, longitude 149° 10′ West). (The Military Area Frequency Coordinator for this area is located at Elmendorf Air Force Base, Alaska.)

(viii) In the State of North Dakota within a 160-kilometer (100 mile) radius of Concrete, North Dakota (latitude 48° 43′ North, longitude 97° 54′ West). (The Military Area Frequency Coordinator for this area can be contacted at: HQ SAC/SXOE, Offutt Air Force Base, Nebraska 68113.)

[FR Doc. 83-15411 Filed 6-8-83; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 25

[OST Docket No. 79; Notice No. 83-11a]

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; Acquisition for Federal and Federally-Assisted Programs

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of comment period.

SUMMARY: This document extends the period for comments on the notice of proposed rulemaking published on April 14, 1983, (48 FR 16197), requesting comment by May 31, 1983, on a proposed regulation that would establish uniform cost-effective policies and procedures governing implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) [42 U.S.C. 4601 *et seq.*] for all programs within the Department of Transportation (DOT). The DOT published this proposed rule at the request of the Office of Management and Budget and it is anticipated that, when a final rule is issued, it will serve as a model for other Federal agencies covered by the Uniform Act. Since the proposed rule may ultimately have effects upon members of the public not normally affected by DOT actions, the comment period is being extended to July 1, 1983, in order to provide the public additional time in which to respond to the notice of proposed rulemaking.

DATE: The comment period is extended to July 1, 1983.

ADDRESS: Comments should be submitted to the Docket Clerk, OST Docket No. 79; Notice No. 83-11a, Department of Transportation, 400 7th Street, SW., Room 10105, Washington, D.C. 20590. Commentors wishing to have their submissions acknowledge should include a stamped, self-addressed postcard with their comments. Comments will be available for review

at the above address from 9:00 a.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Kennedy, Director, Office of Right-of-Way (202–426–0342); Mr. Reid Alsop, Office of the Chief Counsel (202–426–0800); Ms. Martha Schwendeman Gurin, Office of Economics (202–426–4493); or Ms. Lynne Adams-Whitaker, Office of the General Counsel (202–426–4723); Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590. Office hours are Monday through Friday from 7:45 a.m. to 4:15 p.m., ET.

Issued at Washington, D.C. on May 31, 1983.

James H. Burnley, IV,

Acting Secretary.

[FR Doc. 83-15184 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-62-M

Research and Special Programs Administration

49 CFR Parts 172 and 173

[Docket No. HM-186; Notice No. 83-3]

Shipment of Matches

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: MTB proposes to simplify and clarify the requirements in 49 CFR 173.176 pertaining to safety matches and strike anywhere matches. This proposal is based on three petitions for rulemaking and a number of public inquiries requesting clarification of the requirements for shipping matches. The intended effect of this action is to delete unnecessary requirements and to reduce misunderstanding of the regulations applying to matches.

DATE: Comments must be received by August 30, 1983.

ADDRESS: Dockets Branch, Materials Transportation Bureau, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted, if possible, in five copies.

FOR FURTHER INFORMATION CONTACT: Hattie L. Mitchell, Office of Hazardous Materials Regulations, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590, (202) 426–2075.

SUPPLEMENTARY INFORMATION: Few changes have been made to the requirements pertaining to the shipment of matches since they were originally adopted as regulations over 40 years ago. MTB has received three petitions for rulemaking and a number of inquiries requesting interpretations of the requirements for shipping matches. MTB believes the provisions for matches in § 173.176 should be revised for simplification and clarification.

MTB is proposing to place all requirements for safety matches (book, card, and strike-on-box) in § 173.176. The requirements covering strike anywhere matches would be placed in a new § 173.176a.

As suggested by a petitioner, safety matches would be required to be tightly packed in securely closed inside packagings to prevent movement within the package and accidental ignition. Each outside package would be required to be marked **"SAFETY MATCHES"** in conformance with § 172.301. When prepared for shipment in this manner, safety matches in outside fiberboard, wooden or other equivalent-type packagings would not be subject to other requirements of the subchapter. No distinction would be made between safety matches packed alone or packed in the same outside package with nonhazardous material. This will eliminiate the need for two exemption, DOT–E–8726 issued to Whitehall Laboratories, Inc., to ship safety matches and small boxes of pain reliever in the same package, and DOT–E–8866 issued to Norcliff Thayer, Inc., to ship safety matches and small boxes of antacid tablets in the same package.

In this proposal, the requirements covering strike anywhere matches in new § 173.176a are simplified. Basically, the regulations would require that strike anywhere matches be tightly packed in chipboard, fiberboard, wooden or metal inside packagings and further packed in outside specification packagings. The types of specification packagings authorized would remain the same.

MTB believes the requirement in present paragraph (a) requiring that strike anywhere matches not exceed 3 inches in length nor have a stick exceeding .015 square inch in cross section lacks sufficient safety justification and, therefore, should be deleted.

The provision in paragraph (c)(1) requiring approval by the Bureau of Explosives of "hang up" type packagings also should be deleted. MTB believes these packagings are obsolete. MTB is not aware of any approvals issued by the Bureau of Explosives for "hang up" type packagings in the past several years.

A petitioner has requested that strike anywhere matches when ". . . in not over 3 outside containers per vehicle totalling not over 100 pounds net weight . . ." be excepted from shipping paper requirements. The petitioner argued that in the event of a fire, there would be no difference if the shipment involved strike anywhere matches or safety matches. MTB takes the position that since it is easier to ignite strike anywhere matches than safety matches, a greater potential hazard may exist; therefor, shipping papers should be available to assist emergency response personnel in identifying the hazards and quantities of strike anywhere matches involved. The suggested change has not been included in the proposal.

Comments are invited concerning the stability criteria specified in § 173.176(a) since they have not been modified since May 12, 1930. In addition, comments are invited on any matters related to the safe transportation of matches including any pending petitions for rulemaking or outstanding exemptions, in addition to the two exemptions discussed above.

MTB has determined that this proposed regulation is not a "major rule" under the terms of Executive Order 12291 or a significant regulation under DOT's regulatory policy and procedures (44 FR 11034), nor require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 *et seq.*).

Based on limited information available concerning size and nature of entities likely to be affected by this proposal, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities because the overall economic impact of this proposal will be minimal. A regulatory evaluation and environmental assessment are available for review in the docket.

List of Subjects

49 CFR Parts 172

Hazardous materials transportation, Labeling, Packaging and containers.

49 CFR Parts 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Parts 172 and 173 of 49 CFR would be amended as follows:

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

1. Section 172.101 would be revised to read as follows:

§ 172.101 Hazardous materials table

(1)	(2)	(3)	(3 A)	(4)	(5)		(6)		(7)		
					Packaging		Maximum net quantity in one package		Water shipments		
EAW	Hazardous materials descriptions and proper shipping names	Hazard class	Identification number	Label(s) required (if not excepted)	Exceptions	Specific requirements	Passenger carrying aircraft or railcar	Cargo only aircraft	Cargo vessel	Passenger vessel	Other requirements
					(a)	(b)	(a)	(b)	(a)	(b)	(c)
	(Revise)										
	Matches, safety, book, card,or strike-on-box.	Flammable solid	UN 1944	Flammable solid	173.176		50 pounds	50 pounds	1, 2	1	
	Matches, strike anywhere.	Flammable solid	UN 1331	Flammable solid	None	173.176a	Forbidden	Forbidden	1, 2		

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENT AND PACKAGINGS

2. Section 173.176 would be revised to read as follows:

§ 173.176 Safety matches.

(a) Safety matches (strike-on-box, book, and card) are matches which are intended to be ignited on a prepared surface. Safety matches, when offered for transportation, must be of a type which will not ignite spontaneously or undergo marked decomposition when subject for eight consecutive hours to a temperature of 200°F. (93.3°C.). As used in this section, the term "safety matches" includes the match combined with the box, book, or card containing or attached to the matches.

(b) Safety matches which are tightly packed in securely closed inside packagings to prevent accidental ignition, and further packed in outside fiberboard, wooden, or other equivalent-type packagings are not subject to any other requirement (except marking) of this subchapter. Safety matches may be packed in the same outside package with nonhazardous materials.

3. Section 173.176a would be added to read as follows:

§ 173.176a Strike anywhere matches.

(a) Strike anywhere matches are matches which may be ignited by friction on a solid surface. Strike anywhere matches, when offered for transportation, must be of a type which will not ignite spontaneously or undergo marked decomposition when one complete inside package is subjected for eight consecutive hours to a temperature of 200°F (93.3°C.).

(b) Strike anywhere matches may not be packed in the same outside package with any material other than safety matches that are packed in separate inside packagings.

(c) *Inside packagings.* Strike anywhere matches must be tightly packed in chipboard, fiberboard, wooden, or metal inside packagings that are securely closed to prevent accidental ignition. Each inside packaging may contain no more than 700 strike anywhere matches.

(d) *Outside packagings.* Strike anywhere matches must be packed in specification packagings as follows:

(1) Spec. 15A or 19B (§§ 178.205, 178.191 of this subschapter). Wooden boxes, with inside packages. Gross weight must not exceed 100 pounds.

(2) Spec. 12B or 12C (§§ 178.205, 178.206 of this subchapter). Fiberboard boxes with inside packages; not over 60 pounds gross weight each. Fill-in pieces specified by § 178.205–14 or § 178.206–14 of this subchapter are not required.

(49 U.S.C. 1803, 1804, 1808, 49 CFR 1.53; 49 CFR App. A to Part 1, and paragraph (a)(4) of Appendix A to part 106)

Issued in Washington, D.C. on June 1, 1983.

Alan I. Roberts,

Associate Director for Hazardous Materials Regulation Materials Transportation Bureau.

[FR Doc. 83-15091 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

Export of American Ginseng Harvested in 1983 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to propose findings.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates the international trade in certain animal and plant species. Export of animals and plants listed in Appendix II of CITES may occur only if the Scientific Authority has advised the permit-issuing Management Authority that such exports will not be detrimental to the survival of the species, and if the Management Authority is satisfied that the animals or plants were not obtained in violation of laws for their protection.

This notice announces the Service's intent to propose findings by the Management Authority (MA) of the United States on the export of American ginseng from this country. Until recently, such findings have been made *annually* on a State-by-State basis. In 1982, the Service began to make multi-year findings for the export of American ginseng. It issued Scientific Authority (SA) and MA findings covering the 1983–84 seasons. The Service requests comments on MA guidelines for export findings and current information on the species involved. The Service also requests information on environmental and economic impacts that might result from the findings, and information on possible alternative approaches to meeting CITES requirements.

DATE: The Service will consider information and comments received by July 11, 1983 in making its proposed findings and rule.

ADDRESS: Please send correspondence concerning this notice to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240. Materials received will be available for public inspection from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the Federal Wildlife Permit Office, room 620, 1000 N. Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT:

Scientific Authority: Dr. Richard L. Jachowski, Office of the Scientific Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 653–5948.

Management Authority: Mr. Richard K. Robinson, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (703) 235–2481.

SUPPLEMENTARY INFORMATION: The Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) regulates the international trade in listed species. Export of these species may only occur upon approval of both the Scientific and Management Authorities of the country of origin. In

the United States, the Scientific and Management Authorities are within the Fish and Wildlife Service. This is the first in a series of notices concerning the Service's finding on export of American ginseng (*Panax quinquefolius*) taken in the 1983 harvest season.

In this notice, the Service requests current information on the status and management of this species and seeks comments on guidelines to be used in making MA findings on whether the ginseng was obtained in violation of laws for its protection.

Scientific Authority Findings

General criteria used by the SA in advising on whether export will not be detrimental to the survival of a species are as follows (see notice of July 10, 1980, 45 FR 46464):

(1) Whether such export has occurred in the past and has not reduced the numbers or distribution of the species, nor caused signs of ecological or behavioral stress within the species, or in other species of the affected ecosystem;

(2) Whether such export is expected to increase, decrease, or remain constant; and

(3) Whether the life history of the species and the structure and function of its place in its ecosystem indicate that the present or proposed level of export will not appreciably reduce the numbers or distribution of the species, nor cause signs of ecological or behavioral stress within the species or in other species of the affected ecosystem;

For ginsena, the determination of non-detriment by the SA, in accordance with the above-listed general criteria, has been and will continue to be based on an evaluation of the following information concerning each affected State (see notice of April 5, 1982, 47 FR 14666):

(1) Historic, present, and potential distribution of ginseng on a county basis, using county outline maps, and indicating the source(s) and accuracy of this information. Include also the distribution of preferred habitat on a regional or Statewide basis, indicating recent trends in loss or protection of habitat;

(2) Approximate number or density of ginseng populations per county or region, and the approximate number of all known ginseng localities in the State, including also the source of this information;

(3) Average number of plants per population or patch, or local abundance of wild ginseng on a county or regional basis in the State, indicating the source(s), general reliability, and accuracy of the information. Include also any changes from previous years or differences from historical population sizes;

(4) An assessment of population trends on a county or regional basis indicating if populations of ginseng are believed to be increasing, decreasing, stable, extirpated or unknown. Included in this assessment should be source(s) and general reliability and accuracy of this information;

(5) An assessment of harvest intensity on a county or regional basis indicating if the relative collecting intensity is heavy, moderate, light, none, or unknown, and any changes from previous years. The State to provide also the known or estimated number of ginseng collectors in the State;

(6) A county map showing those counties in which ginseng is reported to be commercially cultivated. Included are to be figures on the amount of cultivated ginseng reported to be harvested and certified for export Statewide;

(7) Average number of roots per pound harvested, preferably on a county or regional basis or, if these are not available, on a Statewide basis. Included also is to be an assessment of any trend in root sizes or number of roots per pound over previous years;

(8) A description of the State's current research program on ginseng and its progress, including a summary of results so far obtained;

(9) A description of the State's harvest practices and controls, including regulations on length of harvest season, any harvest restrictions such as size and age of collected plants, and any seed planting requirements.

Management Authority Findings

In addition to the SA advice that the ginseng exports will not be detrimental to the survival of the species, the MA must be satisified that the ginseng was not obtained in contravention of laws for its protection.

Criteria used by the MA in determining if a State program qualifies for export are that the State has adopted and is implementing the following regulatory measures (Relisted from notice of July 10, 1980):

(1) State licensing or regulation of dealers purchasing or selling ginseng in the State;

(2) State requirements that these licensed or registered ginseng dealers maintain true records of their commerce in ginseng, and report such commerce to the State;

(3) Inspection and certification by State personnel of all ginseng shipments from the State. This certification is necessary to authenticate that the ginseng was legally taken from wild or cultivated sources within the State. Experience has shown the value of a State official inspection and certification program which can document that the weight of the roots in question were legally taken from the wild or artifically propagated in that State; and, that the State has supplied the following information to the Service:

(a) A copy of the State ginseng law and regulations;

(b) State dealer, grower, or digger license or registration rules;

(c) Cost of license or registration;

(d) Season of selling/buying operation;

(e) Dealer records, maintenance and reporting requirements;

(f) Samples of current year dealer certificates and reporting forms;

(g) Sample of current year State certificate of legal take and origin; and

(h) Sample of diggers license, if any, indicating cost of license and date of harvest;

(i) Description of State certification system for wild and cultivated ginseng legally harvested within the State, including controls to minimize uncertified ginseng from moving into or from the State; and

(j) Name, address, and telephone number of the State person to contact concerning such information.

In this notice of December 4, 1982, the Service announced that the MA would approve export of artifically propagated ginseng only from the States approved for export of wild-collected ginseng, because they had the program necessary to document the source of roots (45 FR 80444). However, the Service also announced in the December 4 notice that it would approve the export of artificially propagated ginseng from other States if acceptable procedures have been implemented to minimize the risk that wild-collected plants will be exported as cultivated.

In 1982, the Service SA reported that it had found that the status of wild ginseng does not vary greatly from year to year within any given State, and that information compiled to date was adequate to justify multi-year findings under CITES. As described in April 5, 1982, notice (47 FR 14664), the Service used information compiled since 1977 to make multi-year findings under CITES. Even though findings were made for the export of ginseng harvested in certain States in the 1982–84 seasons, the Service indicated it would continue to monitor the status of ginseng each year, and would retain the option of revising the findings at any time if new information shows the need for change. Through this notice, current information

as described in (47 FR 14664) above is requested to enable the Service to perform such monitoring. In addition, the Service will also consider any biological and harvest information submitted by those States seeking export approval for 1983 American ginseng that are not currently approved. Information submitted in the past need not be resubmitted if it is incorporated by reference and its validity is affirmed.

The Service has previously noted (47 FR 3869) that, beginning with the 1983 harvest season, the MA would require all States seeking export approval for their wild or cultivated American ginseng to have a legally established ginseng program requiring that a State official examine and certify all ginseng moved from the State. This certification must verify State of origin, legal take, year of take, weight of shipment, whether wild or artificially propagated, date of certification, shipment number, dealer's State registration number, and signatures of both the dealer and State certifying official. The Service believes that a program of State inspection remains the proper method of insuring legal ginseng export. However, in an attempt to examine other possible methods, the Service will examine and decide on programs other than State examination of ginseng leaving the State. Such a proposed system must offer the same assurance, as does an actual examination of the shipment and dealers records, of origin, legal take and whether wild or cultivated roots, and involved in the shipment.

It was decided to grant multi-year export approval for (1982–1984) only to States with a current ginseng program that provides for a State inspection and certification system and otherwise satisfied the criteria of both the SA and MA in 1982 (47 FR 43702).

In a notice of October 4, 1982 (47 FR 43702), the Service approved export of ginseng lawfully taken during the 1982–84 harvest seasons from the following States, on the grounds that both SA and MA criteria had been met: Georgia, Kentucky, Minnesota, North Carolina, Vermont (artificially propagated only) and Virginia.

In the same notice, the Service approved export of American ginseng lawfully taken only during the 1982 season for the following States that did not all meet MA criteria: Arkansas, Illinois, Indiana, Iowa, Maryland, Ohio, Missouri, Tennessee, West Virginia, and Wisconsin.

As announced in that notice, States approved for the export of only 1982 harvested ginseng would not be granted further export approval until an acceptable ginseng program was developed. The Service did not grant general approval for exports of American ginseng taken from any other State during 1982–84 harvest seasons.

Schedule: The Service intends to publish final export findings in advance of the 1983–85 harvest season according to the following schedule:

June 1983—Publish notice of proposed findings and rule, and invite public comment;

August 1983—Publish notice of final findings and rule, effective upon the date of publication.

Request for Information and Comments: The Service requests comments on the guidelines to be used in MA findings, and information on the biology and management of American ginseng. The Service also requests information on environmental and economic impacts and effects on small entities (including small business, small organizations, and small governmental jurisdictions) that would result from findings for or against export. This information will aid the Service in complying with requirements of the National Environmental Policy Act, Executive Order 12291, and the Regulatory Flexibility Act, and in preparing any required analyses of effect.

List of Subjects in 50 CFR 23

Endangered and threatened wildlife, Exports, Fish, Imports, Plants (Agriculture), Treaties.

This notice of intent to propose findings is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 87 Stat. 884 as amended), and was prepared by S Ronald Singer, Federal Wildlife Permit Office.

Dated: June 3, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife Parks.

[FR Doc. 83-15445 Filed 6-8-83; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

Commercial and Recreational Salmon Fisheries

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan and request for comments.

SUMMARY: NOAA issues this notice that the Pacific Fishery Management Council has submitted a fishery management plan amendment for the Commercial and Recreational Salmon Fisheries off the coast of Washington, Oregon, and California, for Secretarial review and is requesting comments from the public. Copies of the amendment may be obtained from the address below.

DATE: Comments on the plan should be submitted on or before August 19, 1983.

ADDRESSES: All comments should be sent to: H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, Washington 98115; or A. W. Ford, Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

Copies of the amendment are available upon request from the Pacific Fishery Management Council, 526 SW Mill Street, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206–527–6150; or A. W. Ford, 213–548–2575.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires that each regional fishery management council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval or disapproval. This act also requires that the Secretary, upon receiving the plan or amendment, must immediately publish a notice that the plan or amendment is available for public review and comment. The Secretary will consider the public comments in determining whether to approve the plan or plan amendment.

This amendment proposes measures for managing the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, during 1983. On Friday, February 4, the Environmental Protection Agency published a notice of availability of a draft supplemental environmental impact statement for this amendment (48 FR 5308).

Regulations proposed by the Council and based on this amendment are scheduled to be published within 30 days.

(16 U.S.C. 1801 *et seq.*)

Dated: June 6, 1983.

Joe P. Clem,

Acting Chief, Fisheries Process Division, National Marine Fisheries Service.

[FR Doc. 83-15458 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 48, No. 112
Thursday, June 9, 1983

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.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Public Information Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: Notice is hereby given pursuant to § 800.6(b)(3) of the Council's regulations, "Protection of Historic and Cultural Properties" (36 CFR Part 800), that on June 21, 1983, at 7:00 p.m., a public information meeting will be held in the Killian Room, (1st Floor), International Trade Center, 250 N. Water Street, Mobile, Alabama.

This meeting is being called by the Executive Director of the Council in accordance with § 800.6(b)(3) of the Council's regulations. The purpose of the meeting is to provide an opportunity for representatives of national, State, and local units of government, representatives of public and private organizations, and interested citizens to receive information and express their views concerning the proposed construction of the Interstate 210 Connector in Mobile, Alabama, an undertaking of the Federal Highway Administration and the Alabama Highway Department. The project as proposed would affect the Mobile City Hall, a National Historic Landmark; the G.M. & O. Railroad Station, the Church Street East Historic District, the Lower Dauphin Street Commercial Historic District, and the DeTonti Square Historic District, properties listed in the National Register of Historic Places; and the Africatown Historic District and historic archeological resources along Water Street, properties which appear to be eligible for inclusion in the National Register. Consideration will be given to the undertaking, its effects on the National Register and eligible properties, and alternate courses of action that could avoid, mitigate, or minimize adverse effects on these properties.

The following is a summary of the agenda of the meeting:

I. An explanation of the procedures and purpose of the meeting by a representative of the Executive Director of the Council.
II. A description of the undertaking and an evaluation of its effects on the properties by the Federal Highway Administration.
III. A statement by the Alabama State Historic Preservation Officer.
IV. Statements from local officials, private organizations, and the public on the effects of the undertaking on the properties.
V. A general question period.

Speakers should limit their statement to 5 minutes. Written statements in furtherance of oral remarks will be accepted by the Council at the time of the meeting. Additional information regarding the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1522 K Street, N.W., Washington, D.C. 20005, telephone number 202-254-3495. Attention: Amy P. Schlagel.

Dated: June 6, 1983.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 83-15474 Filed 6-8-83; 8:45 am]

BILLING CODE 4310-10-M

CIVIL AERONAUTICS BOARD

[Fitness Investigation 83-6-12; Docket 41388]

Application of Airspur Helicopters, Inc. for Unused Authority Under Section 401(d)(5)

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting the *Airspur Helicopters, Inc. Fitness Investigation*, 83-6-12, Docket 41388.

SUMMARY: The Board is instituting an investigation to determine the fitness of Airspur Helicopters to operate unused authority between Los Angeles-Fullerton, California.

DATES: Persons wishing to intervene in the *Airspur Helicopters, Inc. Fitness Investigation* shall file their petitions in Docket 41388 by June 20, 1983.

ADDRESSES: Petitions to intervene should be filed in Docket 41388, and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C.

In addition, copies of such filings should be served on Airspur Helicopters, Inc., the mayors and airport managers of Los Angeles and Fullerton, California, the California Transportation Commission, the FAA and any other person filing petitions.

FOR FURTHER INFORMATION CONTACT: Phyllis Solomon, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 83-6-12 is available from our Distribution Section, Room, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 83-6-12 to that address.

By the Bureau of Domestic Aviation: June 3, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-15470 Filed 6-8-83; 8:45 am]

BILLING CODE 6320-01-M

[Docket 41306]

Unicorn Air, Ltd., Fitness Investigation; Hearing

Notice is hereby given that a hearing in the above-entitled matter is assigned to commence on July 19, 1983, at 10:00 a.m. (local time) in Room 1027, Universal Building, 1825 Connecticut Ave., N.W., Washington, D.C., before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., June 2, 1983.

Elias C. Rodriguez,

Chief Administrative Law Judge.

[FR Doc. 83-15463 filed 6-8-83; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-051]

Bicycle Tires and Tubes From Korea; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of countervailing duty order.

SUMMARY: As a result of a request by a Korean producer and exporter, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on bicycle tires and tubes from Korea manufactured by Korea Inoue Kasei Co., Ltd., would not cause injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise made on or after August 10, 1981 shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: June 9, 1983.

FOR FURTHER INFORMATION CONTACT: John McKean or Larry Hampel, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On January 12, 1979, the Department of the Treasury published in the **Federal Register** (T.D. 79-13, 44 FR 2570) an affirmative final countervailing duty determination regarding bicycle tires and tubes manufactured by one Korean producer, Korea Inoue Kasei, Co., Ltd. ("KIK").

On August 10, 1981, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department") that KIK had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification by the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On May 20, 1983, the ITC notified the Department of its determination that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of Korean bicycle tires and tubes if the order were revoked (48 FR 24795). As a result, the Department is revoking the countervailing duty order concerning bicycle tires and tubes manufactured by KIK with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after August 10, 1981, the date the Department received notification of the request for an injury determination.

The Department will instruct Customs officers to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after August 10, 1981 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to these entries.

The ITC's decision and this revocation do not affect shipments of the merchandise entered on or before August 9, 1981. These shipments are subject to the administrative review procedures set forth in section 751 of the Tariff Act of 1930.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: June 2, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-15450 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

[C-583-002]

Bicycle Tires and Tubes from Taiwan; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: As a result of a request by a Taiwanese producer and exporter, the International Trade Commission conducted an investigation and determined that revocation of the countervailing duty order on bicycle tires and tubes from Taiwan manufactured by Cheng Shin Rubber Co., Ltd. would not cause injury to an industry in the United States. The Department of Commerce consequently is revoking the countervailing duty order. All entries of this merchandise made on or after December 30, 1982 shall be liquidated without regard to countervailing duties.

EFFECTIVE DATE: June 9, 1983.

FOR FURTHER INFORMATION CONTACT: John McKean or Larry Hampel, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION: On February 17, 1982, the Department of Commerce ("the Department") published in the **Federal Register** (47 FR 6913) a countervailing duty order on bicycle tires and tubes manufactured by one Taiwanese producer, Cheng Shin Rubber Co., Ltd.

On December 30, 1982, the International Trade Commission ("the ITC") notified the Department of Commerce ("the Department ") that Cheng Shin had requested an injury determination for this order under section 104(b) of the Trade Agreements Act of 1979 ("the TAA"). It was not necessary for the Department, upon notification by the ITC, to suspend liquidation of entries of the merchandise pursuant to that section of the TAA, since previous suspensions remained in effect.

On May 20, 1983, the ITC notified the Department of its determination that an industry in the United States would not be materially injured, or threatened with material injury, by reason of imports of Taiwanese bicycle tires and tubes if the order were revoked (48 FR 24795). As a result, the Department is revoking the countervailing duty order concerning bicycle tires and tubes manufactured by Cheng Shin with respect to all merchandise entered, or withdrawn from warehouse, for consumption on or after December 30, 1982, the date the Department received notification of the request for an injury determination.

The Department will instruct Customs officers to proceed with liquidation of all unliquidated entries of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 30, 1982 without regard to countervailing duties and to refund any estimated countervailing duties collected with respect to these entries.

The ITC's decision and this revocation do not affect shipments of the merchandise entered on or before December 29, 1982. These shipments are subject to the administrative review procedures set forth in section 751 of the Tariff Act of 1930.

This revocation and notice are in accordance with section 104(b)(4)(B) of the TAA (19 U.S.C. 1671 note).

Dated: June 2, 1983.

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 15449 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

[C-301-001]

Leather Wearing Apparel From Colombia; Final Results of Administrative Review of Suspension Agreement

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of final results of administrative review of suspension agreement.

SUMMARY: On April 20, 1983, the Department of Commerce published the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia.

The review covers the period September 1, 1981 through June 30, 1982.

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results.

EFFECTIVE DATE: June 9, 1983.

FOR FURTHER INFORMATION CONTACT: Susan Silver or Joseph Black, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 1983, the Department of Commerce ("the Department") published in the **Federal Register** (48 FR 16929) the preliminary results of its administrative review of the agreement suspending the countervailing duty investigation on leather wearing apparel from Colombia (46 FR 19963, April 2, 1981). The Department has now completed that review.

Scope of the Review

Imports covered by the review are shipments of Colombian men's, boys', Women's, girls' and infants' leather coats and jackets, and other leather wearing apparel (such as vests, pants and shorts), as well as parts and pieces thereof. Such merchandise is currently classifiable under items 791.7620, 791.7640 and 791.7660 of the Tariff Schedules of the United States Annotated. The review covers the period September 1, 1981 through June 30, 1982, and one program: the Tax Reimbursement Certificate Program ("CAT").

Final Results of Review

We gave interested parties an opportunity to comment on the preliminary results. We received no comments. Based on our analysis, the final results of review are the same as the preliminary results. We determine that Confecciones Amazonas Orinoco ("CAO"), the predominant exporter of such Colombian apparel to the U.S., has complied with the terms of the suspension agreement for the period September 1, 1981 through June 30, 1982. CAO renounced all CAT benefits associated with exports of leather wearing apparel to the United States, did not accept substitute or equivalent benefits and met all of the reporting requirements of the agreement. CAO continues to account for at least 85 percent of imports of all such Colombian leather wearing apparel into the United States.

Therefore, the suspension agreement for Colombian leather wearing apparel shall remain in effect. The Department is now beginning the next administrative review of the agreement.

The Department encourages interested parties to review the public record and submit applications for protective orders, if desired, as early as possible after the Department's receipt of the information in the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and § 355.41 of the Commerce Regulations (19 CFR 355.41).

Dated: June 2, 1983

Gary N. Horlick,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 83-15451 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

Mount Sinai Medical Center; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 98–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 83–35. Applicant: Mount Sinai Medical Center, Department of Biochemistry, One Gustave L. Levy Place, New York, N.Y. 10029. Instrument: Pulse Nanosecond Fluorometer with Accessories. Manufacturer: Photochemical Research Associates, Canada. Intended use of instrument: See notice on page 53760 in the **Federal Register** of November 29, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States at the time the foreign instrument was ordered (May 5, 1982).

Reasons: The foreign instrument provides good (single photon) sensitivity and operates in the fractional nanosecond range. The Department of Health and Human Services advises in its memorandum dated April 4, 1983 that (1) the capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-15420 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

Rensselaer Polytechnic Institute; Decision on Application For Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 82–00279R. Applicant: Rensselaer Polytechnic Institute, 110–Eight Street, Troy, NY 12181. Instrument: Excimer-Multi-Gas Laser EMG 101/95. Original notice of this resubmitted application was published in the **Federal Register** of August 23, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, was being manufactured in the United States

at the time the foreign instrument was ordered (June 7, 1982).

Reasons: This application is a resubmission of Docket No. 82-00279 which was denied without prejudice to resubmission on December 30, 1982 for informational deficiencies. The foreign instrument provides tunability through the visible range down to 220 nanometers (frequency doubled) with pulse energies of 15 millijoules, and repetition rates in excess of 10 hertz. The National Bureau of Standards advises in its memorandum dated April 22, 1983 that (1) the capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and (2) it knows of no instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use which was being manufactured in the United States at the time the foreign instrument was ordered.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which was being manufactured in the United States at the time the foreign instrument was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-15421 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

Rowland Institute for Science, Inc., et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

The following is a consolidated decision on applications for duty-free entry of electron microscopes pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 83-157. Applicant: Rowland Institute for Science, Inc., 100 Cambridge Parkway, Cambridge, MA 02142. Instrument: Analytical Electron Microscope, Model #JEM-1200EX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: See notice on page 13476 in the **Federal Register** of March 31, 1983. Instrument ordered: December 31, 1982.

Docket No.: 83-159. Applicant: The Pennsylvania State University, Materials Science and Engineering, University Park, PA 16802. Instrument: Electron Microscope, EM 420T with Accessories. Manufacturer: Philips Gloeilampenfabrieken, The Netherlands. Intended use of instrument: See notice on page 15303 in the **Federal Register** of April 8, 1983. Instrument ordered: November 2, 1982.

Docket No.: 83-160. Applicant: University of Illinois at Chicago, Office of Business Affairs, Health Science Center, 833 S. Wood, Chicago, Ill. 60612. Instrument: Electron Microscope, EM 410 and Accessories. Manufacturer: Philips Electronic Instruments Inc., The Netherlands. Intended use of instrument: See notice on page 15303 in the **Federal Register** of April 8, 1983. Instrument ordered: February 22, 1983.

Docket No.: 83-161. Applicant: National Bureau of Standard, Bldg. 233, Room B266, Washington, DC 20234. Instrument: Electron Microscope, EM 430T with Accessories. Manufacturer: N.V. Philips Gloeilampenfabrieken, The Netherlands. Intended use of instrument: See notice on page 16310 in the **Federal Register** of April 15, 1983. Instrument ordered: December 15, 1982.

Docket No.: 83-165. Applicant: University of Iowa, College of Dentistry, Dental Research, Iowa City, IA 52242. Instrument: Electron Microscope, EM 10CA and Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See notice on page 16311 in the **Federal Register** of April 15, 1983. Instrument ordered: February 17, 1983.

Docket No.: 83-166. Applicant: State University of New York, Downstate Medical Center, 450 Clarkson Ave., Brooklyn, NY 11203. Instrument: Electron Microscope Model #EM 109 complete with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See notice on page 16932 in the **Federal Register** of April 20, 1983. Instrument ordered: March 11, 1982.

Docket No.: 83-167. Applicant: Case Western Reserve University, Department of Macromolecular Science, 10900 Euclid Avenue, Cleveland, OH 44106. Instrument: Electron Microscope, Model #JEM-100SX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of instrument: See notice on page 16311 in the **Federal Register** of April 15, 1983. Instrument ordered: January 17, 1983.

Docket No.: 83-168. Applicant: University of Washington, School of Medicine, Seattle, WA 98195. Instrument: Electron Microscope, Model #EM 420T and Accessories. Manufacturer: Philips Electronic Instruments, Inc., The Netherlands. Intended use of instrument: See notice on page 16311 in the **Federal Register** of April 15, 1983. Instrument ordered: March 14, 1983.

Docket No.: 83-169. Applicant: President and Fellows of Harvard College, 9 Oxford Street, Gordon McKay Lab, Cambridge, MA 02138. Instrument: Electron Microscope, Model #EM 420T with Accessories. Manufacturer: N.V. Philips Electronic Instruments, The Netherlands. Intended use of instrument: See notice on page 16932 in the **Federal Register** of April 20, 1983. Instrument ordered: March 11, 1983.

Docket No.: 83-141. Applicant: University of Minnesota, Minneapolis, MN 55455. Instrument: Electron Microscope, Model H-600-2 and Accessories. Manufacturer: Hitachi Ltd., Japan. Intended use of instrument: See notice on page 19766 in the **Federal Register** of May 2, 1983. Instrument ordered: May 19, 1983.

Docket No.: 83-174. Applicant: Riverside Methodist Hospital, 3535 Olentangy River Road, Columbus, OH 43214. Instrument: Electron Microscope, EM 109 with Accessories. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See notice on page 19766 in the **Federal Register** of May 2, 1983. Instrument ordered: November 10, 1982.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument to which the foregoing applications relate is a conventional transmission electron microscope (CTEM). The description of the intended research and/or educational use of each instrument establishes the fact that a comparable CTEM is pertinent to the purposes for which each is intended to be used. We know of no CTEM which was being manufactured in the United States either at the time of order of each instrument described above or at the time of receipt of application by the U.S. Customs Service.

The Department of Commerce knows of no other instrument or apparatus of

equivalent scientific value to any of the foreign instruments to which the foregoing applications relate, for such purposes as these instruments are intended to be used, which was being manufactured in the United States either at the time of order or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-15423 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

St. Mary's Medical Center; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 83-64. Applicant: St. Mary's Medical Center, 3700 Washington Avenue, Evansville, IN 47750. Instrument: #7809 III Gamma Med III Afterloading Irradiation Device for Interstitial Therapy and 2 #7809 SC Source Containers. Manufacturer: Isotopen Technik, GmbH, West Germany. Intended use of instrument: See notice on page 56533 in the **Federal Register** of December 17, 1982.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument provides programmable movement and a 10 curie iridium-192 source small enough to pass through needles for interstitial insertion. The Department of Health and Human Services advises in its memorandum dated April 29, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such pruposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Material)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-15419 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

University of Illinois at Chicago; Decision on Application for Duty-Free Entry of Scientific Instrument

The following is a decision on an application for duty-free entry of a scientific instrument pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued pursuant thereto (15 CFR Part 301 as amended by 47 FR 32517).

A copy of the record pertaining to this decision is available for public review between 8:30 AM and 5:00 PM in Room 1523, Statutory Import Programs Staff, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 83-155. Applicant: University of Illinois at Chicago, Department of Physics, P.O. Box 4348, Chicago, Ill. 60680. Instrument: X-Ray to Visible Streak Camera System, X500, including Conversion Kit. Manufacturer: Hadland Photonics Inc., United Kingdom. Intended use of instrument: See notice on page 13475 in the **Federal Register** of March 31, 1983.

Comments: No comments have been received with respect to this application.

Decision: Application approved. No instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, is being manufactured in the United States.

Reasons: The foreign instrument can record optical events with a 10 picosecond (or shorter) time resolution in the visible, ultraviolet, extreme ultraviolet and X-ray region. The National Bureau of Standards advises in its memorandum dated May 4, 1983 that (1) the capability of the foreign instrument described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign instrument, for such purposes as this instrument is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-15422 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

U.S. Army Natick Res. & Dev. Laboratories et al.; Consolidated Decision on Applications for Duty-Free Entry of Accessories for Foreign Instruments

The following is a consolidated decision on applications for duty-free entry of accessories for foreign instruments pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereto (15 CFR Part 301 as amended by 47 FR 32517). (See especially § 301.5(f).)

A copy of the record pertaining to each of the applications in this consolidated decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 1523 of the Department of Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Docket No.: 83-47. Applicant: U.S. Army Natick Res. & Dev. Laboratories, Directorate for Procurement, Attn: DRDNA-PB, Kansas Street, Natick, MA 01760. Instrument: Electron Microscope Accessories (R.E. Detector and H5014 AE Amp Unit). Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of instrument: See notice on page 55987 in the **Federal Register** of December 14, 1982. Advice submitted by: Department of Health and Human Services: April 29, 1983.

Docket No.: 83-57. Applicant: University of Rochester, School of Medicine, Box 605, Strong Memorial Hospital, 601 Elmwood Avenue, Rochester, NY 14642. Instrument: EM Micro-Dosage Focusing System. Manufacturer: Carl Zeiss, West Germany. Intended use of instrument: See notice on page 56533 in the Federal

Register of December 17, 1982. Advice submitted by: Department of Health and Human Services: April 29, 1983.

Docket No.: 83-87. Applicant: Sandia National Laboratories, P.O. Box 5800, Division 1111, Albuquerque, NM 87185. Instrument: Electron Microscope Accessories. Manufacturer: JEOL Limited, Japan. Intended use of instrument: See notice on page 57982 in the **Federal Register** of December 29, 1982. Advice submitted by: Department of Health and Human Services: April 29, 1983.

Docket No.: 83-93. Applicant: Massachusetts Institute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139. Instrument: Heating Stage for Electron Microscope, Model #200 CX-SHTH. Manufacturer: JEOL Limited, Japan. Intended use of instrument: See notice on page 4018 in the **Federal Register** of January 28, 1983. Advice submitted by: Department of Health and Human Services: April 29, 1983.

Docket No.: 83-99. Applicant: FDA/OMD Center for Medical Device Analysis, 8757 Georgia Avenue, Silver Spring, MD 20910. Instrument: ASID-4 Scanning Attachment for Electron Microscope. Manufacturer: JEOL, Japan. Intended use of instrument: See notice on page 1529 in the **Federal Register** of January 13, 1983. Advice submitted by: Department of Health and Human Services: April 29, 1983.

Comments: No comments have been received with respect to any of the foregoing applications.

Decision: Applications approved. No instrument or apparatus of equivalent scientific value to the foreign instruments, for the purposes for which the instruments are intended to be used, is being manufactured in the United States.

Reasons: The applications relate to compatible accessories for instruments that have been previously imported for the use of the applicant institutions. The instruments are being manufactured by the manufacturers which produced the instruments with which they are intended to be used. We are advised by the Department of Health and Human Services in its respectively cited memoranda that the accessories are pertinent to the applicant's intended uses and that it knows of no comparable domestic accessories.

The Department of Commerce knows of no similar accessories manufactured in the United States which are interchangeable with or can be readily adapted to the instrument with which each accessory is intended to be used.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-15418 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting the Import Restraint Level for Certain Cotton Textile Products From the Republic of the Philippines

June 6, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Charging 1982 overshipments to the level of restraint established for men's and boys' cotton coats in Category 333/334, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1983. The level will be reduced from 83,475 dozen to 72,630 dozen.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175) and May 3, 1983 (48 FR 19924)).

SUMMARY: Under the terms of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 24, 1982, between the Governments of the United States and the Republic of the Philippines, the United States Government is charging 1982 overshipments of cotton textile products in Category 333/334 to the 1983 level.

EFFECTIVE DATE: June 10, 1983.

FOR FURTHER INFORMATION CONTACT: Carl Ruths, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, Washington, D.C. 20230 (202/377-4212).

SUPPLEMENTARY INFORMATION: On December 29, 1982, there was published in the **Federal Register** (47 FR 57986) a letter dated December 22, 1982 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs, which established levels of restraint for certain specified categories of cotton, wool and man-made fiber textile products, including Category 333/334, produced or manufactured in the Philippines, which may be entered into the United States for consumption, or withdrawn from warehouse for consumption, during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to adjust the level of restraint for Category 333/334 to account for 1982 overshipments.

Walter C. Lenahan,

Chairman, Committeee for the Implementation of Textile Agreements.

June 6, 1983.

Commissioner of Customs,
Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 22, 1982 from the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in the Philippines.

Effective on June 10, 1983, paragraph 1 of the directive of December 22, 1982 is further amended to include an adjusted twelve-month level of restraint for cotton textile products in Category 333/334 of 72,630 dozen.[1]

The action taken with respect to the Government of the Republic of the philippines and with respect to imports of cotton textile products from the Philippines has been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, these directions to the Commissioner of Customs, which are necessary for the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the **Federal Register.**

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-15448 filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

Soliciting Public Comment on Bilateral Textile Consultations With the Government of Hong Kong To Review Trade in Categories 336 and 434

June 6, 1983.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: On May 13 and May 17, 1983 the Government of the United States requested consultations with the Government of Hong Kong with respect to Categories 336 (dresses) and 434 (other coats, men's and boys'). These requests were made on the basis of the Agreement of June 23, 1982, as amended, between the Governments of the United States and Hong Kong relating to trade

[1] The level of restraint has been reduced by 10,845 dozen representing overshipments from 1982.

in cotton, wool, and man-made fiber textiles and textile products.

The purpose of this notice is to advise the public that if no solution is agreed upon in consultations between the two governments, the Committee for the Implementation of Textile Agreements may later establish limits for the entry and withdrawal from warehouse for consumption of textile products in Categories 336 and 434, produced or manufactured in Hong Kong and exported to the United States during the twelve-month period which began on January 1, 1983 and extends through December 31, 1983. The Government of the United States also reserves the right to control imports of these categories at the established limits.

Any party wishing to comment or provide data or information regarding the treatment of Categories 336 and 434 under the bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement with the Government of Hong Kong or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these Categories, is invited to submit such comments or information in ten copies to Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230. Since the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C., and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-15447 Filed 6-8-83; 8:45 am]

BILLING CODE 3510-25-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP83-24-002]

Alabama-Tennessee Natural Gas Co.; Filing of Revised Tariff Sheet

June 3, 1983.

Take notice that on May 25, 1983, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee) submitted for filing the following revised tariff sheets to the Alabama-Tennessee's FPC Gas Tariff, Third Revised Volume No. 1:

Forty-first Revised Sheet No. 3–A superseding Substitute Fortieth Revised Sheet No. 3–A

Second Substitute Sixth Revised Sheet No. 5 superseding Fifth Revised Sheet No. 5

Second Substitute Sixth Revised Sheet No. 6 superseding Substitute Sixth Revised Sheet No. 6

Third Substitute Sixth Revised Sheet No. 11 superseding Second Substitute Sixth Revised Sheet No. 11

Second Substitute Fifth Revised Sheet No. 13–B superseding Fourth Revised Sheet No. 13–B

Second Substitute Sixth Revised Sheet No. 14 superseding Substitute Sixth Revised Sheet No. 14.

Also enclosed with the filing is a motion by Alabama-Tennessee filed pursuant to Section 4(e) of the Natural Gas Act and the Commission's order issued in the above-entitled proceeding on December 30, 1982, together with an undertaking and related documents called for by 154.67 of the Commission's Regulations under the Natural Gas Act, including a list showing service upon the purchasers under the rate schedules and affected state regulatory commissions. The motion is designed to make effective on May 31, 1983, the above-described revised tariff sheets.

Alabama-Tennessee states that the revised tariff sheets are designed solely to reflect the rates suspended by the Commission's December 30, 1982 order, as adjusted, for the removal of storage and storage transportation costs, for the purchased gas cost changes since December 30, 1982, shown in Section 20.3 of the revised tariff sheets, and for the unrecovered purchased gas costs shown in Section 20.2 of the revised tariff sheets.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15476 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket Co. RP83-65-002]

Alabama-Tennessee Natural Gas Revised PGA Rate Adjustment

June 3, 1983.

Take notice that on May 19, 1983, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing the following tariff sheets as part of its FPC Gas Tariff, Third Revised Volume No. 1.

Second Substitute Thirty-Ninth Revised Sheet No. 3–A

Second Substitute Sixth Revised Sheet No. 11.

These tariff sheets are proposed to become effective April 3, 1983, and Alabama-Tennessee requests that there be granted any necessary waivers of the Commission's Regulations to accomplish this proposed effective date.

Alabama-Tennessee states that the purpose of the revised tariff sheets is to correct an inadvertent error in its restatement of its Base Tariff Rates as required by the Commission's order issued on April 27, 1983, in the above referenced docket.

These revised tariff sheets provide for the following rates:

Rate schedule	Rates after current adjustment
G-1:	
Demand	$6.05
Commodity	421.04
SG-1:	
Commodity	465.24
I-1:	
Commodity	440.91

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest such filing should file a petition to intervene of protest with the Federal Enery Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Rule 211 or 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before June 17, 1983. Protests will be considered by Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who has previously filed a petition to intervene in this proceeding is not required to file a further pleading. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15477 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-348-000]

Algonquin Gas Transmission Co.; Application

June 2, 1983.

Take notice that on May 26, 1983, Algonquin Gas Transmission Company (Algonquin), 1284 Soldiers Field Road, Boston, Massachusetts 02135, filed in Docket No. CP83-348-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the interruptible sale of natural gas by Algonquin pursuant to its proposed Rate Schedule I-2 utilizing gas made available by Texas Eastern Transmission Corporation (Texas Eastern), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Algonquin seeks authority to render interruptible sales of natural gas to its Rate Schedule F-1 customers pursuant to its proposed Rate Schedule I-2. It is further stated that the service proposed under Rate Schedule I-2 would be rendered during the period between April 16 and November 15 and would be available to the extent that Algonquin obtains gas by purchase from Texas Eastern under Texas Eastern's existing Rate Schedule I-D. Algonquin asserts that all deliveries made pursuant to the proposed Rate Schedule I-2 would be considered surplus gas, subject to curtailment or interruption at any time an may be required by Texas Eastern or as may be requested by Algonquin.

Algonquin asserts that the rate it would charge for service under the proposed Rate Schedule I-2 would consist of a gas cost reimbursement charge to reimburse Algonquin for the cost of Rate Schedule I-D gas purchased from Texas Eastern; a handling charge of 14.74 cents per million Btu; and a GRI surcharge of 0.7 cent per million Btu.

Algonquin states that it is requesting permission to file its proposed Rate Schedule I-2 concurrently with its certificate application or, alternatively, that the Commission indicate in the certificate order that it would accept the proposed Rate Schedule I-2 for filing effective as of the date of such certificate authorization when such Rate Schedule is tendered for filing under Part 154 of the Regulations. Algonquin further states that it is requesting permission to include in its Rate Schedule I-2 provisions for the recovery of the cost of purchasing gas from Texas Eastern for resale under Rate Schedule I-2 on a current basis.

It is stated that the proposed service would enable customers purchasing gas under Algonquin's firm Rate Schedule F-1 to receive additional quantities of surplus gas during the off-peak delivery period to the extent that Texas Eastern makes such gas available and operating conditions allow.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 13, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Algonquin to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15478 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-524-000]

Dayton Power & Light Co.; Filing

June 3, 1983.

The filing Company submits the following:

Take notice that on May 24, 1983, the Dayton Power and Light Company (DP&L) tendered for filing an executed Service Agreement For Partial Requirements And/Or Transmission Wheeling Service To Municipalities For Resale (Service Agreement) between DP&L and the Village of New Bremen, Ohio.

The proposed Service Agreement permits the Village of Bremen to receive partial requirements and transmission wheeling service from DP&L under its FERC Electric Tariff, Original Volume No. 2. The proposed Service Agreement also provides for a change in delivery voltage to 69,000 volts. The previous service agreement between DP&L and the Village of New Bremen under which the Village of New Bremen received service pursuant to DP&L's FERC Electric Tariff Original Volume No. 1, is superseded.

DP&L requests the Commission waive its notice and filing requirements and permit the proposed New Bremen Service Agreement to become effective June 1, 1983.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15481 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA82-2-12-000]

Distrigas Corp. and Distrigas of Massachusetts Corp.; Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

June 3, 1983.

Take notice that on May 25, 1983, Distrigas Corporation (Distrigas) tendered for filing Thirteenth Revised Sheet No. 1 to its FERC Gas Tariff and Distrigas of Massachusetts Corporation (DOMAC), on May 25, 1983, tendered for filing Thirteenth Revised Sheet No. 3A.

Thirteenth Revised Sheet No. 1 and Thirteenth Revised Sheet No. 3A are being filed pursuant to Distrigas' and DOMAC's purchased LNG cost adjustment provision set forth in their respective tariffs. The Distrigas rate change is being filed to reflect in its sales rate to DOMAC a redetermination (decrease) of the price paid for the purchase of LNG from its supplier SONATRACH in accordance with the Distrigas-SONATRACH Agreement for Sale and Purchase of Liquefied Natural Gas, together with demurrage and amortization over the six-month period, July 1, 1983 through December 31, 1983, of the balance of the unrecovered purchased LNG gas account.

The DOMAC rate change is being filed to reflect the Distrigas rate change in DOMAC's rates for resale to its distribution customer companies and the amortization over the six-month period, July 1, 1983 through December 31, 1983, of the balance in DOMAC's unrecovered purchased LNG cost account and the GRI surcharge.

Distrigas and DOMAC request that the proposed tariff sheets become effective July 1, 1983, to coincide with the change in LNG costs from SONATRACH.

A copy of this filing is being served on all affected parties and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15482 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-519-000]

Cincinnati Gas & Electric Co.; Filing

June 3, 1983.

The filing Company submits the following:

Take notice that on May 20, 1983, the Cincinnati Gas & Electric Company (CG&E) tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 which cancel and supersede the rate schedules in said tariff. The proposed changes would increase revenues from jurisdictional sales and service by $5.2 million Phase I and an additional Phase II increase of $4.1 million for a total increase of $9.3 million, based on the 12 months period ending December 31, 1983.

The reasons stated by CG&E for the change in rate schedules are:

(1) To overcome a revenue deficiency for wholesale service occasioned by additions to rate base and the continued inflationary impact on its costs; and,

(2) To update the fuel adjustment clause to comply with Commission regulations governing their content.

CG&E proposes an effective date of July 19, 1983.

Copies of the filing were served upon the Villages of Bethel, Blanchester, Georgetown, Hamersville and Ripley, municipalities in the State of Ohio; and the Union Light, Heat and Power Company, West Harrison Gas and Electric Company, Public Utilities Commission of Ohio, Kentucky Public Service Commission and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 20, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the Proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth P. Plumb,

Secretary.

[FR Doc. 83-15479 Filed 6-8-83; 8:45 a.m.]

BILLING CODE 6717-01-M

[Docket No. TA82-2-22-005 (PGA82-2, IPR82-2, RD&D82-2)]

Consolidated Gas Supply Corp.; Filing of Revised Tariff Sheet

June 3, 1983.

Take notice that on May 23, 1983, Consolidated Gas Supply Corporation (Consolidated) submitted for filing Second Revised Substitute Thirty-First Revised Sheet No. 16 to its FERC Gas Tariff, Third Revised Volume No. 1, pursuant to the Commission's order dated February 4, 1983, as modified by order issued April 6, 1983, in these proceedings. The revised tariff sheet reflects a decrease of 2.53¢ in the Surcharge Rate for the period September 1, 1982 to December 31, 1982. Consolidated states that there is no change in rates, and therefore no refunds for the period subsequent to December 31, 1982. Schedules showing the calculation of the surcharge decrease and the amount of the principal refund by customer are included with the filing.

Consolidates states that its decision to make the tariff change and refund at this time shall in no way be construed as a waiver of Consolidated's rights to appeal the February 4, 1983 and April 6, 1983 orders in this docket.

Copies of this filing has been sent to the applicable state commissions and all parties to these proceedings.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before June 17, 1983. Protests will be considered by the commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file

with the commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15480 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP83-313-000]

El Paso Natural Gas Co.; Application

June 2, 1983.

Take notice that on May 4, 1983, El Paso Natural Gas Company (Applicant), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP83-313-000 an application, as supplemented May 26, 1983, pursuant to Section 311(a)(1) of the Natural Gas Policy Act of 1978 and § 284.107 of the Commission's Regulations for approval of the transportation service and delivery of natural gas to Southwestern Public Service Company (Southwestern) for the account of Cabot Pipeline Corporation (Cabot), an intrastate pipeline company, for a primary term of 3 months and from month to month thereafter up to a period of 2 years, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant asserts that Southwestern generates electricity for sale at its Cunningham Plant located in Lea County, New Mexico, and at its Plant X located in Lamb County, Texas, with Cabot's supplying natural gas at both facilities. Applicant further asserts that Southwestern has scheduled repairs at its Cunningham Plant to commence on or about June 15, 1983, and to continue for approximately a 90-day period, which will cause it to reduce purchasing natural gas from Cabot at the Cunningham Plant. It is submitted that Southwestern's take-or-pay obligation at its Cunningham Plant could be alleviated by Applicant's transporting such volumes of natural gas deemed to be excess at Southwestern's Cunningham Plant to Southwestern's Plant X.

Applicant states that on February 18, 1983, it entered into a gas transportation agreement with Cabot, to perform the requested transportation service, whereby Cabot would tender natural gas to Applicant at Cabot's Hobbs Plant located in Lea County, New Mexico, for transportation by Applicant to Southwestern's Plant X, for the account of Cabot.

Applicant states it is not obligated to accept on any day gas in excess of 20,000 Mcf for the account of Cabot and that it would transport approximately 900,000 Mcf of gas during the term of the transportation agreement.

For such transportation service, Applicant proposes to charge Cabot the rate in effect and reflected from time to time as the "Back Haul Charge" as set forth on Sheet No. 1-D.2 of Applicant's FERC Gas Tariff, Third Revised Volume No. 2, or superseding tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 13, 1983, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15483 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER83-523-000]

Florida Power & Light Co.; Filing

June 3, 1983.

The filing Company submits the following:

Take notice that Florida Power & Light Company (FPL), on May 23, 1983, tendered for filing an Agreement for Specified Transmission Service between FPL and Seminole Electric Cooperative, Inc. (SEC). The Agreement provides the rates, terms, and conditions for delivery of the output of SEC's Seminole Units, Nos. 1 and 2 by FPL to SEC, SEC member delivery points, or to third parties.

FPL requests an effective date of June 1, 1983, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon SEC and the Florida Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 21, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15484 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-34-002 (PGA, IPR)]

Florida Gas Transmission Co.; Revised Tariff Filing

June 3, 1983.

Take notice that on May 19, 1983, Florida Gas Transmission Company (FGT) filed a revised purchase gas adjustment (PGA) with a proposed effective date of May 1, 1983. Such filing was made pursuant to a letter order of the Commission of May 17, 1983, wherein the Commission required FGT to refile its PGA to incorporate the rates in effect as applicable to FGT, of its supplier, Southern Natural Gas Company. The revised tariff filing is composed of:

Original Volume No. 1

31st Revised Sheet No. 3-A

Original Volume No. 2

21st Revised Sheet No. 128

Listed below is a table summarizing the effect of the Commission's letter order on FGT's jurisdictional rates to be effective May 1, 1983.

FGT JURISDICTIONAL RATES EFFECTIVE MAY 1, 1983

[In cents]

	As adjusted	As filed Apr. 4, 1983	Difference
Rate Schedule G (¢/Therm)	32.768	33.204	(.436)
Rate Schedule I (¢/Therm)	31.968	32.404	(.436)
Rate Schedule T-3 (¢/Therm)	43.55	43.68	(.13)

FGT states that a copy of its filing has been served on all customers receiving gas under its FERC Gas Tariff, Original Volume Nos. 1 and 2 and interested state comissions and is being posted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211,

385.214). All such petitions or protests should be filed on or before June 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15485 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA83-2-4-000 (PGA83-3)]

Granite State Gas Transmission, Inc.; Proposed Revised Changes in Rates Pursuant To Purchase Gas Cost Adjustment Provisions

June 3, 1983.

Take notice that Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, on May 23, 1983, tendered for filing Second Substitute, Fourth Revised Sheet No. 7 in its FERC Gas Tariff, First Revised Volume No. 1, containing revised proposed changes in its rates for jurisdictional wholesale sales for effectiveness on May 1, 1983.

According to Granite State, on May 11, 1983, the company filed proposed rates on Substitute Fourth Revised Sheet No. 7 to reflect the effect in its rates of a reduction in the cost of gas purchased from its sole supplier, Tennessee Gas Pipeline Company, a Division of Tenneco (Tennessee) that Tennessee proposed to make effective May 1, 1983 in a filing in Docket No. TA83-2-9-000 (PGA 83-2). Granite State further states that it has discovered an error of $0.0016 in the revised commodity rates for sales to its affiliate, Northern Utilities, Inc. under Rate Schedule CD-2. The revised rate on Second Substitute Fourth Revised Sheet No. 7 corrects for the overstatement of the adjusted commodity component in Rate Schedule CD-2, according to Granite State.

Granite State requests permission to effect its rate reductions through its purchased gas cost provisions concurrent with the effectiveness of the proposed Tennessee reduction.

According to Granite State, copies of the filing were served upon its customers and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 17, 1983. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-15486 Filed 6-8-83; 8:45 am]

BILLING CODE 6717-01-M

Office of Assistant Secretary for International Affairs

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Indonesia Concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/ID(EU)-3, from the Federal Republic of Germany to Indonesia, 64.752 kilograms of uranium, containing 12.787 kilograms of U-235 (19.75% enrichment) in the form of fuel elements, for use in the Janus type research reactor, Serpong, Java.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 3, 1983.

George Bradley,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-15393 Filed 6-8-83; 8:45 am]

BILLING CODE 6450-01-M

International Atomic Energy Agreements; Proposed Subsequent Arrangement; European Atomic Energy Community (EURATOM)

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation Between the Government of the United States of America and the European Atomic Energy Community (EURATOM) Concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation Between the Government of the United States of America and the Government of Austria Concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer: RTD/EU(AT)-15, from Seibersdorf, Austria, to Julich, the Federal Republic of Germany, fuel spheres and coated particles containing 72.16 grams of uranium, enriched to 6.85% in U-235, 0.90 grams of plutonium, and 21.82 grams of thorium, for post-irradiation examination and ultimate disposal.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Dated: June 3, 1983.

George J. Bradley, Jr.,

Principal Deputy Assistant Secretary for International Affairs.

[FR Doc. 83-15394 Filed 6-8-83; 8:45 am]

BILLING CODE 6450-01-M

Office of the Secretary

National Petroleum Council, Miscible Displacement Task Group of the Committee on Enhanced Oil Recovery; Meeting

Notice is hereby given that the Miscible Displacement Task Group of the Committee on Enhanced Oil

Recovery will meet in July 1983. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Enhanced Oil Recovery will investigate the technical and economic aspects of increasing the Nation's petroleum production through enhanced oil recovery. Its analysis and findings will be based on information and data to be gathered by the various task groups. The time, location, and agenda of the Miscible Displacement Task Group meeting follows:

The Miscible Displacement Task Group will hold its seventh meeting on Wednesday and Thursday, July 13 and 14, 1983, starting at 9:00 a.m. each day, in Room 1603, Mobile Exploration and Production Services, Inc., 7200 North Stemmons Freeway, Dallas, Texas.

The tentative agenda for the Miscible Displacement Task Group meeting follows:

1. Opening remarks by the Chairman and Government Cochairman.
2. Review progress of Task Group study assignments.
3. Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

The meeting is open to the public. The Chairman of the Miscible Displacement Task Group is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Miscible Displacement Task Group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform G. J. Parker, Office of Oil, Gas and Shale Technology, Fossil Energy, 301/353-3032, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 1E-190, DOE Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on June 3, 1983.

Donald L. Bauer,

Principal Deputy Assistant Secretary for Fossil Energy.

[FR Doc. 83-15488 Filed 6-8-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30227; PH-FRL 2364-8]

Certain Companies; Applications To Register Pesticide Products Containing New Active Ingredients

Correction

In FR Doc. 83-13300 beginning on page 22358 in the issue of Wednesday, May 18, 1983, make the following corrections.

1. On page 22359, first column, the first term in the second line reading, "Nmethoxy-* * *" should have read "N-methoxy-* * *".

2. In the same column, fifth line of paragraph numbered "4.", "Inspect" should read "Insect".

BILLING CODE 1505-01-M

[PP-3G2821/T411; PH-FRL 2363-1]

Pesticides; Triforine; Establishment of Temporary Tolerance

Correction

In the document beginning on page 22361 in the issue of Wednesday, May 18, 1983, make the following corrections.

1. On page 22362, first column, at the end of the document the FR Doc. number in the file line now reading "FR Doc. 83-13004" should have read "FR Doc. 83-13064".

2. In the same column, below the last paragraph, the following authority should appear:

"(Sec. 408(j), 68 Stat. 516, (21 U.S.C. 346a(j)))".

BILLING CODE 1505-01-M

[OPTS-59124A ; BH-FRL 2379-1]

Toxic Substances; Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of TM83-47, TM83-48, TM83-49 and TM 83-50, applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA). The test marketing conditions are described below.

EFFECTIVE DATE: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Theodore C. Jones, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-204, 401 M St., SW., Washington, DC 20460, (202-382-3825).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and to permit them to manufacture or import new chemical substances for test marketing distribution in commerce, finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities.

EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the applications, and four the time periods specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, number of workers exposed to the new chemical, and the levels and duration of exposure must not exceed that specified in the applications. All other conditions described in the applications must be met. The following additional restrictions apply:

1. The applicant must maintain records of the date(s) of shipment(s) to each customer and the quantities supplied in each shipment, and must make these records available to EPA upon request.

2. A bill of lading accompanying each shipment must state that use of the substance is restricted to that approved in the TME.

TME 83-47

Date of Receipt: April 19, 1983.

Notice of Receipt: May 6, 1983 (48 FR 20486).

Applicant: Confidential.

Chemical: Modified poly (amido-amine) (Generic).

Use: Confidential.

Production Volume: Confidential.

Number of Customers: 3 to 4.

Exposure Information: Chemical operators will potentially be exposed to the new TME substance during discharge of the batch into drums and during the cleaning of the filtration equipment. The TME substance is one of the components of a mixture and is prepared *in situ*.

Test Marketing Period: 90 days.

Commencing on: June 1, 1983.

Rish Assessment: No significant health concerns were identified for the TME substance. Exposure to workers will be very low. Although some ecological effects from the TME substance could be expected, the TME substance is prepared *in situ* and will not be released to the environment.

Public comments: None.

TME 83-48

Date of Receipt: April 19, 1983.
Notice of Receipt: May 6, 1983 (48 FR 20486).
Applicant: Confidential.
Chemical: Diamino heteropolycyclic compound (Generic).
Use: Water colorant used as a minor component in industrial, commercial and consumer applications (Generic).
Production Volume: 500 kg.
Number of Customers: 3.
Process Information: Confidential.
Testing Marketing Exemption Period: 120 days.
Commencing on: June 1, 1983.
Risk Assessment: No significant health or environmental effects were identified for the TME substance. Furthermore, any concerns would be mitigated because of low worker exposure during manufacture, processing and use of the chemical. Concern for releases to the environment is further mitigated by information submitted by the company based on results of aquatic testing on the TME substance. Therefore, the Agency finds that the test marketing activities will not result in an unreasonable risk.
Public Comments: None.

TME 83-49

Date of Receipt: April 19, 1983.
Notice of Receipt: May 6, 1983 (43 FR 20486).
Applicant: Confidential.
Chemical: Spiro [isobenzofuran xanthene] (Generic).
Use: Minor color-forming component in paper coatings (Generic).
Production Volume: 1400 kg.
Process Information: Confidential.
Testing Marketing Period: 210 days.
Commencing on: June 1, 1983.
Risk Assessment: Some health concerns were identified for the TME substance based on an analogue. The nature of the process for manufacture and use of the substance is such that no significant worker exposure is expected. Minimal consumer exposure is expected once the chemical is incorporated into an article. There are no significant concerns for environmental effects. Any concerns would be mitigated by low releases to the environment.

TME 83-50

Date of Receipt: April 19, 1983.
Notice of Receipt: May 6, 1983 (43 FR 20486).
Applicant: Confidential.
Chemical: Dialkylphenyl substituted amine (Generic).
Use: Captive intermediate used in the manufacture of a minor component for paper coatings.
Production Volume: 1900 kg.
Process Information: Confidential.
Testing Marketing Period: 210 days.
Commencing on: June 1, 1983.
Risk Assessment: EPA has established that the new test market substance, submitted under TM 83-50, will not present an unreasonable risk of injury to health or to the environment under specific conditions set out in the application. There are no significant health concerns for the TME substance. There are some concerns for environmental effects. However, the concerns are mitigated by the expected low release of the TME substance and on-site treatment of wastes prior to discharge to a publicly owned treatment works (POTW).
Public Comments: None.
The Agency reserves the right to rescind approval of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk to health or the environment.

Dated: June 1, 1983.

Don R. Clay,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 83-15437 Filed 6-8-83; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

National Industry Advisory Committee; Radio Communications Subcommittee; Meeting

Pursuant to the provisions of Public Law 92-463, announcement is made of a public meeting of the Radio Communications Subcommittee of the National Industry Advisory Committee (NIAC) to be held Tuesday, June 28, 1983. The Subcommittee will meet at the Radio Technical Commission for Aeronautics, 1425 K Street, NW., Suite 500, Washington, D.C. at 10:00 A.M.

Purpose: Initial meeting of the Subcommittee

Agenda: As follows:

1. Opening remarks by Co-Chairmen and introduction of members.
2. Development of Radio Communications Subcommittee Charter.
3. Subcommittee task assignments.
4. Preparation of presentation to the NIAC Long Range Planning Committee.
5. New business.
6. Adjournment.

Any member of the public may attend or file a written statement with the Committee either before or after the meeting. Any member of the public wishing to make an oral statement must consult with the Committee prior to the meeting. Those desiring more specific information about the meeting may telephone the NIAC Executive Secretary in the FCC Emergency Communications Division at (202) 634-1549.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-15396 Filed 6-8-83; 8:45 am]
BILLING CODE 6712-01-M

[Report No. 1406]

Petitions for Reconsideration and Applications for Review of Actions in Rulemaking Proceedings

June 1, 1983.

The following listings of applications for review and petitions for reconsiderations filed in Commission rulemaking proceedings is published pursuant to CFR 1.429(e). Oppositions to such applications for review and petitions for reconsideration must be filed within 15 days after publication of this Public Notice in the **Federal Register.** Replies to an opposition must be filed within 10 days after time for filing oppositions has expired.

Subject: Exchange Network Facilities for Interexchange Access. (CC Docket No. 78-371)
Filed by: Michael H. Bader, Kenneth A. Cox, William J. Byrnes & Joel Rothstein Wolfson, Attorneys for MCI Telecommunications Corporation on 5-16-83.

Subject: Amendment of Part 15 of the Commission's Rules to provide for the operation of a TV Interface Device. (Gen Docket No. 79-244, RM's 3328 & 2876)
Filed by: John B. Crosby, Consulting Engineer & Philip R. Strauss, Management Consultant on 4-22-83. (2 separate petitions filed)

Subject: Interconnection Arrangements Between and Among the Domestic and International Record Carriers. (CC Docket No. 82-122)
Filed by: Roderick A. Mette, Vice President & Counsel for TRT Telecommunications Corporation on 5-19-83.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-15397 Filed 6-8-83; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-677-DR]

California; Amendment to Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of California (FEMA-677-DR) dated February 9, 1983, and related determinations.

DATE: June 3, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of California dated February 9, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 9, 1983.

For Public Assistance, the Counties of: Fresno, Mariposa, Riverside, San Bernardino, Stanislaus, and Tulare.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Louis O. Giuffrida,

Director, Federal Emergency Management Agency.

[FR Doc. 83-15428 Filed 6-8-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-683-DR]

Mississippi; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Mississippi (FEMA-683-DR), dated June 1, 1983, and related determinations.

DATED: June 1, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

Notice is hereby given that, in a letter of June 1, 1983, the President declared a major disaster under the authority of the Disaster Relief Act of 1974, as amended (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288) as follows:

I have determined that the damage in certain areas of the State of Mississippi, resulting from severe storms, tornadoes and flooding beginning on or about May 18, 1983, is of sufficient severity and magnitude to warrant a major-disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of Mississippi.

In order to provide Federal assistance, you are hereby authorized to allocate, from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288 for Public Assistance will be limited to 75 percent of total eligible costs in the designated area.

Pursuant to Section 408(b) of Pub. L. 93-288, you are authorized to advance to the State its 25 percent share of the Individual and Family Grant program, to be repaid to the United States by the State when it is able to do so.

The time period prescribed for the implementation of Section 313(a), priority to certain applications for public facility and public housing assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, and redelegated to me, I hereby appoint Mr. Paul E. Hall of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Mississippi to have been affected adversely by this declared major disaster: Hinds, Madison, and Rankin Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support Federal Emergency Management Agency.

[FR Doc. 83-15430 Filed 6-8-83; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-680-DR]

Utah; Amendment To Major-Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the Notice of a major disaster for the State of Utah (FEMA-680-DR), dated April 30, 1983, and related determinations.

DATED: June 3, 1983.

FOR FURTHER INFORMATION CONTACT: Sewall H. E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472 (202) 287-0501.

Notice

The notice of a major disaster for the State of Utah dated April 30, 1983, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 30, 1983.

Davis County for Individual Assistance and Public Assistance. Salt Lake and Sanpete Counties for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 83-15429 Filed 6-8-83; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreements Filed; Port of Seattle/ Foss-Alaska Line Terminal, et al.

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No. T-3591-1.

Title: Port of Seattle/Foss-Alaska Line Terminal Lease Agreement Amendment.

Parties: Port of Seattle and Foss-Alaska Line.

Synopsis: Agreement No. T-3591-1 amends the basic agreement by granting the lessee one additional five-year renewal option, increasing the leased premises from 14.951 acres to 17.435 acres with an option for an additional 5.667 acres, with a corresponding increase in rental.

Filing party: H. H. Wittren, Associate Director of Real Estate, Leasing, Port of Seattle, P.O. Box 1209, Seattle, Washington 98111.

Agreement No. T-3685-3.

Title: City of Long Beach ((City)/ Maersk Line Pacific, Ltd. (Maersk) Preferential Assignment Agreement Amendment.

Parties: City of Long Beach and Maersk Line Pacific, Ltd.

Synopsis: Agreement No. T-3685-3 amends the basic agreement by adjusting the compensation for the two container cranes which are assigned by City to Maersk. Compensation consists of a fixed amount to cover depreciation and return on investment, plus payment of actual operating expenses.

Filing party: Richard L. Landes, Deputy Office of the City Attorney of Long Beach, Harbor Administration Building, P.O. Box 570, Long Beach, California 90801.

Agreement No. 9847-8.

Title: U.S. Atlantic Ports/Brazil Pooling Agreement.

Parties: Companhia De Navegacao Loide Brasileiro, Moore McCormack Lines, Netumar Line.

Synopisis: This amendment changes the minimum sailing requirements of both parties to four direct sailings in each two-month periods, but with a minimum of thirteen direct sailings and forty direct port calls per six-month pool accounting periods.

Filing agent: John D. Straton, Jr., Esquire, Moore McCormack Lines, 12 Commerce Drive, Cranford, New Jersey 07016.

Agreement No. 10414-3.

Title: People's Republic of China-USA Eastbound Rate Agreement.

Parties: American President Lines, Ltd., Lykes Bros. Steamship Company, Inc., Sea-Land Service, Inc., United States Lines, Inc., Waterman Steamship Corporation.

Synopsis: The amendment proposes to (1) Extend the effectiveness of the basic Agreement beyond its current expiration date of September 30, 1983, for an indefinite term, and (2) amend the basic Agreement to provide for the addition of intermodal ratemaking authority.

Filing agent: Robert A. Peavy, Esquire, Morgan, Lewis & Bockus, 1800 M Street, N.W., Washington, D.C. 20036.

Dated: June 6, 1983.

By order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 83-15385 Filed 6-8-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

InterFirst Corp., et al.; Acquisition of Bank Shares by Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each applicaiton, interested persons may express their views in writing to the address indicated for that application. 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.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *InterFirst Corporation*, Dallas, Texas; to acquire 100 percent of the voting shares or assets of first National Bank of Richardson, Richardson, Texas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Dallas. Comments on this application must be received not later than July 1, 1983.

2. *Industrial Bancshares, Inc.*, Kansas City, Kansas; to acquire an interest in One Security, Inc., Kansas City, Kansas and thereby indirectly acquire an interest in Security National Bank, Kansas City, Kansas. This application may be inspected at the offices of the Board of Governors of the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than July 1, 1983.

3. *Mission Bancshares, Inc.*, Mission, Kansas; to acquire an interest in One Security, Inc., Kansas City, Kansas, and thereby indirectly acquire an interest in Security National Bank, Kansas City, Kansas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than July 1, 1983.

4. *Valley View Bancshares, Inc.*, Overland Park, Kansas; to acquire an interest in One Security, Inc., Kansas City, Kansas, and thereby indirectly acquire an interest in Security National Bank, Kansas City, Kansas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than July 1, 1983.

Board of Governors of the Federal Reserve System, June 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-15391 Filed 6-8-83; 8:45 am]

BILLING CODE 6210-01-M

Raleigh Bankshares, Inc., et al.; Formation of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of bank. 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 may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must inlcude 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.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. **Raleigh Bankshares, Inc.**, Beckley, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Raleigh, Beckley, West Virginia. Comments on this application must be received not later than June 29, 1983.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Arkansas State Bankshares, Inc.*, Clarksville, Arkansas; to become a bank holding company by acquiring Arkansas

State Bank, Clarksville, Arkansas through acquisition of 100 percent of its parent, Arkansas State Bank Corporation. Comments on this application must be received not later than July 1, 1983.

2. *First Bancorp of Russell County, Inc.*, Russell Springs, Kentucky; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Russell Springs, Russell Springs, Kentucky. Comments on this application must be received not later than June 29, 1983.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *QCB Bancorp*, Long Beach, California; to become a bank holding company by acquiring 100 percent of the voting shares of Queen City Bank, N.A., Long Beach, California. Comments on this application must be received not later than July 1, 1983.

D. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *One Security Inc.*, Kansas City, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire control of Security National Bank, Kansas City, Kansas. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Kansas City. Comments on this application must be received not later than July 1, 1983.

Board of Governors of the Federal Reserve System, June 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-15392 Filed 6-8-83; 8:45 am]

BILLING CODE 6210-01-M

United National Bancorporation; Bank Holding Company; Proposed de Novo Nonbank Activities

The organization identified in this notice has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to the application, interested persons may express their views 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 comment on the application that requests a hearing must include 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *United National Bancorporation*, Huntingdon, Pennsylvania (mortgage banking activities; Pennsylvania): To engage *de novo* through its proposed subsidiary, Unitas Mortgage Corporation, Harrisburg, Pennsylvania, in making or acquiring, for its own account or for the account of others, loans and other extensions of credit secured by a lien on real estate in accordance with the Board's Regulation Y. These activities would be conducted from offices located in Huntingdon, Willow Hill, and Chambersburg, Pennsylvania. Comments on this application must be received not later than June 29, 1983.

Board of Governors of the Federal Reserve System, June 3, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-15389 Filed 6-8-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) Transaction Number 83-0274. Blue Circle Industries, PLC's proposed acquisition of certain assets of Martin Marietta Corporation.	May 19, 1983.
(2) Transaction Number 83-0282. Weyerhaeuser Company's proposed acquisition of voting securities of Great Northern Insured Annuity Corporation (Washington Mutual Savings Bank, UPE).	May 24, 1983.
(3) Transaction Number 83-0283. Richardson Vicks, Incorporated's proposed acquisition of all voting securities of Vidal Sassoon, Incorporated.	May 23, 1983.
(4) Transaction Number 83-0299. Promode S.A.'s proposed acquisition of all voting securities of Houchens Industries, Incorporated (Ervin G. Houchens, UPE).	Do.
(5) Transaction Number 83-0302. Promodes S.A.'s proposed acquisition of all voting securities of Houchens Industries, Inc. (Gilbert M. Biggers and Covella Biggers, UPE).	Do.
(6) Transaction Number 83-0306. Contran Corporation's for "The 1964 Simmons Trust" proposed acquisition of voting securities of Kerr Glass Manufacturing Corporation.	May 24, 1983.
(7) Transaction Number 83-0337. International Telephone and Telegraph Corporation's proposed acquisition of certain voting securities of Piper Jaffray, Incorporated (Piper Jaffray ESOT).	May 20, 1983.
(8) Transaction Number 83-0338. Union Pacific Corporation's proposed acquisition of certain assets of Edgington Oil Company Incorporated (Khamsin, UPE).	May 23, 1983.
(9) Transaction Number 83-0345. A. Johnson & Company's proposed acquisition of all voting securities of Hekimian Laboratories, Inc.	May 19, 1983.
(10) Transaction Number 83-0348. P.I.T.S. Films' proposed acquisition of assets of Tandem Productions, Incorporated, (Alan D. Yorkin, UPE).	May 24, 1983
(11) Transaction Number 83-0349. P.I.T.S. Films' proposed acquisition of assets of Tandem Productions, Incorporated (Norman Lear, UPE).	Do.
(12) Transaction Number 83-0347. Bass Brothers Enterprises, Incorporated's proposed acquisition of certain assets of F.M.I. Financial Corporation.	May 26, 1983.
(13) Transaction Number 83-0354. Rorer Group, Incorporated's proposed acquisition of voting securities of Kremers-Urban Company.	Do.

Transaction	Waiting period terminated effective
(14) Transaction Number 83-0355. Global Investment Limited Partnership's proposed acquisition of assets of Canso Oil and Gas, Incorporated (United Canso Oil and Gas, Ltd.).	Do.
(15) Transaction Number 83-0350. Dynalectron Corporation's proposed acquisition of voting securities of Anson Industries, Incorporated.	May 27, 1983.
(16) Transaction Number 83-0343. Extendicare, Ltd.'s proposed acquisition of all voting securities of Unicare Services, Inc. (Joseph J. Zilber, UPE).	Do.
(17) Transaction Number 83-0397. Westinghouse Electric Corporation's proposed acquisition of all voting securities of all voting securities of Fortin Laminating Corporation (Monogram Industries, UPE).	Do.
(18) Transaction Number 83-0269. Westinghouse Electric Corporation's proposed acquisition of all voting securities of Fortin Laminating Corporation (Joseph A. Delgadillo, UPE).	Do.

FOR FURTHER INFORMATION CONTACT:
Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-15431 Filed 6-8-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Privacy Act of 1974; Altered System of Records

AGENCY: Public Health Service, Health and Human Services Department.

ACTION: Notification of altered Privacy Act system of records 09-25-0074, "Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI."

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to alter system of records 09-25-0074, "Clinical Research: Veterans Administration Bladder and Prostate Cancer Clinical Trials, HHS/NIH/NCI."

The purpose of the alteration is to modify an existing system of records into an umbrella system by broadening both the categories of individuals under this system and the purposes for which the system is used. The name of the system of records is also being changed to reflect the alteration. The new name is "Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI."

PHS invites interested persons to submit comments on the proposed alteration on or before July 11 1983.

DATE: PHS has sent a report of Altered System to the Congress and to the Office of Management and Budget on June 1, 1983. The alteration of this system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the alteration 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 during office hours in Room 3B03, 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 301-496-4606. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: At present, this system covers patient studies undertaken by the National Cancer Institute (NCI), Division of Cancer Biology and Diagnosis (DCBD) in connection with the Veterans Administration. The proposed alteration will broaden the categories of individuals, which has been limited to those in bladder and prostate cancer studies, to include participants in other patient studies of DCBD. DCBD intends to expand and diversify the scope of its patient studies to include patients with other types of cancer, individuals being tested for possible cancer, and normal controls, and to include research on biological markers to detect cancer and to monitor treatment. This expansion is consistent with the mission of DCBD to plan and direct NCI research activities relating to cancer biology and diagnosis. Rather than create a separate system of records to describe records maintained in individual research projects, DCBD is modifying an existing system of records, 09-25-0074, so that it may cover the records of any patient studies undertaken by the Division, when these records fall under the definition of system of records in the Privacy Act.

NCI has modified the description of categories of individuals in the system notice to include the full range of persons studied by DCBD. To reflect the expanded coverage, NCI has changed the name of the system from "Clinical Research: Veterans Administration Bladder and Prostate Cancer Clinical Trials, HHS/NIH/NCI" to "Clinical Research: Divisionof Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI." The "System Location" and "Safeguards" sections of the notice have been changed to reflect the expansion of the system. In addition, the "Purpose section has been clarified to describe the various types of research that may be undertaken by DCBD.

The research supported by this system may involve both scientists on the staff of NCI and other scientists working under contracts awarded competitively by NCI or under agreement with other Federal agencies, such as the Veterans Administration. NCI may award research contracts to hospitals and clinics, to educational and research institutions, to State or local government agencies, or to commercial enterprises.

NCI will organize and maintain the records collected under this system according to the particular study in which they are collected. Records will not be entered into a general or comprehensive data base, nor will there be any general index identifying all persons who are subjects of records in the separate studies covered by this system. However, NCI 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 biomedical research purposes and contain similar types of data, (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.

No changes are being proposed in the routine uses established for this system.

This system notice was last published in the **Federal Register** on October 13, 1982 (47 FR 45812-13). We are republishing the system notice in its entirety below to incorporate the proposed alteration.

Dated: June 3, 1983.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-25-0074

SYSTEM NAME:

Clinical Research: Division of Cancer Biology and Diagnosis Patient Trials, HHS/NIH/NCI.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Building 12, NIH
9000 Rockville Pike
Bethesda, MD 20205

and at hospitals and clinics, educational and research institutions, Federal, State or local government agencies, and

private facilities under contract to the National Cancer Institute (NCI), National Institutes of Health (NIH). Write to system manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Cancer patients, individuals undergoing biopsies, and normal controls in clinical studies of the Division of Cancer Biology and Diagnosis (DCBD).

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical and treatment history.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority is provided by Sections 301, Research and Investigation, and Title IV, Part A, National Cancer Institute, of the Public Health Service Act (42 U.S.C. 241, 281–286).

PURPOSE(S):

This system is used to support research:

(1) To compare cancer diagnostic tests;

(2) To develop statistical methodology;

(3) To trace the natural history of the cancer under study, and

(4) To develop, evaluate and verify biological markers for early cancer detection and for monitoring treatment success.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made to HHS contractors, grantees and collaborating researchers and their staff in order to accomplish the research purpose for which the records are collected. The recipients are required to comply with the Privacy Act with respect to these records.

Disclosure may be made to a congressional office from the record of an individual in repsonse to an inquiry from the congressional office made at the request of that individual.

Disclosure may be made to a contractor when the Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to comply with the Privacy Act with respect to such records.

In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent such employee, for example in defending against a claim based upon an individual's mental or physical condition and alleged to have arisen because of activities of the Public Health Service in connection with such individual, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that agency to present an effective defense, provided that such disclosure is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in files and on computer tapes and discs.

RETRIEVABILITY:

Records are retrieved by coded identification number.

SAFEGUARDS:

Measures to prevent unauthorized disclosures are implemented as approriate for each location and for the particular records maintained in each project. Each site implements administrative, physical and procedural safeguards such as the following:

Authorized Users: employees who maintain records in this system are instructed to grant regular access only to physicians, scientists and support staff of the National Cancer Institute and its contractors whose duties require the use of such information. One-time and special access by other employees is granted on a need-to-know basis as specifically authorized by the system manager.

Physical Safeguards Records are kept and computer terminals are kept in limited-access areas, where access is strictly controlled as described immediately above.

Offices are locked during off-duty hours. Input data for computer files is coded to avoid individual identification.

Procedural Safeguards: Access to computer files is controlled through security codes known only to authorized users. Access codes are changed frequently.

Contractors who maintain records in this system are instructed to make no further disclosure of the records except as authorized by the system manager. Privacy Act requirements are specifically included in contracts. NCI contract officers and project officers oversee compliance with these requirements.

The particular safeguards implemented at each site are developed in accordance with chapter 45–13, "Safeguarding Records Contained in Systems of Records," of the HHS General Administration Manual, supplementary chapter PHS.hf: 45–13, and part 6, "ADP Systems Security," of the HHS ADP Systems Manual.

RETENTION AND DISPOSAL:

Records are retained in accordance with NIH Records Control Schedule, item 3000–G–3. The records control schedule may be obtained by writing to the system manager at the address below.

SYSTEM MANAGER(S) AND ADDRESS:

Computer Systems Manager, DCBD, Landow Building, Room 5C08, NIH, 7910 Woodmont Avenue, Bethesda, MD 20205

NOTIFICATION PROCEDURE:

Write to System Manager to determine if a record exists. The requester must also verify his or her identity by providing either a notarization 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/dental record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official under notification procedures above, and reasonably identify the record and specify the information to be contested, and state the corrective action sought, and your reasons for requesting the correction, with supporting evidence to justify it.

RECORD SOURCE CATEGORIES;

Hospitals, medical schools, universities, research institutions, commercial institutions, state agencies,

other U.S. Government agencies, patients and normal volunteers, physicians, research investigators, and other collaborating personnel.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-15500 Filed 6-8-83; 8:45 am]
BILLING CODE 4140-01-M

Privacy Act of 1974; Proposed Major Alteration to Existing System of Records

AGENCY: Public Health Service, Health and Human Services Department.

ACTION: Notification of Proposed Major Alteration to an Existing System of Records: 09-30-0041, "Participants in Drug Abuse Research Studies Supporting New Drug Applications," HHS/ADAMHA/NIDA.

SUMMARY: In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing a notice of a proposed altered system of records, to be renamed "Participants in Drug Abuse Research Studies Supporting New Drug Applications," HHS/ADAMHA/NIDA, in the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), National Institute on Drug Abuse (NIDA). The system is currently entitled "Subject-Participants in a Drug Abuse Research Study on Naltrexone." We propose to alter the existing system to incorporate a second study with a narcotic agonist, LAAM (levo-alpha-acetylmethadol), thus creating an umbrella system. PHS invites interested parties to submit comments on the proposed alteration on or before July 11, 1983.

We are not proposing changes to the nature of the routine use for this system of records but are rewording it to accommodate the LAAM study. This technical revision, in and of itself, does not require a public comment period. Additional technical changes to accommodate the LAAM study also appear elsewhere in the system notice.

DATES: PHS has sent a Report of An Altered System to the Congress and the Office of Management and Budget (OMB) on June 1, 1983. The altered system of records will be effective 60 days from the date submitted to OMB, unless PHS receives comments on the revisions which would result in a contrary determination.

ADDRESS: Please address comments to: Privacy Act Officer, Office of Extramural Policy and Project Review, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 10-42, Rockville, Maryland 20857.

Comments received will be available for inspection at the same address, from 8:00 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Harold M. Ginzburg, M.D., M.P.H., Project Officer, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 10-A-38, Rockville, Maryland 20857, Telephone: (301) 443-6697. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: One purpose of the system is to compile and maintain information (data base) required by the Food and Drug Administration (FDA) in the development and approval of new drug applications for naltrexone, a narcotic antagonist, and under the proposed alteration, LAAM (levo-alpha-acetylmethadol), a narcotic agonist. (A narcotic antagonist is a substance which negates the effect of opiates. A narcotic agonist is a psychoactive substance that acts like a natural narcotic. A new drug application is a notice to FDA that a pharmaceutical company believes they have enough data to demonstrate the safety and efficacy of a substance to satisfy FDA requirements for marketing the substance.) NIDA will also analyze the aggregrate data to determine the effectiveness of naltrexone and LAAM in various treatment environments and modalities.

Altering the existing system is more practical and appropriate than creating a separate system because of the similar nature of the contents and uses of the two sets of records. Both sets of records provide data that are and will be used in determining the effectiveness of therapeutic uses of drugs of abuse through examination of the pattern of life events of drug abusers during the period of time they were enrolled with the participating drug abuse treatment programs. The records in the system were collected under, and are subject to, the protective restrictions of the Confidentiality of Alcohol and Drug Abuse Records Regulation (42 CFR Part 2).

NIDA will maintain the records in the LAAM study in the secure manner described in the system notice until FDA makes a determination on the new drug application. The contractor maintains records in the naltrexone study as described in the system notice. In both cases NIDA uses individually identified information only to identify and match data to the correct subject-participant in the event that FDA should require review of that record. Personal identifiers are deleted before any release of the information by NIDA.

One routine use is approved for the system which reads as follows: "Endo Laboratories, an ADAMHA contractor, uses the records in the system in order to accomplish the research purposes for which the records were collected. In the event of a followup study or continuation study because the contract has been terminated for convenience by the Government, the contractor may disclose records in this system to a subsequent ADAMHA contractor. The new contractor would be required to maintain Privacy Act safeguards with respect to such records and to comply with the confidentiality restrictions of 42 CFR Part 2."

We are altering the wording of the routine use to accommodate the LAAM study. The new wording reads as follows:

"ADAMHA contractors use the records in the system in order to accomplish the research purposes for which the records were collected. In the event of a followup study or continuation study, the responsible System Manager may disclose the records in this system at the direction of the responsible Project Officer to a subsequent ADAMHA contractor(s). Any new contractor(s) would be required to maintain Privacy Act safeguards with respect to such records and to comply with the confidentiality restrictions of 42 CFR Part 2."

Four other, related, alterations to the system are: (1) A new system location has been added; (2) the period of time in which the completed LAAM study occurred has been added; (3) the categories of individuals have been expanded to include the clients who sought to use LAAM as part of their treatment; and (4) retention time of the records has been increased to 15 years.

The system notice was published most recently in the **Federal Register** October 13, 1982 (47 FR 45466-45467). We are republishing the notice in its entirety below to incorporate the proposed alterations.

Dated: June 3, 1983.

Wilford J. Forbush,

Deputy Assistant Secretary for Health Operations and Director, Office of Management.

09-30-0041

SYSTEM NAME:

Subject-Participants in Drug Abuse Research Studies Supporting New Drug Applications, HHS/ADAMAHA/NIDA

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

DuPont Enterprises, 1000 Stewart Avenue, Garden City, New York 11530. Division of Clinical Research, National Institute on Drug Abuse, 5600 Fishers Lane, Room 10–A–38, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Voluntary adult clients of federally-funded and other drug abuse treatment programs who have requested to receive naltrexone or levo-alpha acetylmethadol (LAAM) as part of their treatment. Data collection for LAAM began in 1975 and continued through September 1979; and, for naltrexone began in 1977 and will continue through 1983.

CATEGORIES OF RECORDS IN THE SYSTEM:

Demographic data, treatment outcome data, treatment process data, client locator information, and personal identifiers (name and assigned numerical identifier).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Drug Abuse Prevention, Treatment and Rehabilitation Act, Section 503 (21 U.S.C. 1193); Public Health Service Act, Sections 301(a) and 303(a) (42 U.S.C. 241(a) and 242a(a)).

PURPOSE(S):

1. To maintain information on the effectiveness of drugs of abuse in various treatment environments and modalities and changes in the behavior and characteristics of drug abusers who received these substances as part of their treatment regimen.

2. To provide data required by the Food and Drug Administration (FDA) to support new drug applications for various drugs of abuse. A new drug application is a notice to FDA that a pharmaceutical company believes they have enough data to demonstrate the safety and efficacy of a substance to satisfy FDA for marketing the substance. FDA may also use the records in a form which does not identify individuals in routine inspections FDA conducts in accordance with its responsibilities to develop standards on the composition, quality, safety, and efficacy of drugs administered to humans, and to monitor experimental usage of drugs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

ADAMHA contractor(s) use the records in the system in order to accomplish the research purposes for which the records were collected. In the event of a followup study or continuation study the responsible Project Officer may disclose records in this system to a subsequent ADAMHA contractor(s). Any new contractor(s) would be required to maintain Privacy Act safeguards with respect to such records and to comply with the confidentiality restrictions of 42 CFR Part 2.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Interview forms, magnetic tapes, disks and microfiche in boxes in closed cabinets in a locked room with limited accesibility.

RETRIEVABILITY:

The records are indexed and retrieved by subject-particiant's name and unique numerical identifier. In order to relate the data collected to specific individuals, however, one must use the link file discussed under Safeguards.

SAFEGUARDS:

The safeguards which follow are in accordance with the DHHS Chaper 45–13 and supplementary Chapter PHS.hf: 45–13 in the HHS General Administration Manual and Part 6, "ADP System Security" in the HHS ADP Systems Security Manual.

Physical Security: For the naltrexone records, the contractor stores individually indentified forms in a locked room with controlled entry; i.e., only on the written authority of the professional staff member in charge of data handling and processing operations. The contractor staff enter the collected information onto computer tape or disks as soon after contact with the subject-participant as possible and store the computerized records in a secured area with access limited as above.

For the LAAM records, NIDA stores the individually indentified forms in a lockable cabinet in a secure room. Only authorized NIDA personnel; i.e., Division of Clinical Research Director or System Manager and their professional staff (research psychologist or research psychiatrist) and their support staff (program assistant, clerk-typist, or secretary) have access to the room with controlled entry. The room is in a building which has a 24-hour guard service and has controlled entry (picture identification sign in/out procedure) before and after normal working hours.

Another safeguard for both studies is that the forms containing subject identification information do not include any reference to the purpose of the study. The identification information is separate from any information that would suggest that the respondent is or has been in a drug abuse treatment program. In addition, the computer center being utilized for the naltrexone study has developed an extensive security system to protect computer account codes and data.

Technical Security: Access to the computerized records of the naltrexone study is protected by a computerized password routine which is changed periodically. In addition, the project staff complies with the contractor's DuPont enterprises standard procedures for safeguarding data. The link file system that identifies individuals with personal data has three components: (1) identification information (2) data base information, and (3) the link file, which contains identifying number pairs which match data with individuals. The advantage of this system is that one may use the baseline data directly for report generation, etc., without using the subroutines or accessing the personal information or link files.

Administrative Security: For the naltrexone study, the data management task leader, the project leader, or the project director provide technical supervision of all data collection and processing activities. Only authorized contract staff have access to the records (computerized and hard copy files) in the system. The contractor provides only aggregate data in reports to NIDA, FDA, or the public. Only the NIDA personnel mentioned previously and selected authorized contract staff have access to the stored LAAM records.

A Certificate of Confidentiality has been issued to researchers conducting the naltrexone study under 42 CFR Part 2a, Protection of Identity-Research Subjects. This authorization enables persons engaged in research on mental health, including research on the use and effect of psychoactive drugs, to protect the privacy of research subjects by withholding the names or other identifying characteristics from all persons not connected with the conduct of the research. Persons so authorized may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals. The LAAM study was not conducted under a certificate of confidentiality. These regulations do not prohibit voluntary disclosure by the researcher.

However, records of both studies also are subject to 42 CFR Part 2, the confidentiality of alcohol and Drug Abuse Patient Records Regulations (42 CFR 2.56), which state: "Where the content of patient records has been disclosed pursuant to [these regulations] for the purpose of conducting scientific research * * * information contained therein which would directly or indirectly identify any patient may not be disclosed by the recipient thereof either voluntarily or in response to any legal process whether Federal or State."

The contractor's Institutional Review Board has reviewed and approved the safeguards described above in accordance with 45 CFR Part 46 on the protection of human subjects for the naltrexone study.

RETENTION AND DISPOSAL

The naltrexone contractor staff destroys interview forms by shredding or burning immediately after they complete direct entry on magnetic tape or disk storage and verify the information. NIDA will destroy individual identification data and match-up information by shredding and burning 15 years after FDA completes the review and approves the new drug applications.

NIDA will retain the aggregate data tapes from both studies for research purposes. These tapes will not have any individually identifiable information. In accordance with the ADAMHA Records Control Schedule, the aggregate tapes will be retained for five years after the completion of the project. At that time, the tapes will be retired to the Federal Records Center and destroyed when they are 10 years old or when they are no longer needed for research purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Project Officer, Naltrexone/LAAM Study, Division of Clinical Research, National Institute on Drug Abuse, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 10–A–38, Rockville, Maryland 20857.

NOTIFICATION PROCEDURE:

An individual may determine if a record exists about himself or herself upon written request, with notarized signature if request is made by mail, or with suitable identification if request is made in person, to the System Manager at the address above. The following information should be included, if known: subject-participant's full name and a letter of request with notarized signature of the subject-participant of the record, any alias used, subject-participant's identification number, name of the researcher, name of substance, and approximate date of study participation.

An individual who requests notification of a medical record shall, at the time the request is made, must designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

RECORD ACCESS PROCEDURES:

Same as Notification Procedures. Requesters should also reasonably specify the record contents being sought.

CONTESTING RECORD PROCEDURES:

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting justification.

RECORD SOURCE CATEGORIES:

Research subject-participants, staff in the participating drug abuse treatment programs, written clinical evaluations, private physicians, counselors, psychiatrists, psychotherapists, family members, research assistants, and hospital records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-15501 Filed 6-8-83; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-83-1246]

Availability of Funding Under the Fair Housing Assistance Program; Noncompetitive Solicitation

Correction

In FR Doc. 83-14592 beginning on page 24468 in the issue of Wednesday, June 1, 1983, make the following corection.

On page 24468, second column, sixth line of the "**SUPPLEMENTARY INFORMATION**" section, "July 1, 1983" should read "June 1, 1983".

BILLING CODE 1505-01-M

Office of the Secretary

[Docket No. D-83-699]

Redelegation of Authority to Regional Private Market Financing Specialist (Financial Analyst, Series 1160), Region I

AGENCY: Office of Regional Housing, Region I (Boston), HUD.

ACTION: Redelegation of authority relating to financing and refinancing of housing under the United States Housing Act of 1937.

SUMMARY: The authority of the Secretary relating to financing and refinancing of housing assisted under the United States Housing Act of 1937, as amended, is currently redelegated from the Assistant Secretary for Housing to Regional Administrators, Deputy Regional Administrators, and Directors of the Offices of Regional Housing. The redelegation included the authority to further redelegate. Pursuant to that redelegation, the authority of the Director of the Office of Regional Housing, Region I, is further redelegated to the Regional Private Market Financing Specialist (Financial Analyst, Series 1160), Region I.

EFFECTIVE DATE: February 7, 1983.

FOR FURTHER INFORMATION CONTACT: Marvin H. Lerman, Regional Counsel, Department of Housing and Urban Development, JFK Federal Building, Room 801, Government Center, Boston, MA 02203, (617) 223–4321. This is not a toll-free number.

Accordingly: 1. The regional Private Market Financing Specialist (Financial Analyst, Series 1160), Region I is authorized to exercise the private market financing authority redelegated in Paragraph 1 of Redelegation of Authority, published at 48 FR 6593 (1983).

2. Authority: Paragraph 2 of Redelegation of Authority, published at 48 FR 6593 (1983).

Dated: February 7, 1983.

Nick Nibi,

Director, Office of Regional Housing, Region I.

[FR Doc. 83-15405 Filed 6-8-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1248]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension of reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Single Family Default Monitoring System
Office: Housing
Form No.: HUD–92068A, 92068B and 92068C
Frequency of submission: Monthly/Quarterly
Affected public: Businesses or Other Institutions (except farms)
Estimated burden hours: 58,000
Status: Extension
Contact: Richard B. Buchheit, HUD, (202) 755–6672, Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: April 11, 1983.

Judith L. Tardy,

Assistant Secretary for Administration.

[FR Doc. 83-15406 Filed 6-8-83; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-83-1249]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755–5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Computation of Payments in Lieu of Taxes
Ofice: Housing
Form No.: HUD–52267
Frequency of submission: On occasion
Affected public: State or Local Governments
Estimated burden hours: 1,400
Status: New
Contact: Kenneth Moul, HUD, (202) 755–8145, Robert Neal, OMB, (202) 395–7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 24, 1983.

Lea Hamilton,

Director, Office of Information Policies and Systems.

[FR Doc. 83-15407 Filed 6-8-83; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

California Desert District; Annual Special Recreation Use Permits

AGENCY: Bureau of Land Management, Interior.

ACTION: Open period for accepting applications for annual Special Recreation Use Permits.

SUMMARY: Beginning June 1, 1983, The California Desert Conservation Area's District Manager will be accepting Special Recreation Permit applications for competitive and commercial off-road vehicle events in designated areas of the California Desert Conservation Area until July 31, 1983 for the 1984 calendar year. Applications will not be accepted after July 31, 1983. Applications for noncompetitive and non-commercial events must be filed 120 days before the event.

This notice is given under the authority of the Federal Land Policy and Management Act (Pub. L. 94-579), Executive Order 11644, as amended by Executive Order 11989, and Bureau of Land Management Code and Regulations 43 CFR 8372.

Send applications to District Manager, California Desert Conservation Area District Office, 1695 Spruce Street, Riverside, California 92507, or District Manager.

Dated: June 3, 1983.

Gerald E. Hillier

District Manager, California Desert District.

[FR Doc. 83-15400 Filed 6-8-83; 8:45 am]

BILLING CODE 4310-84-M

[M-57645]

Montana; Notice of Realty Action—Sale of Public Land in Garfield County, Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action M-57645, Modified Competitive Sale of Public Land in Garfield County.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), at no less than the fair market value ($23,800.00).

Principal Montana Meridian

T. 20 N., R. 32 E.,
Sec. 7: SW¼SE¼;
Sec. 10: NW¼SE¼;
Sec. 22: E½E½, SW¼SE¼;
Sec. 23: N½NW¼.
Aggregating 360.00 acres.

The land will be offered for sale by sealed bid using modified competitive bidding procedures designating Mike Pierson of Brusett, Montana, as having the right to meet any high bid. The sale will be held on August 24, 1983.

The subject land is located approximately 50 miles west of Jordan, Montana, in the Missouri River Breaks. These lands are of moderately rough terrain with Ponderosa Pine and native grasses as the dominant vegetation. There is no water and no improvements present. Physical access is possible over ranch trails. There is legal access to the NW¼SE¼, Section 10; the remaining 320 acres is without legal access.

Private lands completely surround these lands. All of these lands are isolated, scattered parcels of 40 acres, 40 acres and 280 acres respectively.

The proposed sale is consistent with the Bureau's planning system, and Garfield County government officials have been notified.

Terms and Conditions

1. All minerals and the right to explore for, mine and remove will be reserved to the United States.

2. A right-of-way for ditches or canals will be reserved to the United States.

3. This sale is subject to any valid existing rights of record.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 940, Miles City, Montana 59301. Any comments will be evaluated by the Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this Notice of Realty Action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION: Information relating to this sale, including the land report/environmental assessment, is available at the Miles City District Office, west of Miles City, Montana.

SUPPLEMENTARY INFORMATION:

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state or the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying lands under the laws of the State of Montana. Bids must be made by the principal or authorized agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value $23,800.00. All bids must be for all of the land identified in this notice.

Method of Bidding: The land will be sold by sealed bid. Each bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Bureau of Land Management for not less than one-fifty of the bid amount.

The sealed bid envelope must be marked in the lower left hand corner as follows: Public Land Sale M-57645, August 24, 183.

The sealed bid must be received at the following address prior to August 24, 1983. Bureau of Land Management, Montana State Office, P.O. Box 30157, Billings, Montana 59107.

If two or more envelopes containing valid bids of the same amount are received, the highest bid shall be determined by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying bid shall then be publicly declared.

Modified Bidding: For a period of 30 days following the date of sale, Mike Pierson of Brusett, Montana, the designated bidder, will be offered the right to meet the highest qualifying bid. The designated bidder must submit a bid of at least the fair market value prior to the sale date in order to be considered under the modified bidding provisions. If he meets the highest bid, the land will be sold to him, and the other bid will be returned. His refusal to meet the highest bid or to submit any bid at all prior to the sale date shall constitute a waiver of such bidding provisions.

Final Details: Once a high bid is accepted, the successful bidder shall submit the remainder of the full bid price within 30 days. Failure to submit the required amount within the allotted time will result in forfeiture of the deposit, and the lands will be offered to the next qualifying bidder. If the public lands are not sold on the sale date, they may remain available for sale on a continuing basis until sold.

Dated: June 3, 1983.

Robert A. Teegarden,

Acting District Manager.

[FR Doc. 83-15400 Filed 6-8-83; 8:45 am]

BILLING CODE 4310-84-M

[M-56542]

Montana; Notice of Realty Action—Modified Competitive sale of Public Land in Garfield County, Montana

AGENCY: Bureau of Land Management, Miles City District Office, Interior.

ACTION: Notice of Realty Action M-56542, Modified Competitive Sale of Public Land in Garfield County.

SUMMARY: The following described lands have been examined and identified as suitable for disposal by sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 (1976), at no less than the fair market value ($6,000.00):

Principal Montana Meridian

T. 19 N., R. 35 E.,
Sec. 3: E½SE¼
80.00 acres.

The land will be offered for sale by sealed bid utilizing modified competitive bidding procedures on August 24, 1983.

The subject land is located approximately 20 miles west of Jordan, Montana. The lands are isolated from other public lands, difficult and

uneconomical to manage and are not suitable for management by another federal agency. The subject lands have been thoroughly examined and there are no public values which would be lost due to disposal. This sale is consistent with the Bureau's planning efforts, and local county government officials have been contacted. This 80 acres is adjacent to a county road and has physical and legal access. The terrain is flat, and vegetation is sagebrush/grassland mix without any trees or brush present. There is no water on these lands. Mr. Clark Murnion has an authorized permit for a fence on these lands. The transfer of this tract into private ownership will benefit the public interest and provide for better land management.

Terms and Conditions

The terms and conditions applicable to this sale are:

1. All minerals will be reserved to the United States, together with the right to explore, prospect for, mine and remove same under applicable law and regulations;
2. A right-of-way for ditches or canals will be reserved to the United States in accordance with 43 U.S.C. 945;
3. The sale of these lands will be subject to all valid existing rights and reservations of record;
4. If Clark Murnion is not the successful bidder, the successful bidder must compensate Mr. Murnion for the fence he has an authorized permit for, as per 43 CFR 4120.6–6(c).

DATE: For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Bureau of Land Managment, at the address shown below. Any adverse comments will be evaluated by the BLM Montana State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information relating to the sale, including planning documents, environmental assessment and land report, is available for review at the Miles City District Office, west of Miles City, Miles City, Montana.

SUPPLEMENTARY INFORMATION:

Bidder Qualifications: The bidder must be a U.S. citizen or, in the case of a corporation, subject to the laws of any state or the U.S. A state, state instrumentality or political subdivision submitting a bid must be authorized to hold property. Any other entity submitting a bid must be legally capable of holding and conveying land or interests therein under the laws of the State of Montana. Bids must be made by the principal or his agent.

Bid Standards: No bid will be accepted for less than the appraised fair market value of $6,000.00 and bids must include all of the land identified in this notice.

Method of Bidding: The land will be sold by sealed bid. Each bid must be accompanied by a certified check, postal money order, bank draft or cashier's check, made payable to the Bureau of Land Management for not less than one-fifth of the amount bid.

The sealed bid envelope must be marked in the lower left hand corner as follows:

Public Sale M–56542
August 24, 1983

The sealed bid must be received at the following address prior to August 24, 1983. Bureau of Land Management, Montana State Office, P.O. Box 30157, Billings, Montana 59107.

If two or more envelopes containing valid bids of the same amount are received, the determination of which is to be considered the highest bid shall be by drawing. The drawing, if required, shall be held immediately following the opening of the sealed bids. The highest qualifying sealed bid shall then be publicly declared.

Modified Bidding: For a period of 30 days following the date of the sale, Clark Murnion of Jordan, Montana, the designated bidder, will be offered the right to meet the highest qualifying bid. The designated bidder must submit a bid of at least the fair market value prior to the sale date in order to be considered under the modified bidding provisions. If he meets the highest bid the land will be sold to him, and the other bid will be returned. His refusal to meet the highest bid or to submit any bid at all prior to the sale date shall constitute a waiver of such bidding provisions.

Final Details: Once a bid is accepted, the successful bidder shall submit the remainder of the full bid price within 30 days. Failure to submit the required amount within the 30-day time period will result in forfeiture of the deposit, and the lands will be offered to the next qualifying bidder. If the public lands are not sold on the sale date, they may remain available for sale on a continuing basis until sold.

Dated: June 3, 1983.

Robert A. Teegarden,

Acting District Manager.

[FR Doc. 83-15399 Filed 6-8-83; 8:45 am]

BILLING CODE 4310-84-M

[Exchange CA 13381]

Realty Action; Public Lands in Humboldt County, Calif.; Correction

In FR Doc. 82–23314, pages 37709 and 37710 of the Thursday, August 26, 1982 issue, the following tract of public land was indentified for disposal by exchange case Serial No. CA 12776:

T. 2 S., R. 1 W., Humboldt Meridian.
Sec. 11, SW¼SE¼;
Sec. 13, N½NW¼, SE¼NW¼;
Sec. 14, N½NE¼, NE¼NW¼.
Containing 280.0 acres, more or less.

This parcel will not be a part of Exchange CA 12776. It has been determined that that parcel remains suitable for disposal and will become a part of Exchange Serial No. CA 13881 under the provision fo Pub. L. 91–476, an Act to provide for the establishment of the King Range National Conservation Area (84 Stat. 1067) and Section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756).

The Pacific Lumber Company, Scotia, California 95565 has filed notice to acquire the above described land in exchange for the following described privately owned lands.

Humboldt Meridian

Lots 1, 2, 3, 4, 8 and 9 in Block 115; and Lot 11 in Block 151 of Tract No. 42, Shelter Cover Subdivision as per Map recorded in Book 14, Pages 73 to 138 inclusive of Maps, in the office of the County Recorder of said County, as Amended by Amending Map recorded in Book 15, Pages 64 to 116 inclusive of Maps, in the office of the County Recorder of said County.

Excepting Therefrom all the water and water rights in, under, or flowing over said property or appurtenant thereto and 50% of all oil, gas and other mineral and hydrocarbon substances below a plan of 500 feet beneath the surface thereof, but without the right of surface entry, all as reserved by The Bank of California, National Association, a national banking association, in Deed recorded June 24, 1980, under Recorder's Serial No. 12185, in Book 1615, Page 19, of Official Records, in the office of the County Recorder of said County.

Containing 2 acres, more or less.

A mineral investigation has been made on the public land and no minerals were found. There will be reserved to the United States in the applied for lands, a right-of-way thereon for ditches and canals constructed by the authority of the United States (43 U.S.C. 945).

The publication of this notice in the **Federal Register** shall segregate the applied for public land from all other forms of appropriation under the public land laws, including the mining laws, for a period of two years. This exchange is expected to be consumated before the end of that period.

Detailed information concerning the exchange, including the environmental analysis and the record of non-federal participation, is available for review at the Eureka Resource Area Office, BLM, 1585 J Street, P.O. Box II, Arcata, California 95521.

Dated: June 2, 1983.

Edwin G. Katlas,

Associate District Manager.

[FR Doc. 83-15471 Filed 6-8-83; 8:45 am]

BILLING CODE 4830-01-M

Utah; Grazing Management Program for Tooele Planning Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 and a 1975 Federal Court ruling, the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Tooele grazing management program in Tooele and small portions of Juab, Box Elder, Utah, and Salt Lake Counties.

The Draft EIS examines four alternative management programs: (1) Proposed Action—No Action, (2) Emphasize Wildlife Habitat, (3) Emphasize Livestock Forage, and (4) Preferred Alternative—Balanced Use. The objective of the alternatives is to provide land use management on the basis of multiple use long-term sustained yield of the natural resources on 1.5 million acres of public land.

The alternatives examine proposed levels of grazing use ranging from 87,327 to 119,835 animal unit months (AUMs) for livestock and from 31,683 to 36,491 AUMs for big game. Rangeland improvements would accompany the proposed levels of forage use in alternatives 2, 3 and 4.

Copies of the Draft EIS will be available on or after June 3, 1983 from the Salt Lake District BLM Office at 2370 South 2300 West, Salt Lake City, Utah 84119. Public reading copies of the Draft EIS will be available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, Interior Building, 18th and C Street N.W., Washington, D.C.

Utah State Office, Bureau of Land Management, University Club Building, 136 East South Temple, Salt Lake City, Utah.

In order to be considered in the Final EIS, comments on the Draft EIS should be submitted by August 2, 1983 to the Salt Lake District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119. Oral and/or written comments will be accepted at a public hearing to be held July 14, 1983 at 7:00 p.m. at the Tooele County Courthouse. Persons who wish to comment at the public hearing should contact the Salt Lake District Manager.

Dated: May 26, 1983.

Roland G. Robison,

Utah State Director.

[FR Doc. 83-15453 Filed 6-8-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

Santa Margarita Project, Calif.; Intent To Prepare a Supplemental Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior plans to prepare a Supplemental Environmental Statement (SES) on the proposed Santa Margarita Project near Fallbrook, California. A 3-year study will be conducted to supplement an existing Final Environmental Impact Statement (FES 76-32) and a Planning Report completed in 1971.

The purpose of the proposed project is to supply (11,540 acre-feet per year) supplemental municipal and industrial water to the Fallbrook Public Utility District and the United States Marine Corps Base at Camp Pendleton, supplemental irrigation water to the Fallbrook Public Utility District, and provide flood control to the Marine Base. In addition, the project would provide recreation, fish and wildlife enhancement, and regulation of imported water. The project would consist of two dams (Fallbrook and De Luz) on the Santa Margarita River and conveyance lines to deliver the stored water. Fallbrook Dam would be a concrete dam 185 feet high and would form a 36,150 acre-foot reservoir. De Luz Dam would be an earth or concrete dam 204 feet high and would form a 100,000 acre-foot reservoir (plus 40,000 acre-feet of flood surcharge).

Alternatives considered in previous studies include: (1) two dams consisting of a 36,500 acre-foot Fallbrook Reservoir and a 175,000 acre-foot De Luz Reservoir; (2) one dam consisting of a 175,000 acre-foot De Luz Reservoir; and (3) no action. These alternatives will also be reevaluated and discussed in the SES.

A public involvement program is being conducted to inform the interested public and to obtain their input. The first public meeting served as a scoping session to identify any new environmental issues that should be studied or addressed in the SES. The meeting was held on February 25, 1982, at Potter Junior High School in Fallbrook, California, at 7:30 p.m.

For additional information, please contact: Gary L. Bryant, LC-760, Lower Colorado Region, Bureau of Reclamation, P.O. Box 427, Boulder City, Nevada 89005, Telephone: (702) 293-8522.

Dated: June 3, 1983.

R. N. Broadbent,

Commissioner.

[FR Doc. 83-15381 Filed 6-8-83; 8:45 am]

BILLING CODE 4310-09-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Decision Notice; Finance Applications

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following

decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission, Review Board Members Parker, Joyce and Fortier.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 4 at (202) 275-7669.

Volume OP4-FC-343

MC-FC-81436, filed May 12, 1983. By decision of June 1, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board approved the transfer to ALPHA TOURS, INC., of Camden, NJ, of Certificate No. MC-136596 (Sub-No. 1), issued December 11, 1973, (Sub-No. 4), issued November 7, 1980, and (Sub-No. 5), issued July 14, 1982, to APACHE TOURS, INC., of Willingboro, NJ, authorizing the transportation of *passengers and their baggoge*, (A) in special and charter operations, (1) beginning and ending in the Townships of Bristol, Middletown, Falls, and Newton (Bucks County), PA, and extending to points in Delaware, Maryland, New Jersey, New York, Virginia, and DC, (2) beginning and ending at Willingboro, NJ and extending to points in AR, CT, DE, FL, GA, IL, IN, KS, ME, MD, MA, MI, MN, MO, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, and DC, and (3) beginning and ending in the Townships of Bristol, Middletown, Falls, and Newton (Bucks County), PA, and extending to points in AR, CT, FL, GA, IL, IN, KS, ME, MA, MI, MN, NH, MO, NC, OH, PA, RI, SC, TN, VT, WV, and WI, and (B) in charter operations, beginning and ending at points in Bucks and Philadelphia Counties, PA, and extending to those points in the United States in and east of MN, KS, MO, AR, and LA. A temporary authority application has been filed. Representative: Diane Fitzpatrick, 1494 Federal St., Camden, NJ 08105.

[FR Doc. 83-15414 filed 6-8-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules Under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note. All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquires to Team 2, (202)275-7030

Volume No. OP2-253

Decided: June 1, 1983.

By the Commission, Review Board members Joyce, Fortier, and Krock.

MC 168162, filed May 19, 1983. Applicant: ROGER W. HILBERT, II d.b.a. T SYSTEMS, 8607 Monroe Ave., Cincinnati., OH 45242. Representative: Robert J. Gallagher, 1435 G St., NW, Ste. 848, Washington, D.C. 20005, (202) 628-1642.. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 168183, filed May 20, 1983. Applicant: TURNER BUS LINES DIVISION OF JACK TURNER MOTORS LTD., 1220 Commerce St., Thunder Bay, Ontario, Canada P7C 4V5. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956, (414) 722-2848. Transporting *passengers*, in charter and special operations, beginning and ending at ports of entry on the international boundary line between the U.S. and Canada at points

in MN, and extending to points in the U.S. (except AK and HI), in foreign commerce.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

For the following, please direct status calls to Team 4 at 202–275–7669.

Volume No. OP4–340.

Decided: June 2, 1983.

By the Commission, Review Board Members Williams, Dowell, and Carleton.

MC 61747 (Sub-3), filed May 23, 1983. Applicant: RONALD H. SABELHAUS, d.b.a. TRI-COUNTY DELIVERY SERVICE, 2607 Kathleen Ct., Cincinnati, OH 45239. Representative: Ronald J. Denicola, 901 5th & Race Tower, 120 West 5th St., Cincinnati, OH 45202, (513) 621–9660. Transporting *shipments weighing 100 pounds or less* if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 168097, filed May 16, 1983. Applicant: SELECT TRAVEL, INC., 24962 Jim Bridger Rd., Calabasas, CA 91302. Representative: Steven B. Bauch (same address as applicant) (213) 991–5880. Transporting *passengers*, in charter and special operations, beginning and ending at points in CA and extending to points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 168216, filed May 23, 1983. Applicant: INTERSTATE TRAFFIC EXPEDITING SERVICE CORP., 603 Floyd St., Engelwood Cliffs, NJ 07632. Representative: Frank M. Cushman, 36 S. Main St., Sharon, MA 02067, (617) 784–6041. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 168236, filed May 23, 1983. Applicant: GROUP CHARTER, INC., 127 Crandell Court, Schaumburg, IL 60193. Representative: Irwin Rozner, 134 N. LaSalle St., Chicago, IL 60602, (312) 782–6937. Transporting *passengers*, in charter operations, beginning and ending at points in Cook, DuPage, Lake and McHenry Counties, IL, and extending to points in WI, MI, IN, and DC.

Note.—Applicant seeks to provide privately-funded charter transportation operations.

MC 168287, filed May 25, 1983. Applicant: NEW BETHANY BAPTIST CHURCH, INC., 1300 10th St., N.W., Washington, DC 20001. Representative: John J. Koger (same address as applicant) (202) 745–9109. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Volume No. OP4–342

Decided: June 3, 1983.

By the Commission Review Board Members Krock, Dowell, and Carleton.

MC 151306 (Sub-1), filed May 23, 1983. Applicant: THE TRAVEL TRUST, INC., d.b.a. T.T.T., 701 Main St., Sharpsburg, PA 15215. Representative: Joseph Matas (same address as applicant) (412) 784–8385. Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to perform privately-funded charter and special transportation.

MC 165037, filed May 23, 1983. Applicant: RICHARD TOWNSEND & GAIL CISSELL d.b.a. PALACE TRANSFER & STORAGE, P.O. Box 787, Clovis, NM 88101. Representative: Richard Townsend (same address as applicant) (505) 762–4709. Transporting *used household goods*, for the account of the United States Government incident to the performance of a pack-and-crate service on behalf of the Department of Defense, between p[illegible]ts in Cury, Debaca, Guadalupe Quay and Roosevelt Counties, NM, and Bailey and Parmer Counties, TX.

MC 168186, filed May 20, 1983. Applicant: D.W. HUTCHENS CO., d.b.a. SPECIALIZED PARCEL DELIVERY SERVICE, P.O. Box 163, Scranton, PA 18501. Representative: Raymond Talipski, 121 S. Main St., Taylor, PA 18517, (717) 344–8030. Transporting *shipments weighing 100 pounds or less*, if transported in a motor vehicle in which no one package exceeds 100 pounds, between points in the U.S. (except AK and HI).

MC 168196, filed May 20, 1983. Applicant: WAYNE MARTIN, Rt. #1, Cecil, AR 72930. Representative: Wayne Martin (same address as applicant) (501) 674–2724. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners*, by the owner of the motor vehicle, in such vehicle, between points in the U.S. (except AK and HI).

MC 168237, filed May 23, 1983. Applicant: MARK E. FLANNERY, 922 12th St., Monroe, WI 53566. Representative: Mark E. Flannery (same address as applicant) (608) 846–3573. Transporting *food and other edible products and byproducts intended for human consumption* (except alcoholic beverages and drugs), *agricultural limestone and fertilizers, and other soil conditioners* by the owner of the motor vehicle in such vehicle, between points in the U.S. (except AK and HI).

[FR Doc. 83–15415 Filed 6–8–83; 8:45 am]

BILLING CODE 7035–01–M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted

problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transportation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizding documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly.

Please direct status inquiries to Team Two at (202) 275–7293.

Volume No. OP2–252

Decided: June 1, 1983.

By the Commission, Review Board Members Joyce, Fortier, and Krock.

MC 96612 (Sub-15), filed April 26, 1983. Applicant: SEA-LAND FREIGHT SERVICE, INC., 100 West Harrison St., Seattle, WA 98106. Representative: B. Carlton Bailey, Jr., P.O. Box 800, Iselin, NJ 08830, 201–632–2229. Transporting *general commodities* (except classes A and B explosives and household goods), (1) between points in WA, on the one hand, and, on the other, points in AK, (2) between points in WA, and (3) between points in AK, under continuing contract(s) with (a) Budget Building Supply & Lumber, Inc., Knik Building Supply, Sohio Alaska Petroleum Company, and Union Oil Company, all of Anchorage, AK, (b) Dresser Industries, Inc., and IMCO Services, both of Houston, TX, (c) Alaska Distributors Co., of Seattle, WA, (d) Safeway Stores, Inc., of Bellevue, WA, (e) Toyota Motor Sales, U.S.A., Inc., of California, of Torrance, CA, and (f) Chevron U.S.A., Inc., of San Francisco, CA.

MC 106902 (Sub-7), filed May 3, 1983. Applicant: LYNN MOVING & STORAGE, INC., 497 Dillehay St., Danville, KY 40422. Representative: Mark C. Ellison, 300 Interstate N. Pkwy., Suite 329, Atlanta, GA 30339, 404–955–4020. Transporting *household goods and new furniture and fixtures*, between points in the U.S. (except HI, ID, ME, MT, NH, OR, VT, and WA).

MC 107403 (Sub-1355), filed May 13, 1983. Applicant: MATLACK, INC., 10 W. Baltimore Ave., Lansdowne, PA. 19050. Representative: A. H. Knouft (same address as applicant), (215) 259–9800. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with manufacturers, distributors, and receivers of chemicals and related products, coal tar and petroleum products, food and related products, paper and paper products, building materials.

MC 128772 (Sub-23), filed May 16, 1983. Applicant: STAR BULK TRANSPORT, INC., 821 North Front St., New Ulm, MN 56073. Representative: Val M. Higgins, 1600 TCF Tower, 121 South 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting (1) *food and related products*, (2) *textile mill products*, and (3) *chemicals and related products*, between points in the U.S., under continuing contract(s) in Part (1) with Oscar C. Wendt & Associates, Inc., of Osseo, MN, in Part (2) with J & S Textile Associates, Inc., of Plymouth, MN, and in Part (3) with (a) Loes Enterprises, Inc., of St. Paul, MN, and (b) Zep Manufacturing Company, of Atlanta, GA.

MC 129863 (Sub-12), filed May 16, 1983. Applicant: FREDERICK L. BULTMAN, INC., 11144 West Silver Spring Dr., Milwaukee, WI 53223. Representative: William C. Dineen, 710 North Plankinton Ave., Milwaukee, WI 53203, 414–273–7410. Transporting (1) *food and related products*, between points in the U.S. (except AK and HI), under continuing contract(s) with persons who are manufacturers, distributors, producers, dealers or consumers of food and related products; (2) *paper and paper products*, between points in the U.S. (except AK and HI), under continuing contract(s) with persons who are manufacturers, distributors, producers, dealers or consumers of paper and paper products; and (3) *floor covering*, between points in the U.S. (except AK and HI), under continuing contract(s) with persons who are manufacturers, distributors, producers, dealers or consumers of floor covering.

MC 133403 (Sub-7), filed April 21, 1983. Applicant: HUDSON TRANSIT CORPORATION, P.O. Box 386, Montgomery, NY 12549. Representative: Michael J. Marzano, 99 Kinderkamack Rd., Westwood, NJ 07675, 201–666–5111. Transporting *passengers*, over *regular routes*, between Binghamton and Olean, NY, in interstate or foreign commerce, and between Binghamton and the NY–PA state line and Olean, NY, and the NY–PA state line in intrastate commerce, over NY Hwy 17, serving all intermediate points.

Note.—(a) Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

(b) Applicant may tack this authority with its existing authority.

MC 135003 (Sub-7), filed May 17, 1983. Applicant: C.R.X. CORPORATION, R.R. 4, Box 3A, Winona, MN 55987. Representative: Gary Huntbatch (same address as applicant) (507) 454–6980. Transporting *general commodities* (except classes A and B explosives, commodities in bulk, and household goods), between points in MN, on the

one hand, and, on the other, points in AR, CT, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MO, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SD, TX, VA, VT, WI, WV, and DC.

MC 148932 (Sub-3), filed May 18, 1983. Applicant: URBAN TRUCKING COMPANY, INC., Ladge Dr., P.O. Box 113, Avon, MA 02322. Representative: Wilbur Barry (same address as applicant), 617–963–9003. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with T. D. H. Incorporated, of Newport, RI, and (b) Transportation Agencies, Inc., of North Dartmouth, MA.

MC 150922 (Sub-2), filed May 20, 1983. Applicant: K & P TRUCKING COMPANY, Rt. No. 2, Willard, OH 44890. Representative: David A. Turano, 100 E. Broad St., Columbus, OH 43215, 614–228–1541. Transporting *food and related products,* between points in the U.S. (except AK and HI).

MC 157182 (Sub-1), filed May 20, 1983. Applicant: PARKWAY DISTRIBUTORS, INC., P.O. Box 2301, San Antonio, TX 78298. Representative: Kenneth R. Hoffman, 1600 W. 38th St.—Suite 410, Austin, TX 78731, 512–451–7409. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AL, AZ, AR, CA, CO, FL, GA, ID, IL, IN, IA, KS, KY, LA, MN, MS, MO, NE, NV, NM, OH, OK, OR, TN, TX, WA, UT, WI, WY, NC, SC, and MI.

MC 168203, filed May 23, 1983. Applicant: JULIAN H. JONES, d.b.a. JONES TRUCKING COMPANY P.O. Box 155, Orchard Hill, GA 30266. Representative: J. L. Fant, P.O. Box 577, Jonesboro, GA 30237, (404) 477–1525. Transporting *lumber and wood products, building materials, and fertilizer,* between points in AL, FL, GA, NC, SC, and TN.

For the following, please direct status calls to Team 3 at 202–275–5223.

Volume No. OP3–250

Decided: June 1, 1983.

By the Commission, Review Board Members Krock, Joyce, and Williams.

MC 123265 (Sub-15), filed May 12, 1983. Applicant: SANTRY TRUCKING COMPANY, 10505 NE Second Ave., Portland, OR 97211. Representative: JOHN G. McLAUGHLIN, 1600 One Main Pl. 101 SW Main St., Portland, OR 97204, (503) 224–5525. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. under continuing contract(s) with Fred Meyer, Inc. of Portland, OR.

MC 139014 (Sub-5), filed May 12, 1983. Applicant: COHEY TRUCKING COMPANY, INC. 2729 Annapolis Rd., Baltimore, MD 21230. Representative: John R. Sims, Jr., 915 Pennsylvania Bldg., 425 13th St., N.W., Washington, D.C. 20004, (202) 737–1030. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between those points in the U.S. in and east of WI, IL, KY, TN, MS and LA.

MC 142305 (Sub-8), filed May 18, 1983. Applicant: WISCONSIN EXPRESS LINES, INC., Rt. 2, Green Bay, WI 54301. Representative: Daniel R. Dineen, 710 No. Plankinton Ave., Milwaukee, WI 53203, (414) 273–7410. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 145384 (Sub-62), filed May 20, 1983. Applicant: ROSE–WAY, INC., 1914 E. Euclid, Des Monies, IA 50313. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting *General commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 148764 (Sub-8), filed May 20, 1983. Applicant: BUFFALO FUEL CORP., 2445 Allen Ave., Niagara Falls, NY 14303. Representative: August A. Iacovitti (same address as applicant), (716) 285–9101. Transporting (1) *farm products,* (2) *food and related products,* (3) *lumber and wood products,* and (4) *chemicals and related products,* between points in the U.S. in and east of ND, SD, NE, KS, OK and TX.

MC 151195 (Sub-3), filed May 13, 1983. Applicant: DUWAINE HELLICKSON d.b.a. HELLICKSON LIVESTOCK AND GRAIN, P.O. Box 146, Ostrander, MN 55961. Representative: Val M. Higgins, 1600 TCF Tower, 121 So. 8th St., Minneapolis, MN 55402, (612) 333–1341. Transporting (1) *metal products, (2) machinery and (3) such commodities* as are dealt in by manufacturers and distributors of grain drying and handling equipment, between points in IA, IL, IN, KY, MN, MO, ND, OH, SD and WI.

MC 152244 (Sub-6), filed May 20, 1983. Applicant: TOTE, INCORPORATED, P.O. Box 538, Salem, SD 57058. Representative: Clifford Tjaden (same address as applicant), (605) 425–2507. Transporting *clay, concrete, glass or stone products,* and *chemicals and related products,* between points in AL, IL, IA, MI, MS, MT, ND, OH, SD, and WY, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 163465 (Sub-1), filed May 13, 1983. Applicant: MARION EXPRESS, INC., 2079 Canaan Township Rd., Edison, OH 43320. Representative: Edward G. Bazelon, 135 So. LaSalle St., Chicago, IL 60603, (312) 236–9375. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Arvey Paper & Supplies Co., a division of Arvey Corporation of Chicago, IL.

MC 166545, filed May 20, 1983. Applicant: BULK CARRIERS, LTD., 1308 Pleasant St., Osage, IA 50461. Representative: James M. Hodge, 3730 Ingersoll Ave., Des Moines, IA 50312, (515) 274–4985. Transporting *food and related products,* between points in Tama County, IA, on the one hand, and, on the other, points in U.S. (except AK and HI).

MC 168144, filed May 18, 1983. Applicant: TEXAS STATE TRUCKING, INC., 9001 Clinton Dr., Houston, TX 77029. Representative: C. W. Ferebee, 3910 FM 1960 W, Suite 106, Houston, TX 77068 (713) 537–8156. Transporting *metal products and commodities which because of their size and weight require the use of special equipment,* between points in the U.S. (except AK and HI).

MC 168155 (Sub-1), filed May 18, 1983. Applicant: EXCEL INTERMODAL, INCORPORATED, Oak Brook Office Pavillion, Suite 32–34, Oak Brook, IL 60521. Representative: Paul T. Saharack, 7 So. Dearborn St., Suite 1412, Chicago, IL 60603 (312) 346–6347. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

For the following, please direct status calls to Team 4 at 202–275–7669.

Volume No. OP4–339

Decided: June 2, 1983.

By the Commission, Review Board Members Williams, Dowell, and Carleton.

MC 105457 (Sub-109), filed May 23, 1983. Applicant: THURSTON MOTOR LINES, INC., 600 Johnston Rd., Charlotte, NC 28206. Representative: John V. Luckadoo, (same address as applicant), (704) 373–1933. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Montgomery Ward & Co., of Chicago, IL.

MC 112617 (Sub-480), filed May 24, 1983. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Larry W. Thompson, P.O. Box 21395, Louisville, KY 40221 (501) 964–3351. Transporting *commodities in bulk*, between points in the U.S. (except HI), under continuing contract(s) with that class of persons, as defined in Section 10923 of the Act, that are engaged in the business of manufacturing, distributing or dealing in bulk commodities.

MC 128207 (Sub-4), filed May 23, 1983. Applicant: JOHN W. HOOGLAND AND JOANNE C. HOOGLAND, d.b.a. CITY EXPRESS, Box 305, Seward, AK 99664. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, Va 22101 (703) 893–3050. Transporting *general commodities* (except classes A and B explosives), between points in AK.

MC 129387 (Sub-24), filed May 23, 1983. Applicant: PAYNE TRANSPORTATION, INC., P.O. Box 844, Huron, SD 57350. Representative: Timothy R. Stivers, P.O. Box 1576, Boise, ID 83701, (208) 343–3071. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Kraft, Inc., of Glenview, IL.

MC 161376 (Sub-1), filed May 19, 1983. Applicant: TRUCK TRANSFER SERVICE, INC., 9115 "C" Spyglass Place., Charlotte, NC 28214. Representative: Frank A. Graham, Jr., P.O. Box 11864, Columbia, SC 29211, (803) 799–9122. Transporting *motor vehicles*, between points in the U.S. (except AK and HI).

MC 163126 (Sub-8), filed May 16, 1983. Applicant: ARROW EXPRESS, INC., P.O. Box 945, Lagrange, IL 60525. Representative: James L. Beattey, 300 E. Fall Creek Pkwy., Suite 403, Indianapolis, IN 46205, (317) 923–8118. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with the General Electric Company, of Fort Wayne, IN.

MC 163706 (Sub-1), filed May 20, 1983. Applicant: BIG WHEEL TRANSPORT, INC., 711 S. Jackson St., Hawkinsville, GA 31036. Representative: F. Lee Champion, III, P.O. Box 2525, Columbus, GA 31902, (404) 324–4477. Transporting (1) *meats and meat products*, between points in AL, AR, CO, DE, FL, GA, IA, ID, IL, KS, KY, LA, MD, MI, MN, MO, MS, NE, NC, ND, NJ, NY, OH, OK, PA, SC, SD, TN, TX, VA, WI, WV, and DC, and (2) *steel wire* and *iron*, between points in Talfair County, GA, on the one hand, and, on the other, points in AL, AR, IL, ID, IA, KS, KY, LA, MN, MI, MO, MS, NE, NC, NY, OH, OK, PA, SC, TN, TX, VA and WI.

MC 165856, filed May 23, 1983. Applicant: TOMMY-JOHN TRUCKIN CO., INC., P.O. Box 56, Havre de Grace, MD 21078. Representative: Dixie C. Newhouse, 1329 Pennsylvania Ave., P.O. Box 1417, Hagerstown, MD 21740, (301) 797–6060. Transporting (1) *paper and paper products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Safegauard Business Systems, Inc., of Hatfield, PA, and (2) *plastic bottles*, between points in the U.S. (except AK and HI), under continuing contract(s) with Sewell Plastics, Inc., of Havre de Grace, MD.

MC 166196 (Sub-1), filed May 23, 1983. Applicant: AGATE TRANSPORT, INC., 38611 Monroe St., Agate, CO 80101. Representative: Lawrence Marquette, P.O. Box 629, Carmel Valley, CA 93924, (408) 625–2031. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

MC 166327, filed May 18, 1983. Applicant: KANSAS SATELLITE SYSTEMS, INC., Box 52, Eskridge, KS 66423. Representative: Clyde N. Christey, 101 Tayler, Suite 110–L, Topeka, KS 66612, (913) 233–9629. Transporting *television satellite antenna systems and equipment*, between points in the U.S. (except AK and HI), under continuing contract(s) with Mark IV R & D, Hawkeye Satellite Division of Mark Twain Marine Industries, of Stanley, KS.

MC 168206, filed May 23, 1983. Applicant: WHITEHORSE CO. SALES AND SERVICE, P.O. Box 659, Wilsonville, OR 97070. Representative: David Kurtz (same address as applicant), (301) 357–8031. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S., under continuing contract(s) with R & R Truck Brokers, Inc., of Medford, OR.

MC 168286, filed May 24, 1983. Applicant: MEADS BUS SERVICE, INC., 7505 Blair Road, NW., Washington, DC 20012. Representative: James A. Meads (same address as applicant), (202) 585–7380. Transporting *passengers*, in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately funded charter and special transportation.

MC 168297, filed May 24, 1983. Applicant: NICKLE-CITY REFRIGERATED TRANSPERTERS, INC., 2375 South Park Ave., Buffalo, NY 14220. Representative: Charles H. White, Jr., 1000 Potomac St., NW., Suite 501, Washington, DC 20007, (202) 337–0104. Transporting *food and related products*, between points in the U.S. (except AK and HI).

Volume No. OP4–341

Decided: June 3, 1983.

By the Commission, Review Board Members Krock, Dowell, and Carleton.

MC 146807 (Sub-43), filed May 23, 1983. Applicant: S n W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18701. Representative: Peter Wolff, 722 Pittston Ave. Scranton, PA 18505, (717) 342–7595. Transporting *plastic and rubber products*, between points in the U.S. (except AK and HI), under continuing contract(s) with Exxon Chemical Americas of Pottsville, PA.

MC 150556 (Sub-1), filed May 23, 1983. Applicant: KLOTH TRUCK & EQUIPMENT CO., P.O. Box 234, Sparta, IL 62286. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. Transporting *petroleum products*, between points in Lyon County, KY, on the one hand, and, on the other, those points in IL on and south of Interstate Highway 70.

MC 167626 (Sub-1), filed May 23, 1983. Applicant: INTEGRATED DISTRIBUTION, INCORPORATED, One Century Dr., Parsippany, NJ 07054. Representative: Raymond L. Pucci, (same address as applicant), (201) 540–7963. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with United Forwarding, Inc. of Omaha, NE.

MC 167626 (Sub-2), filed May 23, 1983. Applicant: INTEGRATED DISTRIBUTION, INCORPORATED, One Century Dr., Parsippany, NJ 07054. Representative: Raymond L. Pucci, (same address as applicant), (201) 540–7963. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Triangle PWC, Inc. of New Brunswick, NJ, and it subsidiaries.

MC 168187, filed May 20, 1983. Applicant: JOHN PENNINGTON, d.b.a. PENNINGTON TRUCKING, P.O. Box 505, Chandler, TX 75758. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062, (214) 255–6279. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in

bulk), between points in AL, AZ, AR, CA, CO, IL, IN, KS, LA, MS, MO, NV, NM, OH, OK, OR, TN, TX, UT, WA, and WY, on the one hand, and on the other, points in the U.S. (except AK and HI).

[FR Doc. 83-15416 Filed 6-8-83; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 387; Sub-No. 945]

Rail Carriers; Burlington Northern Railroad Co.; Exemption for Contract Tariff, ICC-BN-C-0001 (FWD Series) (Wheat Flour)

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Provisional Exemption.

SUMMARY: A provisional exemption is granted under 49 U.S.C. 10505 from the notice requirements of 49 U.S.C. 10713(e), and the above-noted contract tariff may become effective on one day's notice.[1] This exemption may be revoked if protests are filed.

DATE: Protests are due within 15 days of publication in the **Federal Register.**

ADDRESS: An original and 6 copies should be mailed to: Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Douglas Galloway, (202) 275-7278.

SUPPLEMENTARY INFORMATION: The 30-day notice requirement is not necessary in this instance to carry out the transportation policy of 49 U.S.C. 10101a or to protect shippers from abuse of market power; moreover, the transaction is of limited scope. Therefore, we find that the exemption request meets the requirements of 49 U.S.C. 10505(a) and is granted subject to the following conditions:

This grant neither shall be construed to mean that the Commission has approved the contract for purposes of 49 U.S.C. 10713(e) nor that the Commission is deprived of jurisdiction to institute a proceeding on its own initiative or on complaint, to review this contract and to determine its lawfulness.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10505)

Decided: June 3, 1983.

By the Commission, the Review Board, members Parker, Joyce, and Dowell.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-15417 Filed 6-8-83; 8:45 am]

BILLING CODE 7035-01-M

[1] Note: Tariff supplements advancing contract's effective date shall refer to this decision for authority.

NATIONAL TRANSPORTATION SAFETY BOARD

Accident Reports; Safety Recommendations and Responses; Availability

Reports Issued:

Aircraft Accident Report—Pan American World Airways, Inc., Clipper 759, Boeing 727-235, N4737, New Orleans International Airport, Kenner, Louisiana, July 9, 1982 (NTSB/AAR-83/02) (NTIS Order No. PB83-910402).

Marine Accident Reports—Summary Format Issue Number 5—Reports Adopted August 1982 through December 1982 (NTSB-MAB-82-4) (NTIS Order No. PB82-916921).

Railroad Accident Reports—Brief Format Issue Number 3—1981 (NTSB/RAB-83/02) (NTIS Order No. PB83-917202).

Note.—Reports may be ordered from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, for a fee covering the cost of printing, mailing, handling, and maintenance. For information on reports call 703-487-4650 and to order subscriptions to reports call 703-487-4630.

Recommendations to:

Aviation—

Federal Aviation Administration: Mar. 25: A-83-13: Review all Low Level Wind Shear Alert System installations to identify possible deficiencies in coverage similar to the one resulting from the inoperable west sensor at New Orleans International Airport and correct such deficiencies without delay. *A-83-14:* Make appropriate distribution to the aviation community of information regarding (1) the location and designation of remote sensors of the Low Level Wind Shear Alert System (LLWSAS) at equipped airports, (2) the capabilities and limitations of the LLWSAS, and (3) the availability of current LLWSAS remote sensor information if requested from tower controllers. *A-83-15:* Record output data from all installed Low Level Wind Shear Alert System sensors and retain such data for an appropriate period for use in reconstructing pertinent wind shear events and as a basis for studies to effect system improvements. *A-83-16:* Emphasize to pilots on a continuing basis the importance of making prompt reports of wind shear in accordance with prescribed reporting guidelines and assure that Air Traffic Control personnel transmit such reports to pilots promptly. *A-83-17:* Require that Automatic Terminal Information Service advisories be amended promptly to provide current wind shear information and other information pertinent to hazardous meteorological conditions in the terminal area as provided by Center Weather Service Unit meteorologists, and that all aircraft operating in the terminal area be advised by blind broadcast when a new Automatic Terminal Information Service advisory has been issued. *A-83-18:* Evaluate methods and procedures for the use of current weather information from sources such as radar, Low Level Wind Shear Alert Systems, and pilot reports as criteria for delaying approach and departure operations which would expose the flight to low altitude penetration of severe convective weather. *A-83-19:* Study the feasibility of establishing aircraft operational limitations based on the data available from the Low Level Wind Shear Alert System. *A-83-20:* Make the necessary changes to display Low Level Wind Shear Alert System wind output data as longitudinal and lateral components to the runway centerline. *A-83-21:* Use the data obtained from the Joint Airport Weather Studies (JAWS) Project and other relevant data as a basis to (1) quantify the low-level wind shear hazard in terms of effect on airplane performance, (2) evaluate the effectiveness of the Low Level Wind Shear Alert System and improvements which are needed to enhance performance as a wind shear detection and warning system, and (3) evaluate the aerodynamic penalties of precipitation on airplane performance. *A-83-22:* As the data obtained from the Joint Airport Weather Studies (JAWS) Project become available (1) develop training aids for pilots and controllers to emphasize the hazards to flight from convective weather activity, (2) develop realistic microburst wind models for incorporation into pilot flight simulator training programs, and (3) promote the development of airborne wind shear detection devices. *A-83-23:* Expedite the development, testing, and installation of advanced Doppler weather radar to detect hazardous wind shears in airport terminal areas and expedite the installation of more immediately available equipment such as add-on Doppler to provide for detection and quantification of wind shear in high risk airport terminal areas. *A-83-24:* Encourage industry to expedite the development of flight director systems such as MFD-delta-A and head-up type displays which provide enhanced pitch guidance logic which responds to inertial speed/airspeed changes and ground proximity and encourage operators to install these systems. *A-83-25:* Recommend to air carriers that they modify pilot training on simulators capable of reproducing wind shear models so as to include microburst penetration demonstrations during takeoff, approach, and other critical phases of flight. *A-83-26:* Advise air carriers to increase the emphasis in their training programs on the effective use of all available sources of weather information, such as preflight meteorological briefings, ATIS broadcasts, control-provided information, PIREPS, airborne weather radar, and visual observations, and provide added guidance to pilots regarding operational (i.e., "go/no go") decisions involving takeoff and landing operations which could expose a flight to weather conditions which could be hazardous. *Apr. 21: A-83-33:* Issue an airworthiness directive (AD) making mandatory an inspection (as soon as

practical depending on availability of spare units and the capability to replace the defective units) for incorrect sockets specified in Sundstrand Data Control Service Bulletin No. 23 (Document No. 012-0118-123), dated August 2, 1982, titled "Indicating/Recording Systems—Digital Flight Data Recorder (DFDR) Model 573A—Connector Check/Replacement," and require replacement of incorrect connectors at the earliest possible date. *May 9: A-83-34:* Issue an airworthiness directive to make compliance with Cessna Service Letter SE69-16 compulsory. *May 19: A-83-35:* Standardize and disseminate immediately as an interim measure basic guidelines and methodology for controller stress and fatigue detection and management, similar to those currently in use by some flight surgeons and facility supervisors and those developed by the Federal Aviation Administration's Office of Aviation Medicine personnel, to the air traffic control supervisors to assist them to detect and alleviate stress and fatigue among controllers. *A-83-36:* Expedite the development and implementation of the Air Traffic Controller Performance Assessment Program currently being developed by the Federal Aviation Administration's Office of Aviation Medicine to assist air traffic control facility supervisors and managers to objectively and subjectively evaluate controller performance and to detect and alleviate stress and fatigue among controllers. *A-83-37:* Expedite the development and implementation of computer programming procedures at all appropriately equipped en route and terminal radar facilities by which less-than-standard aircraft separation occurrences are automatically detected and flagged for investigation and analysis of possible controller errors or pilot deviations. *A-83-38:* Institute air traffic control directives and procedures to require, when the assigned first-line supervisor is occupied working a control position, that there is appropriate and adequate direct supervision to ensure the detection and reporting of all controller errors or deviations, the detection and monitoring of fatigue and/or stress, and the control of each controller's workload. *A-83-39:* Revise immediately air traffic control directives to reduce or eliminate, possibly by means of an immunity program, the punitive nature of controller operational error/deviation investigations in order to encourage reporting of all incidents, with the view toward instituting prevention-oriented quality control measures and training and procedural improvements. *A-83-40:* Take action to improve compliance with existing directives and guidance to air traffic controllers and staff on the use of the Federal Aviation Administration sponsored National Aeronautics and Space Administration's Aviation Safety Reporting System program to supplement existing incident reporting programs, with the view toward instituting quality control measures and improvements in the air traffic control system. *A-83-41:* Take immediate action to assign adequate staff and to improve equipment capabilities at Flight Service Stations to provide more timely and adequate service to aviation users. *A-83-42:* Revise the criteria for lifting restrictions on air traffic control services to postpone planned increases in air traffic volume and services at facilities until sufficient controllers are trained and qualified and have gained sufficient experience to allow supervisors and key staff members to resume direct first-line supervision and oversight of operations. *A-83-43:* Take immediate action at all air traffic control facilities equipped with radar data recording equipment to staff the data systems specialist positions on an interim basis with persons who are sufficiently qualified to handle the computer equipment, so that continuous recording and data retrieval capability is reestablished.

Highway—

Arkansas Highway and Transportation Department: Apr. 27: H-83-7: Eliminate or reduce the illusional effects of a straighter road and the "wash-out" effects of headlight glare on State Highway 214 at the curved approach to its intersection with State Highway 18. *H-83-8:* Further improve the traffic control features on State Highway 214 at the curved approach to its intersection with State Highway 18. *H-83-9:* Identify similar locations with sharply curved approaches to intersections in Arkansas, determine the need for further traffic control improvements, and improve these locations as necessary.

Bureau of Motor Carrier Safety: May 9: H-83-21: Upon completion of the testing of the Tractor-Trailer Driver Training Standards, the Sample Model Curriculum, and final examination criteria, amend Part 391, "Qualifications of Drivers," of the Federal Motor Carrier Safety Regulations to include criteria and standards for the training of tractor-trailer drivers.

Research and Special Programs Administration: May 10: H-83-29: Revise 49 CFR Section 178.340-6, "Supports and Anchoring," and 49 CFR Section 178.340-7, "Circumferential Reinforcements," of 49 CFR Section 178.340, "General Design and Construction Requirements * * *," to prohibit appurtenance design configurations that create air cavities adjacent to external cargo tank sheet material and to eliminate exceptions based on provisions for venting or draining. *H-83-30:* Revise 49 CFR Section 177.824, "Retesting and Inspection of Cargo Tanks," to: (1) Require that all hazardous materials cargo tanks of mild and high strength, low alloy steel be subjected to several periodic external visual inspections annually, (2) Require that the thickness of cargo tank sheet material be inspected once each year using ultrasonic or equivalent techniques, (3) Require measurement of the thickness of appurtenances once each year that form air cavities adjacent to the cargo tank sheet material. If the thickness of the appurtenance material has corroded to a predetermined percentage of its manufactured thickness, require that access to the tank sheet material within the air cavity be made and that the thickness of the tank sheet material be measured, (4) Require that cargo tanks be placed out of service when the thickness of the tank sheet material has corroded to a specific predetermined percentage (consistent with stress levels that will insure operational safety) of its manufactured thickness.

Federal Highway Administration: May 10: H-83-25: Require an immediate inspection of a significant sample (at least 25 percent) of all hazardous material cargo tanks manufactured prior to June 1979 and which were fabricated with either mild or high strength, low alloy steels, to determine if tank sheet material thicknesses have deteriorated to limits likely to compromise the structural integrity of the cargo tank. When inspecting, using ultrasonic or equivalent techniques where possible, particular emphasis should be directed to the bottom of the cargo tank at locations where the tank sheet material is not accessible to visual inspection because of appurtenance attachment configurations that either form air cavities or otherwise negate tank sheet accessibility, where ultrasonic or equivalent techniques cannot be used, the thickness of the appurtenance material should be ascertained, and, if it has corroded to a predetermined percentage of its manufactured thickness, access to the tank sheet material should be made and the thickness of the tank sheet material should be determined. *H-83-26:* Require that hazardous material cargo tanks be placed out of service when the thickness of tank sheet material has been reduced to a predetermined percentage (consistent with stress levels that will insure operational safety) of its manufactured thickness. *H-83-27:* Develop and prescribe continuing motor carrier operational inspection requirements for hazardous material cargo tank sheet material thickness consistent with the results of the ultrasonic, or equivalent, inspection sampling program recommended by the Safety Board. *H-83-28:* Issue an On-Guard bulletin to alert motor carriers operating hazardous material cargo tanks of the findings in this incident and the Safety Board's recommendation for an ultrasonic or equivalent inspection sampling program. Urge operators to conduct frequent visual tank inspections directing special attention to areas adjacent to air cavities for evidence of corrosion and making certain that drain holes are not plugged. *May 17: H-83-23:* Expand the performance testing of the New Jersey barrier on curved roadway sections to include crash testing of heavier vehicles with higher centers of gravity such as 80,000-pound tractor-semitrailers and gasoline tank trucks. *H-83-24:* Include the testing of heavier vehicles with higher centers of gravity in current high-performance barrier research and development. In particular, encourage the design and development of barriers that can safely contain or redirect small passenger vehicles and heavier vehicles with higher centers of gravity, such as 80,000-pound tractor-semitrailers and gasoline tank trucks.

Board of Commissioners, Allegheny County, Pennsylvania: May 17: H-83-22: Conduct a traffic engineering investigation of the approaches to the Fleming Park Bridge to determine the safe speed for the approaches, and post signing as appropriate before the bridge is reopened to full traffic capacity.

California Department of Transportation: May 25: H-83-10: Evaluate and revise, where necessary, equipment requirements and

emergency procedures at the Caldecott Tunnel to provide early warning of an emergency to motorists in the event of a life-threatening emergency. *H–83–11:* Develop a state-wide emergency response plan and train tunnel employees in all phases of emergency operations, including smoke and toxic fumes management and immediate emergency response notification, and periodically conduct drills to determine employees' ability to perform the above operations under stress. *H–83–12:* Provide easily identifiable exit markings for adits in the Caldecott Tunnel. *H–83–13:* Prohibit passing and lane changes in vehicular tunnels in California. *H–83–14:* In cooperation with appropriate local authorities, survey all vehicular tunnels, and upgrade, where necessary, tunnel traffic controls, communication systems, firefighting equipment, and towing capabilities. *H–83–15:* Ban the movement of hazardous materials through vehicular tunnels where the relative risks of the tunnel route are higher than alternate routes.

Secretary, U.S. Department of Transportation: May 25: H–83–16: Review the Federal Highway Administration and the Urban Mass Transportation Administration programs that encourage joint use of rights-of-way and determine if construction of rapid rail systems in highway rights-of-way presents an unnecessary risk to the public from hazardous materials truck movements on adjacent roadways; if so, modify the safety criteria appropriately.

Alameda/Contra Costa (California) Transit District: May 25: H–83–17: Closely monitor the health of drivers with known medical problems, and when their health may adversely affect their ability to safely transport passengers, remove them from duty.

American Trucking Associations, Inc.: May 25: H–83–18: Inform its members of the circumstances of the accident that occurred on April 7, 1982, in the Caldecott Tunnel near Oakland, California, and stress the use by drivers of trucks transporting hazardous materials of alternate routes which avoid tunnels.

American Public Transit Association: May 25: H–83–19: Establish guidelines to assist public transit operators to better provide safe transportation for their passengers by ensuring that their drivers are physically qualified at all times to perform their jobs.

Armour Oil Company, San Diego, California: May 25: H–83–20: Review the delivery routes traveled by its hazardous materials transporters and make changes as necessary to insure compliance with Federal Motor Carrier Safety Regulations, and give top priority to the safe driving environment.

Railroad—

Baltimore and Ohio Railroad Company: Apr. 29: R–83–35: Increase the level of periodic supervisory road checks on the commuter passenger route between Brunswick, Maryland, and Washington, D.C. *R–83–36:* Expand its educational program for operating traincrews to instruct them about the effects of alcohol on performance of duties.

Washington (D.C.) Terminal Company: Apr. 29: R–83–37: Immediately institute supervisory checks of traincrews reporting for duty.

United Transportation Union: Apr. 29: R–83–38: Actively support the development and implementation of more meaningful alcohol abuse rules and procedures to curb use of alcohol by railroad operating employees during a specific period before they report for duty and while they are on duty. *R–83–39:* Disseminate to its local unions the facts and circumstances of the incident that occurred at Union Station in Washington, D.C. on February 14, 1983, and emphasize the dangers posed by alcohol abuse and the means suggested by the United Transportation Union for preventing such incidents.

Brotherhood of Locomotive Engineers: Apr. 29: R–83–40: Actively support the development and implementation of more meaningful alcohol abuse rules and procedures to curb use of alcohol by railroad operating employees during a specific period before they report for duty or while they are on duty. *R–83–41:* Disseminate to its local unions the facts and circumstances of the incident that occurred at the Union Station in Washington, D.C. on February 14, 1983, and emphasize the dangers posed by alcohol and drug abuse and the means suggested by the Brotherhood of Locomotive Engineers for preventing such incidents.

State of Maryland: Apr. 29: R–83–42: Require that State contracts with the Baltimore and Ohio Railroad Company specify that adequate supervisory checks be performed by the railroad at those points where commuter traincrews report to duty. *R–83–43:* Increase State railroad inspections of operating practices on Maryland Department of Transportation commuter trains.

States of Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, New Hampshire, California, Illinois, Indiana, Michigan, and Wisconsin: Apr. 29: R–83–44: Require that State contracts with railroads and/or commuter railroad authorities specify that adequate supervisory checks be performed by the railroad at those points where commuter traincrews report to duty. *R–83–45:* Increase State railroad inspections of operating practices on commuter trains.

Seaboard System Railroad: May 24: R–83–46: Revise practices for developing waybills to require use of the hazardous material shipping description provided by shippers unless a change is approved by the person(s) originally selecting the shipping description. *R–83–47:* Revise practices to include emergency response guidance information on the hazard graph for tank cars containing residual quantities of hazardous materials classified as "empty." *R–83–48:* Periodically instruct and test traincrews and supervisory personnel on the procedures for using train documents to identify all cars transporting hazardous materials and the information to be provided to assist emergency response personnel. *R–83–49:* Require supervisory personnel arriving at the scene of an emergency to determine what information has been provided by traincrews to emergency response personnel, to verify the accuracy of the information provided, and to advise the on-scene coordinator of any errors or omissions in the initial information given by the traincrew. *R–83–50:* Revise the engineers' retraining program to require annual attendance at the train dynamics analyzer classes with special emphasis on correcting deficiencies observed by supervisors while evaluating the engineers' performance in service. *R–83–51:* Require engineers who fail to demonstrate proficiency in train handling during mandatory train dynamics analyzer classes to attend the engineers' training school and thereafter require that they demonstrate an ability to properly operate a train before being allowed to return to train service.

Office of Emergency Services, State of Virginia: R–83–52: Assist the Town of Colonial Heights and other jurisdictions, as necessary, in improving their emergency response programs for accidents involving hazardous materials, in better defining the responsibilities of the Emergency Services Coordinator for receiving and analyzing response related information and in developing more effective site security procedures.

Note.—Single copies of these recommendation letters are available on written request to: Public Inquiries Section, National Transportation Safety Board, Washington, D.C. 20594. Please include recommendation number in your request. Copies of recent recommendations are free of charge while supplies last. Recommendations that must be photocopied will be billed at a cost of 20 cents per page ($2 minimum charge).

H. Ray Smith, Jr.,

Federal Register Liaison Officer.

June 1, 1983.

[FR Doc. 83-15065 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-58-M

PEACE CORPS

Peace Corps Advisory Council; Meeting

AGENCY: Peace Corps.

ACTION: Peace Corps Advisory Council; Meeting.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), notice is hereby given that an open meeting of the Peace Corps Advisory Council will be held on June 27 and 28 from 9:00 a.m. to 5:00 p.m. in Room 414 of the Peace Corps, 806 Connecticut Avenue, NW., Washington, D.C.

The purposes of the meeting are to conduct ongoing discussions of Peace Corps programs and meet with Peace Corps staff.

Further information on the meeting may be obtained by calling Phyllis Draper at (202) 254–6898.

Signed this 3rd day of June 1983, in Washington, D.C.

Loret Miller Ruppe,

Director.

[FR Doc. 83-15427 Filed 6-8-83; 8:45 am]

BILLING CODE 6051-01-M

DEPARTMENT OF STATE

[Public Notice]

Agency Forms Submitted for OMB Review

AGENCY: Department of State.

ACTION: In accordance with the provisions of the Paperwork Reduction Act of 1980, the Department has submitted a proposed collection of information to the Office of Management and Budget for review.

Purpose: The proposed information collection is to be used by the Passport Office in cases where there is reason to believe criminal statutes of the United States have been violated and also in connection with determining the nationality of a person born in the United States who has applied for a United States passport.

SUMMARY: The following summarizes the information collection proposal submitted to OMB:

(1) Type of request—reinstatement.

(2) Number of forms submitted—one.

(3) Form number—DSP-16.

(4) Title of information collection–Application for Confidential Verification of Birth.

(5) Frequency—On occasion.

(6) Respondents—Registrars of vital statistics.

(7) Estimated number of respondents–1,500.

(8) Estimated number of hours needed to fill out form–125.

Section 3504(h) of Public Law 96-511 does not apply.

Additional information or comments: Copies of the proposed form and supporting documents may be obtained from Gail J. Cook, Departmental Clearance Officer (202) 632-3602. Comments and questions should be directed to (OMB) Francine Picoult (202) 395-7231.

Dated: May 20, 1983.

Thomas M. Tracy,

Assistant Secretary for Administration.

[FR Doc. 15401- Filed 6-8-83; 8:45 am]

BILLING CODE 4710-24-M

[Public Notice 866]

Magnuson Fishery Conservation and Management Act; Applications for Permits to Fish in the United States Fishery Conservation Zone

The Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) requires all foreign vessels fishing in the U.S. fishery conservation zone to have a permit. Section 204 of the Magnuson Act requires the Secretary of State to publish a summary of applications received.

Individual vessel applications for fishing in 1983 have been received from the Governments of Japan, Spain and Portugal.

If additional information regarding any application is desired, it may be obtained from: Fees, Permits, and Regulations Division (F/M12), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634-7432).

Dated: May 24, 1983.

James A. Storer,

Director, Office of Fisheries Affairs.

Fishery codes and designation of regional councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional Council
ABS	Atlantic Billfishes and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet.	North Pacific.
CRB	Crab (Bering Sea)	Do.
GOA	Gulf of Alaska	Do.
NWA	Northwest Atlantic	New England, Mid-Atlantic.
SMT	Seamount Groundfish (Pacific Ocean)	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Washington, Oregon, California Trawl.	Pacific.
PBS	Pacific Billfish and Sharks	Western Pacific.

Activity codes specify categories of fishing operations applied for are as follows:

Activity Code	Fishing Operations
1	Catching, processing, and other support.
2	Processing and other support only.
3	Other support only.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Japan:			
Keiyo Maru, Cargo/Transport Vessel	JA-83-0102	BSA, GOA	3
Hamayoshi Maru No. 63, Medium Stern Trawler.	JA-83-1187	BSA	1,2,
Spain:			
Joint Venture Kantxope, Stern Trawler	SP-83-0056	NWA	2

Marbasa, SA of Spain and James D. O'Malley, Shoreside Company, P.O. Box 1070, Boston, Massachusetts 02205, have applied to engage in a joint venture fishery aimed at producing 1,100 metric tons of Loligo Squid between the months of September 1983 and March 1984.

Portugal:			
VIMEIRO, Stern Trawler	PO-83-0013	NWA	2
SAO Rafael, Large Stern Trawler	PO-83-0002	NWA	2

Armazens Jose Luis do Costa e. Ca. lda, Lisbon, Portugal and Scan Ocean, 42 Rogers Street, Gloucester, Massachusetts 01930, Tel: (617) 283-1004, have applied to engage in a joint venture fishery aimed at producing 5000 metric tons of Illex Squid between the months of May, 1983 and October, 1983. (This Portuguese joint venture, for the above two vessels, was announced in the FEDERAL REGISTER in March, 1983.) At the request of Portugal an amendment has been made to this joint venture application between Portugal and Scan Ocean to include 3,000 metric tons of Loligo.

[FR Doc. 83-15402 filed 6-8-83; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airports District Office at Miami, Florida; Relocation

Notice is hereby given that on July 11, 1983, the Airports District Office at Miami, Florida, will be moved to Orlando, Florida. Services to the aviation public, formerly provided by this office, will be provided by the Airports District Office located in Orlando, Florida. This information will be reflected in the FAA Organization Statement the next time it is reissued.

(Sec. 313(a), 72 Stat. 752; 49 U.S.C. 1354)

Issued in Atlanta, GA, on June 2, 1983.

W. J. McGill,

Division Manager, Airports Division.

[FR Doc. 83-15480 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-83-13]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 29, 1983.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. ——, 800 Independence Avenue SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on June 3, 1983.

Richard C. Beitel,

Acting Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
21254	Renton Aviation, Inc	14 CFR 135.203	Renewal of Exemption 3204 to allow petitioner to conduct operations at an altitude below 500 feet over water outside of controlled airspace, subject to conditions and limitations.
23613	Imeson Aviation (IMESON)	14 CFR 91.15(c)	To permit petitioner to instruct students in certain primary aerobatic maneuvers without each occupant of the aircraft wearing a parachute.
23644	The Dow Chemical Co	14 CFR 21.181, 91.27(a)(1), 91.29, & 91.165	To permit petitioner to operate its 4 Falcon and 1 King Air aircraft in accordance with a minimum equipment list.
23645	The Buckeye Cellulose Corp	14 CFR Portions of Parts 21 & 91	To permit petitioner to operate a C-500 aircraft with certain inoperable instruments and equipment that are covered under a minimum equipment list.

DISPOSITION OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought—disposition
20048	Chalk Int'l. Airlines	14 CFR 135.175(a)	To renew Exemption 3007A to permit petitioner to operate its Grumman Mallard G-73 aircraft in direct day visual flight rule (VFR) flights in large multiengine aircraft between certain points, without having approved airborne weather radar equipment installed in the aircraft. *Granted 5/23/83.*
11144	American Airlines Flight Academy	14 CFR 121.99 & 121.351(a)	Extend Exemption No. 1332, as amended, to permit American Airlines, Inc., to operate its airplanes between Wilmington, NC, and St. Croix and St. Thomas, VI, via Nassau, without maintaining two-way radio communications between each airplane and the dispatch office along the named routes, subject to certain conditions and limitations. *Granted 5/23/83.*
23521	Singapore Airlines (SIA)	14 CFR Portions of Part 21	To permit petitioner, a foreign air carrier which holds operations specifications under Part 129, to operate and maintain two U.S.-registered Boeing 747-300 aircraft using an FAA-approved minimum equipment list (MEL). *Granted 5/20/83.*
23513	Air Polynesia, Inc., d/b/a DHL Cargo	14 CFR 121.583(a)(8)	To permit petitioner to transport dependents of company employees on flights it operates within the State of Hawaii without the dependents being accompanied by the company employee. *Partial grant 5/19/83.*
23404	1st Lt. Timothy R. Morris, USAF	14 CFR 61.183 (d) and (e), 61.185 (a) and (b), 61.187(a).	To allow petitioner to receive a flight instructor instrument certificate based on training as a flight instructor in the U.S. Air Force. *Denied 5/20/83.*
23466	CAA of United Kingdom On Behalf of Pilatus Britten-Norman.	14 CFR 23.1303(e)(1)	To permit type certification of the Pilatus Britten-Norman Model BN-2T airplane without complying with the requirements of the section, which requires a speed-warning device for turbine-engine powered airplanes. *Granted 5/20/83.*
21350	The Coastal Corp.	14 CFR 61.58(c)	An amendment to and an extension of current Exemption 3249 to permit petitioner's flight crews to complete their entire 24-month pilot-in-command check in an FAA-approved simulator, subject to certain conditions and checks. *Granted 5/23/83.*

[FR Doc. 83-15461 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

Announcement of Study on Quality Assurance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of study on quality assurance.

SUMMARY: In response to Section 110(c) of the Surface Transportation Assistance Act of 1982 (STAA of 1982), the Federal Highway Administration is conducting a study of current procedures for assuring that maximum return is received for Federal highway engineering and construction funds. A series of papers prepared by FHWA and National Bureau of Standards (NBS) personnel will discuss existing systems for assuring quality in highways and bridges, particularly design and construction quality, materials quality, testing and inspection quality, and quality relative to personnel skills and personnel training. The papers will be presented and critiqued at a conference to be held on August 30 and 31, 1983. The papers, input of participants, and

the conclusions and recommendations of the conference will be incorporated in a report that will be submitted to Congress.

DATES: The conference will be held on August 30 and 31, 1983.

TIME: 9:00 a.m. to 4:30 p.m. ET.

PLACE: National Bureau of Standards, Administration Building in Gathersburg, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Pielert, National Bureau of Standards, (301) 921–3481, for information regarding registration for the conference; or Mr. Peter A. Kopac, Federal Highway Administration, (703) 285–2432, for information regarding the section 110(c) study on quality assurance.

SUPPLEMENTARY INFORMATION: The gradual shift of responsibilities from the Federal Government to State and local governments has been viewed by many as a desirable trend provided that there continues to be a coordinated Federal direction and a means for assuring that Federal funds are being properly used. The Congress has recognized this concern and, under section 110(c) of the STAA of 1982, has made provisions to study the situation. Section 110(c) states:

> The Secretary of Transportation is directed to coordinate a study with the National Bureau of Standards, the American Society for Testing and Materials, and other organizations as deemed appropriate, (A) to determine the existing quality of design, construction, products, use, and systems for highway and bridges; (B) to determine the need for uniform standards and criteria for design, processing, products, and applications, including personnel training and implementation of enforcement techniques; and (C) to determine the manpower needs and costs of developing a national system for the evaluation and accreditation of testing and inspection agencies. The Secretary shall submit such study to the Congress not later than one year after the date of enactment of this section.

The FHWA has assumed a lead role in carrying out the section 110(c) study. The FHWA's work plan calls for the preparation of a number of discussion papers, each addressing an area that affects the quality of highways and bridges. The papers are to be reviewed at a conference hosted by NBS, with various interested organizations participating in the discussions. The conference will be conducted from 9:00 a.m. to 4:30 p.m. on August 30 and 31, 1983, at the NBS Administration Building in Gaithersburg, Maryland.

Nine papers have been identified to address the study objectives. The subjects covered by the papers include pavement and bridge design, bidding and contract award, the quality of construction, the quality of specifications, construction inspection, acceptance plans, training and certification of technicians, laboratory evaluation and accreditation, and uniformity in standards. In general, the papers will assess the quality assurance efforts in the particular subject areas and define possible opportunities for improvements. Where appropriate, the papers will also describe procedures followed in the past, those procedures that are now applicable, and considerations to meet future needs.

Issued on: May 26, 1983.

L. P. Lamm,

Deputy Federal Highway Administrator, Federal Highway Administration.

[FR Doc. 83-15140 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. EX83-2; Notice 2]

Middlekauff, Inc.; Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 301

This notice grants the petition by Middlekauff, Inc. of Toledo, Ohio ("Middlekauff" herein) for a temporary exemption of three years for its trucks from Federal Motor Vehicle Safety Standard No. 301, *Fuel System Integrity*, on grounds of substantial economic hardship.

Notice of the petition was published on February 22, 1983 (48 FR 7534) and an opportunity afforded for comments.

Petitioner is a final-stage motor vehicle manufacturer whose production in the year prior to filing its petition was 95 units. In finishing incomplete vehicles furnished to it by AM General Corporation, it extends the filler pipe to the gas tank and relocates the filler cap. It believes that it exercises due care in its operations "to the extent of duplicating the hose and clamps used by the original manufacturer, and in many cases utilizing the original gas cap, it is not always possible to recess the gas cap itself." It estimated that the cost to test to compliance would be $10,000 (the cost of each vehicle) which it termed "prohibitive." In the three fiscal years ending September 30, 1981, it had cumulative net losses of $92,000. Thus, testing for compliance would cause it substantial economic hardship.

Petitioner further argued that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

Inasmuch as our method of extending the gas line between the gas tank, supplied by the manufacturer, and the filler cap is to avoid having such gas line or filler cap in any one of the six compartments which comprise the majority of the body, and would, therefore, be subject to leakage or fumes due to the cargo coming in contact, in any way, with the gas system.

No comments were received on the petition.

NHTSA has considered the information submitted by petitioner and has no reason to believe that the company is not performing its alterations in a manner intended to insure conformity with Standard No. 301. It would therefore appear that its compliance problems may be minimal if not nonexistent. The agency finds that the tests involved in Standard No. 301 would cause substantial economic hardship to a company whose cumulative net loss as of September 30, 1981, was $92,000. Petitioner produces less than 100 vehicles a year and its continued existence as a small manufacturer justifies a finding that an exemption would be in the public interest and consistent with the objectives of the National Traffic and Motor Vehicle Safety Act.

Accordingly, Middlekauff, Inc., is herewith granted NHTSA Exemption No. 83–2 from 49 CFR 571.301, Motor Vehicle Safety Standard No. 301, expiring May 1, 1986.

(Sec. 3, Pub. L. 92–548, 86 Stat. 1159 (15 U.S.C. 1410); delegation of authority at 49 CFR 1.50)

Issued on June 1, 1983.

Diane K. Steed,

Acting Administrator.

[FR Doc. 83-15309 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Materials Transportation Bureau, DOT

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described

herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft.

DATES: Comment period closes July 13, 1983.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the Applications are available for inspection in the Dockets Branch, Room 8426, NASSIF Building, 400 7th Street SW., Washington, D.C.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
9057-N	Olympic Chemical Co., North Richland Hills, TX.	49 CFR 173.315(i)(13), 173.33(f)(9),173.33(h)(i).	To authorize use of modified angle valves and safety relief valves on MC-331 chlorine cargo tank motor vehicles. (Mode 1).
9058-N	Gearhart Industries, Ft. Worth, TX	49 CFR 173.304(a), 173.34(d), 175.3	To authorize shipment of a flammable compressed gas, n.o.s. contained in non-DOT specification oil well sampling devices comparable to DOT Specification 3E cylinders. (Modes 1,4).
9059-N	Air Products and Chemicals, Inc., Allentown, PA.	49 CFR 172.101, 172.202, 172.302, 173.34(d)	To authorize shipment of a fluorine-helium mixture contained in DOT Specification cylinders prescribed for fluorine. (Modes 1, 2).
9060-N	CVI Inc., Columbus, OH	49 CFR 173.315	To manufacture, mark and sell 11,000 gallon non-DOT specification portable tanks, for shipment of helium, pressurized liquid, classed as a nonflammable gas. (Mode 1).
9061-N	The S. S. I. Group Ltd., Fairdale, KY	49 CFR 172.504, 173.178	To authorize shipment of calcium carbide, labeled flammable solid and dangerous when wet, contained in 1 quart metal cans with water tight lids overpacked in a fiberboard box not to exceed 10 pounds per overpack to be transported without placarding the vehicles. (Mode 1).
9062-N	UOP Process Division, Des Plaines, IL	49 CFR 173.245	To authorize shipment of a corrosive liquid, n.o.s., in DOT specification 57 steel portable tanks. (Modes 1,2).
9063-N	Hoechst Aktiengesellschaft, Frankfurt, West Germany.	49 CFR 173.315	To authorize shipment of hexafluoropropylene, classed as a nonflammable gas in non-DOT specification IMO Type 5 portable tanks. (Modes 1, 2, 3).
9064-N	Corning Glass Works, Corning, NY	49 CFR 173.245	To authorize shipment of various corrosive liquids in a glass containers not to exceed 5¾ gallon capacity, surrounded by vermiculite placed in a cyclindrical steel overpack, packed not exceed 4 to a compartmented wooden box. (Mode 1).
9065-N	Scientrex Limited, Concord Ontario, Canada	49 CFR Parts 100–199	To authorize shipment of cesuim vapour lamps containing not more than 1 milligram of cesium metal, and magnetometer products containing such cesium vapour lamps as essentially non-regulated. (Modes 1, 2, 3, 4, 5).
9066-N	Cayern-Chemie GmbH, Ottobrunn, West Germany.	49 CFR 173.154, 175.3	To qualify inflator airbag systems containing a propellant explosive, Class B as a flammable solid classification; packaged in non-DOT specification polyatyrene case overpacked in a fiberboard box. (Modes 1, 2, 3, 4).
9067-N	Watco Truck Rigging, Inc., Odessa, TX	49 CFR 173.119, 173.245	To manufacture, mark and sell non-DOT specification steel tanks of up to 8 separate compartments not to exceed a total capacity of 800 gallons containing various flammable liquids or corrosive material (oil well treating compounds). (Mode 1).
9068-N	Global International Airways, Kansas City, MO	49 CFR 172.101, 175.30	To authorize carriage of various military ammunition Class A explosives which are not permitted for shipment by air. (Mode 4).
9069-N	Ford Aerospace & Communications Corp., Palo Alto, CA.	49 CFR 172.101 Column 6(b), 175.30	To authorize shipment of three rocket motors, Class B, exceeding gross weight limitations, via cargo only aircraft. (Mode 4).
9070-N	Warner Bros. Inc., Sunderland, MA	49 CFR 173.119	To authorize shipment of gasoline, classed as a flammable liquid, in non-DOT specification steel containers of up to 340 gallon capacity. (Mode 1).
9071-N	McCarthy Tank and Steel Co., Bakerfield, CA	49 CFR 173.119, 173.245, 173.346, 178.340-7, 178.342-5, 178.343-5.	To manufacture, mark and sell non-DOT specification cargo tanks complying in general with DOT-MC307/312 except for bottom outlet valve variations, for transportation of waste flammable, corrosive or poison B liquids or semi-solids. (Mode 1).
9072-N	Thiokol Corp., Brigham City, UT	49 CFR 173.92	To authorize shipment of rocket motors, Class B explosive in specially designed outside packagings. (Mode 1).
9073-N	Natico, Inc., Chicago, IL	49 CFR 178.116	To manufacture, mark and sell tight head drums comparable to DOT Specification 17E except they are constructed of 19 gauge steel with corrugated bottom and top head and 7 ply chime construction, for shipment of various flammable, corrosive and poison B liquids. (Modes 1, 2).
9074-N	Reuter-Stokes, Inc., Cleveland, OH	49 CFR 173.302(a)	To manufacture, mark and sell gamma ionization chambers constructed of stainless steel, not to exceed 410 psig, for shipment of argon, classed as nonflammable gas. (Modes 1, 2, 4, 5).
9075-N	Trans-Air-Link, Corp., Miami, FL	49 CFR 173.101	To authorize shipment of various Class A, B and C explosives not permitted for air shipment or in quantities greater than those prescribed for shipment by air. (Mode 4).
9076-N	U.S. Department of Energy, Washington, DC	49 CFR 173.392(d)(2)(ii)	To authorize shipment of uranyl nitrate at concentrations not to exceed 32 percent LSA, in DOT Specification MC-311 and 312 cargo tanks. (Mode 1).
9077-N	Central Vermont Railway, Inc., St. Albans, VT	49 CFR Part 100–199	To authorize carriage of railway torpedoes and fuses packed in metal kits, in motor vehicles by railroad maintenance crews as non-regulated rail carrier equipment. (Mode 1).
9078-N	Monsanto Co., St. Louis, MO	49 CFR 173.245	To authorize shipment of up to 293 gallons of waste formic acid/phenol mixture (corrosive/poison) in DOT Specification 57 stainless steel portable tanks. (Mode 1).
9079-N	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	49 CFR 173.315	To authorize shipment of a flammable compressed gas mixture in DOT Specification 51 portable tanks. (Modes 1, 3).
9080-N	Henderson's Welding Mfg. Corp., Seminole, TX.	49 CFR 173.119, 173.245	To manufacture, mark and sell non-DOT specification compartmented portable tanks complying with DOT Specification 57 except for capacity and sight glass gage, for shipment of flammable liquid or corrosive materials (oil well treating compounds). (Mode 1).
9081-N	Diamond Shamrock Corp., Irving, TX	49 CFR 173.164(a)(6)	To authorize shipment of chromic acid solid, classed as an oxidizer, in DOT Specification 21C fiber drum lined with plastic other than saran material. (Modes 1, 2).
9082-N	Union Carbide Corp., Danbury, CT	49 CFR 173.365(a)	To authorize shipment of carbamate pesticide, solid, n.o.s., Class B poison, in non-DOT specification woven polypropylene bags not to exceed 2,200 pounds. (Modes 1, 3).

This notice of receipt of applications for new exemptions is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 2, 1983.

J. R. Grothe, Chief,

Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 83-15490 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-60-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application to Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes June 28, 1983.

ADDRESS COMMENTS TO: Dockets Branch, Office of Regulatory Planning and Analysis, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
2709-X	Hercules, Incorporated, Wilmington, DE.	2709
4400-X	Airco Industrial Gases, Murray Hill, NJ.	4400
4459-X	Allied Healthcare Products, Inc., St. Louis, MO.	4459
4719-X	Allied Corporation, Morristown, NJ.	4719
5022-X	The Boeing Company, Seattle, WA.	5022
5248-X	Rockwell International Corporation, Anaheim, CA.	5248
5746-X	U.S. Department of Defense, Washington, DC.	5746
5777-X	U.S. Department of Defense, Washington, DC.	5777
5876-X	FMC Corporation, Philadelphia, PA.	5876
6228-X	Airco Welding Products, Murray Hill, NJ.	6228
6232-X	McDonnell Douglas Corporation, St. Louis, MO.	6232
6232-X	U.S. Department of Defense, Washington, DC.	6232
6416-X	Allied Corporation, Morristown, NJ.	6416
6658-X	U.S. Department of Defense, Washington, DC.	6658
6759-X	Atlas Powder Company, Dallas, TX.	6759
6759-X	Hercules, Incorporated, Wilmington, DE.	6759
6769-X	E.I. du Pont de Nemours & Company, Inc., Wilmington, DE.	6769
6798-X	Allied Corporation, Morristown, NJ.	6798
6724-X	GPS Industries, City of Industry, CA.	6824
6961-X	Monsanto Company, St. Louis, MO.	6961
6971-X	Chem Service, Inc., West Chester, PA (See footnote 1).	6971
7035-X	Owens-Illinois (Plastic Products Division) Toledo, OH.	7035
7051-X	Ozark-Mahoning Company, Tulsa, OK.	7051
7192-X	Air Products and Chemicals, Incorporated, Allentown, PA.	7192
7235-X	Luxfer U.S.A., Limited, Riverside, CA.	7235
7458-X	Ekohwerks Company, Eastlake, OH.	7458
7555-X	Provost Cartage, Incorporated, Ville d'Anjou, Quebec (See footnote 2).	7555
7574-X	Remmers-Tomkins Flight Service, Inc., Burlington, IA (See footnote 3).	7574
7603-X	Air Products and Chemicals, Incorporated, Allentown, PA.	7603
7716-X	Kinepak, Inc., Lewisville, TX	7716
7857-X	Makhteshim Darom (Ramat Hovav) Ltd., Beer Sheva, Israel.	7857
7954-X	Air Products and Chemicals, Incorporated, Allentown, PA (See footnote 4).	7954
8096-X	Pressure-Pak Container Company, Incorporated, East Hampton, CT.	8096
8119-X	BJ-Hughes, Incorporated, Houston, TX.	8119 (See footnote 5)
8129-X	Environmental Transfer Corporation, Flanders, NJ.	8129
8129-X	Emergency Technical Services Corporation, Flanders, NJ.	8129
8129-X	Advanced Environmental Technology Corporation, Flanders, NJ.	8129
8129-X	U.S. Pollution Control, Inc., Oklahoma City, OK.	8129
8167-X	Manostat Corporation, New York, NY.	8167
8177-X	A.O. Smith-Inland, Inc., Little Rock, AR.	8177
8192-X	Greif Bros. Corporation, Springfield, NJ.	8192
8194-X	Pennwalt Corporation, Buffalo, NY.	8194
8196-X	Eurotainer S.A., Paris, France	8196
8208-X	Jet Propulsion Laboratory, Pasadena, CA.	8208
8215-X	Olin Corporation, East Alton, IL	8215
8232-X	Societe Auxiliarie de Transports et d'Industries, Paris, France.	8232
8232-X	Eurotainer S.A., Paris, France	8232
8232-X	ANF Industries, Paris, France	8232
8239-X	Westinghouse Electric Corporation, Horseheads, NY.	8239
8255-X	Applied Environments Corporation, Woodland Hills, CA.	8255
8285-X	Radian Corporation, Austin, TX	8285
8391-X	Acurex Corporation, Mountain View, CA (See footnote 6).	8391
8445-X	Emergency Technical Services Corporation, Flanders, NJ.	8445
8445-X	Advanced Environmental Technology Corporation, Flanders, NJ.	8445
8445-X	Environmental Transfer Corporation, Flanders, NJ.	8445
8511-X	Oxychem Company, New York, NY.	8511
8511-X	FMC Corporation, Philadelphia, PA.	8511
8609-X	Natico, Inc., Chicago, IL	8609
8614-X	Arrow Airways, Inc., Minneapolis, MN.	8614
8636-X	Ethyl Corporation, Baton Rouge, LA.	8636
8650-X	Ethyl Corporation, Baton Rouge, LA.	8650
8671-X	Allied Corporation, Morristown, NJ.	8671
8691-X	Aluminum Company of America, Pittsburgh, PA.	8691
8697-X	ERA Helicopters, Inc., Anchorage, AK.	8697
8723-X	Ireco Chemicals, Salt Lake City, UT (See footnote 7).	8723
8822-X	Certified Tank Manufacturing, Inc., Wilmington, CA (See footnote 8).	8822
9052-X	Chemical Handling Equipment Company, Inc., Detroit, MI (See footnote 9).	9052

[1] Request modification of paragraph 7(a) to authorize 30 grams of hazardous material instead of 10 grams.

[2] To renew and to provide for additional corrosive liquids.

[3] To modify by removing restriction limiting carriage of Class A, B & C explosives for the Department of Defense only.

[4] To authorize DOT Specification 3AAX2400 cylinders as additional cylinder for shipment of a fluorine-nitrogen gas mixture.

[5] To authorize cargo tanks to be coated with kynar, pyrolite, or plasite 4005, for shipment of various corrosive, flammable and poison B materials.

[6] Request for modification of the design qualification tests criteria.

[7] To authorize an additional bulk tank motor vehicle for the transportation of certain blasting agents.

[8] To authorize portable vacuum pressure tank configuration as additional container.

[9] To authorize cargo vessel as an additonal mode of transportation.

Application number	Applicant	Parties to exemption
3606-P	Valcor Engineering Corporation, Springfield, NJ.	3606
4453-P	E. I. du Pont de Nemours & Co., Inc. Wilmington, DE.	4453
5951-P	McKesson Chemical Company, Spartanburg, SC.	5951
6092-P	Hi-Pure Chemicals, Inc., Nazareth, PA.	6092
6602-P	Ethyl Corporation, Baton Rouge, LA.	6602
6702-P	Seragen, Inc., Boston, MA	6702
6926-P	Union Carbide Agricultural Products Company, Danbury, CT.	6926
7052-P	SAFT America Inc., Cockeysville, MD.	7052
7052-P	Electro-Flow Controls, Inc., Missouri City, TX.	7052
7052-P	Technical Oil Tool Corporation, Norman, OK.	7052
7052-P	In-Situ, Inc., Laramie, WY	7052
7835-P	Big Three Industries, Inc., Houston, TX.	7835
7890-P	Union Carbide Agricultural Products Company, Danbury, CT.	7890
7909-P	EMCO, Inc., Little Rock, AR	7909
8099-P	Union Carbide Corporation, Danbury, CT.	8099
8129-P	Disposal Control Service, Upland, CA.	8129
8129-P	Bunker Ramo Electronic Systems, Westlake Village, CA.	8129
8129-P	Containerized Chemical Disposal, Inc., Morovia, CA.	8129
8129-P	Solvent Service, Inc., San Jose, CA.	8129
8129-P	McDonnell Douglas Corporation, St. Louis, MO.	8129
8129-P	Varian Palto Alto, CA	8129
8445-P	McDonnell Douglas Corporation, St. Louis, MO.	8445
8554-P	Buckley Powder Company, Denver, CO.	8554
8877-P	Mallinckrodt, Inc., Paris, KY	8877
8877-P	KTI Chemicals, Incorporated, Danbury, CT.	8877

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 3, 1983.

J. R. Grothe,

Chief, Exemption Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 84-15491 Filed 6-8-83; 8:45 a.m.]

BILLING CODE 4910-60-M

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 1:30 p.m., June 27, 1983, at the Corporation's Offices at 800 Independence Avenue, SW., Washington, D.C. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; Business; Closing Remarks.

Attendance at meetings is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than June 23, 1983, Robert D. Kraft, Director, Plans and Policy Development, Saint Lawrence Seaway Development Corporation, 800 Independence Avenue, SW., Washington, D.C. 20591; 202/426-3574.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, D.C., on June 3, 1983.

Robert D. Kraft,

Director, Plans and Policy Development.

[FR Doc. 83-15382 Filed 6-8-83; 8:45 am]

BILLING CODE 4910-61-M

VETERANS ADMINISTRATION

Agency Form Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This is a new data collection. The entry contains the following information: (1) The department or staff office issuing the form; (2) The title of the form; (3) The agency form number, if applicable; (4) How often the form must be filled out; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to fill out the form; and (8) An indication of whether section 3504(H) of Pub. L. 96-511 applies.

ADDRESSES: Requests for further information, including copies of the proposed form and supporting documents may be obtained from Patricia Viers, Agency Clearance Officer (004A2), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420 (202) 389-2146. Comments and questions about the items on this list should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Rich Shepard, Desk Officer for Veterans Administration, 726 Jackson Place, NW, Washington, DC 20503, (202) 395-6880.

DATES: Comments on the form should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: May 23, 1983.

Dominick Onorato,

Associate Deputy Administrator for Information Resources Management.

Category: New

Department: Department of Medicine and Surgery

Title of form: Former Prisoner of War Medical History

Agency form #: 10-0048

How often the form must be filled out: One time, nonrecurring

Estimate of the number of responses: 10,000

Estimate of the total number of hours needed: 5,000 hrs.

Section 3504(H) of Pub. L. 96-511: Not applicable

[FR Doc. 83-15432 Filed 6-8-83; 8:45 am]

BILLING CODE 8320-01-M

Performance Review Board Members

AGENCY: Veterans Administration.

ACTION: Notice.

SUMMARY: Under the provisions of 5 U.S.C. 4314(c)(4) agencies are required to publish a notice in the **Federal Register** of the appointment of Performance Review Board (PRB) members. This list amends the list of members of the Veterans Administration Performance Review Board which was published in the **Federal Register** 47 FR 42862 and 42863, dated September 29, 1982.

EFFECTIVE DATE: May 6, 1983.

FOR FURTHER INFORMATION CONTACT: K. Joyce Edwards, Office of Personnel and Labor Relations (05A3), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420 (202-389-3423).

The members of the VA Performance Review Board are:

Chairperson.— Everett Alvarez, Jr., Deputy Administrator.

Members.—Anthony J. Principi, Associate Deputy Administrator for Congressional and Public Affairs, Dominick Onorato, Associate Deputy Administrator for Information Resources Management, William F. Sullivan, Associate Deputy Administrator for Logistics, Donald L. Custis, M.D., Chief Medical Director, Dorothy L. Starbuck, Chief Benefits Director, Paul T. Bannai, Chief Memorial Affairs Director, John P. Murphy, General Counsel, Kenneth E. Eaton, Chairman, Board of Veterans Appeals, Jack J. Sharkey, Director, Office of Data Management and Telecommunications, Conrad Hoffman, Director, Office of Budget and Finance, Joseph Mancias, Jr., Director, Office of Public and Consumer Affairs, Raymond S. Blunt, Director, Office of Program Planning and Evaluation, William A. Salmond, Director, Office of Construction, Michael Rudd, Director, Office of Personnel and Labor Relations, Clyde C. Cook, Director, Office of Procurement and Supply, Robert W. Schultz, Director, Office of Reports, and Statistics, Renald P. Morani, Assistant Inspector General for Policy, Planning and Resources.

Dated: June 2, 1983.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 83-15433 Filed 6-8-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 112
Thursday, June 9, 1983

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

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, June 17, 1983.

PLACE: 2033 K Street NW., Washington, D.C., Eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S-818-83 Filed 6-7-83; 2:03 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2 p.m., Thursday, June 16, 1983.

PLACE: 2033 K Street NW., Washington, D.C., Eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Judicial Session

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S-819-83 Filed 6-7-83; 2:03 P.m.]

BILLING CODE 6351-01-M

3

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11 a.m., Friday, June 10, 1983.

PLACE: 2033 K Street NW., Washington, D.C., eighth floor conference room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Surveillance Briefing

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S-820-83 Filed 6-7-83; 2:03 pm]

BILLING CODE 6351-01-M

4

COMMODITY FUTURES TRADING COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Friday, June 10, 1983.

CHANGES IN THE MEETING: Rescheduled to: 11 a.m., Thursday, June 9, 1983.

[S-821-83 Filed 6-7-83; 2:03 pm]

BILLING CODE 6351-01-M

5

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10 a.m., Thursday, June 9, 1983.

PLACE: 2033 K Street NW., Washington, D.C., fifth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Contract Market Application Fees

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S-822-83 Filed 6-7-83; 2:03 pm]

BILLING CODE 6351-01-M

6

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Thrusday, June 9, 1983.

PLACE: 2033 K Street NW., Washington, D.C., 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Discussion of mandated studies.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254–6314.

[S-823-83 Filed 6-7-83; 2:03 pm]

BILLING CODE 6351-01-M

7

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, June 13, 1983, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Application for Federal deposit insurance:

Lewis County Bank, a proposed new bank to be located at the southeast corner of West Linden Street and North Court Street, Hohenwald, Tennessee.

Application for consent to transfer assets in consideration of the assumption of deposit liabilities:

Monroe Savings Bank, Rochester, New York, a federally-chartered savings bank insured by the Federal Deposit Insurance Corporation, for consent to transfer certain assets to Empire of America, FSA, Southfield, Michigan, a federal savings association not insured by the Federal Deposit Insurance Corporation, in consideration of the assumption of liabilities for deposits made in the Corning,

Dansville and Hornellsville, New York, branches of Monroe Savings Bank.

Application pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involving dishonesty or a breach of a trust as a director, officer, or employee of an insured bank:

Name of person and of bank authorized to be exempt from disclosure pursuant to provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Request for relief from adjustment for violations of Regulation Z:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C 552b (c)(8) and (c)(9)(A)(ii)).

Recommendation regarding the liquidation of a bank's assets acquired by the corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum and Resolution re: The Metro Bank of Huntington, Inc. Huntington, West Virginia

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 6, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-816-83 Filed 6-7-83; 11:51 am]

BILLING CODE 6714-01-M

8

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2 p.m. on Monday, June 12, 1983, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish three branches:

Community First Bank, Bakersfield, California, an insured State nonmember bank, for consent to merge, under its charter and title, with Growers and Merchants State Bank, Selma, California, and to establish the three offices of Growers and Merchants State Bank as branches of the resultant bank.

Applications for consent to purchase assets and assume liabilities and establish one branch:

Le Mars Savings Bank, Le Mars, Iowa, an insured State nonmember bank, for consent to purchase the assets of and assume the liability to pay deposits made in Farmers Savings Bank, Struble, Iowa, and to establish the sole office of Farmers Savings Bank as a branch of Le Mars Savings Bank.

Hamilton Bank, Lancaster, Pennsylvania, an insured State nonmember bank, for consent to purchase certain assets of and assume the liability to pay deposits made in the Lebanon Plaza Branch of the Commonwealth National Bank, Harrisburg, Pennsylvania, and to establish that office as a branch of Hamilton Bank.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,691—The Greenwich Savings Bank, New York, New York

Case No. 45,692-SR—The Bank of Woodson, Woodson, Texas

Memorandum and Resolution re: The Farmers State Bank, Protection, Kansas

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or actions involving administrative enforcement proceedings approved by the Director or Associate Director (Administration and Corporate Applications) of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Office of Corporate Audits and Internal Investigations:

Audit Report re: Reimbursable Expenses Billed to the FDIC by the Firm of Roth, Kudler, Berner and Company, dated May 12, 1983.

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389–4425.

Dated: June 6, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

S-817-83 Filed 6-7-83; 11:51 am]

BILLING CODE 6714-01-M

9

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2), notice is hereby given that at its open meeting held at 2 p.m. on Monday, June 6, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvin H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Request of Dakota Bank of Wahpeton, a proposed new bank to be located at 1005 Dakota Avenue, Wahpeton, North Dakota, for reconsideration of a previous denial of an application for Federal deposit insurance.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Hoosier State Bank of Indiana, Hammond, Indiana, for consent to establish a branch within the Strack & Vantil Grocery Store, Routes 30 and 41, Schererville, Indiana.

Request of the Philadelphia Savings Fund Society, Horsham Township (P.O. Horsham), Pennsylvania, for a waiver of the time deposit early withdrawal penalty.

By the same majority vote, the Board further determined that no earlier notice

of these changes in the subject matter of the meeting was practicable.

Dated: June 6, 1983.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[S-827-83 Filed 6-7-83; 3:07 pm]

BILLING CODE 6714-01-M

10

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 6, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. H. Joe Selby, acting in the place and stead of Director C. T. Conover (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Request of Indian Springs State Bank, Kansas City, Kansas, for an extension of time within which to relocate the main office from 4601 State Avenue to 4810 State Avenue, Kansas City, Kansas.

Application pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involving dishonesty or a breach of a trust as a director, officer, or employee of an insured bank: Name of person and of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,694-L (Addendum)—The Ina State Bank, Ina, Illinois

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 6, 1983.

Federal Deposit Insurance Corporation

Hoyle L. Robinson,

Executive Secretary.

[S-828-83 Filed 6-7-83; 3:07 pm]

BILLING CODE 6714-01-M

11

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 14, 1983, 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance, Personnel, Litigation, Audits.

PERSON TO CONTACT FOR MORE INFORMATION: Mr. Fred Eiland, Information Officer, telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-829-83 Filed 6-7-83; 3:38 pm]

BILLING CODE 6715-01-M

12

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9 a.m., June 15, 1983.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Agreement No. 8900-20: Modification of the "8900" Lines Rate Agreement to permit the establishment of open rates.

2. Special Docket No. 1021—Application of Korea Shipping Corporation for the Benefit of Sunkyong Magnetic Ltd; Special Docket No. 1022—Application of Hanjin Container Lines, Ltd. for the Benefit of Latex Gloves Co., Inc.; Special Docket No. 1023—Application of American President Lines, Ltd. for the Benefit of Lux Chemical Corp.; Special Docket No. 1024—Application of Yamashita-Shinnihon Steamship Co., Ltd. for the Benefit of Melco Sales Singapore Pte., Ltd.—Consideration of Order of Discontinuance.

Portion closed to the public:

1. Volume Incentive Program of Agreements Nos. 10107 and 10108.

CONTACT PERSON FOR MORE INFORMATION: Francis C. Hurney, Secretary (202) 523-5725.

[S-826-83 Filed 6-7-83; 2:18 pm]

BILLING CODE 6730-01-M

13

NATIONAL CREDIT UNION ADMINISTRATION

Changes in Date and Subject of Board Meeting

The previously announced closed meeting of the National Credit Union Administration scheduled for 4 p.m., Wednesday, May 11, 1983 was changed to Thursday, May 12, 1983.

The National Credit Union Administration Board also determined that its business required that the previously announced closed meeting on Wednesday, May 11, 1983 changed to Thursday, May 12, 1983 include the following additional item, which was closed to public observation.

Budget Allocation. Closed purusant to exemption (2).

The Board voted unanimously to add this item to the closed agenda.

Earlier announcement of these changes was not possible.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.

2. Requests from Federally insured credit unions for special assistance to prevent liquidation under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

3. Requests for special assistance under Section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

4. Requests for emergency mergers under Section 205(h) of the Federal Credit Union Act with special assistance under Section 208(a)(2) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).

5. Proposed Memorandum of Agreement between NCUA and a Federal Credit Union. Closed pursuant to exemptions (8) and (9)(A)(ii).

6. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 2:54 p.m., Sheraton Centre Hotel, 811 7th Avenue (7th and 53rd Street), New York, New York 10019.

CONTACT PERSON FOR MORE INFORMATION: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-824-83 Filed 6-7-83; 2:14 pm]

BILLING CODE 7535-01-M

14

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9 a.m., Tuesday, June 14, 1983.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C. 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.

* * * * *

TIME AND DATE: 2 p.m., Monday, June 13, 1983.

PLACE: Seventh floor board room, 1776 G Street NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Requests from Federally insured credit unions for special assistance to prevent liquidation under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).

CONTACT PERSON FOR MORE INFORMATION: Rosemary Brady, Secretary of the Board, Telephone (202) 357–1100.

[S-825-83 Filed 6-7-83; 2:14 pm]

BILLING CODE 7535-01-M

federal register

Thursday
June 9, 1983

Part II

Environmental Protection Agency

Fuel Economy of Motor Vehicles; Revisions To Improve Fuel Economy Labeling and the Fuel Economy Data Base

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS-FRL 2302-7, Docket No. A-80-32]

Fuel Economy of Motor Vehicles; Revisions To Improve Fuel Economy Labeling and the Fuel Economy Data Base

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the motor vehicle fuel economy regulations for fuel economy labeling and for submitting fuel economy data for calculating Corporate Average Fuel Economy (CAFE) and label values. EPA proposes that these amendments take effect beginning with the 1985 model year.

Accurate and reliable fuel economy information is essential to allow the free market to exert its influence on what vehicles are produced. The primary purpose of this proposal is to increase the credibility and usefulness of EPA's fuel economy information to prospective new-car buyers. We believe this proposal will accomplish this goal without significant regulatory increases.

The major proposals in this rulemaking would: (1) Mathematically adjust laboratory fuel economy label values to correct for the average differences between the fuel economy measured in the laboratory and actual in-use experience, (2) require fuel economy labels to be revised during the model year if label values decrease by 1.0 mpg due to certain design changes and following a mid-year general recalculation, (3) require that the minimum data used in label calculations be more representative of projected sales, (4) require that both city and highway adjusted fuel economy values appear on each fuel economy label, and (5) establish a standard label format to more clearly highlight the fuel economy values and improve the consumer's ability to compare products.

DATE: Public Comment: Comments on the proposed rule must be received by September 1, 1983. The dates of the hearing will be Tuesday, and Wednesday, July 26 and 27, 1983.

ADDRESS: Comments in response to this NPRM should be submitted to the U.S. Environmental Protection Agency, Central Docket Section (A-130), Gallery 1, West Tower Lobby, Waterside Mall, 401 M Street, SW., Washington, D.C. 20460, Attn: Docket No. A-80-32.

A hearing will be held at the Ann Arbor Huron High School in Ann Arbor, Michigan, 2727 Fuller Road. On the first day the hearing will be convened at 9:00 a.m. and will adjourn at 5:00 p.m. If a second day is necessary to complete the business of the hearing, the hearing will reconvene at 9:00 a.m.

FOR FURTHER INFORMATION CONTACT: Clifford D. Tyree, Certification Division, Office of Mobile Sources, Environmental Protection Agency, 2565 Plymouth road, Ann Arbor, MI 48105; (313) 668-4310.

SUPPLEMENTARY INFORMATION:

Participation in the Public Hearing

Any person desiring to make a statement at the hearing or to submit material for the hearing record should contact Judy Faye Carmickle (313-668-4440) to schedule a time at the hearing. These scheduled to testify or those planning to submit material at the hearing should provide written confirmation of their interest, together with at least one copy of the proposed statement or material, for inclusion in the record. All such documents should be submitted to EPA at the address below no later than Tuesday, July 19, 1983. It is strongly requested, but not required, that at least 100 copies accompany any documents which cannot be submitted prior to the start of the hearing.

Participants are advised to adhere to these guidelines if possible. Documents submitted late may not receive full staff consideration prior to the hearing. Further, participants who submit documents on the scheduled day of the appearance, without the requested 100 copies, may be rescheduled for a later time or session of the hearing if duplication of the documents cannot be completed by EPA prior to the scheduled time of appearance.

The record of the hearing will be left open for 30 days following the close of the hearing to allow submission of rebuttal and supplementary information.

Mr. Richard D. Wilson is hereby designated as the Presiding Officer of the hearing. He will be responsible for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, and, to the extent possible, notifying participants of the time at which they may appear. The hearing will be conducted informally. Technical rules of evidence will not apply.

The present national fuel economy testing program performs three functions: (1) It generates general fuel economy values for each model type and makes these values available to the public on individual vehicle fuel economy labels and in the *Gas Mileage Guide (Guide)* pursuant to 15 U.S.C. 2006, (2) it determines manufacturers' compliance with the CAFE requirements established in accordance with 15 U.S.C. 2002, (3) it establishes, in accordance with the National Energy Conservation and Policy Act (NECPA), manufacturers' "Gas Guzzler Tax" liability based on the general fuel economy label calculations.

In recent years, EPA, other government agencies, the U.S. Congress, and consumers have been concerned about apparent differences between the EPA fuel economy estimates and the actual fuel economy performance of vehicles in use. In general, these differences arise from travel environment, owner travel and driving habits, and vehicle maintenance. An EPA report to Congress, entitled "Passenger Car Fuel Economy: EPA and Road," EPA-460/3-80-010, published September 1980, shows that since 1976, fuel economy label and *Guide* figures have been higher, on the average (termed "shortfall"), than actual in-use fuel economy. This discrepancy has caused considerable consumer dissatisfaction and lack of confidence in EPA's fuel economy estimates.

Congress addressed this problem in public hearings of the House Subcommittee on Environment, Energy, and Natural Resources on January 29 through February 1, 1980.[1] The subcommittee concluded that the fuel economy information provided to consumers did not adequately reflect in-use fuel economy and that EPA possesses the authority to make changes in the fuel economy program that will improve the accuracy of the fuel economy data. The subcommittee consequently recommended that EPA devise a new system for labeling new vehicles with fuel economy values that most drivers can reasonably expect to experience. The subcommittee also recommended that EPA tighten its test procedures for determining compliance with Federal CAFE standards in order to eliminate actual or potential loopholes that introduce inaccuracies in EPA's approximation of in-use fleet average fuel economy. EPA has also been assessing its fuel economy testing program to improve the usefulness and accuracy of the fuel economy information it provides to the public and to improve the data base from which fuel economy values are derived.

On September 29, 1980, EPA published an advance notice of proposed

[1] Seventeenth Report by the Committee on Government Operations, Union Calendar No. 582, House Report No. 96-948, May 13, 1980.

rulemaking (ANPRM) for this proposed rule. The ANPRM presented several courses of action that EPA was considering for improvements in the fuel economy program and requested comments on those ideas. EPA received comments from a number of sources that included concerned citizens and consumer groups as well as major automobile manufacturers. This NPRM proposes changes that have resulted from EPA's desire to provide consumers with fair and accurate fuel economy information. Copies of specific comments on the ANPRM are available for public inspection in the EPA public docket presented in the **ADDRESS** section of this notice.

I. History and Background

In order to minimize the length of this notice EPA has not attempted to provide a detailed description of how the current program works or how it evolved. To the extent possible, we have presented the proposals in a manner that will not require extensive fuel economy program knowledge in order to understand them. The public docket for this rulemaking (Public Docket No. A–80–32) contains a report entitled *History and Description of the EPA Motor Vehicle Fuel Economy Program* which briefly describes the history and procedures of the current fuel economy program.

II. Description of the Proposed Modifications

A. In-Use Adjustments for Label Values

Many studies and analyses have been conducted to characterize the differences between EPA fuel economy estimates and in-use performance.[2] Two typical conclusions are that: (1) In-use fuel economy is significantly lower than EPA estimates and (2) because of these differences, consumer confidence in the label values has suffered. While a small portion of the differences could be eliminated by improved data representation and label updating (discussed later in this proposal), there would remain an offset between the advertised fuel economy values and the fuel economy achieved in use because of the different operating conditions between laboratory testing and in use. These laboratory conditions do not reflect changes in climate, road conditions, driving patterns, and other factors that affect in-use fuel economy.

In order to account for differences between EPA laboratory results and actual in-use experience, EPA proposes to calculate fuel economy values according to current procedures and then "discount" these values by an adjustment factor. EPA proposes that the adjustments be made by multiplying the city model type fuel economy value by 0.90 and the highway model type fuel economy by 0.78. The data and the procedures used to arrive at these factors are contained in an internal EPA report dated November 3, 1982, "Adjustments to EPA Fuel Values—Stage II Results." (This document is contained in the docket for this rulemaking.) EPA requests comments on the data and methodology used to derive these factors and may modify the factor as appropriate, based on comments received.

EPA proposes that only the adjusted fuel economy values appear on labels. However, EPA requests comments on alternative methods of presenting this information, pointing out specific advantages. For example, one alternative was suggested by the Office of Management and Budget (OMB) following its review of this proposal.[3] OMB suggested that rather than depicting single fuel conomy values on the label, the fuel economy estimates would be presented in a narrative form that includes a disclaimer for the unadjusted values. Both the unadjusted values and an adjustment factor would be presented. However, EPA believes that a "fine print" disclaimer is not useful since consumers most likely would not read it. Therefore, under this alternative, all lettering in the above fuel economy statement would be of the same size and prominence, including the fuel economy values. For example, under this alternative, the label fuel economy estimate for a given value (city or highway) could read as follows:

The [City, Highway] fuel economy estimate is —— m.p.g.; however, actual [City, Highway] fuel economy will likely average —— percent lower.

EPA is not proposing a set timetable for updating the adjustment factors. However, the Agency will continue to collect in-use data to review the status of the validity of the factors. If it appears appropriate to change the adjustment factors, EPA will publish proposed amendments and provide an appropriate leadtime before they are adopted. EPA requests comments on how to best collect such information and what minimum leadtime is necessary before revised factors can be used.

EPA also requests comments on ways to minimize consumer confusion in the first year of transition to adjusted fuel economy estimates. This confusion could result from consumers not being informed of (or not understanding) the reason for the fuel economy value decreases as compared to similar or identical vehicles of the previous model year. Manufacturers may also have problems highlighting fuel economy improvements for particular models when the adjustments bring the estimates below the previous year's estimates. EPA is open to suggestions as to how to best inform the public and to highlight fuel economy improvements.

B. Minimum Data Requirements for Labeling

The current minimum data requirement to establish a label value is one test per base level.[4] If the manufacturer has met the minimum data requirements by testing an emission test car, no additional testing is required for that base level to establish a label value. (If *no* previous data had been generated for a base level, the manufacturer must submit data from the highest projected sales configuration in the base level.) This can result in a base level represented by very low sales configurations. Because the base level fuel economy is sales-weighted into the model type label value using the *entire* base level sales, this single low sales configuration would have a disproportionate influence on the label value.

EPA has estimated the effect of this problem by projecting the likely fuel economy of untested subconfigurations and recalculating the label values for comparison. The results of this analysis show three percent of all 1980 vehicles were labeled 2 mpg or more too high, implying that the current system causes a portion of vehicles sold to be misrepresented simply because of data requirements and calculation methods. Although the number of labels affected is small, we are concerned that these

[2] The docket to this proposed rulemaking, A–80–32, contains numerous supporting documents and technical analyses. Note that because of revisions to this notice while in draft, EPA documents which are dated prior to July 1982 which describe the "proposed" rulemaking do not necessarily reflect the final proposals of this NPRM.

[3] Executive Order 12291 requires that all proposed regulations be reviewed by the Office of Management and Budget before being published. OMB commented in a letter to the Administrator dated June 2, 1983 (available in the public docket). OMB expressed a concern that label values with only the adjusted fuel economy values would imply more accuracy in the value than warranted. Specifically, the concern is that the public will perceive the adjusted values as predictions of the fuel economy each individual consumer will receive rather than representing an estimate of average performance to aid in comparison shopping as is intended.

[4] A base level is defined as a unique combination of vehicles with the same basic engine, inertia weight class, and transmission class. A complete listing of definitions can be found in 40 CFR 600.002–81.

biased label values can be extensively used, perhaps even emphasized in manufacturers' advertising. Further, without some change in the regulations, the situation could become worse in a future model year as manufacturers try to achieve continual increases in their label values.

EPA considered several alternative solutions to this problem. The first alternative was to test all configurations to establish label values. This was rejected as too burdensome and costly. The second alternative was to require minimum sales representation for test data in the label calculation. This was rejected since it could still greatly increase the manufacturers' testing burdens prior to model introduction and would increase label testing for models that are adequately covered under the current system. The third option was to retain the current testing requirements, but use analytical procedures to estimate test values for all subconfigurations. The analytical values and the actual test values would be used in sales-weighted label calculations, thus reflecting all designs at their proper sales weight. (This alternative is discussed further in Section III.E of this preamble.) EPA rejected this alternative since it would be a complex and controversial solution impacting all label calculations rather than centering only on the expected small number of problem labels.

Since our analysis suggests that this problem may be limited to a small number of model types that are not covered adequately by the current requirements, EPA proposes a simple solution whereby each base level must be represented at least by data from the highest projected sales configuration within the base level. This should affect only a small fraction of base levels. (In the 1982 model year, approximately 7 percent of the base levels were not represented by the high sales configuration for labeling.)

We do not expect that this requirement would cure all problem cases. However, it will correct some of the overstated label values and, more importantly, place limitations on a manufacturer's ability to overstate label values further by testing only vehicles with very low sales. Thus, this requirement would target only potential problem areas at a very small burden for manufacturers. The actual number of tests performed annually should not increase since these vehicles would likely be tested for CAFE purposes. The only increase in burden with this proposal would be due to a shift when these designs are tested, causing a very slight test load increase prior to model introduction.

C. Relabeling

Under the existing fuel economy label regulations, label values, once calculated, are not changed for the entire model year. Design changes can, however, be implemented after the label has been calculated which may significantly change the fuel efficiency of the vehicles. Design changes after production has started are called running changes. Because label values are only calculated once during a model year, any change in the fuel efficiency caused by design changes is currently not reflected in the label values. Furthermore, since the label value represents the sales weighted average fuel economy prediction for the included designs, changes in sales predictions can significantly affect the estimated fuel economy. These deficiencies in the current calculation procedures adversely affect the representativeness of the label values and thus their usefulness to consumers.

Ideally, label values would be kept most up-to-date by requiring them to be recalculated every time a running change is submitted or a sales shift occurs. However, EPA recognizes the practical limits of reflecting these changes on a continuous basis. Therefore, EPA is proposing two updating mechanisms: A continuous check on label values triggered only by certain design changes, and a single mid-year recalculation for all labels. EPA believes this combination can approximate the ideal system with much less burden on the industry.

While this proposal details a particular combination of update requirements, EPA recognizes that there may be other combinations or single update systems that would achieve comparable results. EPA requests comments on other ways to solve the label updating problem.

EPA is proposing that the label values be recalculated: (1) Once per model year (in January) for the complete product line, and (2) any time running changes wer made directionally affecting any of the specific parameters of equivalent test weight, axle ratio, or road-load horsepower for vehicles covered by a label. For the mid-year recalculation, any label value decrease of 1.0 mpg or more would have to be reflected on new labels. (Manufacturers could optionally relabel for fuel economy increases.) For recalculations triggered by the running change, if the newly calculated label value were 1.0 mpg or more below the city or highway value new labels would be required. A brief explanation of each of these types of relabeling follows:

1. *Mid-Year Recalculations.* Recent experience in the fuel economy program indicates that compared to current label values (calculated early in the model year, often before production starts), the label values that would be calculated using end-of-year data were as much as 3 mpg different for the city value and 4 mpg different for the highway value. Further, 20 percent of the city label values for cars were overstated by 1 mpg or more and 30 percent of the highway label values were overstated by 1 mpg or more.

EPA proposes that manufacturers recalculate all label values using total model year projected sales updated as of December 31 of the calendar year preceding the model year. If any recalculated city *or* highway label value is less than the existing label by 1.0 mpg or more, new label values would have to be in place by the following February 1. All manufacturer-calculated label values (and data used in the calculations) would be submitted to EPA at least five days before implementation. For the recalculation, all base levels would be represented by data from at least the highest projected sales configuration, as with the initial labels. EPA would provide comparable vehicle range values for the labels at an appropriate time before February 1. As is currently required, these updated range values would be incorporated on the labels within 15 days of the date EPA made them available.

The date for the mid-year relabeling was chosen so as to have the least impact on industry resources. The current labeling procedures require that the range of fuel economy of comparable vehicles contained on the labels (but not the label values) be updated (around this time) and these new labels be affixed to subsequent production. Because manufacturers are already required to put new labels on much of their product lines at this time, the only new cost involved would be in performing the calculation and updating sales projections. EPA estimates this cost to be approximately $380,000 for the industry. EPA requests information on other possible costs associated with relabeling, such as for updating advertising and brochures.

EPA acknowledges that if all of manufacturers' advertising had to be altered at mid-model year to reflect revised fuel economy estimates, it would amount to significant disruption in advertising, with possibly higher costs. However, it is likely that the current portion of overstated label values would

be significantly less because of the incentive for manufacturers not to make changes during the year that decrease fuel economy. This incentive would be reinforced by the proposal to require labeling for certain design changes (see below) at any time during the model year. Further, manufacturers' advertising typically centers only on the highest fuel economy model type within a car line, which further decreases the likelihood of label value changes that would affect advertising. Thus, EPA believes that the actual impact of relabeling on advertising cost would not be significant, primarily due to the presence of the relabeling requirements themselves. The risk of affecting advertising would discourage unnecessary design changes that decrease fuel economy.

2. Recalculation Resulting Directly from Design Changes. Certification records show that in the 1982 model year, 115 of the over 800 design changes involved changes in axles, equivalent test weight or road-load horsepower. Because design changes involving any one of these three vehicle characteristics may have a significant effect on fuel economy,[8] EPA is proposing that the label values be immediately recalculated and relabeled, if necessary, to reflect these types of design changes if they are in the direction of decreasing fuel economy. These are specific design changes that are closely controlled by the manufacturer's product planning and, therefore, manufacturers should be responsible for reflecting them in fuel economy estimates to the public.

Specifically, this proposal would require that: (1) Anytime an axle ratio is added which is numerically 10 percent larger than the largest axle ratio tested, or (2) a higher equivalent test weight is added, or (3) when the road-load horsepower is increased by 10 percent (either cumulative or a single change), the label values must be recalculated. If the recalculation, using undated projected annual sales, results in any label calculation reduction of a full 1.0 mpg or more of the city or highway calculation, the affected vehicles would have to be relabeled. (Each manufacturer would have the option to relabel for fuel economy increases by 1.0 mpg or more.) The 1.0 mpg city or highway change in fuel economy was selected to ensure that only those design changes which had a significant effect on fuel economy would trigger a relabeling. That is, changes of less than 1.0 mpg may result in label values changing due to round-off. However, labels will not be revised in these cases.

If the manufacturer were required to relabel based on the above criteria, the new labels would have to be installed on the affected model types at the time the running change was implemented. The manufacturer would submit the new label values, along with the data used in the calculations, to EPA at least five working days before implementations. As is the current practice when new labels are calculated during the year, EPA will supply the manufacturer with the latest available comparable vehicle range values to be used on the new labels.

Current fuel economy regulations do not require supplementary data for changes only in road-load horsepower or increase in equivalent test weight. Therefore, EPA is also proposing that manufacturers be required to submit supplementary fuel economy data for running changes that affect these parameters as described above. EPA does not anticipate that this requirement would significantly increase testing since emissions regulations often require test data for such changes.

3. Gas Guzzler Tax Liability. Currently, a manufacturer's liability for Gas Guzzler Tax on a particular vehicle is determined by the model type fuel economy value that EPA assigns to it. Since the proposed labeling program will cause label values to be updated, EPA proposes that the Gas Guzzler Tax liability be reevaluated whenever a label is updated. This would permit a manufacturer to remove a vehicle from the Gas Guzzler category (or decrease the tax liability) by making fuel economy improvements during the year. The converse would also be true as vehicles could fall into the Gas Guzzler category if model type fuel economy estimates decreased during the model year.

D. Modifications to the Label Information

1. Inclusion of City and Highway Estimates. The fuel economy label currently contains a single fuel economy value referred to as the EPA estimated fuel economy. The EPA estimated fuel economy is based on a test procedure which simulates the relative low speed stop-and-go driving typical in a city or urban environment. Since the current label fuel economy value is based on a city-type test, it does not reflect highway fuel economy performance. This lack of label information about highway fuel economy is particularly significant due to the many improved designs available today (such as overdrive transmission gearing) that mainly affect the highway fuel economy, not city fuel economy. In addition, highway estimates are used and emphasized by manufacturers in their advertising even though they do not appear on the label.

EPA propose a two-number label that would present separate city and highway estimates. Manufacturers' comments on the ANPRM have indicated agreement with this system. The advantage of this two-number system is that individual buyers would determine the expected fuel economy under the driving mode or modes of particular interest to them.

EPA had previously included highway fuel economy estimates on labels during the 1975 through 1978 model years. We subsequently dropped the highway estimate from the labels and termed the former "city" estimate simply as the "estimate." This was done as an interim measure while a solution to the in-use fuel economy shortfall problem could be found. If EPA adopts the previously described shortfall adjustments to label values, the separate city and highway estimates will become more valid and useful. The Agency does not intend to adopt this two-mode label system if shortfall adjustments are not adopted.

2. Elimination of Prior Approvals for Label Values. Current regulations require that manufacturers obtain EPA approval of label values before they can be used. This approval process requires significant EPA resources and can cause delays for manufacturers in labeling vehicles in production.

EPA proposes to eliminate the requirement for prior label approvals. Manufacturers would be responsible for calculating label values and could apply them at their discretion provided they had submitted the label value and supporting calculation to EPA. EPA would retain the function of auditing label calculations at its discretion. If EPA audits revealed vehicles mislabeled too high, manufacturers would be required to relabel the vehicles. Manufacturers would have 15 calendar days to change labels on unsold vehicles and begin installing correct labels on all unlabeled vehicles. The relabeling cost and disruption to advertising should be sufficient incentive for manufacturers to maintain good internal quality control of their label calculations. Thus, no additional mislabeling penalty is proposed. As in running change label updates, EPA would provide the latest available comparable range to be used.

3. Unique Labels for Fuel Efficient Vehicles. Currently, each model type classification (as defined by car line name, basic engine, and transmission class) is represented by a single fuel

[8] EPA Report No. 460/3-80-010, "Passenger Car Fuel Economy: EPA and Road," September 1980, available in Public Docket No. A-80-32.

economy general label value (although labels specific to configurations are allowed temporarily until general labels become available). Manufacturers often have specific fuel efficient design packages within model types that are not appropriately represented by the model type general label value. There is currently no formal mechanism that allows manufacturers to separately label and advertise these fuel efficient packages if they fall within a currently defined model type. EPA agrees that the highlighting of specific fuel efficient designs that are available is consistent with the Agency's goal to provide consumers with accurate fuel economy information. Therefore, EPA proposes to allow manufacturers to separately label specific vehicle designs based on fuel economy performance, providing these vehicles bear a unique name for consumer identification, and providing certain minimum testing requirements are met.

Under this proposal, the manufacturer would be allowed to create unique car lines representing model types separated from the original model types. The new car line name must be different form the remaining car line name (although the unique car line name may be a derivative of the original name, such as Omni Miser), and must appear on the label and on each vehicle bearing the label. For label calculation purposes, the vehicles separated from the original model type will be considered separate basic engines. No subconfiguration may be represented in more than one basic engine, and *all* subconfigurations within a unique label calculation must be represented by test data. The label values for the unique model types contained in the new basic engines would be calculated using existing procedures.

The manufacturer may make unique label subconfiguration groupings as large or small as it desires as long as each subconfiguration in the grouping is represented by test data. Further, the lable updating provisions of this proposal would apply as with other model types.

4. *Clarification and Standardization of Label Format.* Under the current regulations, prior approval of labels encompasses the format as well as the information contained on the label. This approval process costs both the manufacturers and EPA time and resources. Format variation also makes it difficult for potential buyers to locate and understand the information and reduces the usefulness of the label for comparative shopping.

We are proposing changes affecting both the information EPA required on the label and the format itself in order to achieve a certain degree of standardization, improved clarity, and a more streamlined administrative process. The proposed changes to the label format are to establish a standard format and to delete the requirement that EPA approve the label format.

EPA has contracted with a media consultant firm to review specific label formats and provide comments and suggestions.[6] The Department of Energy (DOE) has done similar studies.[7] Drawing from this information and from EPA's experience with various formats used by manufacturers, EPA is presenting two alternatives in this proposal. The format adopted in the final rule will be based on the comments received on these alternatives. Examples of the alternative formats are appended to the regulations.

The first alternative (developed by EPA) allows the manufacturer some flexibility in the information that can be included on the label beyond the minimum information required. It has certain minimum dimensional requirements and must leave at least 60 percent of the label area for the fuel economy values which also have minimum dimensional requirements. This alternative format is presented in the text of the regulations for this NPRM since it allows more variation and, therefore, needs a more detailed description. The second alternative is the fixed format developed by DOE which features a depiction of a gas pump and exact label language. For this alternative, no variations may be made to the exact format except that the size (with contents) may be proportionately increased from minimum dimensions.

EPA also proposes to eliminate the requirement for EPA prior approval of label formats even though some format variation may still be allowed. EPA would instead audit label formats as necessary and could require relabeling if violations occur.

EPA requests comments on the proposed labeling format changes, particularly on:

a. The preferred format alternative;

b. Implementation costs and problems;

c. Consumer information needs and understanding;

d. Advertising guidelines for all media; and

e. Any other proposed systems, including their advantages and disadvantages.

E. Proposed Technical Amendments To Cut Costs and Improve the Data Base

1. Elimination of the Preliminary CAFE Calculation. There are two basic uses of the preliminary CAFE in the current program. One is to provide the manufacturer an early estimate of what the final CAFE could be. A second purpose is to establish the subdivisions of a product line which will be the basis for establishing test requirements for the final CAFE data base. The need for the preliminary CAFE is now being questioned by both EPA and the industry.

EPA originally incorporated the preliminary CAFE concept in response to manufacturers' requests.[8] According to manufacturers, this early program of EPA-confirmed corporate fuel economy values would provide a very good indication of what the final CAFE values would be if no significant changes were introduced by the manufacturers and the projected sales remained stable. They also felt EPA-confirmed values would provide their marketing departments latitude in making marketing decisions if preliminary CAFE's were above the standard. Even though EPA offers the preliminary CAFE as an early indicator of the manufacturer's status for CAFE compliance, in recent years manufacturers seem to have stopped relying on the preliminary CAFE for this purpose. Whether the manufacturer needs it or not, EPA and the manufacturer still must devote resources to generate and confirm the value since this is required by the current regulations.

EPA proposes to eliminate the preliminary CAFE calculation from the fuel economy program. In its place, the regulations would require that the final CAFE include test data on vehicle configurations with total production of 90 percent or more of the manufacturer's total production. If this proposal to eliminate the preliminary CAFE is adopted, manufacturers will be free to choose, in most cases, which designs to test as long as the final CAFE data base represents 90 percent or more of vehicle configuration production. (There would be no change in the existing requirement that all data submitted during the label calculation procedures must also be included in the CAFE calculation and this would also apply to data submitted for relabeling purposes.)

[6] Buckheim & Rowland, Inc., "Fuel Economy Label Design Evaluation," May 1981. Available in Public Docket No. A-80-32.

[7] Pirkey, McNutt, "Consumer Response to Fuel Economy Information—Alternative Sources, Users, and Formats," SAE No. 820792, June 1982, available in Public Docket No. A-80-32

[8] 41 FR 38647, September 10, 1976.

Also related to the preliminary CAFE calculation, under the current regulations (40 CFR 600.507–79(a) (1)), manufacturers may request exemptions from the requirement that supplementary fuel economy data be submitted for running changes based upon preliminary CAFE values. If a manufacturer's preliminary CAFE is sufficiently above the model year's CAFE value, the manufacturer may request such an exemption. Since the exemption decision relies on the preliminary CAFE and since the manufacturers will, in most cases, be free to choose which data to include in the final CAFE data base, EPA proposes that the exemption be eliminated in conjunction with eliminating the preliminary CAFE calculation. Also, in some cases the additional running change data will be needed under the relabeling proposal.

2. *Fuel Economy Adjustments for High Mileage Test Vehicles.* Presently, the regulations allow a maximum mileage accumulation of 10,000 miles for fuel economy data vehicles. This is allowed in order to extend the usefulness of fuel economy test vehicles so that each vehicle can be used for more tests, thus saving the cost of new test vehicles. It also allows vehicles which had been used to generate emission certification data under 40 CFR Part 86 to be reconfigured and used as fuel economy data vehicles.

Fuel economy levels usually improve with mileage accumulation because engine wear reduces friction. Test vehicle mileage over 4,000 miles can consequently bias fuel economy test results from the original 4,000-mile base. EPA conducted an analysis (available in the public docket) of fuel economy data from 1976 through 1981 model year test vehicles.* Average fuel economy improvements of approximately 5 percent were calculated between 4,000 and 10,000 miles. Thus, for example, by increasing the mileage accumulated on a test vehicle to 10,000 miles, fuel economy can be increased on the average by about 1.0 mpg on a vehicle which has a 4,000-mile fuel economy of 20 mpg. In the 1976 model year, approximately 8 percent of the fuel economy tests were performed on vehicles which had accumulated over 6,200 miles. By the 1980 model year, 35 percent of the tests were performed on vehicles which had accumulated over 6,200 miles. This increased use of test vehicles which have accumulated high mileage tends to bias the fuel economy data.

EPA is proposing (for labeling only) to apply an adjustment factor to test data from vehicles which exceed 6,200 miles (10,000 kilometers). This would allow manufacturers to continue using existing test vehicles, but the fuel economy bias caused by higher mileage would be eliminated. An adjustment equation is contained in the test of the proposed regulation. This proposal would allow the manufacturer to test vehicles with up to 6,200 miles accumulation without a factor being applied to the fuel economy results. For any tests conducted on vehicles with 6,200 miles or more, and up to 10,000 miles, the test results must be adjusted to 4,000-mile levels. The proposed method would allow manufacturers to choose between the use of the adjustment factors for vehicles over 6,200 miles or testing a new vehicle.

Because the proposal is to adjust the fuel economy of vehicles exceeding 6,200 miles back to a 4,000-mile reference point, we recognize that it would constitute a strong disincentive to accumulate more than 6,200 miles on a test vehicle. That disincentive is intended without going so far as to establish an absolute prohibition. Recent changes to the emission certification regulations (46 FR 50464, October 13, 1981) have created greater flexibility to reconfigure vehicles and to perform the emission certification tests sooner than 4,000 miles. This leaves sufficient latitude to reconfigure these vehicles again and fulfill any necessary fuel economy data requirements without accumulating over 6,200 miles. We believe the tendency to accumulate over 6,200 miles is not driven by a desire to save costs by maximizing vehicle reuse but by the desire to generate the maximum fuel economy possible within the time and resources available to the manufacturer to accumulate mileage. This creates inequity in the comparability of fuel economy values and favors manufacturers who have resources available to accumulate additional mileage.

This proposal to adjust data on vehicles with mileage over 6,200 miles only applies to fuel economy values used for label calculations. Since this rulemaking is not intended to affect CAFE stringency, we are not proposing now to use the adjusted values in the CAFE calculation.

3. *Drivetrain Separation.* a. Presently, the definition of "transmission class" does not explicitly distinguish between front- and rear-wheel drive. Consequently, either front- or rear-wheel drive vehicles, or a combination of both, can generate fuel economy data to represent a base level. Available EPA test data show that, in general, configurations tested with rear-wheel drive achieve better tested fuel economy than the same configurations tested with front-wheel drive. This difference in testing results can compromise the representativeness of particular fuel economy values.

The current fuel economy regulations (40 CFR 600.002–79(a)(22)) allow the Administrator to separate vehicles with front- and rear-wheel drive systems into separate transmission classes based on "other characteristics determined significant by the Administrator," and thus, into separate base levels. EPA began separating front- and rear-wheel drive transmission vehicles into separate transmission classes in the 1981 model year using this provision. EPA proposes in this NPRM to make this separation explicit in the regulations.

b. Some manufacturers are now installing automatic transmissions that have "lockup" torque converters and have also installed transmissions with "overdrive" gear ratios. Both of these features improve the fuel efficiency of the vehicle.

EPA proposes that both overdrive gearing and automatic transmission with lockup be explicitly included in the definition of transmission class. Thus, consumers would be notified of the fuel economy impact (since transmission class determines a model type) and the manufacturer would get fulll credit for these features by having them calculated and listed separately both in the *Guide* and on vehicle labels. Few, if any, additional tests would be required by this change.

4. *Interior Volume.* EPA uses the interior volume of vehicles to classify passenger automobiles to aid the consumer in comparing the fuel efficiency of similar vehicles. The current classification technique was published as a final rule in the September 12, 1977 **Federal Register** (42 FR 45668).

EPA is proposing three changes to the current method for measuring vehicles to account for: (1) The cargo volume of hatchbacks and station wagons, (2) the total front-seat leg room, and (3) adding interior volume measurements to the two-seater vehicle classification. Since these changes will result in new interior volumes for all vehicles, some of the vehicles could be in a new interior volume classification. Therefore, EPA is requesting that manufacturers include in their comments interior volume information on these vehicles that would change classification. This

*EPA Report No. EPA/AA/CPSB/81–03, "Effect of Vehicle Mileage on Tested Fuel Economy," February 1981.

information will be used to determine whether the existing ranges need to be adjusted.

5. *Reduced Reporting Requirements.* EPA proposes to reduce the manufacturers' reporting burdens by eliminating requirements to submit certain information to EPA and to require that information be retained by the manufacturer. This information concerns test vehicle calibrations and maintenance records, and also incudes certain interior volume calculation information. Since EPA does not routinely use this information, it no longer needs to be submitted. However, under this proposal, the manufacturer would have to make these records available to EPA upon request.

III. Other Major Alternatives Considered

In this effort to improve the credibility and usefulness of EPA's fuel economy information, EPA considered many alternatives. The most significant alternatives considered for each of the proposed modifications to the existing regulations are outlined below.

A. Changes in the Test Procedure

A logical option to bring EPA estimates more in line with in-use experience is to make the fuel economy test procedure more closely match actual in-use conditions. However, in order to minimize test costs and maximize the usefulness of the data, test procedures should be the same for the fuel economy labeling program and the manufacturer's CAFE compliance program. Furthermore, when Congress established mandatory CAFE standards, they were based on then-current test procedures. If changes to the basic test cycle would significantly affect the stringency of the CAFE standards, adjusting the standards or test results might be necessary to maintain the same relative stringency. Additionally, a large portion of the fuel economy data are derived from emissions tests since EPA uses the same urban test cycle for both emissions and fuel economy. Changing the test cycle for fuel economy labeling purposes only would double the testing costs to obtain fuel economy data on emission-data vehicles. Finally, major test procedure changes would require costly capital equipment investments and would require at least five years to develop and implement, thus delaying for several years the implementation of an improved fuel economy labeling program.

B. Estimated Fuel Economy Ranges

For each model type, EPA could determine a range of fuel economy based on the estimated percentage of drivers which would achieve fuel economy within the range. EPA could establish a highly inclusive range that would allow, for example, 90 percent of drivers to achieve values within the range but then the range could be so wide as to be meaningless to consumers. Alternatively, EPA could establish a less inclusive fuel economy range that would be more useful for comparisons, but a large number of people would get fuel economy outside of the range. The range approach could make people satisfied that they achieve fuel economy within the limits expected. However, it would not help in comparison shopping since consumers would not know where within the range their fuel economy would most likely be. People might also continue to perceive the range limits as a city value and a highway value, but these range limits may not be the most accurate estimates of expected average in-use city and highway fuel economy.

C. Use of Combined Number Only

EPA considered replacing the existing estimated EPA number with another single number representing a combined city and highway fuel economy value (55 percent city and 45 percent highway weighting). The combined figure would have been a harmonic average of the city and highway values. One of the major problems with this approach is that few drivers actually operate their vehicles with this proportion of driving and while the number might provide for an easy way to comparison shop it would probably not reflect in-use fuel economy. ANPRM commenters did not support this approach.

D. Technology-Specific Adjustment Factors

EPA conducted a thorough analysis of alternatives for developing separate shortfall adjustment factors for different engine/drivetrain designs.[10] Such an approach would probably be more technically correct than applying uniform adjustments across vehicle designs because some design characteristics have been found to exhibit different relationships between laboratory results and on-road results. However, the analysis of how to categorize designs and assign them adjustment factors is very complex and requires an enormous (as well as complete and up-to-date) data base of in-use results. EPA has derived technology-specific adjustment factors based on currently available data, but in-use data are lacking for light-duty trucks and for some of the more recent designs such as light-duty diesels and some front-wheel drive technology. Although EPA considered proposing technologies-specific factors, the potential controversy over the validity and fairness of these factors led EPA to opt for the uniform factors as an initial step. Another disadvantage of technology-specific factors is that we believe technology changes would require frequent update of the factors. Simple uniform factors may also need to be updated, but since their use would not change the competitive ranking order of vehicle label values and since the factors would be based upon the overall average shortfall of all technology types, they should require less frequent updating. This would result in less disruption to manufacturers' planning and marketing practices and less resource expenditures needed by EPA to run a continuous factors updating program. EPA requests comments on the technology-specific analyses and how (or if) EPA should pursue the development of technology-specific factors in the future.

E. Design Factor Label Calculations

EPA considered using design adjustment factors to predict fuel economy mathematically for each untested subconfiguration. This would have reduced significantly the bais in the label fuel economy caused by lack of data on the configurations included within the model type covered by the labels. It can also improve the representation of the label values and possibly reduce testing requirements for both the label calculation requirements and CAFE requirements. (The development and impact analysis of this system is contained in EPA Report No. EPA–AA–CPSB–81–02 entitled, "A Comparison of Current and Proposed Labeling Programs," and is available in the public docket.) Several manufacturers have indicated, however, that in order to "prove out" the adjustment equations they would also have to test vehicles to compare tested to calculated results. This method would also tend to be more complex to set up initially and might cause some concern as to the validity of "calculating" test results.

We have concluded that only a small percentage of labels [11] are overstated by

[10] EPA Report No. EPA/AA/CTAB/FE–82–6, "Analysis of In-Use Fuel Economy Data: Stage I," Dillard Murrell, September, 1982, available in Public Docket No. A–80–83.

[11] For passenger cars only three percent of the city labels and nine percent of the highway values appear overstated by two or more mpg and for light-duty trucks only one percent of the city labels and six percent of the highway labels appear overstated by two or more mpg.

two mpg or more due to lack of data and deficiencies in the current data aggregation system. The implementation of a new system as complex as the design factor approach would seem to be a drastic solution relative to the magnitude of the problem. Hence, we have proposed the simpler approach of requiring the testing of the highest sales volume in each configuration as the minimum data requirement to generate a label. We believe this approach will correct the large majority of overstated labels with the minimum change to the current system. EPA welcomes comments on this approach for labeling as well as comments as to whether EPA should consider the use of design factoring in generating analytical CAFE data (as is currently allowed in the regulations).

F. Labels That Are More Design Specific

EPA indicated in the ANPRM that it was considering label values for subgroups within each model type. The level of detail could have been as detailed as the subconfiguration level. Comments received to this advanced notice indicated that labeling at this level would be very costly. This high cost would result because most manufacturers apparently do not have a mechanism for tracking such unique vehicle designs during the assembly process. Therefore, to set up this tracking mechanism to ensure that each vehicle is properly labeled, complicated and very costly systems would have to be purchased and installed. EPA also considered less detailed levels of labeling (such as by axle ratio) which would have resulted in an improvement for vehicle comparisons. However, these would have required that more vehicles be tested early in the model year or that design factors be used for estimating test results. EPA requests comments on whether such approaches should still be considered to improve the labeling program.

IV. Cost of Implementation

EPA has estimated, based on information from previous model years, the likely cost to maufacturers of the changes proposed in this NPRM. The proposed changes are estimated to cost the entire industry less than $600,000 per year. A detailed analysis of the likely costs of the proposals in this NPRM is contained in a document entitled "Cost Analysis of Proposed Changes to 40 CFR Part 600 to Improve Fuel Economy Labeling and the Fuel Economy Data Base," which can be obtained from Public Docket No. A–80–32. EPA invites comments and additional information to improve the accuracy of the analysis used to develop the final rule.

V. EPCA Constraints

Section 503(d)(1) of EPCA, 15 U.S.C. 2003(b)(1), requires that for purposes of CAFE, fuel economy be measured and calculated by procedures established by the EPA Administrator. It further requires that "Procedures so established with respect to passenger automobiles (other than for purposes of Section 506) shall be procedures utilized by the EPA Administrator for model year 1975 (weighted 55 percent urban cycle and 45 percent highway cycle) or procedures which yield comparable results." The data base improvements EPA is proposing in this notice (see Section II.E of this preamble) are intended to improve the completeness and representativeness of the fuel economy data base so that EPA fuel ecomony estimates do not overstate fuel economy improvements as compared to the 1975 base model year. These options would not change the 1975 testing or CAFE calculation procedures themselves, but would only require that manufacturers use more representative data.

Section 503(d)(3), 15 U.S.C. 2003(d)(3), of EPCA states, "testing and calculation procedures applicable to a model year, and any amendment to such procedures (other than a technical or clerical amendment), shall be promulgated not less than 12 months prior to the model year to which such procedures apply." EPA believes that the changes proposed in this NPRM are technical amendments to procedures under Section 503(d)(3) of EPCA. They would change neither the actual fuel economy testing procedures nor the basic formula used to derive manufacturers' corporate average fuel economy levels and would not entail practical leadtime constraints or compliance burdens for manufacturers.

These proposed rules are technical changes to existing requirements intended to improve the completeness and representativeness of the data base. Changes of this nature, which do not require (as a practical matter) a year's leadtime, are the type of changes Congress had in mind when it created the exception to the leadtime requirements of Section 503(d)(3). Changes to the labeling program are generally not constrained by the leadtime requirements of Section 503(d)(3). However, the Agency invites comments on the question of whether or not the changes proposed here should be treated as technical amendments.

VI. Regulatory Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a regulatory impact analysis. This regulation is not major because it will result in an annual effect on the economy of less than $100 million. Also, this regulation should not result in increased costs or prices for consumers, industries, or others, nor should it have adverse effects on competition, employment, investment, or productivity.

This action was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection in the docket for this rulemaking: Docket No. A–80–32. The EPA's Central Docket Section (A–130) is located at 401 M Street SW., Washington, D.C. 20460.

VII. Reporting and Recordkeeping Requirements

These amendments would require the manufacturers to maintain additional records on the recalculation of label values and the approved test data used to generate them. However, the reporting of the additional label calculations would be minor compared to existing requirements. When coupled with the decrease in reporting burden due to the elimination of test vehicle calibration specification, label format, and preliminary CAFE approvals, the total program reporting and recordkeeping burden would probably decrease. Furthermore, the proposed flexibility for manufacturers to issue their own labels, rather than wait for EPA to process them, while not reducing reporting or recordkeeping requirements, should reduce manufacturers' operating costs due to their greater control over their own schedules.

Reporting, recordkeeping and labeling requirements in 40 CFR Part 600 have previously been approved by OMB and assigned control number 2000–0390. The modifications proposed in this notice have been submitted for approval to OMB under section 3504(h) of the Paperwork Reduction Act of 1980, U.S.C. 4501 *et seq.* Comments on information collection requirements proposed in this notice should be directed to the Office of Information and Regulatory Affairs, OMB, ATTN: Desk Officer EPA.

VIII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA is required to determine whether a regulation will have a significant economic impact on a substantial number of small entities so

as to require a regulatory analysis. The revision of the fuel economy regulation established by this rulemaking should reduce the burden, including costs of compliance with fuel economy requirements for small entities. Therefore, pursuant to 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities.

IX. List of Subjects in 40 CFR Part 600

Electric power, Energy conservation, Gasoline, Labeling, Motor vehicles, Reporting and recordkeeping requirements, Administrative practice and procedure, Fuel economy.

Dated: May 24, 1983.

William D. Ruckelshaus,

Administrator.

PART 600—[AMENDED]

For the reasons set forth in the preamble, 40 Part 600 is amended as follows:

1. The authority for Part 600 reads as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94-163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95-619, 92 Stat. 3206.

2. A new § 600.002-85 is added to read as follows:

§ 600.002-85 Definitions.

(a) As used in this subpart, all terms not defined herein shall have the meaning given them in the Act:

(1) "Act" means Part I of Title V of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 1901 et seq.).

(2) "Administrator" means the Adminstrator of the Environmental Protection Agency or his authorized representative.

(3) "Secretary" means the Secretary of Transportation or his authorized representative.

(4) "Automobile" means any four-wheel vehicle propelled by a combustion engine using onboard fuel or by an electric motor drawing current from rechargeable storage batteries or other portable energy storage devices (rechargeable using energy from a source off the vehicle such as residential electric service) which is manufactured primarily for use on public streets, roads, or highways (except any vehicle operated on a rail or rails) and which is rated at 8,500 pounds gross vehicle weight or less or is a type of vehicle which the Secretary determines is substantially used for the same purposes.

(5) "Passenger Automobile" means any automobile which the Secretary determines is manufactured primarily for use in the transportation of no more than 10 individuals.

(6) "Model Year" means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If a manufacturer has no annual production period, the term "model year" means the calendar year.

(7) "Federal Emission Test Procedure" refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in Part 86 for the respective model year, which are used to derive city fuel economy data for gasoline-fueled or diesel vehicles.

(8) "Federal Highway Fuel Economy Test Procedure" refers to the dynamometer driving schedule, dynamometer procedure, and sampling and analytical procedures described in Subpart B of this part and which are used to derive highway fuel economy data for gasoline-fueled or diesel vehicles.

(9) "Fuel" means: (i) Gasoline and diesel fuel for gasoline- or diesel-powered automobiles or (ii) electrical energy for electrically powered automobiles.

(10) "Fuel Economy" means: (i) The average number of miles traveled by an automobile or group of automobiles per gallon of gasoline or diesel fuel consumed as computed in § 600.113 or § 600.207 or (ii) the equivalent petroleum-based fuel economy for an electrically powered automobile as determined by the Secretary of Energy.

(11) "City Fuel Economy" means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal emission test procedure.

(12) "Highway Fuel Economy" means the fuel economy determined by operating a vehicle (or vehicles) over the driving schedule in the Federal highway fuel economy test procedure.

(13) "Combined Fuel Economy" means the fuel economy value determined for a vehicle (or vehicles) by harmonically averaging the city and highway fuel economy values, weighted 0.55 and 0.45 respectively, for gasoline-fueled and diesel vehicles. For electric vehicles, the term means the equivalent petroleum-based fuel economy value as determined by the calculation procedure promulgated by the Secretary of Energy.

(14) "Average Fuel Economy" means the unique fuel economy value as computed under § 600.510 for a specific class of automobiles produced by a manufacturer that is subject to average fuel economy standards.

(15) "Certification Vehicle" means a vehicle which is selected under § 86.084-24(b)(1) and used to determine compliance under § 86.084-30 for issuance of an original certificate of conformity.

(16) "Fuel Economy Data Vehicle" means a vehicle used for the purpose of determining fuel economy which is not a certification vehicle.

(17) "Label" means a sticker that contains fuel economy information and is affixed to new automobiles in accordance with Subpart D of this part.

(18) "Dealer" means a person who resides or is located in the United States, any territory of the United States, or the District of Columbia and who is engaged in the sale or distribution of new automobiles to the ultimate purchaser.

(19) "Model Type" means a unique combination of car line, basic engine, and transmission class

(20) "Car Line" means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roof line, number of doors, seats, or windows except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

(21) "Basic Engine" means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator. For electric vehicles, basic engine means a unique combination of manufacturer and electric traction motor, motor controller, battery configuration, electrical charging system, energy storage device, and other components as specified by the Administrator.

(22) "Transmission Class" means a group of transmissions having the following common features: basic transmission type (manual, automatic, or semi-automatic), number of forward gears used in fuel economy testing (e.g., manual four-speed, three-speed automatic, two-speed semi-automatic), drive system (e.g., front-wheel-drive, all-wheel-drive), type of overdrive, if applicable (e.g., final gear ratio less than 1.00, separate overdrive unit), torque converter type, if applicable (e.g., non-lockup, lockup, variable ratio), and other transmission characteristics that may be

determined to be significant by the Administrator.

(23) "Base Level" means a unique combination of basic engine inertia weight class and transmission class.

(24) "Vehicle Configuration" means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio within a base level.

(25) "Engine Code" means, for gaoline-fueled and diesel vehicles, a unique combination, within an engine-system combination (as defined in Part 86 of this chapter), of displacement, carburetor (or fuel injection) calibration, distributor calibration, choke calibration, and auxiliary emission control devices, and other engine and emission control system components specified by the Administrator. For electric vehicles, engine code means a unique combination of manufacturer, electric traction motor, motor configuration, motor controller, and energy storage device.

(26) "Inertia Weight Class" means the class, which is a group of test weights, into which a vehicle is grouped based on its loaded vehicle weight in accordance with the provisions of Part 86.

(27) "Transmission Configuration" means a unique combination, within a transmission class, of the total number of forward gears. If the Administrator determines that sufficient fuel economy differences exist within a transmission configuration the Administrator may further subdivide that configuration by such features as gear ratios, torque converter multiplication ratio, stall speed, shift calibration, or shift speed.

(28) "Axle Ratio" means the number of times the input shaft to the differential (or equivalent) turns for each turn of the drive wheels.

(29) "Auxiliary Emission Control Device (AECD)" means an element of design as defined in Part 86.

(30) "Rounded" means a number shortened to the specific number of decimal places in accordance with the "Round Off Method" specified in ASTM E 29-67.

(31) "Calibration" means the set of specifications, including tolerances, unique to a particular design, version of application of a component, or component assembly capable of functionally describing its operation over its working range.

(32) "Production Volume" means, for a domestic manufacturer, the number of vehicle units domestically produced in a particular model year but not exported, and for a foreign manufacturer, means the number of vehicle units of a particular model imported into the United States.

(33) "Body Style" means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback) and number of seats (i.e., front, second, or third seat) requiring seat belts pursuant to National Highway Traffic Safety Administration safety regulations. Station wagons and light trucks are identified as car lines.

(34) "Hatchback" means a passenger automobile where the conventional luggage compartment, i.e., trunk, is replaced by a cargo area which is open to the passenger compartment and accessed vertically by a rear door which encompasses the rear window.

(35) "Pickup Truck" means a nonpassenger automobile which has a passenger compartment and an open cargo bed.

(36) "Station Wagon" means a passenger automobile with an extended roof line to increase cargo or passenger capacity, cargo compartment open to the passenger compartment, a tailgate, and one or more rear seats readily removed or folded to facilitate cargo carrying.

(37) "Gross Vehicle Weight Rating" means the manufacturer's gross weight rating for the individual vehicle.

(38) "Ultimate Consumer" means the first person who purchases an automobile for purposes other than resale or leases an automobile.

(39) "Van" means any light truck having an integral enclosure fully enclosing the driver compartment and load-carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

(40) "Base Vehicle" means the lowest priced version of each body style that makes up a car line.

(41) "Nonpassenger Automobile" means an automobile that is not a passenger automobile, as defined by the Secretary of Transportation at 49 CFR 523.5.

(42) "Four-Wheel-Drive General Utility Vehicle" means a four-wheel-drive, general purpose automobile capable of off-highway operation that has a wheelbase not more than 110 inches and that has a body shape similar to a 1977 Jeep CJ-5 or CJ-7, or the 1977 Toyota Land Cruiser, as defined by the Secretary of Transportation at 49 CFR 553.4.

(43) "Test Weight" means the weight within an inertia weight class which is used in the dynamometer testing of a vehicle, and which is based on its loaded vehicle weight in accordance with the provisions of Part 86.

(44) "Secretary of Energy" means the Secretary of Energy or his authorized representative.

(45) "Electric Traction Motor" means an electrically powered motor which provides tractive energy to the wheels of a vehicle.

(46) "Energy Storage Device" means a rechargeable means of storing tractive energy on board a vehicle such as storage batteries or a flywheel.

(47) "Motor Controller" means an electronic or electromechanical device to convert energy stored in an energy storage device into a form suitable to power the traction motor.

(48) "Electrical Charging System" means a device to convert 60Hz alternating electric current, as commonly available in residential electric service in the United States, to a proper form for recharging the energy storage device.

(49) "Battery Configuration" means the electrochemical type, voltage, capacity (in Watt-hours at the c/3 rate), and physical characteristics of the battery used as the tractive energy storage device.

(50) "Drive System" means the number and location of drive axles (e.g., front-wheel-drive, all-wheel-drive, rear-wheel-drive) and any other feature of the drive system if the Administrator determines that such other feature may result in a fuel economy difference.

(51) "Subconfiguration" means a unique combination within a vehicle configuration of equivalent test weight, road-load horsepower, and any other operational characteristic or parameter which the Administrator determines may significantly affect fuel economy within a vehicle configuration.

3. A new § 600.006-85, is added to read as follows.

§ 600.006-85 Data and information requirements for fuel economy vehicles.

(a) For certification vehicles with less than 10,000 miles, the requirements of this section are considered to have been met except as noted in paragraph (c) of this section.

(b)(1) The manufacturer shall submit the following information for each fuel economy data vehicle:

(i) A description of the vehicle, exhaust emission test results, applicable deterioration factors, and adjusted exhaust emission levels.

(ii) A statement of the origin of the vehicle including total mileage accumulation, and modifications (if any) from the vehicle configuration in which the mileage was accumulated. [For modifications requiring advance approval by the Administrator, the name of the Administrator's representative approving the modification and date of approval are required.] If the vehicle

was previously used for testing for compliance with Part 86 of this chapter or previously accepted by the Administrator as a fuel economy data vehicle in a different configuration, the requirements of this paragraph may be satisfied by reference to the vehicle number and previous configuration.

(iii) A statement that the fuel economy data vehicle, with respect to which data are submitted:

(A) Has been tested in accordance with applicable test procedures,

(B) Is, to the best of the manufacturer's knowledge, representative of the vehicle configuration listed, and

(C) Is in compliance with applicable exhaust emission standards.

(2) The manufacturer shall retain the following information for each fuel economy data vehicle, and make them available to the Administrator upon request:

(i) A description of all maintenance to engine, emission control system, or fuel system components performed within 2,000 miles prior to fuel economy testing.

(ii) In the case of electric vehicles, the manufacturer should provide a description of all maintenance to electric motor, motor controller, battery configuration, or other components performed within 2,000 miles prior to fuel economy testing.

(iii) A copy of calibrations for engine, fuel system, and emission control devices, showing the calibration of the actual components on the test vehicle as well as the design tolerances.

(iv) In the case of electric vehicles, the manufacturer should provide a copy of calibrations for the electric motor, motor controller, battery configuration, or other components on the test vehicle as well as the design tolerances.

(v) If calibrations for components in paragraph (b) of this section were submitted previously as part of the description of another vehicle or configuration, the original submittal may be referenced.

(c) The manufacturer shall submit the following fuel economy data:

(1) For vehicles tested to meet the requirements of Part 86 (other than those chosen in accordance with § 86.084–24 (c) and (h)), the city and highway fuel economy results from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

(2) For each fuel economy data vehicle, all individual test results (excluding results of invalid and zero mile tests) and, if the data are used in fuel economy label calculations, the test results adjusted in accordance with paragraph (g) of this section.

(d) The manufacturer shall submit an indication of the intended purpose of the data (e.g., data required by the general labeling program or voluntarily submitted for specific labeling).

(e) In lieu of submitting actual data from a test vehicle, a manufacturer may provide fuel economy values derived from an analytical expression, e.g., regression analysis. In order for fuel economy values derived from analytical methods to be accepted, the expression (form and coefficients) must have been approved by the Administrator.

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in § 86.084–21, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

(g)(i) The manufacturer shall adjust all test data used for fuel economy label calculations generated by vehicles with engine-system combinations with more than 6,200 miles (10,000 kilometers) using either of the following equations:

Equation A

$$FE_{6.400km} = FE_T\,[0.969 + 0.523 \times 10^{-3}\,(km)]^{-1}$$

Equation B

$$FE_{4.000mi} = FE_T\,[0.969 + 0.842 \times 10^{-3}\,(m)]^{-1}$$

Where:

$FE_{6.400km}$ = Fuel economy data adjusted to 6,400-kilometer test point

$FE_{4.000mi}$ = Fuel economy data adjusted to 4,000-mile test point

FE_T = Tested fuel economy value

km = Kilometer accumulation at test point

mi = Miles accumulation at test point

(ii) For vehicles with 6,200 miles (10,000 kilometers) or less accumulated, the manufacturer is not required to adjust the data.

4. A new § 600.010–85 is added to read as follows:

§ 600.010–85 Vehicle test requirements and minimum data requirements.

(a) For each certification vehicle defined in this part, and for each vehicle tested according to the emission test procedures in Part 86 for addition of a model after certification (§ 86.079–32) or, approval of running change (§ 86.079–33):

(1) The manufacturer shall generate city fuel economy data by testing according to the applicable procedures.

(2) The manufacturer shall generate highway fuel economy data by:

(i) Testing according to applicable procedures, or

(ii) Use of an analytical technique as described in § 600.006(e).

(3) The data generated in paragraphs (a) (1) and (2) of this section, shall be submitted to the Administrator in combination with other data for the vehicle required to be submitted in Part 86 of this Title.

(b) For each fuel economy data vehicle:

(1) The manufacturer shall generate city fuel economy data and highway fuel economy data by:

(i) Testing according to applicable procedures, or

(ii) Use of analytical technique as described in § 600.006(e), in addition to testing (e.g., city fuel economy data by testing, highway fuel economy data by analytical technique).

(2) The data generated shall be submitted to the Administrator according to the procedures in § 600.006.

(c) *Minimum data requirements for labeling:* (1) In order to establish initial fuel economy label values under § 600.306, or mid-year label updates under § 600.314(c), the manufacturer shall use only test data accepted in accordance with § 600.008(b) and (f) meeting the minimum coverage of:

(i) Data required for emission certification under §§ 86.082–24, 86.079–32, 86.079–33, and 86.082–34.

(ii) Data from the highest projected model year sales subconfiguration within the highest projected model year sales configuration for each base level, or

(iii) For additional model types established under § 600.207(a)(2), data from each subconfiguration included within the model type.

(2) For the purpose of calculating fuel economy label values for running change updates under § 600.314(b), the manufacturer shall submit data required under § 600.507.

(d) *Minimum data requirements for the manufacturer's average fuel economy:* For the purpose of calculating the manufacturer's average fuel economy under § 600.510, the manufacturer shall submit test data representing at least 90 percent of the manufacturer's actual model year production, by configuration, for each category identified for calculation under § 600.510(a).

5. A new § 600.206–85, is added to read as follows:

§ 600.206–85 Calculation and use of fuel economy values for gasoline-fueled, diesel, and electric vehicle configurations.

(a) Fuel economy values determined for each vehicle and as approved in § 600.008 (b) or (f) are used to determine city, highway, and combined fuel economy values for each vehicle configuration (as determined by the

Administrator) for which data are available.

(1) If only one set of city and highway fuel economy values are accepted for a vehicle configuration, these values, rounded to the nearest tenth of a mile per gallon, comprise the city and highway fuel economy values for that configuration.

(2) If more than one city or highway fuel economy value is accepted for a vehicle configuration:

(i) All data shall be grouped according to the subconfiguration at which the data were generated using sales projections supplied in accordance with § 600.207(a)(3).

(ii) Within each group of data, all values are harmonically averaged and rounded to the nearest 0.0001 of a mile per gallon in order to determine city and highway fuel economy values for each subconfiguration at which the vehicle configuration was tested.

(iii) All city fuel economy values and all highway fuel economy values calculated in paragraph (a)(2)(ii) of this section are (separately for city and highway) averaged in proportion to the sales fraction (rounded to the nearest 0.0001) within the vehicle configuration (as provided to the Administrator by the manufacturer) of vehicles of each tested subconfiguration. The resultant values, rounded to the nearest 0.0001 mile per gallon, are the city and highway fuel economy values for the vehicle configuration.

(3) The combined fuel economy value for a vehicle configuration is calculated by harmonically averaging the city and highway fuel economy values as determined in § 600.206(a) (1) or (2), weighted 0.55 and 0.45 respectively, and rounded to the nearest 0.0001 mile per gallon. A sample of this calculation appears in Appendix II to this part.

(b) If only one equivalent petroleum-based fuel economy value exists for an electric configuration, that value, rounded to the nearest tenth of a mile per gallon, will comprise the petroleum-based fuel economy for that configuration.

(c) If more than one equivalent petroleum-based fuel economy value exists for an electric vehicle configuration, all values for that vehicle configuration are harmonically averaged and rounded to the nearest 0.0001 mile per gallon for that configuration.

6. A new § 600.207–85 is added to read as follows:

§ 600.207–85 Calculation of fuel economy values for a model type.

(a) Fuel economy values for a base level are calculated from vehicle configuration fuel economy values as determined in § 600.206(a) for low-altitude tests.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each base level for vehicles intended for sale in California and for each base level for vehicles intended for sale in the rest of the states.

(2) In order to highlight the fuel efficiency of certain designs otherwise included within a model type, a manufacturer may wish to subdivide a model type into one or more additional model types. This is accomplished by separating subconfigurations from existing base level(s) and placing them into new base level(s). The new base level(s) are identical to the existing base level(s) except that they shall be considered, for the purposes of this paragraph, as containing a new basic engine. The manufacturer will be permitted to determine such new basic engines and base level(s) if:

(i) Each additional model type subsequently divided has a unique car line name and that name appears on the label and on the vehicle bearing that label, and

(ii) The subconfigurations included in the new base levels are not included in any other base level which differs only by basic engine (i.e., they are not included in the calculation of the orginal base level fuel economy values), and

(iii) All subconfigurations within the new base level(s) are represented by test data in accordance with § 600.010(c)(ii).

(3) The manufacturer shall supply total model year sales projections for each car line/vehicle subconfiguration combination.

(i) Sales projections must be supplied separately for each car line/vehicle subconfiguration intended for sale in California and each car line/vehicle subconfiguration intended for sale in the rest of the states if required by the Administrator under paragraph (a)(1) of this section.

(ii) Manufacturers shall update sales projections at the time any model type value is calculated for a label value.

(iii) The requirements of this paragraph may be satisfied by providing an amended application for certification, as described in § 86.084–21 of this chapter.

(4) Vehicle configuration fuel economy values, as determined in § 600.206(a), are grouped according to base level.

(i) If only one vehicle configuration within a base level has been tested, the fuel economy value from that vehicle configuration constitutes the fuel economy for that base level.

(ii) If more than one vehicle configuration within a base level has been tested, the vehicle configuration fuel economy values are harmonically averaged in proportion to the respective sales fraction (rounded to the nearest 0.0001) of each vehicle configuration and the resultant fuel economy value rounded to the nearest 0.0001 mile per gallon.

(5) The procedure specified in § 600.207(a) will be repeated for each base level, thus establishing city, highway, and combined fuel economy values for each base level.

(6) For the purposes of calculating a base level fuel economy value, if the only vehicle configuration(s) within the base level are vehicle configuration(s) which are intended for sale at high altitude, the Administrator may use fuel economy data from tests conducted on these vehicle configuration(s) at high altitude to calculate the fuel economy for the base level.

(b) For each model type, as determined by the Administrator, a city, highway, and combined fuel economy value will be calculated by using the projected sales and fuel economy values for each base level within the model type.

(1) If the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will calculate fuel economy values for each model type for vehicles intended for sale in California and for each model type for vehicles intended for sale in the rest of the states.

(2) The sales fraction for each base level is calculated by dividing the projected sales of the base level within the model type by the projected sales of the model type and rounding the quotient to the nearest 0.0001.

(3) The city fuel economy values of the model type (calculated to the nearest 0.0001 mpg) are determined by dividing one by a sum of terms, each of which corresponds to a base level and which is a fraction determined by dividing:

(i) The sales fraction of a base level, by

(ii) The city fuel economy value for the respective base level.

(4) The procedure specified in paragraph (b)(3) of this section is repeated in an analogous manner to determine the highway and combined fuel economy values for the model type.

7. A new § 600.209–85 is added to read as follows.

§ 600.209-85 Calculation of fuel economy values for labeling.

(a) For the purpose of calculating the EPA Fuel Economy Estimates for labeling, the manufacturer shall multiply the city model type fuel economy value determined in § 600.207(b), by 0.90, rounding the product to the nearest whole mpg, and

(b) Multiply the highway model type fuel economy value determined in § 600.207(b) by 0.78, rounding to the nearest whole mpg.

8. Section 600.306.85, is added to read as follows:

§ 600.306-85 Labeling requirements.

(a) Before offering a vehicle for sale, each manufacturer shall affix or cause to be affixed and each dealer shall maintain or cause to be maintained on each automobile:

(1) A general fuel economy label (initial, or updated as required in § 600.314) as described in § 600.307(b)(3) or;

(2) A specific label, as described in § 600.307(b)(4), for those automobiles manufactured or imported before the date that occurs 15 days after general labels are approved for the manufacturer.

(3) For any vehicle for which a specific label is requested which has a fuel economy value at or below the minimum tax-free value, the following statement must appear of the specific label:

[Manufacturer's name] may have to pay IRS a Gas Guzzler Tax on this vehicle because of its how fuel-economy unless the combination of mpg data from similar vehicles exceeds the minimum tax-free mpg.

(4)(i) At the time a general fuel economy value is determined for a model type, a manufacturer shall, except as provided in paragraph (a)(4)(ii) of this section, relabel, or cause to be relabeled, vehicles which:

(A) have not been delivered to the ultimate purchaser, and

(B) have a combined model type fuel economy value of 0.1 mpg or more below the lowest fuel economy value at which a Gas Guzzler Tax of $0 is to be assessed.

(ii) The manufacturer has the option of relabeling vehicles during the first five working days after the general label value is known.

(iii) For those vehicle model types which have been issued a specific label and are subsequently found to have tax liability, the manufacturer is responsible for the tax liability regardless of whether the vehicle has been sold or not whether the vehicle has been relabeled or not.

(b) The manufacturer shall include the current range of fuel economy of comparable automobiles (as described in §§ 600.311 and 600.314) in the label of each vehicle manufactured or imported more than 15 calendar days after the current range is made available by the Administrator.

(1) Automobiles manufactured before a date 16 or more calendar days after the initial label range is made available under § 600.311(c) may be labeled without a range of fuel economy of comparable automobiles. In place of the range of fuel economy of comparable automobiles, the label must contain a statement indicating that, as of the date of production or importation of this automobile, no range of fuel economy of comparable automobiles was available.

(2) Automobiles manufactured more than 15 calendar days after the initial or updated label range is made available under § 600.311 (c) or (d) will be labeled with the current range of fuel economy of comparable automobiles as approved for that label.

(c) The fuel economy label must be readily visible from the exterior of the automobile and remain affixed until the time the automobile is delivered to the ultimate consumer.

(1) The fuel economy label must be located on a side window. If the window is not large enough to contain both the Automobile Information Disclosure Act label and the fuel economy label, the manufacturer shall have the fuel economy label affixed on another window and as close as possible to the Automobile Information Disclosure Act label.

(2) The fuel economy label information may be included with the Automobile Information Disclosure Act label if the prominence and legibility of the fuel economy label is maintained. For this purpose, all fuel economy label information must be placed on a separate section in the lower or right hand portion of the label and may not be intermixed with the Automobile Information Disclosure Act label information except vehicle descriptions as noted in § 600.307(b)(5).

(3) The manufacturer shall have the fuel economy label affixed in a manner that appearance and legibility are maintained until after the vehicle is delivered to the ultimate consumer.

9. A new § 600.307-85 is added to read as follows:

§ 600.307-85 Fuel economy label format requirements.

(a) Fuel economy labels must be rectangular in shape, printed in a color which contrasts with the paper color and in a type size that is easily readable, and be large enough to allow inclusion of all required and voluntary information without distracting from readability.

(1) Within the height/width ratio range of 0.618 to 1.618, manufacturers may set their own label dimensions, as needed, keeping within the minimum requirements of:

(i) 95 millimeters (3.7 inches) high,

(ii) 100 millimeters (3.9 inches) wide, and

(iii) An area of 15,000 mm^2 (23.25 $inches^2$).

(2) At leat 60 percent of the total fuel economy label area, either the top or left portion, shall contain only the following information:

(i) The EPA logo in the upper left corner and Department of Energy logo in an adjacent corner.

(ii) The heading "Fuel Economy Estimates," highlighted by size or type face.

(iii) The city and highway fuel economy values, as described in paragraph (b)(1) of this section, of equal size and highlighting. The city value should be to the left or above the highway value.

(3) The fuel economy label shall have a contrasting border line at least 2.5 mm (0.1 inch) wide.

(b) Fuel economy labels, an example of which is illustrated in Appendix IX, shall contain in the format described in this section, at a minimum the following information:

(1) The city and highway fuel economy estimates, labeled accordingly, and calculated in accordance with § 600.209.

(2) The phrase "Compare this vehicle to others in the FREE Gas Mileage Guide, required by law at all dealerships." The word "FREE" shall be highlighted. The phrase shall be the first phrase in the label area not reserved for the fuel economy estimates, as described in paragraph (a)(2) of this section.

(3) The following vehicle descriptors will be used for general labels:

(i) Model year;

(ii) Vehicle car line;

(iii) Engine displacement, in cubic inches, cubic centimeters, or liters whichever is consistent with the customary description of that engine;

(iv) Number of engine cylinders or rotors;

(v) Engine description, if necessary to distinguish otherwise identical model type, as approved by the Administrator;

(vi) Fuel metering system, including number of carburetor barrels, if applicable;

(vii) Transmission class; and

(vii) Catalyst usage, if necessary to distinguish otherwise identical model types.

(viii) California emission control system usage, if applicable and if the Administrator determines that automobiles intended for sale in the State of California are likely to exhibit significant differences in fuel economy from those intended for sale in other states.

(4) The following vehicle descriptors will be used for specific labels:

(i) The descriptors of paragraph (b)(3) of this section;

(ii) Inertia weight class; and

(iii) Axle ratio.

(iv) Other engine or vehicle arameters, if approved by the Administrator.

(5) Where the fuel economy label is incorporated with the Motor Vehicle Information and Cost Savings Act label the vehicle descriptors, as set forth in paragraph (b) of this section, do not have to be repeated if the information is readily found on the Motor Vehicle Information and Cost Savings Act label.

(6) The phrase "Estimated annual fuel cost:" followed by the annual fuel cost. The annual fuel cost estimate for operating the automobile shall be computed by using values for the fuel cost per gallon, average annual mileage (both obtained through the Administrator from the Department of Energy), and the combined city/highway fuel economy determined in accordance with §600.209.

(i) The annual fuel cost estimate for a vehicle is computed by:

(A) Multiplying the estimated fuel cost per gallon for the model year, expressed in dollars to the nearest 0.05 dollar, by

(B) The average annual mileage, expressed in miles per year to the nearest 1,000 miles per year, and

(C) Dividing by the combined city/highway fuel economy value calculated using city and highway fuel economy value adjusted in accordance with § 600.209.

(ii) The product computed in paragraph (b)(6)(i) of this section and rounded to the nearest dollar per year will comprise the annual fuel cost estimate that appears on labels for that vehicle.

(7) The vehicle's classification (determined in accordance with § 600.315), the comparison range of city and highway fuel economy values for the class, and the date of the comparison range.

(i) The fuel economy range required by paragraph (b)(7) of this section is calculated and supplied to the manufacturer by the Administrator in accordance with § 600.311

(ii) If the Administrator has not supplied the fuel economy range for other vehicles to the manufacturer by the time a vehicle is to be labeled or within the time constraints of § 600.306(b), the statement required by paragraph (b)(7) of this section shall be replaced by the statement: "A range of MPG numbers for other models of similar size was not available when this vehicle was labeled."

(8)(i) For fuel economy labels of passenger automobile model types requiring a tax statement under § 600.513, the phrase "* * * Gas Guzzler Tax: $——— * * *" centered on a separate line within the fuel economy label. The words "Gas Guzzler" shall be highlighted.

(ii) The tax value required by this paragraph shall be based on the combined fuel economy value for the model type calculated in accordance with § 600.207 and rounded to the nearest 0.1 mpg. Adjustment in accordance with § 600.209 will not be used to determine the tax liability.

(c) The fuel economy estimates required by paragraph (b)(1) of this section shall be highlighted by being no less than six times the size of the next largest print on the label (excluding the title and logos) with each digit measuring at least 20 mm × 25 mm (0.75 inch × 1.0 inch) in width and height, respectively. The line width of each digit shall be at least 2.5 mm (0.1 inch). Digits not printed as a single large character shall be made of a matrix of smaller characters. The small characters shall not be separate alphabetic or numeric characters. The small characters shall form a reasonably dark and continuous line, to approximate a single large character.

§ 600.308–85 General labels. [Reserved]

10. Section 600.308–86 is added and reserved.

§ 600.309–85 Specific labels. [Reserved]

11. Section 600.309–85 is added and reserved.

12. A new § 600.311–85 is added to read as follows:

§ 600.311–85 Range of fuel economy for comparable automobiles.

(a) The Administrator will determine the range of city and the range of highway fuel economy values for each class of comparable automobiles.

(b) The range of city fuel economy values within a class is the maximum city and the minimum city fuel economy value for all general labels as determined in § 600.307(b)(3) regardless of manufacturer. The range of highway values is determined in the same manner.

(c) The initial range will be made available on a date specified by the Administrator that closely coincides to the date of the general model introduction for the industry.

(d) The ranges of comparable fuel economy values for a class of automobiles will be updated periodically and will be derived from the latest available label values reported to the Administrator for that class of automobiles.

(e) If the Administrator determines that automobiles intended for sale in California are likely to exhibit significant differences in fuel economy from those intended for sale in other states, he will compute separate ranges of fuel economy values for each class of automobiles for California and for the other states.

(f) For high altitude vehicles determined under § 600.310, both general and specific labels will contain the range of comparable fuel economy computed in this section.

(g) The manufacturer shall include the appropriate range of fuel economy determined by the Administrator in paragraph (c) or (d) of this section, on each label affixed to an automobile within that class except as provided in § 600.306(b)(7)(ii).

13. A new § 600.312–85 is added to read as follows:

§ 600.312–85 Labeling reporting and recordkeeping, Administrator reviews.

(a)(1) The manufacturer shall determine label values using the procedures specified in Subparts C and D of this part and submit the label values, and the data sufficient to calculate the label values, to the Administrator according to the timetable specified in § 600.313.

(2) The label values that the manufacturer calculates and submits under paragraph (a)(1) of this section shall constitute the EPA Fuel Economy Estimates unless the Administrator determines that they are not calculated accordingly to the procedures specified in Subparts C and D of this part.

(3) If at any time during the model year, any label values are determined not to be calculated according to the procedures specified in Subparts C and D of this part, the Administrator shall notify the manufacturer in writing. If the Administrator has sufficient information to enable calculation of the correct label values, this notification shall specify the correct label values which constitute the EPA Fuel Economy Estimates. If additional information is required, the Administrator shall request such additional information and a

recalculation of the label value by the manufacturer.

(4) If the Administrator determines revised label values under paragraph (a)(3) of this section are lower than the label values calculated by the manufacturer, the manufacturer shall affix the revised labels to all affected new vehicles which are unsold beginning no later than 15 calendar days after the date of notification by the Administrator.

(b)(1) The manufacturer is responsible for affixing vehicle labels that meet the format and content requirements of this subpart.

(2) The manufacturer shall retain for examination, at the Administrator's discretion, typical label formats representing all information required on the manufacturer's fuel economy labels. The information shall include the text of all required and voluntary information as well as the size and color of print and paper, spacing, and location of all printed information. Where the fuel economy label is incorporated with the automobile Information Disclosure Act label, the above requirements pertain to those sections of the label concerning fuel economy labeling information.

(3) If the Administrator determines upon examiniation of records that the label format or contents do not meet the requirements of this subpart, the Administrator may require the manufacturer to make specific changesx in subsequent labels. The Administrator may require such changes to be implemented on a reasonable timetable, but no sooner than 15 days from the date of notification to the manfacturer.

14. A new § 600.313–85 is added to read as follows:

§ 600.313–85 Timetable for data and information submittal and review.

(a) A manufacturer shall submit to the Administrator fuel economy label values and sufficient information to determine fuel economy label values within the following time constraints:

(1) For initial general label values, no later than five working days before the date that the model type is initially offered for sale.

(2) For the mid-year label update (as required under § 600.314(c)), the submissions for all model types must be made at least 5 working days before the implementation of new label values.

(3) For model types having label values updated because of running changes (as required under § 600.314(b)), the submission must be made at least five working days before the date of implementation of the running change.

(b) A manufacturer may not proceed with any label calculation until the data from each vehicle used in such calculation satisfies the requirements of § 600.008.

(c) If the Administrator has waived any testing in paragraph (b) of this section and subsequently finds that the decision to waive testing was based on an incorrect data submission or that a fuel economy offset exists (based on subsequent testing of that manufacturer's product line), the Administrator may require confirmation of the data generated by any such waived vehicle.

15. A new § 600.314–85 is added to read as follows:

§ 600.314–85 Updating label values, annual fuel cost, gas guzzler tax, and range of fuel economies for comparable automobiles.

(a) After the manufacturer calculates initial fuel economy values for a model type, those values will remain in effect for that model year unless updated in accordance with paragraph (b) or (c) of this section or unless revised in accordance with Section 312 of this part.

(b) *Continuous change label updates.* (1) Except as specified in paragraph (b)(2) of this section, the manufacturer shall recalculate the model type values for any running change under §§ 86.079–32, 86.079–33, or 86.082–34 that increases the equivalent test weight of any vehicle in the model type, adds an axle ratio which is 10 percent (or more) larger than the largest axle ratio tested in any base level, or increases the road-load horsepower for any vehicle in the model type by more than 10 percent since the most recent label value was determined using test data in accordance with § 600.507.

(2) For those model types created in § 600.207(a)(2), the manufacturer shall recalculate the model type values for any additons or deletions of sub-configurations to the model type. Minimum data requirements specified in § 600.010(C)(1)(ii) shall be met prior to recalculation.

(3) Recalculations shall be performed as specified in paragraph (d) of this section.

(i) The manufacturer shall use updated total model year projected sales for the recalculation in accordance with § 600.207 of this part.

(ii) All current model year data approved by the administrator for that model type shall be included in the recalculation

(c) *Mid-year label updates.* Each manufacturer shall recalculate label values once per year, in addition to any recalculations required under paragraph (b) of this section.

(1) All base levels used in the label calculations shall contain the minimum test data specified in § 600.010(c).

(2) The total model year projected sales shall be updated as of December 31 of the calendar year preceding the applicable model year.

(3) All current model year data approved by the Administrator as of December 31 shall be included in the recalculation.

(4) Recalculations shall be performed as specified in paragraph (d) of this section.

(5) The recalculated label values shall be used for labeling purposes no later than February 1 of the calendar year that is the same as the model year.

(d) *Recalculation Procedure.* (1) The difference between the fuel economy value currently used for labeling and recalculated values shall be determined as follows:

(i) The existing label values, calculated in accordance with § 600.207(b) (3) and (4), shall be rounded to the nearest 0.1 mpg.

(ii) The recalculated value, using the additional data cited in paragraph (b) or (c) of this section, shall be calculated in accordance with § 600.207. The values determined in accordance with § 600.207(b) (3) and (4) shall be rounded to the nearest 0.1 mpg.

(2)(i) If the city value calculated in paragraph (d)(1)(ii) of this section is less than the city value in paragraph (d)(1)(i) of this section by 1.0 mpg or more the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg's) to all new vehicles of that model type beginning:

(A) For label updates as described in paragraph (b) of this section, on the day of implementation of the running change.

(B) For mid-year label updates as described in paragraph (c) of this section, no later than February 1 of the calendar year that is the same as the model year.

(ii) If the highway value in paragraph (d)(1)(ii) of this section is less than the highway value in paragraph (d)(1)(i) of this section by 1.0 mpg or more the manufacturer shall affix labels with the recalculated model type values to all new vehicles of that model type beginning:

(A) For label updates as described in paragraph (b) of this section, on the day of implementation of the running change.

(B) For mid-year label updates as described in paragraph (c) of this section, no later than February 1 of the calendar year that is the same as the model years.

(3) If the recalculated city value is at least 1.0 mpg or more, or the recalculated highway value is at least 2.0 mpg more than the value currently used for the labeling, then the manufacturer has the option to use the new recalculated values for labeling the entire model type beginning on the day of implementation of the running change.

(e) For fuel economy labels using newly calculated fuel economy values in accordance with paragraphs (b) and (c) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax).

(f) The Administrator shall periodically update the range of fuel economies of comparable automobiles for all previously approved labels.

16. A new § 600.315–85, is added to read as follows:

§ 600.315–85 Classes of comparable automobiles.

(a) The Secretary will classify automobiles as passenger automobiles or light trucks (nonpassenger automobiles) in accordance with 49 CFR Part 523.

(1) The Administrator will classify passenger automoblies by car line into one of the following classes based on interior volume index or seating capacity except for those passenger automobiles which the Administrator determines are most appropriately classed as special purpose vehicles as provided in paragraph (a) (3) of this section:

(i) *Two Seaters.* A car line shall be classed as "Two Seaters" if the majority of the vehicles in that car line have no more than two designated seating positions as such term is defined in the regulations of the National Highway Traffic Safety Administration, Department of Transportation (DOT), 49 CFR 571.3.

(ii) *Minicompact cars.* Interior volume index less than 85 cubic feet.

(iii) *Subcompact cars.* Interior volume index greater than or equal to 85 cubic feet but less than 100 cubic feet.

(iv) *Compact cars.* Interior volume index greater than or equal to 100 cubic feet but less than 110 cubic feet.

(v) *Midsize cars.* Interior volume index greater than or equal to 110 cubic feet but less than 120 cubic feet.

(vi) *Large cars.* Interior volume index greater than or equal to 120 cubic feet.

(vii) *Small station wagons.* Station wagons with interior volume index less than 130 cubic feet.

(viii) *Midsize station wagons.* Station wagons with interior volume index greater than or equal to 130 cubic feet but less than 160 cubic feet.

(ix) *Large station wagons.* Station wagons with interior volume index greater than or equal to 160 cubic feet.

(2) The Administrator will classify nonpassenger automobiles into the following categories: Small pickup trucks, standard pickup trucks, vans, and special purpose vehicles. Pickup trucks will be separated by car line on the basis of gross vehicle weight rating (GVWR). For pickup truck car lines with more than one GVWR, the GVWR of the pickup truck car line is the arithmetic average of all distinct GVWR's less than or equal to 8,500 pounds available for that car line.

(i) *Small pickup trucks.* Pickup trucks with a GVWR less than 4,500 pounds.

(ii) *Standard pickup trucks.* Pickup trucks with a GVWR of 4,500 pounds up to and including 8,500 pounds.

(iii) *Vans.*

(3) All automobiles with GVWR less than or equal to 8,500 pounds which possess special features and which the Administrator determines are more appropriately classified as separate from typical automobiles or which do not meet the requirements of paragraphs (a) (1) and (2) of this section will be classified as *Special purpose vehicles.*

(4) Once a certain car line is classified by the Administrator, the classification will remain in effect for the model year.

(b) Interior volume index—passenger automobiles.

(1) The interior volume index shall be calculated, for each car line, in cubic feet rounded to the nearest 0.1 cubic foot. For car lines with more than one body style, the interior volume index for the car line is the arithmetic average of the interior volume indices of each body style in the car line.

(2) For all body styles, except station wagons and hatchbacks, with more than one seat (e.g., with a second or third seat) equipped with seatbelts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest whole 0.1 cubic foot, of the front seat volume, the rear seat volume, and the luggage capacity.

(3) For all station wagons and hatchbacks with more than one seat (e.g., with a second or third seat) equipped with seatbelts as required by DOT safety regulations, interior volume index is the sum, rounded to the nearest whole 0.1 cubic foot, of the front seat volume, the rear seat volume, and the cargo volume index.

(c) All interior and cargo dimensions are measured in millimeters (or inches) to the nearest whole millimeters (0.1 inch). All dimensions and volumes shall be determined from the base vehicles of each body style in each car line and do not include optional equipment. The dimensions H61, W3, W5, L34, H63, W4, W6, L51, H197, and volume V1 are to be determined in accordance with the procedures outlined in Motor Vehicle Dimensions SAE HS J1100a (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 and last revised October 1979) except as noted herein:

(1) SAE HS J1100a(2.3) Cargo Dimensions—All dimensions measured with the front seat positioned the same as for the interior dimension measurement and the second seat (if applicable), for station wagons and hatchbacks, in the upright position. All head restraints shall be in the stowed position and considered part of the seat.

(2) SAE HS J1100a(5) Interior Dimensions. *L33-Maximum effective leg room-front passenger.* The dimension measured along a line from the ankle pivot center to the seating reference point (SgRP)—front (dimension "A" in the Appendix VIII figure) plus 254 millimeters (10.0 inches) with the front passenger's right foot placed on the depressed floor covering on the toeboard with the back of heel positioned at a line that bisects the angle formed by the extension of the normal toeboard and floor covering surfaces. Standard floor covering is to be used.

(3) SAE HS J1100a(7) Cargo Dimensions. *H198—Second seatback to load floor height.* The dimension measured vertically from the horizontal tangent to the top of the second seatback to the underpressed floor covering.

(4) SAE HS J1100a(8) Luggage Capacity—Total of volumes of individual pieces of a standard luggage set plus H-boxes stowed in the luggage compartment in accordance with the procedure described in 8.2. For passenger automobiles with no rear seat or with a rear seat with no rear seatbelts, the luggage compartment shall include the area to the rear of the front seat, with the rear seat (if applicable) folded, measured in accordance with paragraph (g)(2) of this section.

(d) The front seat volume is calculated in liters (cubic feet) by dividing 1,000,000 (or 1,728 as applicable) into the product of three terms following and rounding the quotient to the nearest 0.01 liter (0.001 cubic foot):

(1) H61—Effective head room—front (Obtained according to paragraph (c)).

(2)(i) (W3+W5+127)/2 for millimeters or (W3+W5+5)/2 for inches—Average of shoulder and hip

room—front, rounded to whole millimeters (0.1 inches) if hip room is more than 127 millimeters (5 inches) less than shoulder room (W3 and W5 are obtained according to paragraph (c) of this section), or

(ii) W3—Shoulder room—front, if hip room is not more than 127 millimeters (5 inches) less than shoulder room (W3 is obtained according to paragraph (c) of this section), and

(3) The arithmetic average of L34 (Maximum effective leg room—accelerator) and L33 (Maximum effective leg room-front passenger) rounded to whole millimeters (0.1 inches). L34 is obtained according to paragraph (c) of this section. L33 is calculated in accordance with Appendix VIII of this part.

(e) The rear seat volume is calculated in liters (cubic feet) for vehicles with a rear seat equipped with seat belts (as required by the Department of Transportation) by dividing 1,000.000 (or 1.728 as applicable) into the product of three terms listed below and rounding the quotient to the nearest 0.01 liter (0.001 cubic feet):

(1) H63—Effective head room—second. (Obtained according to paragraph (c) of this section.)

(2)(i) (W4+W6+127)/2 for millimeters or (W4+W6+5)/2 for inches—Average of shoulder and hip room—second, rounded to whole millimeters (0.1inches) if hip room is more than 127 millimeters (5 inches) less than shoulder room (W4 and W6 are obtained according to paragraph (c) of this section), or

(ii) W4—Shoulder room—second, if hip room is not more than 127 millimeters (5 inches) less than shoulder room (W4 is obtained according to paragraph (c) of this section), and

(3) L51—Minimum effective leg room—second. (Obtained according to paragraph (c) of this section.)

(f) The luggage capacity is V1, the usable luggage capacity obtained according to paragraph (c) of this section. For passenger automobiles with no rear seat or with a rear seat but no rear seatbelts, the area to the rear of the front seat shall be included in the determination of V1, usable luggage capacity, as outlined in paragraph (c) of this section.

(g) Cargo volume index:

(1) For station wagons, the cargo volume index V2 is the total of the volume of L Boxes (50 liter rectangular blocks measuring 250 x 400 x 500 millimeters) and M boxes (5 liter rectangular blocks measuring 125 x 160 x 250 millimeters) that can be placed in the cargo area in accordance with section 8.2 of HS J–1100a, substituting L and M boxes for the standard luggage set and H boxes, respectfully. The hidden cargo volume determined in accordance with paragraph (g)(3) of this section may also be included in the cargo volume index.

(i) The seat back of the rearmost seat equipped with seatbelts, as required by the Department of Transportation safety regulations, shall be in the upright position and the standard equipped spare tire, tools, or other vehicle parts normally stored in the cargo area shall be in their normal stored positions during the determination. The cargo area access door must close and lock freely without forcing or excessive slamming when all of the boxes used in the volume determination are in place.

(ii) The boxes shall be stacked from the rearmost seat as defined in paragraph (1)(i) of this section to the rear access door and from the cargo floor to the ceiling with soft point measurements (except for the cargo floor) used. No box shall protrude into the passenger compartment, that is, above the rearmost seat and forward of the vertical plane that is tangent to the back of the rearmost seat.

(iii) The M boxes used in the estimation of station wagon cargo volume shall equal no more than 20 percent of the total cargo volume of the vehicle.

(2) For hatchbacks, the luggage capacity procedure defined by the SAE for sedans will be used (SAE HS J–1100a(8)) except that the following additional conditions shall apply:

(i) A luggage piece may protrude above the height of the back of the rearmost seat, as defined in paragraph (1)(c) of this part, provided that the dimensional center of that piece is at least 50 mm (2 inches) below H197—front seat back to lower floor height or H198 second seat back to lower floor height, as applicable.

(ii) Hidden cargo volume determined in accordance with paragraph (g)(3) of this section may be included in the total cargo volume determination.

(iii) For hatchbacks with cargo covers:

(A) If the cargo cover is not removable or capable of storage, the cover is to be treated as part of the cargo compartment lid or access door and must close freely without forcing or excessive slamming with all of the luggage in place in the compartment.

(B) If the cover is removable or capable of storage, then cargo measurements may be made as in paragraph (g)(2)(i) of this section with the cover removed and placed within the cargo area or stored within the cargo area as designed by the manufacturer.

(3) Hidden cargo volume shall be determined by placing one or more M boxes into each hidden cargo area. A hidden cargo area is any space to the rear of the second seat that is distinct from the main open cargo area, designed by the manufacturer to accommodate small parcels, and which may have a door to separate it from the open cargo area. If a hidden cargo area is completely enclosed, the door must be capable of being closed and latched without forcing when all the M boxes used in the volume determination are in place.

(h) The following data for each body style in the car line covered by that label shall be made available to the Administrator upon request.

(1) For all passenger automobiles:

(i) Dimensions H61, W3, W5, L33, and L34 determined in accordance with paragraph (c) of this section.

(ii) Front seat volume determined in accordance with paragraph (d) of this section.

(iii) Dimensions H63, W4, W6, and L51 (if applicable) determined in accordance with paragagph (c) of this section.

(iv) Rear seat volume (if applicable) determined in accordance with paragraph (e) of this section.

(v) The interior volume index determined in accordance with paragraph (b) of this section for:

(A) Each body style, and

(B) The car line.

(vi) The class of the car line as determined in paragraph (a) of this section.

(2) For all passenger automobiles except station wagons and hatchbacks with one or more seats equipped with seatbelts as required by the Department of Transportation safety regulations:

(i) The quantity and letter designation of the pieces of the standard luggage set installed in the vehicle in the determination of usable luggage capacity V1, and

(ii) The usable luggage capacity V1, determined in accordance with paragraph (f) of this section.

(3) For station wagons with one or more seats equipped with seatbelts as required by the Department of Transportation safety regulations:

(i) The quantity and letter designation of the pieces of the set defined in paragraph (g)(1) of this section installed in the vehicle in the determination of cargo volume V2.

(ii) The cargo volume index V2 determined in accordance with paragraph (g)(1) of this section.

(4) For hatchbacks with one or more seats equipped with seatbelts as

required by the Department of Transportation safety regulations:

(i) The dimension H197 or H198, as applicable, determined in accordance with paragraph (c) of this section,

(ii) the quantity and letter designation of the pieces of the standard luggage set installed in the vehicle in the determination of usable luggage capacity V1,

(iii) The usable luggage capcity V1, detemined in accordance with paragraph (g)(2) of this section.

(5) For pickup trucks:

(i) All GVWR's of less than or equal to 8,500 pounds available in the car line.

(ii) The arithmetic average GVWR for the car line.

17. A new § 600.507–85 is added to read as follows:

§ 600.507–85 Running change data requirements.

(a) Except as specified in paragraph (d) of this section the manufacturer shall submit additional running change fuel economy data as specified in paragraph (b) of this section for any running change approved or implemented under §§ 86.079–32, 86.079–33, or 86.082–34 which:

(1) Creates a new base level or,

(2) Affects an existing base level by:

(i) Adding an axle ratio which is 10 percent (or more) larger than the largest axle ratio tested.

(ii) Increasing the road-load horsepower for a subconfiguration by 10 percent or more for the individual running change or when considered cumulatively since original certification (for each cumulative 10 percent increase using the originally certified road-load horsepower as a base).

(iii) Creating a new subconfiguration due to an increase in equivalent test weight within the configuration.

(b)(1) The additional running change fuel economy data requirement in paragraph (a) of this section will be determined based on the sales of the vehicle configurations in the created or affected base level(s) as updated at the time of running change approval.

(2) Within each newly created base level as specified in paragraph (a)(1) of this section, the manufacturer shall submit data from the highest projected total model year sales subconfiguration within the highest projected total model year sales configuration in the base level.

(3) Within each base level affected by a running change as specified in paragraph (a)(2) of this section, fuel economy data shall be submitted for the vehicle configuration created or affected by the running change which has the highest total model year sales. The test vehicle shall be of the subconfiguration created by the running change which has the highest projected total model year sales within the applicable vehicle configuration.

(c) The manufacturer shall submit the fuel economy data required by this section to the Administrator in accordance with § 600.313(a)(3).

(d) For those model types created under § 600.207(a)(2), the manufacturer shall submit data for each subconfiguration added by a running change.

§ 600.508–85 [Reserved]

18. Section 600.580–85 is added and reserved.

19. A new § 600.509–85, is added to read as follows:

§ 600.509–85 Voluntary submission of additional data.

(a) The manufacturer may, at his option, submit data in addition to the data required by the Administrator.

(1) Additional fuel economy data may be submitted by the manufacturer for any vehicle configuration which is to be tested as required in § 600.506 or § 600.507 or for which fuel economy data were previously submitted under paragraph (a)(2) of this section.

(2) Within a base level, additional fuel economy data may be submitted by manufacturer for any vehicle configuration which is not required to be tested by § 600.506 or § 600.507.

(b) The voluntary data submitted under paragraph (a)(2) of this section shall be submitted in rank order such that data is first submitted for all configurations with a higher sales fraction.

20. A new § 600.510–85 is added to read as follows:

§ 600.510–85 Calculation of average fuel economy.

(a) Average fuel economy will be calculated to the nearest 0.1 mpg for the classes of automobiles identified herein, and the results of such calculations will be reported to the Secretary of Transportation for use in determining compliance with the applicable fuel economy standards.

(1) An average fuel economy calculation will be made for the category of passenger automobiles that are domestically manufactured as defined in § 600.511(d)(1).

(2) An average fuel economy calculation will be made for the category of passenger automobiles that are not domestically manufactured as defined in § 600.511(d)(2).

(3) An average fuel economy calculation will be made for the category of light trucks which are defined in § 600.511(e)(1) and have two-wheel drive.

(4) An average fuel economy calculation will be made for the category of light trucks which are defined in § 600.511(e)(1) and have four-wheel drive.

(5) An average economy calculation will be made for the category of light trucks which are defined in § 600.511(e)(2) and have two-wheel drive.

(6) An average fuel economy calculation will be made for the category of light trucks which are defined in § 600.511(e)(2) and have four-wheel drive.

(b) For the purpose of calculating average fuel economy under paragraph (c), of this section:

(1) All fuel economy data submitted in accordance with § 600.006(e) or § 600.512(c) shall be used.

(2) The combined city/highway fuel economy will be calculated for each model type in accordance with § 600.207 of this section except that:

(i) Separate fuel economy values will be calculated for model types and base levels associated with car lines that are:

(A) Domestically produced, and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart, will be used instead of sales projections;

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline;

(iv) the fuel economy value will be rounded to the nearest 0.1 mpg;

(v) At the manufacturer's option, those vehicle configurations that are self-compensating to altitude changes may be separated by sales into high-altitude sales categories and low-altitude sales categories. These separate sales categories may then be treated (only for the purpose of this section) as separate configurations in accordance with the procedure of paragraph § 600.207(a)(4)(ii), and

(3) The fuel economy value for each vehicle configuration is the combined fuel economy calculated according to § 600.206 except that:

(i) Separate fuel economy values will be calculated for vehicle configurations associated with car lines that are:

(A) Domestically produced, and

(B) Nondomestically produced and imported;

(ii) Total model year production data, as required by this subpart will be used instead of sales projections; and

(iii) The fuel economy value of diesel-powered model types will be multiplied by the factor 1.0 to convert gallons of diesel fuel to equivalent gallons of gasoline;

(c) Except as permitted in paragraph (d) of this section, the average fuel economy will be calculated individually for each category identified in § 600.510(a), as follows:

(1) Divide the total production volume of that category of automobiles by

(2) A sum of terms, each of which corresponds to a model type within that category of automobiles and is a fraction determined by dividing

(i) The number of automobiles of that model type produced by the manufacturer in the model year by

(ii) The fuel economy calculated for that model type in accordance with paragraph (b)(2) of this section.

(d) The Administrator may approve an alternate calculation method if it is part of an approved credit plan under the provisions of Section 503(b) of 15 U.S.C. 2003(b).

21. A new §600.512–85 is added to read as follows:

§ 600.512–85 Model year report.

(a) For each model year, the manufacturer shall submit to the Administrator a report, known as the model year report, containing all information necessary for the calculation of the manufacturer's average fuel economy.

(b)(1) The model year report shall be in writing, signed by the authorized representative of the manufacturer and shall be submitted no later than 60 days after the report required in § 86.079–37 for the final production quarter.

(2) The Administrator may waive the requirement that the model year report be submitted within 60 days after the final quarterly production report. Based upon a request by the manufacturer, if the Administrator determines that 60 days is insufficient time for the manufacturer to provide all additional data required as determined in either §§ 600.506 or 600.507, the Administrator shall establish a date by which the model year report must be submitted.

(3) Separate reports shall be submitted for passenger automobiles and light trucks (as identified in § 600.510).

(c) The model year report must include the following information:

(1) All fuel economy data used in the labeling calculations and subsequently required by the Administrator in accordance with §§ 600.506 and 600.507.

(2) All fuel economy data for certification vehicles and for vehicles tested for running changes approved under §§ 86.079–32, 86.079–33, and 86–082.34.

(3) Any additional fuel economy data submitted by the manufacturer under § 600.509.

(4) A fuel economy value for each model type of the manufacturer's product line calculated according to § 600.510(b)(2).

(5) the manufacturer's average fuel economy value calculated according to § 600.510(c).

(6) A listing of both domestically and nondomestically produced car lines as determined in § 600.511 and the cost information upon which the determination was made.

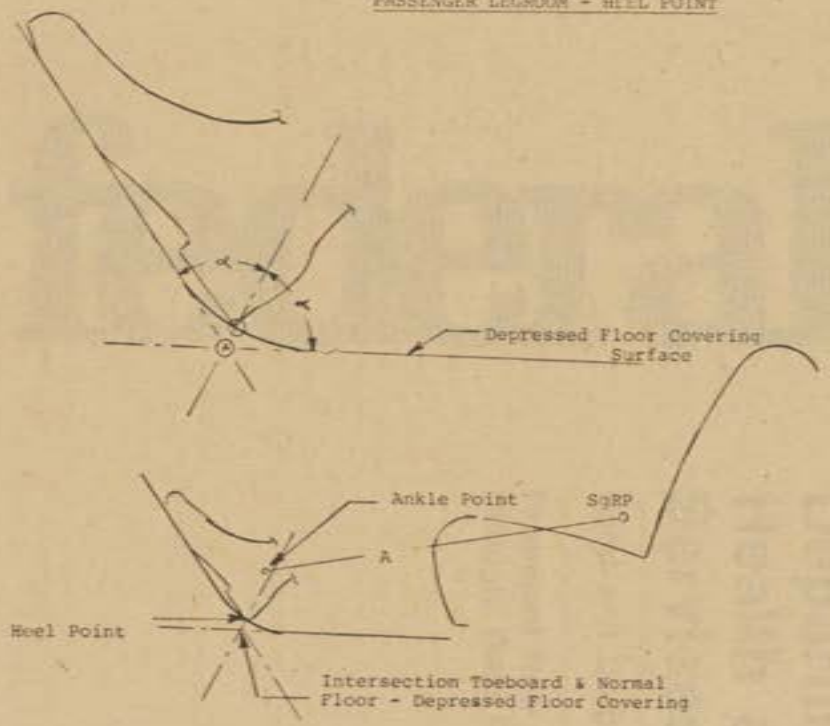
(7) Production data, the authenticity and accuracy of which shall be attested to by the corporation, and shall bear the signature of the chief executive officer.

22. Appendix VIII and IX are added as follows:

BILLING CODE 6560-50-M

FRONT PASSENGER LEGROOM DIMENSION TO BE USED IN DETERMINING VEHICLE INTERIOR VOLUME INDEX

PASSENGER LEGROOM - HEEL POINT



EPA Proposed Label Format

EPA

FUEL ECONOMY ESTIMATES

14 17

CITY ESTIMATE HIGHWAY ESTIMATE

Compare this vehicle to others in the FREE GAS MILEAGE GUIDE required by law at all new vehicle dealerships.
1982 BLUEBIRD 4.9 LITER, 8 CYLINDER, 2 VENTURI (MOVER) ENGINE, MANUAL 4-SPEED TRANSMISSION, AND 2.75 AXLE.
Estimated annual fuel cost: $1500.
The range of estimated fuel economy values of other MID-SIZE vehicles was from 12 to 42 mpg in the city and from 15 to 56 mpg in the highway as of September 18, 1981.

* * * GAS GUZZLER TAX: $1000. * * *

[FR Doc. 83-15183 Filed 6-8-83; 8:45 am]
BILLING CODE 6560-50-C

Federal Register

Thursday
June 9, 1983

Part III

Department of Health and Human Services

Food and Drug Administration

Proposed New Drug, Antibiotic, and Biologic Drug Product Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 312

[Docket No. 82N-0394]

Proposed New Drug, Antibiotic, and Biologic Drug Product Regulations

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise its regulations governing the review of investigational new drug applications and the monitoring of the progress of investigational drug use. FDA is taking this action to improve the investigational drug development process while maintaining high standards of human subject protection. The improvements are intended to assist sponsors of clinical investigations to prepare and submit high quality applications and to permit FDA to review them efficiently and with minimal delay. This action is one part of a larger effort to review and improve all aspects of FDA's drug regulatory process.

DATE: Comments by August 8, 1983.

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

FOR FURTHER INFORMATION CONTACT: Steven H. Unger, National Center for Drugs and Biologics (HFN-7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION:

Introduction

This proposal is the second phase of efforts by the Department of Health and Human Services (HHS) and FDA to revise Federal regulations governing the new drug approval process. The first phase was a proposal published in the **Federal Register** of October 19, 1982 (47 FR 46622) to streamline the procedures in 21 CFR Part 314 for FDA review of new drug applications for marketing (NDA Rewrite). The second phase, contained in this document, addresses FDA's procedures in 21 CFR Part 312 for reviewing investigational new drug applications and for monitoring the progress of investigational drug use (IND Rewrite). Collectively, the IND/NDA Rewrite culminates an effort begun several years ago when FDA made concept papers available for public comment (44 FR 58919; October 12, 1979) and held a public meeting to discuss them (November 9, 1979).

The IND portion of the Rewrite reflects the continuing commitment of HHS Secretary Richard S. Schweiker and FDA Commissioner Arthur Hull Hayes, Jr., M.D., to facilitate the development, evaluation, and approval of safe and effective new therapies without compromising the underlying standards of safety and effectiveness upon which the American public has come to depend. Towards this end, the proposals reflect two major policy objectives. First, during the early phase of investigational research, FDA should focus on protecting the safety of human test subjects and give sponsors greater freedom to design, revise, and implement clinical research studies. This change should encourage innovation in drug development without compromising the safety of test subjects. Second, once the preliminary human studies have been completed and the drug appears to have marketing potential, FDA and drug sponsors should consult more closely to help ensure that the design of the major clinical trials are acceptable and will support marketing approval if the test results are favorable. Through better planning and closer consultation, FDA's later review of applications for marketing should proceed more efficiently. These changes will benefit the consumer by enhancing the prompt availability of safe and effective therapies.

Like the NDA portion of the Rewrite, the IND regulations have been reviewed by a special task force appointed by the Secretary, and chaired by the Commissioner, whose specific charge has been to review these regulations in accordance with Executive Order 12291 (46 FR 13193; February 19, 1981), the mandate of the President's Task Force on Regulatory Relief, and the policy objectives outlined above. Many of these issues were also previously reviewed by a separate FDA task force, which the Commissioner also chaired.

FDA's IND Rewrite proposal is designed to complement the October 19, 1982 NDA Rewrite proposal. That document proposed the following: a new streamlined format for marketing applications; the substitution of concise tabulations of essential clinical data in lieu of most case report forms; a new automatic appeals process for the prompt resolution of scientific disputes; a new policy on the acceptance of foreign data; more definite time frames for agency review; fewer supplements to approved applications along with fewer recordkeeping and reporting requirements; safety update reports while a marketing application is under review by the agency; and a strengthened adverse drug effect surveillance system after drugs have been approved for use by consumers.

These IND/NDA Rewrite proposals are part of a larger, overall effort to reform the drug development and review process. For example, FDA has instituted management changes aimed at enhancing accountability, improving utilization of personnel, and promoting timely communications with drug sponsors. The agency has also instituted some organizational changes, including the formation of the National Center for Drugs and Biologics, and the creation of a separate Office of Orphan Product Development within the Office of the Commissioner. Finally, as described in more detail below, FDA plans to issue guidelines on application format and on how to fulfill testing requirements. FDA believes that these initiatives, taken as a whole, should significantly improve the new drug approval process.

Highlights of this IND proposal, related issues, a description of the investigational new drug process, and the agency's economic analysis are summarized in the following introductory sections. The remainder of this preamble is devoted to a section-by-section analysis of the proposed regulatory changes.

Highlights of This Proposal

The major theme of the proposed IND regulations is that different stages of the IND process would be regulated differently. Safety concerns would predominate at the beginning of the process to ensure that research subjects are not exposed to unreasonable risk. In the later phases of drug investigation, FDA would also evaluate the scientific merit of study protocols to ensure that the planned clinical studies are capable of producing valid information on safety and effectiveness necessary to obtain marketing approval. This change in emphasis reflects the reality that only 20 percent of new chemical entities studied under an IND ever reach the NDA stage. Accordingly, FDA requirements and advice geared toward the development of a marketing application should wait until the drug has undergone the initial safety tests in human subjects and has shown some marketing potential. This proposal also clarifies the IND format, simplifies reporting requirements, and seeks to foster open, frank communications between FDA staff and drug sponsors. Finally, the regulations would give formal recognition to the idea of "treatment use" of certain drugs within the investigational context and

would also exempt certain studies on marketed drugs from most IND requirements (except Institutional Review Board review and informed consent). The specific changes are summarized as follows:

1. *Greater freedom during the early phase of human research.* The agency proposes to give drug sponsors greater freedom during the early phase of human research (Phase 1) by permitting such research to proceed unless it presents an unreasonable and significant risk to test subjects. FDA proposes to narrow the scope of its review of Phase 1 studies to focus on the safety of human test subjects. The proposal also articulates the flexibility available to clinical investigators in Phase 1 to modify protocols on the basis of experience gained during the investigation without prior notification to FDA, and further emphasizes to drug sponsors that the amount of toxicology and chemistry information required to be submitted in an IND depends on the nature and extent of the proposed clinical studies. As noted above, these changes to FDA's regulation of early research are intended to encourage innovation in drug development without compromising the safety of test subjects.

2. *Clearer format for IND submission.* The agency proposes to clarify the format for submission of an IND to create better organized applications and thereby facilitate agency review. This new format includes a greatly simplified cover sheet (Form FDA–1571), a brief overview of the investigational plan, and a brief introductory statement about the drug. The proposed format would also focus attention on the proposed human studies so that the supporting toxicology and chemistry information can be reviewed in light of the proposed clinical investigations.

3. *Clarified amendment procedures.* The agency proposes to clarify its amendment procedures by dividing amendments into several distinct categories: (i) Protocol amendments, for new protocols and changes in existing protocols; (ii) information amendments, for additional data as they develop; and (iii) IND safety reports. Each of these categories carries with it appropriate reporting intervals, depending upon the promptness needed for agency review. FDA also proposes to clarfify the scope of the annual reports to provide an overview of the progress to date and future plans for the IND, and to provide FDA with an update of the most significant safety information.

4. *Creation of explicit "clinical hold" procedures.* The agency proposes to codify procedures for instituting a "clinical hold," an order not to commence or continue a clinical study. For Phase 1 studies, FDA proposes to limit clinical holds to situations where there is an unreasonable and significant risk to human subjects. In later phases, the criteria would also include serious defects in study design that would render the study incapable of producing valid evidence of safety and effectiveness. To ensure uniform application of these criteria to similar drugs, all clinical holds would need to be approved by the director of the applicable reviewing division.

5. *Closer consultation between FDA and drug sponsors.* Although FDA has for several years offered "end-of-phase 2" conferences for drugs likely to provide significant and modest therapeutic advances, FDA now proposes to give the sponsor of any IND an opportunity to hold such a conference with the agency. The purpose of this meeting is to obtain concurrence on an overall plan for the conduct of Phase 3 trials and the design of specific studies. Such a "meeting of the minds" should significantly reduce the possibility of disputes later on after submission to FDA of a marketing application. FDA also proposes to place in its regulations the opportunity for a "pre-NDA" conference to discuss appropriate format and data presentation in a marketing application.

6. *Treatment use of investigational drugs.* The agency proposes to codify and state the conditions under which investigational drugs may be used to accomplish a treatment purpose in addition to an investigational purpose. This provision is designed primarily for drugs that have completed Phase 2 testing, when sufficient evidence of safety and effectiveness has already been obtained to justify making available an investigational drug for a treatment use. Such treatment uses would be limited to patients with serious diseases or conditions, for whom alternative therapies do not exist or cannot be used. Under these criteria, orphan drugs would be leading candidates for such treatment use. Accordingly, this provision implements a corresponding section of the recently enacted Orphan Drug Act, as described elsewhere in this preamble. FDA also proposes to simplify the procedures for obtaining investigational drugs for treatment use once these conditions are met.

7. *Exemptions for certain studies on marketed drugs.* Finally, FDA proposes to exempt from most IND requirements contained in Part 312 certain investigations conducted with drugs already approved for marketing for other uses. These would be limited to situations where safety is not an issue (because of a similarity in dose, route of administration, and patient population with the approved labeling) and where the investigations are not being conducted as a "pivotal study" for the purpose of changing the drug's labeling or advertising (e.g., adding a new indication or comparative safety claim). The exemption would apply primarily to researchers in academic or other institutions who are beginning to explore new uses for marketed drugs (i.e., not pivotal studies), or who are using the drug as a research tool. This provision is intended to reduce burdens on researchers and to permit FDA resources to be devoted to clinical investigations requiring FDA oversight and to review new drugs intended for marketing. Though exempt from most IND requirements in Part 312, such investigations would still be subject to other regulations designed to protect the rights and safety of patients, such as review by Institutional Review Boards (21 CFR Part 56) and informed consent (21 CFR Part 50), as these investigations are still subject to section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355).

Related Issues

1. *Guidelines.* During the middle and late 1970's, the agency, with the help of its standing advisory committees, prepared over 25 guidelines devoted to the design of adequate and well-controlled clinical studies on different classes of drugs. These guidelines have facilitated high quality drug research and have been well received by drug sponsors. Therefore, FDA intends to expand the use of guidelines into other areas.

In the IND context, in addition to these clinical testing guidelines, the most pertinent guidelines are those related to animal toxicology testing and to chemistry and manufacturing controls requirements. As discussed elsewhere in this preamble, FDA intends to limit the scope of toxicology and chemistry submissions to that which is necessary to support the scope and duration of the proposed human testing. The guidelines are intended to help describe the scope of such submissions in the more common and expected circumstances. The new toxicology guidelines will update the current guidelines on this subject. The chemistry guidelines will be entirely new.

FDA recognizes that it is important, in issuing such guidelines, to solicit the views of experts throughout the scientific community, including government, industry, and academia.

Accordingly, FDA plans to hold public workshops about what should be in these guidelines to gain the views of members of the scientific community. The agency will publish the details of these workshops in future issues of the **Federal Register.**

FDA is also developing guidelines on appropriate formats for IND's. These guidelines should aid sponsors in organizing and presenting their submissions in a fashion most suitable for efficient agency review.

FDA believes that the planned revisions to existing guidelines and the creation of new guidelines should materially assist in the implementation of the new regulations. Thus, as noted above, the NDA Rewrite, IND Rewrite, and implementing guidelines are very much interrelated and should be viewed as a whole as increasing the efficiency of the new drug approval process.

2. *Outside review boards.* One option still under consideration by the agency, though not being proposed at this time, is the establishment of a "dual track" system whereby drug sponsors would have the option of submitting initial IND's either to FDA or to third party nongovernmental bodies. These outside groups would fall under the umbrella term of "Outside Review Boards" (ORB's). ORB's would parallel FDA in performing a "scientific review" of proposed human research studies, involving pharmacology, toxicology, chemistry, and clinical issues. The IND's being considered for this dual track system are the initial IND's that cover the first introduction of the drug into man and the early clinical pharmacolgy and effectiveness studies (Phase 1). Even under this dual track system, drug sponsors would still be required to submit their proposed human studies to local Institutional Review Boards (IRB's) for an "ethical review" and to ensure that research subjects give their informed consent.

The specifics of this outside review concept have varied over time. In the **Federal Register** of September 11, 1981 (46 FR 45538), FDA published a request for information, soliciting views as to whether local IRB's could assume the responsibility for reviewing certain IND's instead of FDA. Over 200 comments were received on that notice from hospitals, university medical centers, testing laboratories, IRB's, pharmaceutical manufacturers, academic and professional associations, and others. The concept of an IRB having sole responsibility for review of IND's was not favored by any category of comments. Most comments cited the lack of specialized scientific expertise of IRB's (especially regarding toxicology, chemistry, and pharmacology), the increased expense of expanding IRB's to gain the needed expertise, liability concerns, and the possibility that IRB's could take more time than FDA to review submissions. A number of comments, however, did suggest an optional system whereby a willing and expanded IRB could assume such review responsibility in lieu of an FDA review. Accordingly, FDA has redirected its consideration to this type of optional system which falls under the general umbrella term, ORB's.

Arguments in favor of ORB's are that FDA now tends to "overregulate" the early stages of human testing by delving into areas, such as study design, that should not concern FDA until later in the process when the drug has shown marketing potential. These arguments suggest that outside experts will be more prone to focus only on the central question of patient safety and leave these other matters to the discretion of the drug sponsor. ORB's are also perceived as a means of saving agency resources without compromising patient safety, as many drugs never advance beyond Phase 1 and so would never need to be seen by the agency.

Arguments against the dual track system start with the fact that FDA now reviews IND's promptly, and that in 90 percent of the cases the research may proceed within 30 days of the initial IND submission. Lengthy review times are therefore not often involved. Opponents also express concern about the possibility that "permissive" ORB's will surface, thereby letting drug sponsors "shop around" to find favorable reviewers, and that the "independence" of ORB's might be questioned where the drug sponsor provides large financial grants to the institution establishing the ORB. Finally, any FDA resource savings in IND review personnel may be more than offset by the additional resources necessary to develop standards for, inspect, and regulate ORB's.

FDA's preliminary view, apart from the possible advantages and disadvantages noted above, is that the dual track system may be unnecessary in light of the many other reforms contained in this proposal. As noted above, the agency itself is seeking to streamline the regulation of early research by narrowing the scope of Phase 1 review and by maximizing the flexibility with which drug sponsors may carry out early human investigations. By making these changes at FDA, the agency believes that the major goals of the dual track system can be achieved without the possible disadvantages noted above.

This issue, however, still remains under consideration by the agency. Therefore, FDA is soliciting comments as to whether, in light of the other changes being proposed in this document, the dual track system is worth pursuing, either on a permanent or pilot basis. In commenting on this issue, FDA requests responses to the following questions:

a. What specific benefits are attainable under a dual track system that are not attainable by making internal changes at FDA?

b. How can potential conflicts of interest be avoided? For example, should an individual drug sponsor be permitted to have its studies reviewed by an ORB whose institution receives financial assistance or grants from that drug sponsor?

c. What would be the appropriate degree of FDA oversight over ORB's, in terms of licensing, standard setting, and inspections?

d. Should FDA receive any concurrent notification (and, if so, in how much detail) or IND's submitted to ORB's for review?

e. If the dual track system were to be tried on a pilot basis, how long should the pilot program be tried, and how should the parameters of the pilot program be defined (e.g., by drug class and/or by authorizing a limited number of ORB's to operate)?

In addition, with respect to the possibility of a pilot program, FDA would like commenting institutions and drug sponsors to state whether they would be willing to participate in such an experiment.

FDA will carefully consider comments received on this proposal before reaching any final decision on whether to propose regulations involving Outside Review Boards.

3. *Bioresearch monitoring regulations.* The IND Rewrite proposal is intended to complement the agency's bioresearch monitoring regulations. Those regulations are the protection of human subjects in clinical investigations (21 CFR Part 50), the composition, operation, and responsibility of institutional review boards that review clinical investigations (21 CFR Part 56), and good laboratory practice for conducting non-clinical laboratory studies (21 CFR Part 58). In addition, the agency has also proposed regulations defining the obligations of clinical investigators (proposed 21 CFR Part 54; 43 FR 35210; August 8, 1978) and obligations of sponsors and monitors (proposed 21 CFR Part 52; 42 FR 49612; September 27, 1977).

The IND Rewrite proposal has been prepared on the assumption that clinical investigator and sponsor/monitor regulations will be made final before, or at the same time as, the IND Rewrite regulations. Accordingly, this proposal summarizes only the most essential clinical investigator and sponsor/monitor obligations and is completely silent on other issues (e.g., clinical investigator disqualification) that will be covered by the forthcoming bioresearch monitoring final regulations.

The Investigational New Drug Development Process

Almost all new drugs in the United States are developed by large pharmaceutical firms. These companies discover biologically active new molecules primarily by screening large numbers of synthetic compounds and natural products for various types of pharmacological activity. Those compounds that look promising are then subjected to short-term animal toxicity testing (1 week to 3 months, depending upon the anticipated duration of clinical testing) before being studied in humans. The preclinical testing is conducted to predict whether initial human studies will be acceptably safe and to predict, if possible, the drug's likely therapeutic activity. If the drug looks promising, human clinical studies are proposed in an investigational new drug application (IND).

Once an IND is filed with FDA, the sponsor must wait 30 days before testing the drug in humans. During this period, FDA reviews the submission to make sure the human subjects will not be subjected to unreasonable risks. If the agency is satisfied that the study does not pose such risks, the sponsor may begin testing the drug in humans. However, if FDA is concerned about the safety of the drug, or finds that more information is necessary to assess the safety issue, the agency notifies the drug sponsor not to begin human testing until the problems are resolved.

IND's are also reviewed by local IRB's for ethical acceptability. One goal of this review is to assure that human subjects are provided with sufficient information to be able to give their informed consent, a requirement that is statutorily mandated. IRB's are composed of scientific, medical, and lay personnel and are usually associated with the university, hospital, or clinic where the clinical research is to be undertaken. IRB's are regulated by FDA under regulations in Part 56.

Clinical investigations on new drugs are usually conducted by academic physicians working in university medical centers and by physicians in private practice. These investigations are frequently conducted on behalf of sponsoring drug firms, and the results may be published in the medical literature. Clinical testing proceeds progressively in three phases (called Phases 1, 2, and 3), each phase more extensive than its predecessor. (As noted below, the definitions of these phases are being revised in this proposal to reflect current practice.) As revised, these phases may be summarized as follows:

a. Phase 1 includes the initial introduction of the investigational new drug into humans. Phase 1 studies, which may be conducted in patients or normal volunteeer subjects, are designed to determine the metabolism and other pharmacologic actions of the drug, the side effects associated with increasing doses, and, if possible, to gain early evidence on effectiveness. Phase 1 also includes research studies on drug metabolism, pharmacokinetics, structure-activity relationships, and mechanism of action in humans. Total Phase 1 exposure is quite small, generally in the range of 20 to 80 persons.

b. Phase 2 includes the early controlled clinical studies conducted to evaluate the effectiveness of the drug for a particular indication in patients with the disease and to determine the common short-term side effects snd risks associated with the drug. Phase 2 trials are typically well controlled, closely monitored, and conducted in a relatively small number of patients (usually not more than several hundred).

c. Phase 3 studies are the expanded controlled and uncontrolled trials. They are performed after preliminary evidence of effectiveness of the drug has been established, and are intended to gather additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of the drug and to provide an adequate basis for physician labeling. Phase 3 studies usually include from several hundred to several thousand patients.

Animal testing is also conducted during the human testing phases. As the human studies enlarge in scope and duration, further toxicology studies are needed to support them. Also, use of women of child bearing potential as test subjects must usually be preceded by reproductive performance and teratology studies in animals. Finally, once a drug appears to have marketing potential, long-term (chronic) animal studies, aproximately 1 to 2 years in duration, are usually conducted to predict possible latent human toxicities, including carcinongenicity.

FDA monitors the progress of an IND by reviewing IND amendments and annual reports submitted by the drug sponsor. Prompt reporting is required for significant safety findings, including certain adverse drug experiences in humans and important findings from animal toxicity studies. Such findings may result in the temporary suspension of a particular study or the termination of the entire IND if the safety subjects is placed in doubt. The agency also reviews new protocols submitted to the IND. In addition, when the sponsor so requests, agency officials assist in developing the overall clinical plan and designing specific protocols, most typically during an "End-of-Phase 2" conference with the drug sponsor, to ensure that planned studies are appropriate for the support of a marketing application.

Once the major IND studies are completed and the sponsor believes the data show the drug to be safe and effective under specified conditions, the sponsor submits to FDA an application to obtain the agency's approval for general marketing. Submission of a marketing application, however, usually does not mean that the IND file is closed. Some patients from earlier studies may still be receiving the investigational drug, or new clinical trials may have been commenced to study the drug for new indications. Accordingly, the IND remains active as long as patients are receiving the drug in an investigational context.

The process just described applies to a "commercial IND"—that is, an IND submitted by a pharmaceutical company or research center for the purpose of collecting safety and efficacy data necessary to gain marketing approval. In addition, FDA reviews "sponsor-investigator IND's" and "treatment IND's" which normally do not go through the entire three-phase IND process.

A "sponsor-investigator IND" is submitted by an individual researcher, often associated with an academic institution, in order to conduct exploratory therapeutic research or to use the drug as a research tool. A sponsor-investigator IND may involve either an unapproved drug or an approved drug for an unapproved use. If results from this research suggest marketing potential for the drug, further studies are usually conducted under the auspices of a commercial IND.

The term "treatment IND" applies to a request by a practicing physician to administer an unapproved drug primarily for treatment purposes within the investigational context. Such

treatment use may be appropriate for patients with serious disease conditions who are not responsive to approved therapies, such as in the case with orphan drugs. Ordinarily, a drug may be available for treatment use only after Phase 2 investigations have been completed.

In terms of overall number, FDA receives approximately 1,100 IND's for new drug and biological products each year. Of these, about 25 percent are commercial IND's, 30 percent are treatment IND's, and the remaining 45 percent are sponsor-investigator IND's. Accordingly, although most of the provisions in this proposal relate to commercial IND's, other provisions relate specifically to treatment IND's and certain sponsor-investigator IND's as well.

Economic Analysis

FDA has examined the economic consequences of the proposed changes in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The agency concludes that these revisions would have favorable economic impacts on the health care system, drug sponsors, and the agency without compromising the safety of human subjects. Although some of these favorable impacts are quantifiable, others with greater potential for savings can only be characterized in a very generalized, nonquantitative manner at this time.

Quantifiable impacts include an estimated net annual savings of $3.3 million to sponsors, arising from a simplified IND format; reduced and/or staged submission of manfacturing and controls data; a reduction in the number of amendments that are submitted during the first year that an IND is active; savings in start-up expenses associated with studies that would no longer be placed on clinical hold under the revised criteria; and savings of sponsor-investigator resources currently used to prepare IND's that will no longer be accepted. The only projected cost increase is modest by comparison and arises from requirements to improve the quality of annual reports. These revisions would also produce some savings in agency review resources.

A potential for substantially larger savings is presented by the provisions for increased use of guidelines, meetings, advice, and an appeals process to aid commercial IND sponsors in assembling the data for those IND's that lead to the submission of a marketing application. These initiatives, taken together, could result in substantial savings from fewer deficiencies being noted in the NDA review process due to better designed clinical trials, as well as further savings from the elimination of some unnecessary or poorly designed clinical studies.

The agency concludes that these revisions are not a major rule as defined in Executive Order 12291. The agency also certifies that the changes will not have a significant impact on a substantial number of small entities. The net savings, described above, will accrue to all sponsors, regardless of size, and the preponderance of unquantifiable savings will probably accrue to the public and to sponsors of commercial IND's, most of whom are not small entities. A copy of the agency's assessment of economic impact is on file with the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

The revisions to the IND regulations have a significance well beyond the specific cost reductions summarized above. As noted earlier, these regulations are part of a comprehensive review of the new drug approval process designed to accelerate the development and marketing of new drug therapies without compromising the safety and effectiveness of new drugs. Collectively, FDA's new regulations, guidelines, procedures, and policies should have considerable benefits. A quicker, more efficient drug development process means that the American public will have more safe and effective drugs sooner. A less costly drug development process means that the pharmaceutical industry will be able to develop more new drugs with the same number of research dollars, or alternatively to market less costly drugs. Either outcome will be of direct benefit to the American public. Most importantly, the prompt availability of safe and effective drug therapies has enormous potential benefit to patients and in public terms of improving the length and quality of life and in reducing health care and hospital costs. In addition, the provisions governing treatment use should be of special, if unquantifiable, benefit to patients with serious conditions who do not have adequate alternative therapies available to them, consistent with the goals of the recently enacted Orphan Drug Act.

Section-by-Section Analysis

FDA proposes to establish six new subparts in Part 312. Subpart A contains general provisions describing the scope of the regulations and the kinds of investigations that are exempt from IND requirements. It also describes the waiver provisions, labeling requirements, and requirements relating to the promotion and sale of investigational products. Subpart B describes the different kinds of applications and format, content, and reporting requirements for each of them. Subpart C contains regulations governing FDA review and action upon applications submitted under Subpart B, including clinical holds and terminations of IND's. Subpart D contains the general responsibilities of sponsors and clinical investigators during the course of a clinical investigation. Subpart E contains provisions on import and export of investigational drugs and a provision on the acceptability of foreign data in support of investigational and marketing applications. Finally, Subpart F describes requirements concerning the use of drugs in vitro and in animal testing.

Definitions. Under current regulations, "IND" stands for "Notice of Claimed Investigational Exemption for a New Drug." However, "IND" has come to be understood as standing simply for "investigational new drug application" and the proposed definition of "IND" would codify the simpler phrase.

As the IND regulations apply not only to "new drugs" but also to antibiotic drugs and biological products, "investigational new drugs" would be defined to include all members of these three categories of drugs that are either not approved for marketing or, if approved, are used in an investigational context outside of medical practice. Similarly, in identifying the submission needed to obtain approval to market a product, the proposal speaks in generic terms of a "marketing application" rather than specifically identifying the application appropriate to the drug (i.e., a new drug application (NDA) for new drugs, a request to provide for certification of an antibiotic (Form 5) for antibiotics, or a product license application for biological products.

The proposal would also define "clinical investigation" to mean any experiment in which an investigational new drug is administered or dispensed to, or used involving, one or more human subjects. In this context, an experiment is any drug use other than the use of a marketed drug in the practice of medicine.

The proposal would adopt definitions of "sponsor," "sponsor-investigator," "investigator," and "subject" that are like those used in the bioresearch monitoring regulations.

Finally, the proposal would revise the definitions of the phases of a clinical investigation to conform them to the current working understanding of the

distinctions between them. The regulations now consider both "Phase 1" and "Phase 2" to be parts of "clinical pharmacology," "Phase 1" involving studies in normal subjects, and "Phase 2" involving studies in patients. "Phase 3," under the current regulations, includes all clinical trials. The proposed revision would redefine Phase 1 to include clinical pharmacology testing both in normal subjects and in patients with the condition under investigation. What is currently "Phase 3" under the regulations would, under the revision, be divided into a new "Phase 2," representing the first small, rigidly controlled, clinical studies and a new "Phase 3," representing the expanded clinical trials. The proposed redefinitions in the regulations parallel current usage in the agency's clinical guidelines.

IND Format and Content

This section describes the format in which IND's should be submitted and the types of information IND's should contain.

Currently, IND format and content requirements are set forth in the IND Form FDA–1571, the application submitted by the sponsor to FDA. The form identifies in some detail the kinds of information a sponsor must submit in an IND. In general, such submission is required to include information on the drug's chemistry and manufacture, information about the pharmacology and toxicology of the drug derived mainly from animal studies, sufficient information about each clinical investigator to show that he or she is qualified to undertake the proposed investigations, information about any previous human experience with the drug, and protocols for each proposed study. The current form also performs several other functions, such as describing the sponsor's obligations with respect to the conduct of the investigation, describing some of the administrative actions FDA may take with respect to an IND, and defining the phases of an investigation.

FDA believes there are several deficiencies in the current content and format regulations that should be remedied. First, the statement of what is required to be submitted is needlessly complex and confusing and may lead some sponsors to submit more information than is actually required. Second, current applications are frequently submitted without the kinds of "abstracts" or introductory summaries that are of considerable help to the review process. Third, the current regulation fails to make clear that the technical information should be tailored to the nature and scope of the proposed clinical trials. Accordingly, the proposed revisions in IND format and content are intended to clarify IND submission requirements, to encourage the use of introductory and summary statements to facilitate administrative processing and review, and to emphasize that submission requirements vary with the phase and scope of the proposed clinical investigations.

More important than the actual structural changes, however, are the general principles set forth to guide sponsors in submitting IND's and FDA staff in reviewing them. FDA recognizes that many complaints with the IND system reflect not so much the regulations themselves as the superstructure that has grown up around them in practice. For example, although drugs and biologics have long been governed by the same IND regulations, drug IND's are usually at least twice as extensive as biologics IND's. Accordingly, the following principles are enunciated in the proposed regulations themselves in order to aid in the interpretation of the specific provisions.

The first such principle would be the FDA's primary objectives in reviewing an IND would be, in all phases of the investigation, to assure the safety and rights of subjects, and, in Phases 2 and 3, to help assure that the quality of the scientific evaluation of drugs is adequate to permit an evaluation of the drug's effectiveness and safety. Therefore, FDA's review of Phase 1 submissions would focus on assessing the safety of Phase 1 investigations. FDA's review of Phase 2 and Phase 3 submissions, however, would also include an assessment of the scientific quality of the clinical investigation and the likelihood that the investigations will yield data capable of meeting statutory standards for marketing approval. This principle is intended to reflect the agency's underlying policy goals to: (1) Encourage innovation by narrowing the scope of FDA regulation over early human research; and (2) increase the efficiency of the NDA review process through a heightened emphasis on advance FDA/sponsor consultation regarding the design of the major clinical trials.

The second basic principle is that the amount of information on a particular drug that must be submitted in an IND would depend upon the novelty of the drug, the extent to which it has been studied previously, the known or suspected risks, and the developmental phase of the drug and similar factors. This principle is intended to reflect the fact that flexibility in submission requirements is a function not only of the developmental phase of the research, but also of these other aspects of the drug itself.

The third principle is that the central focus of the first IND submission would be on the general investigational plan and the protocols for specific human studies. Subsequent amendments to the IND that contain new or revised protocols would build logically on previous submissions and would be supported by additional information including the results of animal toxicology studies or other human studies as appropriate. Annual reports to the IND would serve as the focus for reporting the status of studies being conducted under the IND and would update the general investigational plan for the coming year. This principle underscores the point that it is the scope and nature of proposed protocols that are of central importance in determining how much information needs to be submitted and in focusing on the degree of safety that needs to be shown.

The new IND format itself would consist of a cover sheet (revised Form FDA–1571), a table of contents, some introductory material intended to provide an overview of the investigation, the protocols for each study, and the technical information to support those specific protocols. This format may be further described, as follows:

1. *Cover sheet (Form FDA–1571).* FDA proposes to transform the IND Form FDA–1571 from a repository of the regulations to simply a cover sheet for the IND. The new Form FDA–1571 would only identify the phase or phases to be conducted and would contain essential "identifier" information about the sponsor and monitor of the investigation. When signed by the sponsor or the sponsor's representative, the application would commit the sponsor to comply with all applicable provisions governing the investigational use of drugs, as described in Part 312 as well as Parts 50, 52, 54, and 56. If the sponsor does not reside in the United States, the sponsor would designate an agent who resides or maintains a place of business in the United States who would also sign the form. This provision regarding foreign sponsors would correspond to a similar provision in the NDA Rewrite proposal.

2. *Introductory sections.* The proposed IND format would begin with a table of contents and a brief introductory statement. The introductory statement, which the agency believes should not usually be more than two or three pages in length, would give a broad overview

of the proposed investigation. It would give the drug's name, its pharmacological class, a short statement of the objectives of the proposed study, and a brief summary of previous human experience with the drug, including any foreign experience. FDA believes that the statement would be of considerable benefit in facilitating review by helping assign IND's to the appropriate reviewing division in an expeditious manner and by quickly orienting reviewers to the contents of the IND. Following the introductory statement, the IND would contain a general plan for the proposed investigation. This document would give a "blueprint" for drug development—that is, the kind and number of studies to be conducted in the following year, the general approach to be followed, and an estimate of the number of subjects to be involved. This "blueprint" is one mechanism for focusing attention on the scope and extent of the proposed human studies, both for sponsor submission and FDA review purposes.

3. *Protocols.* The general investigation plan would be followed by a protocol for each study the sponsor intends to begin at the end of FDA's 30-day review period. Protocols for later studies may be submitted in the initial IND or in protocol amendments as the investigation progresses. The detail of Phase I protocols now submitted by drug sponsors provides one of the best examples of where current practice has superseded the actual letter of the regulations. Although the current regulations require only a "general outline" of Phase 1 studies, in practice most Phase 1 studies have been submitted in the kind of detail more appropriate for Phase 2 or 3 protocols. Accordingly, in drafting revised regulations, FDA has sought to emphasize the difference in requirements between Phase 1 protocols and protocols for Phases 2 and 3.

Although the proposal would require protocols for all phases to contain information on subject selection criteria, on investigator qualification, on proposed procedures for monitoring the clinical effects of the drug, and so on, the proposal would stress that the amount of detail needed on each aspect of the protocol would vary with the phase of the investigation. The revision would reflect FDA's focus in Phase 1 on safety issues and would make clear that FDA expects Phase 1 protocols to be submitted in an outline form that would need to contain sufficient detail to permit a reliable assessment of subject safety, but not more than necessary for an adequate review.

The revision would also stress the flexibility a sponsor has to modify a Phase 1 protocol as experience dictates without having to submit protocol amendments to FDA (provided such modification is described in the next annual report). This flexibility reflects the truly experimental nature of early research and is consistent with the broad policy objective of maximizing sponsor freedom during this stage. Although this flexibility is available under current requirements, it has not been fully appreciated in practice by FDA or investigators and sponsors.

As noted above, FDA's review of Phase 2 and Phase 3 submissions has a broader scope. At this stage FDA is concerned not only with subject safety, but also with an assessment of the scientific quality of studies and the likelihood that the studies will produce the kind of data that can be considered in determining whether to approve a drug for marketing. Therefore, to decrease the chance that such studies will not meet statutory standards for marketing approval, much more detailed information about study design is required for Phase 2 and 3 investigations. FDA has prepared over 25 clinical guidelines for different classes of drugs that describe appropriate ways of designing and conducting these Phase 2 and Phase 3 trials.

One additional minor change should be mentioned. Under current regulations, protocols for early phase studies must identify "any expert committees or panels to be utilized," although protocols for later phases need not. The justification for this difference is no longer evident, and the IND Rewrite would require that each protocol, regardless of phase, identify the name and address of its reviewing institutional review board (IRB). This minor change will provide FDA with immediate access to the identity of a particular IRB, if necessary.

4. *Chemistry, manufacturing, and control information.* This section states the requirements regarding the submission in the application of information about the composition of the drug substance and drug product, their specifications, and their methods of manufacture and control. The section would clarify rather than substantially revise current requirements. FDA is preparing guidelines on the scope and content of chemistry, manufacturing, and control submissions. The language of the proposed regulation is intended to be general in nature so that it may accommodate changes that might be made as a result of the guideline development process.

The proposed revision emphasizes that chemistry, manufacturing, and control information should be tailored to the scope and duration of the proposed clinical investigation. For example, if relatively short-term clinical tests are planned, the stability information required would be limited to that needed to demonstrate that the product would be stable for the short duration of the investigation.

The revision would continue to require the submission of sufficient information about the drug substance and drug product to ensure its identity, potency, quality, and purity and to ensure that there is a sufficient continuity in the product so that information obtained from previous clinical and nonclinical studies can be considered in assessing the safety of future studies. It would also require a description of the method of preparation (or isolation) of the drug substance and a brief general description of the manufacturing and packaging of the drug product.

5. *Pharmacology and toxicology information.* FDA also does not propose to change significantly the substance of the current requirements regarding submission of animal and in vitro test results. The results of such tests serve primarily to support FDA's assessment of the safety of proposed clinical investigations. These studies are directed toward defining the drug's safety, toxicity, and pharmacological action rather than its efficacy. They are meant to predict effects which might be expected when the drug is administered to human subjects.

The proposal would retain the current requirement for "adequate information" on the basis of which the sponsor has concluded that it is reasonably safe to begin the proposed study. The proposal, like the current regulation, would note that the kind, duration, and scope of such tests would depend on the nature of the proposed investigations. The proposal would identify only in a general way the kinds of tests that sponsors would ordinarily submit in an IND. Detailed information on what kinds of tests may be submitted to support specific kinds of clinical investigations is contained in toxicology guidelines. The agency is reviewing its toxicology guidelines, and, as noted earlier, plans to develop new guidelines with the help of scientific experts from both inside and outside of government.

The proposal would also specify an appropriate format for toxicology submissions. The sponsor would be

required to submit an integrated summary of the toxicological effects of the drug in animals and in vitro and, for each study submitted primarily to support the safety of a proposed investigation, a full tabulation of the data. The latter provision reflects the fact that, unlike most other technical data, the usefulness of much toxicology data is largely confined to the investigational stages of drug development. Because such data's utility is greatest at this early stage, it is appropriate that it be submitted in the kind of detail appropriate for careful scrutiny.

6. *Sponsor-investigator IND's.* It should be emphasized that the proposed application section describes the information a commercial sponsor must submit for a previously unstudied new molecular entity. In general, it does not describe the kinds of technical information needed to support a sponsor-investigator research study of a previously studied drug product. FDA expects that in most such cases technical information previously submitted to FDA by the commercial sponsor will be incorporated by reference into the sponsor-investigator's IND, assuming permission is granted by the commercial sponsor. FDA will make available guidelines to assist sponsor-investigators in preparing IND's.

Amendments to the IND

This section describes the types and timing of IND amendments that must be submitted during the time that a drug is under investigational status. These amendments fall into three categories: (1) Protocol amendments, (2) information amendments, and (3) adverse drug experience reports. The proposed revisions are intended to rationalize the flow of information to an active IND file, to clarify when amendments are required, and to establish formatting requirements that will simplify their processing and review.

1. *Protocol amendments.* Current regulations require that a sponsor conducting an investigation adhere to the protocols described in the IND submission. If the sponsor intends to expand the scope of the investigation or to alter its direction, the sponsor is required to amend the IND to reflect the change. The current regulations, however, do not specify when an amendment should be submitted, for what kinds of changes amendments are required, or what the amendment should contain. The lack of specificity in the regulations means all too frequently that amendments are submitted in such a fashion that it is extremely difficult for reviewers to gain an understanding of their significance or their relationship to previous or subsequent submissions, except by reviewing the complete IND file. This difficulty in tracking an IND once an investigation begins may explain in part current emphasis on the initial IND submission.

The proposal would make clear that FDA is interested only in learning contemporaneously about the kinds of changes that bear directly on its review and monitoring responsibilities. Thus, under the protocol amendment procedures, amendments would be required only for new protocols, for protocol changes that significantly relate to the agency's assessment of an investigation's safety, and, for Phase 2 and Phase 3 studies, also for protocol changes that significantly relate to the scope of an investigation or to its scientific quality. Additionally, a protocol amendment would be required to list a new investigator that is added to an already submitted protocol. FDA reviews each new investigator to ensure that the investigator is qualified to conduct the proposed research and to verify that the investigator is eligible to receive investigational new drugs.

The proposal would also clarify the proper timing of submissions. The current IND regulations require the sponsor to notify FDA before beginning a substantially modified protocol or a new protocol, but do not require sponsors to pause before proceeding, so long as local IRB approval has been obtained. The IND Rewrite would explicitly retain this current process. The only change being made here is that protocol amendments which merely list a new investigator to an already submitted protocol would be sent to FDA under the timetable described below for information amendments.

Finally, FDA proposes to create a standard format for protocol amendments that would make them much easier to process and review. The flow of protocol amendments to the IND under current requirements is such that it is frequently difficult to determine the contents of an amendment, the sequence of amendments, or even to determine what specific protocol in an IND a submission is intended to amend. To remedy these deficiencies, the proposed revision would require that all protocol amendments be prominently identified, that they be numbered iin sequence of submission, and that protocol changes plainly indicate what specific protocols they are amending. The proposal would also require that a protocol amendment cite any specific technical data that support the proposed new protocol or protocol change. If, for example, the sponsor proposed to undertake a new long-term trial of 6 months' duration, where all previous trials had not exceeded 1 month, the sponsor would be required to cite the specific animal studies that supported a trial of this length. Such supporting data would either have been previously submitted to the IND or would be concurrently submitted in an information amendment.

2. *Information amendments.* The current regulation provides that the IND may be "amended or supplemented from time to time on the basis of experience gained with the * * * drug." The regulation contains no other guidance on the submission of additional technical information after the initial IND is submitted. The IND Rewrite would add specificity by establishing an "information amendment" as a means for conveying to FDA information on significant changes in the technical content of the IND file. Information amendments would provide specific technical information, including chemistry, toxicology, and pharmacokinetic data. Information amendments would serve primarily two functions: (i) They would provide the technical support (usually essential toxicological or chemistry information) for new or modified clinical protocols; and (ii) they would be a mechanism for keeping current the information contained in the IND file. The format of information amendments would be similar to that of protocol amendments.

Thus, information amendments would be required to bear prominent identification of their contents and to be serially numbered by discipline. Additionally, to facilitate FDA review, information amendments would be required to contain a statement of the nature and purpose of the amendment and to be submitted in a fashion appropriate for scientific review.

The proposal would also establish a new system for timing of information amendment submissions. Currently, the frequency and number of separate amendments and other communications submitted to an IND file places a significant workload on the agency. This results in delaying the routing of documents to the reviewing divisions. The proposal therefore encourages sponsors to group together information amendments and to submit them together at 30-day intervals instead of submitting these amendments individually. The grouping of amendments should ease both the agency's administrative burdens and the organizational and shipping burdens placed on sponsors. Of course, the

agency recognizes that in some cases the progress of an investigation may not permit the grouping of amendments, such as when information amendments are needed to support a protocol amendment that must be submitted more promptly. However, even when submissions are needed more often than every 30 days (so as not to impede the progress of the investigation), FDA encourages sponsors to group submissions as much as possible in order to improve the functioning of FDA document control.

To alleviate the administrative difficulties described above, FDA requests sponsors to group amendments at 30-day intervals (or earlier, if necessary) on an interim basis, pending completion of the notice and comment rulemaking proceeding. FDA believes such implementation is permissible prior to publication of a final rule because the change only affects the timing, not the content, of the submissions.

3. *IND safety reports.* The IND Rewrite contains a separate section on safety reports to highlight the importance of monitoring patient safety throughout the IND process. The proposal retains the current requirement for sponsors to notify FDA and all participating investigators about any information the sponsors receive associated with the use of the drug that may suggest significant hazards, contraindications, side effects, or precautions; the proposal states that, in meeting this requirement, the sponsor is required to review all information relevant to the safety of the drug obtained or otherwise received by the sponsor from any source, foreign or domestic, including information derived from clinical investigations, animal investigations, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers. (Under the proposed rule defining the obligations of clinical investigators, an investigator is responsible for relaying to the reviewing IRB information received from the sponsor about adverse effects.) The proposal defines "information relevant to the safety of the drug" to include information about related drugs. The proposal also defines "associated with the use of the drug" to mean there is a reasonable possibility that the event may have been caused by the drug. To meet this definition, the causal relationship between the drug and the adverse event need not be known with any degree of certainty and, when doubt exists, the regulation should be construed to require submission of an IND safety report.

In addition, the proposal specifies time frames within which a sponsor would be required to relay safety reports to FDA. The current requirement is that an "alarming" finding must be reported "immediately" and that all other findings must be reported "promptly." Under the proposal, a sponsor would be required to notify FDA about fatal or life-threatening clinical experiences not previously reported as soon as practical and in no event later than 3 working days after the sponsor initially receives the information. Other serious adverse events would be required to be relayed to FDA as soon as possible and in no event later than 10 working days after the sponsor initially receives the information.

To ensure that this information is rapidly transmitted to FDA, the proposal would require the sponsor to relay the 3-day and 10-day IND safety reports by telephone at the same time as Written notifications are submitted. Telephone calls are to be made to the FDA division with review responsibility for the IND. written notifications are to be prominently identified to facilitate expedited processing by the agency.

The proposal would also retain the requirement obliging sponsors to investigate thoroughly all safety related information received by them. Although FDA understands that these investigations will not ordinarily be completed within the time limits prescribed for the IND safety reports, the proposal would require sponsors to submit relevant followup information to the 3-day and 10-day reports as expeditiously as practicable in an information amendment. Followup information on incidents not triggering a 3-day or 10-day report would be submitted, as appropriate, in either an information amendment or an annual report.

Annual Reports

This section describes content requirements for annual reports. Current regulations require a sponsor to submit accurate progress reports of the investigation and significant findings together with any significant changes in the investigator brochure at reasonable intervals, not exceeding once a year. FDA has found such reports to be a valuable means of monitoring the progress of investigations and therefore proposes to retain the provision in the rewrite. However, because current regulations provide inadequate guidance on what should be included in a progress report, the quality of such reports has varied considerably. Annual reports have varied from a very brief and conclusory statement about a sponsor's activities to a comprehensive statistical analysis of all data collected. Accordingly, some sponsors submit too much information and others submit too little.

The revision would clarify what FDA regards as the minimum amount of information needed to monitor satisfactorily the progress of drug development. It would require a brief summary of the status of each clinical study in progress, a brief summary of safety information obtained in the previous year, and a description of the general investigational plan for the following year. As part of the summary of safety information from the previous year, the annual report would contain a listing of patients who died or dropped out of clinical studies, because these patients are likely to provide the most important safety information. (The annual update of safety information would necessarily summarize all IND safety reports submitted to FDA throughout the previous year.) This requirement is consistent with a provision in the NDA Rewrite proposal that would require the routine submission of case report forms for those patients meeting these same criteria (i.e., persons who died or dropped out). Finally, as an aid in fostering better communication between FDA and the sponsor, the sponsor could use the annual report to identify any outstanding business about which the sponsor would like to meet with FDA or to have a written reply or comment from the agency.

Use of Investigational Drugs for Treatment

This section codifies a special procedure authorizing the "treatment use" of investigational drugs in an investigational context.

When reports in the medical literature begin to appear that a new investigational drug shows promise for a serious disease, a demand for the drug for the benefit of patients frequently develops. FDA has responded to this demand by permitting physicians to obtain investigational drugs for treatment use either under physician sponsored IND's or under protocols that are part of commercially sponsored IND's. In addition to providing patients with needed drug therapy, such treatment uses are a valuable adjunct to the investigation as well, frequently providing sponsors and FDA with valuable safety data. Although the agency has for many years permitted selected investigational drugs to be distributed primarily for treatment use

under these circumstances, the current IND regulations do not specifically authorize the practice. The proposed revisions would expressly authorize this use of investigational drugs, define the universe of drugs eligible for treatment use, and describe the procedures by which these drugs can be obtained.

Under this proposal, a drug would be obtainable for treatment use either under a treatment protocol submitted by the sponsor of an active commercial IND for that drug or under a separate treatment IND submitted by a licensed medical practitioner. The proposal would make plain that the primary purpose of a treatment protocol or treatment IND is to provide patients with a drug to treat a serious disease condition not treatable satisfactorily with alternative therapies. The criteria for authorizing the use of an investigational drug for treatment would reflect this purpose. Thus, FDA would only authorize use of a drug under a treatment protocol/IND if it found: (1) That the proposed use is intended for a serious disease condition in patients for whom no satisfactory approved drug or other therapy is available; (2) that the potential benefits of the drug's use outweigh the potential risks; and (3) that there is sufficient evidence of the drug's safety and effectiveness to justify its intended treatment use. These criteria would ordinarily mean that a drug would not be a candidate for a treatment use until it had gone through the kind of studies conducted during Phase 2. Thus, investigational drugs would ordinarily only become available for a treatment use at the end of Phase 2 or during Phase 3 of an investigation.

FDA believes that there are several reasons for generally confining the availability of investigational drugs for treatment use to drugs in this time frame. First, the kind of evidence necessary for FDA to be able to make an adequate assessment of the drug's potential benefits is usually not available until this time frame. Second, the agency wants to ensure that the treatment protocol/IND system does not undermine patients' interest in participating in controlled clinical trials. If access to investigational drugs for "treatment" becomes too widespread too early in the process, this could impede the collection of the type of data necessary to obtain marketing approval. Accordingly, FDA believes that the model for treatment protocol/IND use should be a drug in Phase 3 when the major clinical trials are completed or underway and where the evidence to date is favorable toward subsequent approval for marketing. The "Group C" system at the National Cancer Institute has followed these same principles and has achieved considerable success.

FDA anticipates that the proposed criteria for making a drug available under a treatment IND/protocol will be adequate to meet the vast majority of treatment use requests. Where compelling circumstances warrant, however, FDA will consider permitting treatment use earlier in the IND process.

Under the proposed criteria, "orphan drugs" would be leading candidates for treatment use by virtue of their being intended for rare diseases without satisfactory alternative therapy. As stated in the Orphan Drug Act (Pub. L. 97–414; January 4, 1983), sponsors of IND's for orphan drugs should be encouraged to design clinical studies that permit the inclusion of patients who wish to receive the drug for treatment purposes. (See section of Pub. L. 97–414 entitled, "Open Protocols for Investigations of Drugs for Rare Diseases or Conditions.") Accordingly, the treatment use section of the proposed regulations serve to implement the corresponding provisions of the Orphan Drug Act.

FDA has been criticized for not adequately informing the medical commuity about the availability of certain investigational drugs for treatment use. The proposal is intended to improve physician (and patient) access to these investigational drugs in three ways. First, by placing the procedures in the regulations, the necessary steps for obtaining such drugs will be made clear and more generally known. Second, as described below, FDA is encouraging commercial sponsors to develop treatment protocols so that, in most instances, the individual physician should not even have to come to FDA. Third, when separate treatment IND's do need to be submitted to the agency, the necessary paperwork is minimal, designed primarily to ensure patient safety, and the type of information needed to be submitted should be readily accessible to the treating physician. Accordingly, this provision should provide considerable benefits to consumers.

For some of the most promising investigational drugs, requests for the drug for treatment of individual patients can extend into the hundreds. The regulation would encourage drug companies to accommodate such requests under company-developed treatment protocols rather than to act simply as a supplier to many individual physicians, each of whom would otherwise have to submit a separate treatment IND. A company-sponsored treatment protocol has several advantages. Such a protocol can be readily designed to collect important, useful, and easily interpreted data about the drug, especially regarding safety.

It would certainly be in the public interest to utilize that additional premarketing data base. In addition, by channeling a number of physicians' requests for a drug for treatment into a single treatment protocol, scarce agency resources may be saved which can then be devoted to other IND's and marketing applications. In this regard, it should be noted that treatment IND's submitted by individual physicians now account for approximately 30 percent of all IND's received by FDA in a typical year.

Whether the request for use of an investigational drug in treatment were to be submitted in a treatment protocol or in a treatment IND, FDA' requirements would be minimal, consistent with patient safety and proper use. The protocol for each would include an explanation of the rationale for use of the drug, a brief description of the criteria for patient selection, a description of the clinical procedures, laboratory tests, or other measures to be taken to monitor the effects of the drug and to minimize risk, and a description of the proposed dosage and administration. Such protocols might be written by either the drug firm supplying the drug or an individual physician sponsor, with input from FDA as necessary to aid patient safety and proper use.

Because toxicology, chemistry, and other technical information should already be available for FDA review in the commercial sponsor's IND, in general little or no additional supporting information would be required for either a treatment protocol or a treatment IND. In the case of a treatment IND submitted by a individual physician, however, the physician needs permission from the commercial sponsor for FDA to cross-reference such technical information from the commercial sponsor's IND into the physician's treatment IND. In the normal course, if a commercial sponsor chooses to provide the individual physician with the investigational drug, FDA would view that shipment of the drug as authorization by the commercial sponsor to permit FDA to incorporate by reference the technical information in the commercial sponsor's IND into the physician's treatment IND. Such incorporation by reference makes the information available to FDA for review purposes, but does not authorize disclosure to the physician of the information so incorporated.

The obligations of sponsors and investigators on the conduct of investigational uses under treatment protocols/IND's would in general be identical to those imposed on other sponsors and investigators. Thus, the requirements regarding the control of the drug, recordkeeping, and reporting of safety information would apply in the treatment protocol/IND context as well. Although investigators are normally obliged under the IRB regulations in Part 56 to obtain the review and approval of a local IRB, FDA would carefully consider granting waivers from that requirement in a treatment setting, on the grounds that review by an IRB for conformance with ethical principles designed for the research setting is not always necessary in a treatment context. For treatment protocols covering many patients, the IRB review requirement (or waiver therefrom) applies only once to the initial protocol, not to each patient that is added to it. Of course, FDA waiver of an IRB requirement would not preclude a local IRB from requiring physicians to obtain IRB review for all experimental procedures conducted in the institution.

When FDA does waive IRB review requirements, it may require as a condition of such waiver that the sponsor submit adequate assurance that the treatments use is to be conducted in conformity with all applicable requirements regarding the ethical conduct of an investigation. In particular, FDA may require the submission of sample informed consent forms to demonstrate that adequate and informed consent will be obtained. This is especially important when IRB review has been waived because IRB review is the chief means of assuring adequate informed consent of patients.

It should be emphasized that the treatment IND or treatment protocol is suitable only as a mechanism to obtain a drug that is not otherwise obtainable. The mechanism would not be appropriate as a means of obtaining a commercially available approved drug for a treatment use that is not described in the product's package insert. Such uses of marketed products, if within the practice of medicine, are beyond FDA's authority to require submission of an IND. The applicability of IND requirements to the use of marketed drugs is discussed elsewhere in this preamble.

Emergency Procedures

The need for an investigational drug may arise in an emergency situation that does not allow time for compliance with applicable IND submission requirements. The proposal would formally establish the mechanism now used for obtaining a drug in an emergency. The proposal would permit FDA to authorize shipment of a drug for a specified use before submission of an IND. Such requests would usually be made over the telephone. FDA's authorization would typically require the person who obtains the drug on an emergency basis to followup the initial request with a full written IND submission.

Administrative Actions on an IND

FDA proposes to describe in the regulations administrative actions the agency may take in reviewing an initial IND and in monitoring the progress of investigations that are conducted under an effective IND.

As noted in the introductory section of this preamble, under current requirements FDA has 30 days to review an initial IND submission. FDA's reviewers are asked to decide whether the information submitted in the application supports initiation of the proposed clinical investigations. If the reviewers find that some deficiency in the application justifies delaying the commencement of human studies, a "clinical hold" may be imposed instructing the sponsor not to begin the studies. The kinds of deficiencies that would justify a clinical hold are not described in the current regulations. Unless otherwise notified, a sponsor may begin human studies 30 days after FDA receives the IND.

Once clinical investigations begin, the principal mechanisms of further FDA regulation are deficiency letters, which point out specific technical problems in the application; clinical holds, which are orders to stop or limit specifically identified studies under an IND; and terminations, which are orders that prohibit all investigational activity under an IND.

Current regulations impose no obligations on FDA to explain actions taken with respect to an IND, provide no effective procedures for appealing decisions during the IND process, and fail to explain the regulatory significance of agency deficiency letters and other communications sent to the sponsor during the pendency of an IND. Also, current regulations concerning administrative actions do not describe the proper scope of FDA review during the different phases of the IND process. Therefore, FDA believes that a comprehensive revision and restatement of IND procedures and standards for administrative actions should be undertaken.

The proposal would attempt to remedy these omissions, among other ways, by specifying clinical hold and termination procedures that reflect the changing focus of FDA's concerns in reviewing IND's for different phases, by clarifying the regulatory status of FDA's communications to sponsors, and by codifying an appeals mechanism.

The proposal would also retain the 30-day period for review of initial IND submissions. FDA believes that the 30-day period imposes little if any delay on the drug development process while providing FDA with adequate time to fulfill the agency's responsibilities in monitoring and assessing the safety of proposed human studies. At the same time, FDA concludes that it is unnecessary to establish an affirmative approval mechanism for IND's, i.e., a mechanism under which a sponsor could only begin a study after receiving written notification from FDA. FDA believes the current mechanism has worked well and should not be changed.

1. *Deficiency letters.* Under current practice, FDA frequently sends letters to sponsors outlining deficiencies in the IND or requesting additional data or information. These "deficiency letters" may follow FDA review of the initial IND or a subsequent amendment, and the letters ae usually not accompanied by a "clinical hold" order. Accordingly, the regulatory status of such letters has been unclear, and some sponsors have apparently interpreted such letters as imposing regulatory "requirements." Under the proposal, the practice of sending deficiency letters to sponsors would be retained, but the regulatory status of these letters would be clarified. Specifically, the proposal states that such letters would be advisory only and would not require any action by sponsors, unless accompanied by a "clinical hold" order. FDA believes this provision should provide both sponsors and agency staff with clear notice of their rights and responsibilities regarding these communications.

2. *Clinical holds.* The proposal would define the standards for imposing a clinical hold during the different phases of the investigation. Standards for Phase 1 clinical holds would reflect FDA's focus on safety. Thus, a hold in Phase 1 could only be imposed if FDA found one of the following: (1) Human subjects would be exposed to an unreasonable and significant risk of illness or injury (without commensurate benefit to the subject); (2) the clinical investigators were not adequately qualified to conduct the investigation; (3) the investigator's brochure was misleading, erroneous, or materially incomplete; or (4) the IND did not contain enough information to assess the risks to human

subjects. This narrowed scope of review would mean that FDA could not impose a clinical hold on a proposed Phase 1 study on concluding that the study was poorly designed or without a proper scientific rationale, unless those deficiencies had a direct bearing on safety. The purpose of this standard is to give sponsors greater freedom to design, revise, and implement early clinical research, as long as patients are not put at risk. Phase 1 studies are almost never considered pivotol for marketing approval, so FDA's responsibility is met at this stage once safety is established. The agency estimates that these narrowed clinical hold criteria would reduce the number of commercial IND's placed on clinical hold by approximately 30 percent. In contrast, during Phases 2 and 3, FDA would be able to stop or delay a study not only for safety, but also if the agency found that the study was "clearly deficient in design to meet its stated objective." The purpose of this different standard is to eliminate the wasteful expenditure of resources by sponsors in undertaking major clinical studies which, on their face, are simply incapable of producing data to support marketing approval.

The proposal would make clear FDA's authority to impose a clinical hold, not only prior to the beginning of a study, but at any time during the course of a clinical investigation. The proposal would also establish procedures to standardize the imposition of clinical holds. First, a clinical hold could only be imposed following a decision by the director of the division that is responsible for reviewing the IND, and the division director would be required to give the sponsor a written explanation of the basis for the hold within 15 days. Second, the clinical hold order would specify whether the study may be commenced or resumed as soon as stated deficiencies are corrected or whether the study's resumption must await the responsible division director notifying the sponsor that the study may proceed. Finally, as described below, if all investigations under an IND remain under a clinical hold order for 1 year or more, FDA could place the IND on inactive status.

In the clinical hold area, as elsewhere, the proposed regulation stresses the agency's commitment to seek the resolution of problems through informal discussions and meetings before resorting to formal regulatory mechanisms. Thus, the proposal provides that whenever FDA believes that a clinical hold should be imposed, it would attempt within the 30 days to discuss and resolve the matter with the sponsor before imposing the hold.

3. *Termination of an IND.* The proposed revisions of the "terminations" provisions should be viewed as an extension of the proposed revisions regarding "clinical holds." As described above, a clinical hold is an order not to commence or continue a clinical study. The order is viewed as a temporary measure until the problems affecting the specific studies placed on clinical hold can be resolved. In contrast, a termination order is viewed with a greater sense of finality. It is an order that affects all studies being conducted under an IND. In general, an IND would not be terminated if FDA felt there was any real prospect of continuing the investigation. Historically, the termination provision has been used only rarely, but FDA believes it is a necessary sanction to permit FDA to exercise its responsibilities in monitoring adequately the IND process.

The proposal would restate the general grounds for termination of an IND contained in the current regulations, but would tailor the grounds to the specific phases of the investigation. during Phase 1, terminations would be limited to issues involving the safety of subjects or substantial noncompliance with the regulations. In addition to these grounds, the proposal would permit the agency to terminate an IND during Phase 2 and Phase 3 investigations if the plan or protocol were not reasonable as a bona fide scientific plan for determining whether the drug is safe and effective, or if there exists convincing evidence that drug is ineffective for the purpose for which it is being investigated. These latter two criteria (i.e., "not reasonable as a bona fide scientific plan" and "convincing evidence that the drug is ineffective") are expected to apply only in rare cases.

The proposal would retain the current procedures for terminating an IND. Under those procedures, when FDA proposes to terminate an IND, it first notifies the sponsor in writing and gives the sponsor an opportunity to correct any deficiencies or explain why it believes termination of the IND is unwarranted. The sponsor then has 30 days to provide a written response or request a conference with FDA to respond to the agency's proposal. Lacking any response, FDA will terminate the IND. If the sponsor provides a response that the agency finds unacceptable, it will give the sponsor an opportunity for a regulatory hearing under 21 CFR Part 16 of FDA's administrative practice and procedure regulations on the question of whether the IND should be terminated. If FDA's proposed grounds for termination are sustained, the IND is terminated. Following termination, the sponsor is required to discontinue all ongoing studies and properly dispose of supplies of the investigational drug. FDA will, in general, only initiate termination proceedings after first attempting to resolve differences informally or, when appropriate, through the clinical hold procedures described above.

Finally, the proposal would retain the provision in the current regulations that permit FDA to terminate an IND immediately if the agency concludes that continuation of an investigation presents a significant danger to the public or patient health. Although this procedure has only rarely been utilized, FDA believes it represents a valuable procedural complement to the other mechanisms available for ending studies conducted under an IND.

4. *Inactive status.* FDA proposes to establish an inactive status: (1) For IND's for which no subjects have been entered into clinical studies for a period of 2 years or more; or (2) for which all investigations under the IND have been on clinical hold for 1 year or more. Under the proposal, FDA could place an IND on inactive status on the request of the sponsor or on the agency's own initiative. If FDA acts on its own initative, it would first give the sponsor notice of the proposed action and an opportunity to show that clinical investigations under the IND are being conducted and therefore that the IND should remain active. No clinical studies would be permitted under an inactive IND, but neither would the sponsor be required to comply with the annual reporting requirement applicable to IND's. Resumption of clinical studies would require the submission of amendments describing the proposed investigations. Finally, the agency could terminate an IND that remains inactive for 5 years or more.

This change is intended to help FDA keep track of IND's that are no longer considered active and would also benefit drug sponsors who now make nonsubstantive submissions in the form of annual reports to IND's for which no clinical studies are ongoing or planned. Sponsors believe these submissions are necessary to prevent their applications from being considered abandoned, which under current regulations would make all data and information in the IND available for public disclosure unless extraordinary circumstances exist (see current 21 CFR 312.5(b) and 314.14(f)). This proposal would eliminate the need to submit those reports for

inactive IND's. FDA would presume an inactive IND to be in effect for purposes of the public disclosure of data and information in the IND.

The Pharmaceutical Manufacturers Association (PMA) Petitioned FDA to provide for an inactive status for IND's for which sponsors have discontinued clinical investigations. The PMA petition and this proposal are similar in that both would provide for a sponsor to request that an IND be considered inactive, both would eliminate the requirement for annual reports for inactive IND's, and both would protect trade secrets and confidential commercial and financial information from public disclosure.

FDA's proposal differs from the PMA petition, however, in several respects. First, under FDA's proposal, the agency could place an IND on inactive status without the sponsor's consent. The agency believes that this provision is necessary to keep government records current so that agency resources can appropriately be directed to IND's under which clinical investigations are actually being conducted. Second, under the proposal, to resume a study placed on inactive status, a sponsor would have to submit a protocol amendment and wait 30 days for FDA review, paralleling the procedure for initial IND's. FDA believes a 30-day pause before resumption of studies under an inactive IND is necessary because the general accumulation of scientific knowledge during the period of inactivity may affect the risk assessment of studies under the IND. Thus, a reassessment of the potential risks to subjects as well as the potential scientific usefulness of Phase 2 and Phase 3 studies is appropriate after a substantial period of inactivity.

5. *Request for reconsideration or clarification.* FDA recently adopted a new appeals process under which the sponsor of an NDA or IND can appeal a request or opinion from the division monitoring the application. This procedure, which is more fully described in a publicly available FDA Staff Manual Guide (NCDB 4820.5), was first outlined in the agency's proposal to revise its new drug and antibiotic application procedures (see 47 FR 46622, 46633–46634; October 19, 1982). Sponsors can use the procedure to appeal requests by agency employees for specific additional studies or information, requests to modify or delay a study, or unfavorable agency responses to sponsors' requests for waivers or special technical approaches to scientific problems. The procedure is marked by the sponsor's submission of a written request for reconsideration or clarification to the division responsible for reviewing the IND, the division's prompt response to the sponsor, and, if the division's response is not acceptable, automatic review of the issue by management of the National Center for Drugs and Biologics. FDA will attempt to issue a final decision within 60 days of a sponsor's initial request. The IND Rewrite would simply codify the applicability of this procedure to the IND process. This procedure has already been implemented for both NDA's and IND's through the staff manual guide noted above.

Meetings

This section describes the use of meetings to improve communications between FDA and sponsors of clinical investigations and thus to facilitate the drug development and approval process. FDA proposes to expand and codify its current practices with respect to meetings with IND sponsors during the course of clinical investigations and in preparation for submission of a marketing application. Although FDA encourages frank and open communication with sponsors throughout the drug development and approval process, it has found that discussions held at the end of Phase 2 of an investigation ("end-of-Phase 2" meetings) and meetings held before submission of a marketing application ("pre-NDA" meetings) are most helpful in facilitating drug development and marketing.

Under the proposal, any IND sponsor may request and obtain an end-of-Phase 2 meeting with reviewing officials, with a special emphasis on new chemical entities under development. FDA's current practice is to encourage end-of-Phase 2 meetings for new chemical entities offering major or modest therapeutic gains over existing drugs. (Type IA and IB drugs under the agency's classification system). FDA's success with these meetings has led it to conclude that the development of other drugs, especially other new chemical entities, would most likely benefit from such early consultation as well. Although other new chemical entities are classified as providing little or no therapeutic gain over existing drugs (Type IC), these products may still provide improved therapeutic benefits for some patients who do not respond well to available therapy. In addition, increase availability of similar drugs should help increase competition in the marketplace.

The primary objective of the end-of-Phase 2 meeting would be for FDA and the sponsor to reach an agreement on the overall plan for Phase 3 clinical investigations and the objectives and designs of particular studies. Minutes of the meeting would reflect the agreements reached. Unless a significant scientific development requires otherwise, the sponsor would be assured that studies performed in accordance with the agreements would be acceptable to FDA (in design and objectives) for purposes of an application for marketing approval.

FDA believes that the kind of collaborative planning that takes place in such meetings is one of the best means available for facilitating drug development without compromising the safety or effectiveness of marketed drugs. One of the greatest sources of delay in the review of marketing applications is when sponsors submit reports from "pivotal" studies that are found to have significant flaws in design. In this situation, prolonged discussions frequently follow on whether the studies are "adequate and well-controlled" and whether the results are scientifically credible. Sponsors, understandably, are dismayed at the prospect of having to re-do major studies, but FDA cannot approve a drug for marketing that does not meet the statutory standards. FDA's experience is that questions of study design can almost always be worked out and agreed upon—if the discussion takes place before the studies have been conducted. Accordingly, although increased availability of end-of-Phase 2 meetings will create more resource demands on the agency and on sponsors, FDA believes that resources spent increasing the efficiency of the drug development process are well worth spending.

The proposal would specifically provide that both sponsors and the agency may bring outside expert consultants to end-of-Phase 2 conferences. FDA has sought in the past to involve outside experts in end-of-Phase 2 meetings, where practicable, and the agency's experience has been that such expertise is often of considerable benefit in planning the design of Phase 3 studies. FDA, therefore, plans to continue this policy.

FDA also proposes to codify its procedures for "pre-NDA" meetings that are held to discuss new drug and antibiotic applications and biological product license applications. The agency has found these meetings to be useful in ensuring that marketing applications present data in a manner suitable for efficient agency review. "Pre-NDA" meetings are another mechanism

whereby advance planning can facilitate the drug review process.

Applicability of IND Requirements to Marketed Drugs

This section describes the applicability of IND requirements to marketed drugs. Specifically, the proposal: (1) Would clarify that the act does not regulate the "practice of medicine" so that a licensed physician may prescribe an approved drug for an unapproved indication; (2) would also clarify that the act does regulate "clinical investigations" using marketed drugs; but (3) would create a new category of clinical investigations using marketed drugs that would no longer require an IND.

Current regulations are silent on the act's applicability to the use of approved drugs for unapproved uses. This issue has caused considerable confusion both inside and outside the agency. In the Federal Register of August 15, 1972 (37 FR 16503), the agency proposed a regulation that would have put forth the legal status of approved labeling; although no final rule has been issued on this subject, the agency has continued to apply the principles set forth in the preamble to the 1972 proposal. In FDA's *Drug Bulletin* of April 1982, the agency sought to clarify and reiterate the position that the act does not regulate the "practice of medicine." Once a drug product has been approved for marketing, a physician may, in treating patients, prescribe the drug for uses not included in the drug's approved labeling. The primary legal constraints in that situation are State laws on medical practice and products liability law. The IND Rewrite proposal would codify the agency's longstanding position that the regulations do not apply to the "practice of medicine," though the proposal does not purport to define with specificity such practice in terms of the act.

A different issue arises when physicians, usually affiliated with academic institutions, seek to conduct "clinical investigations" using marketed drugs, either to look for new uses or to use the drug as a research tool. FDA's position has been, and continues to be, that such investigations are subject to section 505(i) of the act (21 U.S.C. 355(i)). Thus, the agency has received numerous IND's each year covering these types of studies. FDA, however, has reevaluated the utility of reviewing these IND's and has concluded that the agency's review of certain categories of them, as described below, is not necessary to assure patient protection. Accordingly, FDA proposes to exempt from the IND requirements of Part 312 clinical investigations using marketed drugs that meet the following two criteria: (1) The investigation does not involve a route of administration or dosage level or use in a patient population that significantly increases the risk associated with use of the drug product; (2) the investigation is not intended to be reported to FDA as a well-controlled study in support of a new indication for use, nor intended to be used to support any other significant change in the advertising or labeling for the drug.

The first criterion embodies the view that, where a marketed drug is investigated in a way consistent with its approved labeling, FDA review is not needed to protect the safety of research subjects. The agency's approval of a new drug product for marketing is based on a substantial body of scientific information demonstrating the drug's safety in certain doses, routes of administration, and, sometimes, in certain patient populations. That information is conveyed to physicians through detailed professional labeling Administration of the drug under circumstances similar to those described in the approved labeling would not, therefore, be expected normally to produce any significant safety problems necessitating FDA review under the IND process.

FDA recognizes that the safety standard in the proposal contains an element of professional judgment in determining whether the conditions of the investigations "significantly increase" the risk associated with use of the drug. In applying this test, physicians should rely upon the contents of the approved labeling, reports in the medical literature, and their own experience in medical practice. For example, safety concerns necessitating submission of an IND would ordinarily arise where: (1) A drug is to be administered in a dosage many times greater than the labeled amount (new dosage level); (2) a drug approved for use in an oral dosage form is to be used in an intravaneous solution (new dosage form); or (3) an anticancer drug is to be used in patients with nonmalignant disease (new patient population). As an adjunct to these general criteria, FDA would also provide public notice when specific situations are identified that would require an IND.

The second criterion in the proposed regulation is aimed at helping ensure that investigations intended to be submitted to FDA for labeling or advertising changes are adequate in design to serve that purpose. This is the same reason the agency evaluates the design of Phase 2 and Phase 3 studies, and why FDA encourages close consultation with sponsors through participation in "End-of-Phase 2" conferences. As noted earlier, such review by FDA in advance adds considerable efficiency to the drug development process.

Persons conducting exempted studies would still be required to conform to all ethical principles applicable to the conduct of clinical investigations, including the statutory requirement for informed consent. Thus, a study's exemption under the proposal would be conditioned on a sponsor obtaining appropriate informed consent as well as the review and approval of a local IRB. Finally, the sponsor would still be prohibited from commercializing the investigation or promoting the product for its investigated use, except on specific approval by FDA.

The agency considered several alternatives to exempting such studies from IND submission requirements. For example, FDA considered requiring the submission to FDA of an "abbreviated IND" for this subset of uses. Such an IND would simply identify the investigational use the sponsor proposed to study and explain why the study met the criteria for exemption. This notification scheme would arguably permit FDA to play a more active role in regulating these investigations and would allow the agency, if a proposed study failed to meet the criteria for exemption, to stop it prior to its beginning. FDA is concerned, however, that such a system woud actually slow down the process because an abbreviated IND is unlikely to contain sufficient information to verify the criteria. Because reviewers are likely to ask for additional information and delay commencement of the studies, FDA does not consider this to be the best available option. The agency also considered expressly requiring IND's for these studies but, for the reasons stated above, FDA believes agency review is unnecessary to meet FDA's regulatory responsibilities.

The exempted group would include many, if not most, studies conducted by individual investigators in which marketed drugs are used as research tools or in exploratory therapeutic trials. The exemption would also apply to commercially sponsored studies if they fell into the exempted category. The agency would not accept IND's for exempt studies. FDA anticipates that there may be questions raised about the exempt status of certain kinds of investigations. FDA will provide assistance to interested persons who are

uncertain whether a proposed study falls under the terms of this exemption.

FDA believes that the exemption for studies of marketed drugs should significantly reduce administrative burdens placed on research conducted by individual investigators without compromising patient safety. FDA should also benefit because studies that would be exempted under the proposal constitute a significant fraction (over 15 percent) of all IND's received by FDA in a given year. Thus, review time and other staff time that are now spent on these IND's would be saved and redirected toward commercial IND's for new products under development, FDA reviews, and other review functions.

Responsibilities of Sponsors and Investigators

FDA proposes to summarize in the regulations the requirements concerning the responsibilities of sponsors and investigators under an IND. These provisions are intended to supplement more detailed requirements contained in FDA's proposed regulations defining the obligations of sponsor and monitors (42 FR 49612; September 27, 1977; proposed Part 52) and of clinical investigators (43 FR 35210; August 8, 1978; proposed Part 54). As noted earlier in this preamble, the IND proposal has been prepared on the assumption that sponsor/monitor and clinical investigator regulations will be made final either before, or at the same time as, the final IND Rewrite. Responsibilities of sponsors and/or clinical investigators are also contained in current FDA regulations on: (1) Informed consent (21 CFR Part 50), (2) institutional review boards (21 CFR Part 56), and (3) good laboratory practice for conducting nonclinical laboratory studies (21 CFR Part 58). To the extent that apparent inconsistencies may develop between the IND regulations and the bioresearch monitoring regulations, the bioresearch regulations would control and the IND regulations would be appropriately clarified when published in final form.

The IND proposal would retain current requirements for a sponsor to (1) select qualified investigators, (2) provide them with the information they need to conduct an investigation properly, (3) ensure proper monitoring of the investigation, (4) ensure that the investigation is conducted in accordance with the general investigational plan and protocols contained in the IND, (5) maintain an effective IND with respect to the investigation, and (6) ensure that FDA and all participating investigators are promptly informed of significant new safety information with respect to the drug. The proposal would also retain current requirements for an investigator to ensure: (1) That the investigation is conducted according to the investigator's statement that was provided to the sponsor, the investigational plan, and applicable FDA regulations; (2) the rights, safety, and welfare of subjects under the investigator's care are protected; and (3) that the drugs used in the investigation are kept under careful control.

One of the primary responsibilities of sponsors under an IND is to select investigators and a monitor who are qualified by training and experience to investigate the drug and monitor the investigations. In this regard the sponsor is required to obtain from each clinical investigator an investigator's statement containing information about the investigator, the facilities where the study will be conducted, and commitments by the investigator with respect to his or her involvement in the study. The sponsor is also required to obtain a curriculum vitae for each investigator and an outline of the plan of investigation.

Unlike most FDA regulations, the current content requirements for an investigator statement are contained in Form FDA–1572 (for investigators involved in clinical pharmacology) and Form FDA–1573 (for investigators involved in clinical trials). The forms, which are reprinted in the regulations, identify in detail the kinds of information the investigator must provide to the sponsor and contain specific commitments the investigator makes with respect to the investigation. The agency proposes to combine the forms into a single investigator statement Form FDA–1572 and to revise the form to make it simply a checklist of the investigator's submission. The agency would provide guidelines to help investigators compile necessary information and provide it to the sponsor.

As described more fully above, the sponsor would be required, as now, to provide each investigator with an investigator brochure containing the information the investigator needs to conduct the investigation properly. In addition, the sponsor is under a continuing obligation to keep each participating investigator informed about new information about the drug, particularly with respect to safety information and the drug's safe use. The important safety information should be communicated orally to investigators with a written followup.

Under the proposal, a sponsor would continue to monitor an investigation by securing compliance of noncomplying investigators with the investigational plan and ending an investigator's participation if he or she refuses to comply with the plan. In addition, the sponsor must monitor the progress of investigations, evaluate safety and effectiveness information, and make reports to FDA regarding adverse drug experiences. All records of the investigation would of course be available for inspection by authorized Federal employees. If a sponsor determines that an adverse drug effect presents an unreasonable and significant risk to subjects, the sponsor must (1) discontinue the investigation and notify FDA and all investigators, (2) dispose of all stocks of the drug, and (3) provide FDA with a full report of the actions taken. Although current regulations require that the sponsors take this action promptly, the proposal would require a sponsor to discontinue an investigation as soon as possible, but in no event later than 5 working days after determining it should be discontinued.

Miscellaneous Provisions

1. *Sale of investigational drugs.* The proposal would retain, essentially unchanged, the current provisions prohibiting promotion and commercialization of investigational drugs. The proposal would also retain the current policy of not permitting sale of an investigational drug unless a full and satisfactory explanation is given why the sale should not be regarded as commercializing the drug. However, while this policy applies to sale of any investigational drug, the procedure for implementing the policy is different for investigational biological products than it is for investigational new drugs and antibiotics. For biologics, sale is not permitted until the sponsor is notified of FDA's approval of the sale. With respect to new drugs and antibiotics, there is no written current policy, and therefore the issue is subject to differing interpretations and applications, although in practice FDA usually does make affirmative decisions on whether to permit sale. The proposal would extend the procedure for sale of biological products to all investigational drugs so that no sale would be permitted except upon written approval of the Director, National Center for Drugs and Biologics. Centralizing these decisions in one individual would ensure uniform application of the agency's policy in this area.

2. *Imports and exports.* FDA proposes to codify its current policy on imports and exports of investigational new drugs. The Federal Food, Drug, and

Cosmetic (the act) prohibits, under sections 301(d) and 505(a) (21 U.S.C. 331(d) and 355(a)), the introduction or delivery for introduction into interstate commerce of any new drug without an approved application under section 505(b) or an exemption under section 505(i). That prohibition extends to imports and exports of unapproved new drugs under the act's definition of the term "interstate commerce" (section 201(b)) (21 U.S.C. 321(b)). Thus, an unapproved new drug may not be imported into, or exported from, the United States unless it is subject to an exemption provided by FDA for an investigational new drug.

The proposal would simplify the agency's regulations governing imports by requiring an investigational new drug offered for importation into the United States to be subject to an effective IND and require the consignee within the United States to be either the sponsor of the IND or an investigator named in the IND. If the sponsor did not reside in the United States, the sponsor would be required to designate a domestic agent to act on behalf of the sponsor.

The proposal would retain the agency's current policies on exports of an investigational new drug by providing that such drug may be exported from the United States if an IND is in effect for it and each person to whom it is exported is an investigator named in the IND. The proposal would also modify the procedures under which FDA may authorize export of an investigational new drug that is not subject to an IND. Currently, requests for export under these procedures may only be processed through the Department of State.

The proposal would streamline this process by permitting these requests to be submitted directly to FDA by an authorized official of the importing foreign government. As an alternative procedure, the proposal would also permit requests to be submitted by an official of the company that proposes to export the drug. In either case, FDA will authorize shipment only if it is satisfied that the drug is appropriate for investigational use in human subjects, that the drug will be used for investigational purposes only, and that the drug may legally be used by the consignee in the importing country. The amount of information needed to satisfy these criteria will vary depending on the nature of the drug and FDA's prior familiarity with it.

FDA will coordinate export authorization with the appropriate governmental officials of the importing countries. As in the past, FDA will give considerable deference to letters by foreign governments specifically requesting shipment of the drug into their country. Where the request is made by the exporter, FDA will notify the foreign government of any export authorizations that are made.

Finally, the agency emphasizes that these procedures do not permit export of an investigational drug for commercial marketing or for use in routine medical practice.

3. *Foreign clinical studies.* The proposal would retain current policy on FDA's acceptance for IND purposes of foreign clinical studies not conducted under an IND. The regulation itself has been redrafted to provide greater clarity. FDA accepts well-designed and well-conducted investigational studies that are performed by qualified investigators in accordance with ethical principles acceptable to the world community. Studies meeting these criteria may be used to support clinical investigations in the United States as well as subsequent marketing approval. Marketing approval of a new drug or antibiotic drug based solely on foreign clinical data, however, would be governed by the agency's regulations on new drug applications in Part 314 (see the proposal in 47 FR 46622, 46642–46644, and 46655; October 19, 1982).

4. *Public availability of data and information in an IND.* FDA proposes no substantive change in the specific regulations applicable to the availability for public disclosure of data and information in an IND. (Although, as noted above, FDA does propose to treat an IND on inactive status as an active IND for purposes of the public disclosure of data and information.) The proposal would retain the current provisions which (i) prohibit FDA disclosure of the existence of an IND, (ii) apply to IND's the same provisions for public release of data and information in a new drug application (NDA) under Part 314, and (iii) specifically provide for the disclosure to an individual patient who received an investigational new drug of a copy of any adverse reaction report relating to the use of the drug in that individual.

5. *Address for correspondence.* FDA proposes a new section in the regulations to identify the appropriate agency offices to which IND's should be sent. The regulation would also require the outside wrapper of each IND submission to identify the submission (for example, as the original IND submission, protocol amendment, information amendment, adverse drug experience report, or annual report).

6. *Guidelines.* This section simply states that the agency prepares guidelines to help persons comply with the regulations. As stated in § 10.90(b), guidelinnes do not establish legal requirements but a person may be assured that by following an agency guideline his or her submission will be in a form acceptable to the agency. A person may also choose to use alternative procedures or standards even though they are not provided for in a guideline. A person who chooses to use alternative procedures or standards may discuss the matter in advance with FDA to prevent an expenditure of money and effort on work that may later be found unacceptable. The agency also proposes to establish and make publicly available a list of guidelines that apply to the IND regulations.

7. *Use in laboratory research animals or in vitro tests.* Although an IND is not required, the agency proposes to retain, with some editorial changes, its current regulations governing the proper labeling and control of investigational new drugs intended solely for use in laboratory research animals, or for tests in vitro.

Environmental Impact

The agency has determined under 21 CFR 25.24(b)(17) (proposed December 11, 1979; 44 FR 71742) that this proposed action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act of 1980

This proposed rule contains a number of information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Rm. 3208), Washington, DC 20503, ATTN: Richard Eisenger.

FDA proposes that the final regulation be effective 60 days after its date of publication in the **Federal Register.**

List of Subjects in 21 CFR Part 312

Drugs, Medical research.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053

as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under 21 CFR 5.11 as revised (see 47 FR 16010; April 14, 1982), it is proposed that Part 312 be revised to read as follows:

PART 312—INVESTIGATIONAL NEW DRUG APPLICATION

Subpart A—General Provisions

Subpart B—Investigational New Drug Application (IND)

Subpart C—Administrative Actions

Subpart D—Responsibilities of Sponsors and Investigators

Subpart E—Miscellaneous

Subpart F—Drugs for Investigational Use in Laboratory Research Animals or In Vitro Tests

Authority: Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262).

Subpart A—General Provisions

§ 312.1 Scope.

(a) This part contains procedures and requirements governing the use of investigational new drugs, including procedures and requirements for the submission to, and review by, the Food and Drug Administration of investigational new drug applications (IND's). An investigational new drug for which an IND is in effect in accordance with this part exempts the drug from the premarketing approval requirements that are otherwise applicable and permits the drug to be shipped lawfully for the purpose of conducting clinical investigations of that drug.

(b) References in this part to regulations in the Code of Federal Regulations are to Chapter I of Title 21, unless otherwise noted.

§ 312.2 Applicability.

(a) Except as provided in this section, this part applies to all clinical investigations of drugs that are subject to section 505 or 507 of the Federal Food, Drug, and Cosmetic Act or to the licensing provisions of the Public Health Service Act (58 Stat. 632, as amended (42 U.S.C. 201 et seq.)).

(b)(1) *Exemptions.* The following categories of drugs are exempt from the requirements of this part:

(i) a lawfully marketed drug product used in a clinical investigation, if all the following apply:

(*a*) The investigation is not intended to be reported to FDA as a well-controlled study in support of a new indication for use nor intended to be used to support any other significant change in the advertising or labeling for the drug;

(*b*) The investigation does not involve a route of administration or dosage level or use in a patient population that significantly increases the risks associated with use of the drug product;

(*c*) The investigation is conducted in compliance with the requirements for institutional review set forth in Part 56 and with the requirements for informed consent set forth in Part 50; and

(*d*) The investigation is conducted in compliance with the requirements of § 312.7.

(ii) A biological drug intended for in vitro diagnostic use if:

(*a*) It is intended to be used in a diagnostic procedure that confirms the diagnosis made by another, medically established, diagnostic product or procedure, and

(*b*) The investigational drug is shipped in compliance with §312.160.

(iii) A drug intended solely for tests in laboratory research animals, if shipped in accordance with § 312.160.

(2) FDA will not accept an application for an investigation that is exempt under the provisions of paragraph (b)(1) of this section.

(c) For the applicability of this part to in vivo bioavailability studies in humans, see § 320.31.

(d) This part does not apply to the use in the practice of medicine for an unlabeled indication of a new drug or antibiotic drug product approved under Part 314 or of a licensed biological product.

(e) FDA may, on its own initiative, issue guidance on the applicability of this part to particular investigational uses of drugs. On request, FDA will advise on the applicability of this part to a planned clinical investigation.

§ 312.3 Definitions and interpretations.

(a) The definitions and interpretations of terms contained in section 201 of the act apply to those terms when used in this part.

(b) The following definitions of terms also apply to this part:

"Act" means the Federal Food, Drug, and Cosmetic Act (sections 201–902, 52 Stat. 1040 et seq., as amended (21 U.S.C. 301–392)).

"Clinical investigation" means any experiment in which an investigational new drug is administered or dispensed to, or used involving, one or more human subjects. For the purposes of this part, an experiment is any use of a drug except for the use of a marketed drug in the course of medical practice.

"FDA" means the Food and Drug Administration.

"IND" means an investigational new drug application.

"Investigational new drug" means a new drug, antibiotic drug, or biological drug (including a biological product that is used in vitro for diaganostic purposes) that: is not marketed under an approved marketing application; or is a marketed drug that is used for any purpose or in any way other than that described in its labeling, except when such use is carried out by a licensed practitioner in

the course of medical practice. The terms "investigational drug" and "investigational new drug" are deemed to be synonymous for purposes of this part.

"Investigator" means an individual who actually conducts a clinical investigation (i.e., under whose immediate direction the drug is administered or dispensed to a subject). In the event an investigation is conducted by a team of individuals, the investigator is the responsible leader of the team.

"Marketing application" means an application for a new drug submitted under section 505(b) of the act, a request to provide for certification of an antibiotic submitted under section 507 of the act, or a product license application for a biological product submitted under the Public Health Service Act.

"Sponsor" means a person who takes responsibility for and initiates a clinical investigation. The sponsor may be an individual or pharmaceutical company, governmental agency, academic institution, private organization or other organization. The sponsor does not actually conduct the investigation unless the sponsor is a sponsor-investigator. A person other than an individual that uses one or more of its own employees to conduct an investigation that it has initiated is a sponsor, not a sponsor-investigator, and the employees are investigators.

"Sponsor-Investigator" means an individual who both initiates and conducts an investigation, and under whose immediate direction the investigational drug is administered or dispensed. The term does not include any person other than an individual. The requirements applicable to a sponsor-investigator under this part include both those applicable to an investigator and a sponsor.

"Subject" means a human who participates in an investigation, either as a recipient of the investigational new drug or as a control. A subject may be a healthy human or a patient with a disease.

§ 312.6 Labeling of an investigational new drug.

(a) The immediate package of an investigational new drug intended for human use shall bear a label with the statement "Caution: New Drug—Limited by Federal (or United States) law to investigational use."

(b) The label or labeling of an investigational new drug shall not bear any statement that is false or misleading in any particular and shall not represent that the investigational new drug is safe or effective for the purposes for which it is being investigated.

§ 312.7 Promotion and sale of investigational drugs.

(a) *Promotion of an investigational new drug.* A sponsor or investigator, or any person acting on behalf of a sponsor or investigator, shall not represent in a promotional context that an investigational new drug is safe or effective for the purposes for which it is under investigation or otherwise promote the drug. This provision is not intended to restrict the full exchange of scientific information concerning the drug, including dissemination of scientific findings in scientific or lay media: Rather, its intent is to restrict promotional claims of safety or effectiveness of the drug for a use for which it is under investigation and to preclude commercialization of the drug before it is approved for commercial distribution.

(b) *Commercial distribution of an investigational new drug.* A sponsor shall not commercially distribute or test market an investigational new drug.

(c) *Prolonging an investigation.* A sponsor shall not unduly prolong an investigation, but shall submit a marketing application for the drug, with reasonable promptness after finding that the results of the investigation appear to establish sufficient data to support a marketing application, or within 60 days of receipt of a request for such application by FDA. If the sponsor determines that the data obtained will support a marketing application, the sponsor shall promptly discontinue the investigation and withdraw the IND.

(d) *Sale of an investigational drug.* The sale of an ivestigational new drug is not permitted except upon the written approval of the Director of the National Center for Drugs and Biologics. To obtain approval for the sale of a drug, the sponsor shall submit a full written explanation why sale is required and why the sale should not be regarded as the commercialization of an investigational drug. No sale will be permitted except in the context of an acceptable investigation.

§ 312.10 Waivers.

(a) A sponsor may request FDA to waive any applicable requirement under this part. A waive request may be submitted either in an initial IND or in an information amendment to an IND. In an emergency, a request may be made by telephone or other rapid communication means. A waiver request is required to contain at least one of the following:

(1) An explanation why the sponsor's compliance with the requirement is unnecessary or cannot be achieved;

(2) A description of an alternative submission or course of action that satisfies the purpose of the requirement; or

(3) Other information justifying a waiver.

(b) FDA may grant a waiver if it finds that the sponsor's noncompliance would not pose a significant and unreasonable risk to human subjects of the investigation and that one of the following is met:

(1) The sponsor's compliance with the requirement is unnecessary for the agency to evaluate the application, or compliance cannot be achieved;

(2) The sponsor's proposed alternative satisfies the requirement; or

(3) The applicant's submission otherwise justifies a waiver.

Subpart B—Investigational New Drug Application (IND)

§ 312.20 Requirement for an IND.

(a) A sponsor shall submit an IND to FDA if the sponsor intends to conduct a clinical investigation with an investigational new drug that is subject to § 312.2(a).

(b) A sponsor shall not begin a clinical investigation subject to § 312.2(a) until the investigation is subject to an effective IND in accordance with § 312.40.

§ 312.21 Phases of an investigation.

An IND may be submitted for one or more phases of an investigation. The clinical investigation of a previously untested drug is generally divided into three phases. Although in general the phases are conducted sequentially, they may overlap. These three phases of an investigation are as follows:

(a) *Phase 1.* (1) Phase 1 includes the initial introduction of an investigational new drug into humans. Phase 1 studies are typically closely monitored and may be conducted in patients or normal volunteer subjects. These studies are designed to determine the metabolism and pharmacologic actions of the drug in humans, the side effects associated with increasing doses, and, if possible, to gain early evidence on effectiveness. During Phase 1, sufficient information about the drug's pharmacokinetics and pharmacological effects should be obtained to permit the design of well-controlled, scientifically valid, Phase 2 studies. The total number of subjects and patients included in Phase 1 studies varies with the drug, but is generally in the range of 20 to 80.

(2) Phase 1 studies also include studies of drug metabolism, structure-activity relationships, and mechanism of action in humans, as well as studies in which investigational drugs are used as research tools to explore biological phenomena or disease processes.

(b) *Phase 2.* Phase 2 includes the controlled clinical studies conducted to evaluate the effectiveness of the drug for a particular indication or indications in patients with the disease or condition under study and to determine the common short-term side effects and risks associated with the drug. Phase 2 studies are typically well controlled, closely monitored, and conducted in a relatively small number of patients, usually involving no more than several hundred subjects.

(b) *Phase 3.* Phase 3 studies are expanded controlled and uncontrolled trials. They are performed after preliminary evidence of effectiveness of the drug has been established, and are intended to gather the additional information about effectiveness and safety that is needed to evaluate the overall benefit-risk relationship of the drug and to provide an adequate basis for physician labeling. Phase 3 studies usually include from several hundred to several thousand subjects.

§ 312.22 General principal of the IND submission.

(a) FDA's primary objectives in reviewing an IND are, in all phases of the investigation, to assure the safety and rights of subjects, and, in Phase 2 and 3, to help assure that the quality of the scientific evaluation of drugs is adequate to permit an evaluation of the drug's effectiveness and safety. Therefore, although FDA's review of Phase 1 submissions will focus on assessing the safety of Phase 1 investigations, FDA's review of Phases 2 and 3 submissions will also include an assessment of the scientific quality of the clinical investigation and the likelihood that the investigations will yield data capable of meeting statutory standards for marketing approval.

(b) The amount of information on a particular drug that must be submitted in an IND to assure the accomplishment of the objectives described in paragraph (a) of this section depends upon such factors as the novelty of the drug, the extent to which it has been studied previously, the known or suspected risks, and the developmental phase of the drug.

(c) The central focus of the first IND submission should be on the general investigational plan and the protocols for specific human studies. Subsequent amendments to the IND that contain new or revised protocols should build logically on previous submissions and should be supported by additional information including the results of animal toxicology studies or other human studies as appropriate. Annual reports to the IND should serve as the focus for reporting the status of studies being conducted under the IND and should update the general investigational plan for the coming year. To aid communication and minimize paperwork, information and data in IND's should, with some exceptions, be submitted only in summary form.

(d) The IND format set forth in § 312.23 should be followed routinely by sponsors in the interest of fostering an efficient review of applications. Sponsors are expected to exercise considerable discretion, however, regarding the contest of information submitted in each section, depending upon the kind of drug being studied and the nature of the available information. Section 312.23 outlines the information needed for a commercially sponsored IND for a new molecular entity. A sponsor-investigator who uses, as a research tool, an investigational new drug that is already subject to a manufacturer's IND should follow the same general format, but ordinarily may refer to the manufacturer's IND in providing the technical information supporting the proposal clinical investigation. A sponsor-investigator who uses an investigational drug not subject to a manufacturer's IND is ordinarily required to submit all technical information supporting the IND, unless, such information may be referenced from the scientific literature.

§ 312.23 IND content and format.

(a) A sponsor who intends to conduct a clinical investigation subject to this part shall submit an "Investigational New Drug Application" (IND) including, in the following order:

(1) *Cover sheet (Form FDA–1571).* A cover sheet for the application containing the following:

(i) The name, address, and telephone number of the sponsor, the date of the application, and the name of the investigational new drug.

(ii) Identification of the phase or phases of the clinical investigation to be conducted.

(iii) A commitment not to begin clinical investigations until an IND covering the investigations is in effect.

(iv) A commitment that an Institutional Review Board (IRB) that complies with the requirements set forth in Part 56 will be responsible for the initial and continuing review and approval of each of the studies in the proposed clincial investigation, that investigators will report to the IRB all proposed changes in the research activity and all unanticipated problems involving risks to human subjects or others, and that investigators will not make any deviations from the research plan without IRB approval, except where necessary to eliminate apparent immediate hazard to human subjects.

(v) A commitment to conduct the investigation in accordance with all other applicable regulatory requirements.

(vi) The name and title of the person responsible for monitoring the conduct and progress of the clinical investigations.

(vii) If the sponsor is not a sponsor-investigator, the name and title of the individual responsible for evaluating adverse reactions or other evidence of risk when such information is received from the clinical investigators.

(vii) The signature of the sponsor or the sponsor's authorized representative. If the person signing the application does not reside or have a place of business within the United States, the IND is required to contain the name and address of, and be countersigned by, an attorney, agent, or other authorized official who resides or maintains a place of business within the United States.

(2) *A table of contents.*

(3) *Introductory statement.* (i) A brief introductory statement giving the name of the drug and all active ingredients, the drug's pharmacological class, the structural formula of the drug (if known), the formulation of the dosage form(s) to be used, the route of administration, and the broad objectives and planned duration of the proposed clinical investigation(s).

(ii) A brief summary of previous human experience with the drug, with reference to other IND's if pertinent, and to investigational or marketing experience in other countries that may be relevent to the safety of the proposed clinical investigation(s).

(iii) If the drug has been withdrawn from investigation or marketing in any country for any reason related to safety or effectiveness, identification of the country(ies) where the drug was withdrawn and the reasons for the withdrawal.

(4) *General investigational plan.* A brief description of the overall plan for investigating the drug product, including: (i) The rationale for the drug or the research study; (ii) the indication(s) to be studied; (iii) the general approach to be followed in evaluating the drug; (iv) the kinds of clinical trials to be conducted in the first year following the

submission; (v) the estimated number of patients to be given the drug in those studies, and (vi) any special risks anticipated on the basis of the toxicological data in animals or prior studies in humans with the drug or related drugs.

(5) *Investigator's brochure.* If required under § 312.55, a copy of the investigator's brochure, containing the following information.

(i) A brief description of the drug substance and the formulation, including the structural formula, if known.

(ii) A summary of the pharmacological and toxicological effects of the drug in animals and, to the extent know, in humans.

(iii) A summary of the pharmacokinetics and biological disposition of the drug in animals and, if known, in humans.

(iv) A summary of information relating to safety and effectiveness in humans obtained from prior clinical studies. (Reprints of published articles on such studies may be appended when useful.)

(v) A description of possible risks and side effects to be anticipated on the basis of prior experience with the drug under investigation or with related drugs, and of precautions or special monitoring to be done as part of the investigational use of the drug.

(6) *Protocols.* (i) A protocol for each planned study. In general, protocols for Phase 1 studies may be less detailed and more flexible than protocols for Phase 2 and 3 studies. Phase 1 protocols should be directed primarily at providing an outline of the investigation—an estimate of the number of patients to be involved, a description of safety exclusions, and a description of the dosing plan including duration, dose, or method to be used in determining dose—and should specify in detail only those elements of the study that are critical to safety, such as necessary monitoring of vital signs and blood chemistries. Modifications of the experimental design of Phase 1 studies that do not affect critical safety assignments are required to be reported to FDA only in the annual report.

(ii) In Phases 2 and 3, detailed protocols describing all aspects of the study should be submitted. A protocol for a Phase 2 or 3 investigation should be designed in such a way that, if the sponsor anticipates that some deviation from the study design may become necessary as the investigation progresses, alternatives or contingencies to provide for such deviation are built into the protocols at the outset. For example, a protocol for a controlled short-term study might include a plan for an early crossover of nonresponders to an alternative therapy.

(iii) A protocol is required to contain the following, with the specific elements and detail of the protocol reflecting the above distinctions depending on the phase of study:

(*a*) A statement of the objectives and purpose of the study.

(*b*) The name and address and curriculum vitae of each investigator, and the name of each subinvestigator (e.g., research fellow, resident) working under the supervision of the investigators; the name and address of the research facilities to be used; and the name and address of each reviewing Institutional Review Board.

(*c*) The criteria for patient selection and for exclusion of patients and an estimate of the number of patients to be studied.

(*d*) A description of the design of the study, including the kind of control group to be used, if any, and a description of methods to be used to minimize bias on the part of subjects, investigators, and analysts.

(*e*) The method for determining the dose(s) to be administered, the planned maximum dosage, and the duration of individual patient exposure to the drug.

(*f*) A description of the observations and measurements to be made to fulfill the objectives of the study.

(*g*) A description of clinical procedures, laboratory tests, or other measures to be taken to monitor the effects of the drug in human subjects and to minimize risk.

(7) *Chemistry, manufacturing, and control information.* (i) As appropriate for the particular investigations covered by the IND, a section describing the composition, manufacture, and control of the drug substance and the drug product. Although in each phase of the investigation sufficient information is required to be submitted to assure the proper identification, quality, purity, and strength of the investigational drug, the amount of information needed to make that assurance will vary with the phase of the investigation, the proposed duration of the investigation, the dosage form, and the amount of information otherwise available. FDA recognizes that modifications to the method of preparation of the new drug substance and dosage form and changes in the dosage form itself are likely as the investigation progresses. Therefore, the emphasis in an initial Phase 1 submission should generally be placed on the identification and control of the raw materials and the new drug substance. Final specifications for the drug substance and drug product are not expected until the end of the investigational process.

(ii) It should be emphasized that the amount of information to be submitted depends upon the scope of the proposed clinical investigation. For example, although stability data are required in all phases of the IND to demonstrate that the new drug substance and drug product are within acceptable chemical and physical limits for the planned duration of the proposed clinical investigation, if very short-term tests are proposed, the supporting stability data can be correspondingly limited.

(iii) As drug development proceeds and as the scale of production is changed from the pilot-scale production appropriate for the limited initial clinical investigations to the larger-scale production needed for expanded clinical trials, the sponsor should submit information amendments to supplement the initial information submitted on the manufacturing and control processes with information appropriate to the expanded scope of the investigation.

(iv) Reflecting the distinctions described in this paragraph (a)(7), and based on the phase(s) to be studied, the submission is required to contain the following:

(*a*) *Drug substance.* A description of the drug substance, including its physical, chemical, or biological characteristics; the name and address of its manufacturer; the general method of preparation of the drug substance; the acceptable limits and analytical methods used to assure the identity, potency, quality, and purity of the drug substance; and information sufficient to support stability of the drug substance during the toxicological studies and the planned clinical studies. Reference to the current edition of the U.S. Pharmacopeia and the National Formulary may be made to satisfy relevant requirements in this paragraph.

(*b*) *Drug product.* A list of all components, whic may include reasonable alternates for inactive compounds, used in the manufacture of the investigational drug product, including both those components intended to appear in the drug product and those which may not appear but which are used in the manufacturing process, and, where applicable, the quantitative composition of the investigational drug product, including any reasonable variations that may be expected during the investigational stage; the name and address of the drug product manufacturer; a brief general description of the manufacturing and packaging procedure as appropriate for the product; the acceptable limits and analytical methods used to assure the identity, strength, quality, and purity of

the drug product; and information sufficient to assure the product's stability during the planned clinical studies. Reference to the current edition of the U.S. Pharmacopeia and the National Formulary may be made to satisfy relevant requirements in this paragraph.

(c) *Labeling.* A copy of all labels and labeling to be provided to each investigator.

(d) *Environmental impact analysis report.* If requestd by FDA, environmental impact analysis report under § 25.1 analyzing the environmental impact of the manufacturing process and the ultimate use of the drug product.

(8) *Pharmacology and toxicology information.* Adequate information about pharmacological and toxicological studies of the drug involving laboratory animals or in vitro, on the basis of which the sponsor has concluded that it is reasonably safe to conduct the proposed clinical investigations. The kind, duration, and scope of animal and other tests required varies with the duration and nature of the proposed clinical investigations. Guidelines are available from FDA that describe ways in which these requirements may be met. Such information is required to include the identification and qualifications of the individuals who evaluated the results of such studies and concluded that it is reasonably safe to begin the proposed investigations and a statement of where the investigations were conducted and where the records are available for inspection. As drug development proceeds, the sponsor is required to submit informational amendments, as appropriate, with additional information pertinent to safety.

(i) *Pharmacology and drug disposition.* A section describing the pharmacological effects and mechanism(s) of action of the drug in animals, and information on the absorption, distribution, metabolism, and excretion of the drug, if known.

(ii) *Toxicology. (a)* An integrated summary of the toxicological effects of the drug in animals and in vitro. Depending on the nature of the drug and the phase of the investigation, the description is to include the results of acute, subacute, and chronic toxicity tests; tests of the drug's effects on reproduction and the developing fetus; any special toxicity test related to the drug's particular mode of administration or conditions of use (e.g., inhalation, dermal, or ocular toxicology); and any in vitro studies intended to evaluate drug toxicity.

(b) For each toxicology study that is intended primarily to support the safety of the proposed clinical investigation, a full tabulation of data suitable for detailed review.

(iii) For each toxicology study submitted to support the safety of a proposed clinical study that was not conducted in compliance with Part 58 relating to good laboratory practices, a description of each difference between the practices used in the study and those required under Part 58.

(9) *Previous human experience with the investigational drug.* A summary of previous human experience, if any, with the investigational drug. The information is required to include the following:

(i) If the investigational drug has been investigated or marketed previously, either in the United States or other countries, detailed information about such experience that is relevant to the safety of the proposed investigation or to the investigation's rationale. If the drug has been the subject of controlled trials, detailed information on such trials that is relevant to an assessment of the drug's effectiveness for the proposed investigational use(s) should also be provided. Any published material that is relevant to the safety of the proposed investigation or to an assessment of the drug's effectiveness for its proposed investigational use should be provided in full. Published material that is less directly relevant may be supplied by a bibliography.

(ii) If the drug is a combination of drugs previously investigated or marketed, the information required under paragraph (a)(9)(i) of this section should be provided for each component.

(iii) If the drug has been marketed outside the United States, a list of the countries in which the drug has been marketed and a list of the countries in which the drug has been withdrawn from marketing for reasons potentially related to safety or effectiveness.

(10) *Additional information.* In certain applications, as described below, information on special topics may be needed. Such information shall be submitted in this section as follows:

(i) *Drug dependence and abuse potential.* If the drug is a psychotropic substance or otherwise has abuse potential, a section describing relevant clinical studies and experience and studies in test animals.

(ii) *Radioactive drugs.* If the drug is a radioactive drug, sufficient data from animal or human studies to allow a reasonable calculation of radiation-absorbed dose to the whole body and critical organs upon administration to a human subject. Phase 1 studies of radioactive drugs must include studies which will obtain sufficient data for dosimetry calculations.

(iii) *Other information.* A brief statement on any other information that would aid evaluation of the proposed clinical investigations with respect to their safety or their design and potential as controlled clinical trials to support marketing of the drug.

(11) If requested by FDA, any other relevant information needed for review of the application.

(b) *Information previously submitted.* The sponsor ordinarily is not required to resubmit information previously submitted, but may incorporate the information by reference. A reference to information submitted previously must identify the file by name, reference number, volume, and page number where the information can be found. A reference to information submitted to the agency by a person other than the sponsor is required to contain a written statement that authorizes the reference and that is signed by the person who submitted the information.

(c) *Material in a foreign languoge.* The sponsor shall submit an accurate and complete English translation of each part of the IND that is not in English. The sponsor shall also submit a copy of each original literature publication for which an English translation is submitted.

(d) *Number of copies.* The sponsor shall submit an original and two copies of all submissions to the IND file, including the original submission and all amendments and reports.

§ 312.30 Protocol amendments.

Once an IND is in effect, a sponsor shall amend it as needed to ensure that the clinical investigations are conducted according to protocols included in the application. This section sets forth the provisions under which new protocols may be submitted and changes in previously submitted protocols may be made.

(a) *New protocol.* Whenever a sponsor intends to conduct a study that is not covered by a protocol already contained in the IND, the sponsor shall submit to the IND a protocol amendment containing the protocol for the study. Such study may begin provided two conditions are met: (1) The sponsor has submitted the protocol to FDA for its review; and (2) the protocol has been approved by the institutional review board (IRB) with responsibility for review and approval of the study in accordance with the requirements of Part 56. The sponsor may comply with these two conditions in either order.

(b) *Changes in a protocol.* A sponsor shall submit a protocol amendment describing any change in a Phase 1 protocol that significantly affects the safety of subjects or any change in a Phase 2 or 3 protocol that significantly affects the safety of subjects, the scope of the investigation, or the scientific quality of the study. Such change may be made after the sponsor has submitted the amendment to the IND following completion of review of the change by the IRB that is responsible for review and approval of the study that is the subject of the protocol. Examples of changes requiring an amendment under this paragraph include:

(1) Any increase in drug dosage or duration of exposure of individual subjects to the drug beyond that in the current protocol, or any significant increase in the number of subjects under study.

(2) Any significant change in the design of a protocol (such as the addition or dropping of a control group).

(3) The addition of a new test or procedure that is intended to improve monitoring for, or reduce the risk of, a side effect or adverse event; or the dropping of a test intended to monitor safety.

(c) *New investigator.* A sponsor shall submit a protocol amendment when a new investigator is added to carry out a previously submitted protocol, except that a protocol amendment is not required when a licensed practitioner is added in the case of a treatment protocol under § 312.34. The sponsor shall notify FDA of the new investigator within 30 days of the investigator being added.

(d) *Content and format.* A protocol amendment is required to be prominently identified as such (i.e., "Protocol Amendment: New Protocol", "Protocol Amendment: Change in Protocol", or "Protocol Amendment: New Investigator"), to be serially numbered, and to contain the following:

(1)(i) In the case of a new protocol, a copy of the new protocol and a description of how it differs from previous protocols.

(ii) In the case of a change in protocol, a brief description of the change and reference (date and number) to the submission that contained the protocol.

(iii) In the case of a new investigator, the investigator's name and qualifications to conduct the investigation.

(2) Reference to the specific information in the IND or in a concurrently submitted information amendment to the IND that the sponsor relies on to support the new or amended protocol. If the reference is made to supporting information already in the IND, the sponsor shall identify by name, reference number, volume, and page number the location of the information.

(3) If the sponsor desires FDA to comment on the submission, a request for such comment and the specific questions FDA's response should address.

(e) *When submitted.* A sponsor shall submit a protocol amendment for a new protocol or a change in protocol before its implementation. Protocol amendments to add a new investigator or to provide additional information about investigators may be grouped and submitted at 30-day intervals. When several submissions of new protocols or protocol changes are anticipated during a short period, the sponsor is encouraged, to the extent feasible, to include these all in a single submission.

§ 312.31 Information amendments.

(a) *Requirement for information amendment.* A sponsor shall report in an information amendment essential information on the IND that is not within the scope of a protocol amendment, IND safety reports, or annual report. Examples of information requiring an information amendment include:

(1) New toxicology, chemistry, or other technical information; or

(2) A report regarding the discontinuance of a clinical investigation.

(b) *Content and format of an information amendment.* An information amendment is required to bear prominent identification of its contents (eg., "Information Amendment: Chemistry, Manufacturing, and Control"), to be numbered serially by discipline, and to contain the following:

(1) A statement of the nature and purpose of the amendment.

(2) An organized submission of the data in a format appropriate for scientific review.

(3) If the sponsor desires FDA to comment on an information amendment, a request for such comment.

(c) *When submitted.* Information amendments to the IND should be submitted as necessary but, to the extent feasible, not more often than every 30 days.

§ 312.12 IND safety reports.

(a) *Review of safety information.* The sponsor shall immediately review all information relevant to the safety or the drug obtained or otherwise received by the sponsor from any source, foreign or domestic, including information derived from clinical investigations, animal investigations, commercial marketing experience, reports in the scientific literature, and unpublished scientific papers. For purposes of this paragraph, "information relevant to the safety of the drug" includes information about related drugs.

(b) *IND safety reports.* (1) The sponsor shall notify FDA and all participating investigators in an IND safety report of the following:

(i) Any serious adverse experiences or other information associated with the use of the drug not previously reported (in nature, severity, or incidence) that may suggest significant hazards, contraindications, side effects, or precautions. Such notification shall be made as soon as possible and in no event later than 10 working days after the sponsor's initial receipt of the information;

(ii) Any fatal or life-threatening clinical experiences associated with the use of the drug not previously reported (in nature, severity, or incidence). Such notification shall be made as soon possible and in no event later than 3 working days after the sponsor's initial receipt of the report.

(iii) For purposes of this paragraph, "associated with the use of the drug" means there is a reasonable possibility that the event may have been caused by the drug.

(2) The sponsor shall transmit each IND safety report by telephone within the time frames specified in paragraph (b)(1) of this section and shall concurrently submit a written notification. Each written notification shall bear prominent indentification of its contents, i.e., "10-Day IND Safety Report" or "3-Day IND Safety Report." Each written notification and telephone call to FDA shall be transmitted to the FDA division with responsibility for review of the IND.

(c) *Followup.* The sponsor shall promptly investigate all safety information received by it. Followup information to 3-day and 10-day reports shall be submitted promptly in an information amendment, as soon as the relevant information is available. Results of sponsor's investigation of other safety information shall be submitted, as appropriate, in an information amendment or annual report.

§ 312.33 Annual reports.

A sponsor shall submit, at intervals of 1 year after the date of submission of the IND, a brief report on the progress of the investigation containing the following:

(a) A brief summary of the status of each of the clinical studies in progress,

including the name of the investigator and the approximate number of patients under study.

(b) A brief summary of information obtained during the previous year's clinical and nonclinical investigations that is relevant to assessing the drug's safety, including: (1) A summary of all IND safety reports submitted during the past year in accordance with § 312.32; (2) a list of subjects who died during participation in an investigation, with the cause of death for each subject; and (3) a list of subjects who dropped out of an ongoing investigation.

(c) A description of the general investigational plan for the coming year to replace that submitted 1 year earlier. The general investigational plan shall contain the information required under § 312.23(a)(4).

(d) If the investigator brochure has been revised, a description of the revision and a copy of the new brochure.

(e) A description of any significant Phase 1 protocol modifications made during the previous year and not previously reported to the IND in a protocol amendment.

(f) A brief summary of significant foreign marketing developments with the drug during the past year, such as approval for marketing in any country or withdrawal from marketing in any country.

(g) If desired by the sponsor, a log of any outstanding business with respect to the IND for which the sponsor requests or expects a reply, comment, or meeting.

§ 312.34 Treatment use of an investigational new drug.

(a) *General.* A drug that is not approved for marketing may be under clinical investigation for a serious disease condition in patients for whom no satisfactory alternative drug or other therapy is available. During the clinical investigation of the drug, it may be appropriate to use the drug in the treatment of patients after sufficient evidence of the drug's safety and effectiveness has been obtained to warrant such use. Ordinarily, a drug may be made available for treatment under this section only after Phase 2 investigations have been completed, but FDA may permit such use earlier in the investigational process if compelling circumstances warrant. Administration of an investigational drug under this section serves both to provide treatment and the investigational purpose of gathering additional data on the drug's safety and effectiveness.

(b) *Treatment protocol submitted by IND sponsor.* A sponsor of a clinical investigation of a drug who intends to sponsor a treatment use for the drug under this section shall submit to FDA a treatment protocol. A treatment use under a treatment protocol may begin 30 days after FDA receives the protocol or on earlier notification by FDA that the treatment use described in the protocol may begin.

(1) A treatment protocol is required to contain the following:

(i) The intended use of the drug.

(ii) An explanation of the rationale for use of the drug, including, as appropriate, either a list of what available regimens ordinarily should be tried before using the investigational drug or an explanation of why the use of the investigational drug is preferable to the use of available marketed treatments.

(iii) A brief description of the criteria for patient selection.

(iv) The method of administration of the drug and the dosages to be used.

(v) A description of clinical procedures, laboratory tests, or other measures to be taken to monitor the effects of the drug and to minimize risk.

(2) A treatment protocol is required to be supported by the following information:

(i) A copy of the informational brochure that is to be supplied to each treating physician.

(ii) The technical information that is relevant to determining the safety and effectiveness of the drug for the intended treatment purpose. Information that is already contained in the sponsor's IND may be incorporated by reference.

(iii) If a waiver from IRB review an approval requirements is desired, a request for the waiver. (FDA may on its own initiative waive IRB review under Part 56 if it finds such review unnecessary for the protection of subjects to be treated.)

(c)(1) *Treatment IND submitted by licensed practitioner.* If a sponsor of a clinical investigation of a drug has not established a treatment protocol for the drug under paragraph (b) of this section, but the drug is being investigated by the sponsor under an effective IND, a licensed medical practitioner may seek to obtain the drug from such sponsor and submit a treatment IND to FDA requesting authorization to use the investigational drug for treatment use. A treatment use under a treatment IND may begin 30 days after FDA receives the IND or on earlier notification by FDA that the treatment use under the IND may begin. A treatment IND is required to contain the following:

(i) A cover sheet (Form FDA–1571) meeting the requirements of § 312.23(a)(1).

(ii) Information on the drug's chemistry, manufacturing, and control, and prior clinical and nonclinical experience with the drug submitted in accordance with the requirements of § 312.23. The provision of an investigational drug to a licensed medical practitioner by a sponsor of a separate clinical investigation that is subject to an IND shall be deemed to authorize the incorporation by reference of the technical information contained in the sponsor's IND into the medical practitioner's treatment IND.

(iii) A treatment protocol containing the following:

(*a*) The intended use of the drug.

(*b*) An explanation of the rationale for use of the drug, including, as appropriate, an explanation of the regimens that have perviously been tried or why use of the investigational drug is preferable to the use of available marketed treatments.

(*c*) A brief description of the criteria for patient selection.

(*d*) The method of administration of the drug and the dosages to be used.

(*e*) A description of clinical procedures, laboratory tests, or other measures to be taken to monitor the effects of the drug and minimize risks.

(iv) If a waiver from IRB review and approval requirements is desired, a request for the waiver. (FDA may on its own initiative waive IRB review requirements under Part 56, if it finds such review unnecessary for protection of subjects to be treated.)

(v) A statement of the practitioner's qualifications to use the investigational drug for the intended treatment use.

(vi) A statement that the practitioner has read or is otherwise familiar with information on the drug's safety and effectiveness derived from previous clinical and nonclinical experience with the drug.

(vii) A commitment to report to FDA adverse drug effects in accordance with § 312.56(c).

(2) A licensed practitioner who submits a treatment IND under this section is the sponsor-investigator for such IND and is responsible for meeting all applicable sponsor and investigator responsibilities under this part and Parts 50, 52, 54, and 56.

(d) *Criteria.* FDA may permit an investigational drug to be used for a treatment use under a treatment protocol or treatment IND unless it finds one of the following:

(1) The application does not fall within the terms of this section as it does not involve the treatment use of an investigational new drug intended for a serious disease condition in patients for

whom no satisfactory alternative drug or other therapy is available.

(2) The potential risks outweigh the potential benefits of the drug in the treatment of patients.

(3) There is not sufficient evidence of the drug's safety and effectiveness to justify its intended treatment use.

(e) *Agency assistance.* FDA will provide assistance to persons interested in submitting an application under this section.

§ 312.36 Emergency use of an investigational new drug.

Need for an investigational drug may arise in an emergency situation that does not allow time for submission of an IND in accordance with § 312.23. In such a case, FDA may authorize shipment of the drug for a specified use in advance of submission of an IND. A request for such authorization may be transmitted to FDA by telephone or other rapid communication means. Except in extraordinary circumstances, such authorization will be conditioned on the sponsor making an appropriate IND submission as soon as practicable after receiving the authorization.

§ 312.38 Withdrawal of an IND.

(a) At any time a sponsor may withdraw an effective IND without prejudice.

(b) If an IND is withdrawn, FDA shall be so notified, all clinical investigations conducted under the IND shall be ended, all current investigators notified, and all stocks of the drug returned or otherwise disposed of in accordance with the requirements of Part 52.

(c) If an IND is withdrawn because of a safety reason, the sponsor shall promptly so inform FDA, all participating investigators, and all reviewing Institutional Review Boards, together with the reasons for such withdrawal.

Subpart C—Administrative Actions

§ 312.40 General requirements for use of an investigational new drug in a clinical investigation.

(a) An investigational new drug may be used in a clinical investigation if the following conditions are met:

(1) The sponsor of the investigation submits an IND for the drug to FDA; the IND is in effect under paragraph (b) of this section; and the sponsor complies with all applicable requirements in this part and Parts 50, 52, 54, and 56 with respect to the conduct of the clinical investigations, and

(2) Each participating investigator conducts his or her investigation in compliance with the requirements of this part and Parts 50, 54, and 56.

(b) An IND goes into effect

(1) 30 days after FDA receives the IND, unless FDA notifies the sponsor that the investigations described in the IND are subject to a clinical hold under § 312.42, or

(2) on earlier notification by FDA that the clinical investigations in the IND may begin. FDA will notify the sponsor in writing of the date it receives the IND.

(c) A sponsor may ship an investigational new drug to investigators named in the IND:

(1) 30 days after FDA receives the IND; or

(2) on earlier FDA authorization to ship the drug.

Investigators may not, however, administer the investigational new drug to human subjects until the IND goes into effect under paragraph (b) of this section.

§ 312.41 Comment and advice on an IND.

(a) FDA may at any time during the course of the investigation communicate with the sponsor orally or in writing about deficiencies in the IND or about FDA's need for more data or information.

(b) On the sponsor's request, FDA will provide advice on specific matters relating to an IND. Such advice may include, for example, advice on the adequacy of technical data to support an investigational plan, on the design of a clinical trial, or on whether proposed investigations are likely to produce the data and information that is needed to meet requirements for a marketing application.

(c) FDA communications with a sponsor under this section are solely advisory and do not require any modification in the planned or ongoing clinical investigations or response to the agency, unless the communication is accompanied by a clinical hold order under § 312.42.

§ 312.42 Clinical holds and requests for modification.

(a) *General.* A clinical hold is an order issued by FDA to the sponsor to delay a proposed clinical investigation or to suspend an ongoing investigation. The clinical hold order may apply to one or more of the investigations covered by an IND. When a proposed study is placed on clinical hold, subjects may not be given the investigational drug by the clinical investigator conducting the study. When an ongoing study is placed on clinical hold, no new subjects may be recruited to the study and placed on the investigational drug; patients already in the study should be taken off therapy under the protocol unless specifically permitted by FDA in the interest of patient safety.

(b) *Grounds for imposition of clinical hold.*—(1) *Clinical hold of a Phase 1 study under an IND.* FDA may place a proposed or ongoing Phase 1 investigation on clinical hold if it finds that:

(i) Human subjects are or would be exposed to an unreasonable and significant risk of illness or injury;

(ii) The clinical investigators named in the IND are not qualified by reason of their scientific training and experience to conduct the investigation described in the IND;

(iii) The investigator brochure is misleading, erroneous, or materially incomplete; or

(iv) The IND does not contain sufficient information required under § 312.23 to assess the risks to subjects of the proposed studies.

(2) *Clinical hold of a Phase 2 or 3 study under an IND.* FDA may place a proposed or onging Phase 2 or 3 investigation on clinical hold if it finds that:

(i) Any of the conditions in paragraph (b)(1)(i) through (iv) of this section apply, or;

(ii) The plan or protocol for the investigation is clearly deficient in design to meet its stated objectives.

(c) *Discussion of deficiency.* Whenever FDA concludes that a deficiency exists in a clinical investigation that may be grounds for the imposition of a clinical hold, FDA will, before issuing the clinical hold order, attempt to discuss and satisfactorily resolve the matter with the sponsor.

(d) *Imposition of clinical hold.* The initial clinical hold order may be made by telephone or other means of rapid communication or in writing. The clinical hold order shall be made by or on behalf of the Division Director with responsibility for review of the IND. Within 15 days of the imposition of the clinical hold, the Division Director will provide the sponsor a written explanation of the basis for the hold.

(e) *Resumption of clinical investigations.* If, by the terms of the clinical hold order, resumption of the affected investigation is permitted without prior notification by FDA once a stated correction or modification is made, the investigation may proceed as soon as the correction or modification is made. In all other cases, an investigation may only resume after the Division Director with responsibility for review of the IND has notified the sponsor that the investigation may proceed. In these cases the Division

Director will authorize resumption of the affected investigation(s) when the sponsor corrects the deficiency(ies) previously cited by the Division Director or otherwise satisfies the Division Director that the investigation(s) can proceed.

(f) *Appeal.* If the sponsor disagrees with the reasons cited for the clinical hold, the sponsor may request reconsideration of the decision in accordance with § 312.48.

(g) *Conversion of IND on clinical hold to inactive status.* If all investigations covered by an IND remain on clinical hold for 1 year or more, the IND may be placed on inactive status by FDA under § 312.45.

§ 312.44 Termination.

(a) *General.* This section describes the procedures under which FDA may terminate an IND. If an IND is terminated, the sponsor shall end all clinical investigations conducted under the IND and recall or otherwise provide for the disposition of all unused supplies of the drug. A termination action may be based on deficiencies in the IND or in the conduct of an investigation under an IND. Except as provided in paragraph (d) of this section, a termination shall be preceded by a proposal to terminate by FDA and an opportunity for the sponsor to respond. FDA will, in general, only initiate an action under this section after first attempting to resolve differences informally or, when appropriate, through the clinical hold procedures described in § 312.42.

(b) *Grounds for termination.*—(1) *Phase 1.* FDA may propose to terminate a Phase 1 IND if it finds that:

(i) Human subjects would be exposed to an unreasonable and significant risk of illness or injury.

(ii) The IND does not contain sufficient information required under § 312.23 to assess the safety to subjects of the clinical investigations.

(iii) The methods, facilities, and controls used for the manufacturing, processing, and packing of the investigational drug are inadequate to establish and maintain appropriate standards of identity, strength, quality and purity as needed for subject safety.

(iv) The clinical investigations are not being conducted in accordance with the plan or protocols submitted in the IND.

(v) The drug is being promoted or distributed for commercial purposes not justified by the requirements of the investigation or permitted by § 312.7.

(vi) The IND, or any amendment or report to the IND, contains an untrue statement of a material fact or omits material information required by this part.

(vii) The sponsor fails promptly to investigate and inform the Food and Drug Administration and all investigators of newly found serious or potentially serious hazards, contraindications, side effects, and precautions pertinent to the safety of the new drug or fails to make any other report required under this part.

(viii) The sponsor fails to submit an accurate annual report of the investigations in acordance with § 312.33.

(ix) The sponsor fails to comply with any other applicable requirement of this part or Part 50, 52, 54, or 56.

(x) The IND has remained on inactive status for 5 years or more.

(2) *Phase 2 or 3.* FDA may propose to terminate an IND during Phase 2 or Phase 3 if FDA finds that:

(i) Any of the conditions in paragraph (b)(1)(i) thorugh (x) of this section apply; or

(ii) The investigational plan or protocol(s) is not reasonable as a bona fide scientific plan to determine whether or not the drug is safe and effective for use; or

(iii) There is convincing evidence that the drug is effective for the purpose for which it is being investigated.

(c) *Opportunity for sponsor response.* (1) If FDA proposes to terminate an IND, FDA will notify the sponsor in writing, and invite correction or explanation within a period of 30 days.

(2) On such notification, the sponsor may provide a written explanation or correction or may request a conference with FDA to provide the requested explanation or correction. If the sponsor does not respond to the notification within the allocated time, the IND shall be terminated.

(3) If the sponsor responds but FDA does not accept the explanation or correction submitted, FDA shall inform the sponsor in writing of the reason for the nonacceptance and provide the sponsor with an opportunity for a regulatory hearing before FDA Under Part 16 on the question of whether the IND should be terminated. The sponsor's request for a regulatory hearing must be made within 10 days of the sponsor's receipt of FDA's notification of nonacceptance.

(d) *Immediate termination of IND.* Notwithstanding paragraphs (a) through (c) of this section, if at any time FDA concludes that continuation of the investigation presents a significant danger to the public health, the agency shall immediately, by written notice to the sponsor from the Director of the National Center for Drugs and Biologics, terminate the IND. An IND so terminated is subject to reinstatement by the Director on the basis of additional submissions that eliminate such danger. If an IND is terminated under this paragraph, the agency will afford the sponsor an opportunity for a regulatory hearing under Part 16 on the question of whether the IND should be reinstated.

§ 312.45 Inactive status.

(a) If no subjects are entered into clinical studies for a period of 2 years or more under an IND, or if all investigations under an IND remain on clinical hold for 1 year or more, the IND may be placed by FDA on inactive status. This action may be taken by FDA either on request of the sponsor or on FDA's own initiative. If FDA seeks to act on its own initiative under this section, it shall first notify the sponsor in writing of the proposed inactive status. Upon receipt of such notification, the sponsor shall have 30 days to respond as to why the IND should continue to remain active.

(b) If an IND is placed on inactive status, all investigators shall be so notified and all stocks of the drug shall be returned or otherwise disposed of as described in Part 52.

(c) A sponsor is not required to submit annual reports to an IND on inactive status. An inactive IND is, however, still in effect for purposes of the public disclosure of data and information under § 312.130.

(d) A sponsor who intends to resume clinical investigation under an IND placed on inactive status shall submit a protocol amendment under § 312.30 containing the proposed general investigational plan for the coming year and appropriate protocols. If the protocol amendment relies on information previously submitted, the plan shall reference such information. Additional information supporting the proposed investigation, if any, shall be submitted in an information amendment Notwithstanding the provisions of § 312.30, clinical investigations under an IND on inactive status may only resume (1) 30 days after FDA receives the protocol amendment, unless FDA notifies the sponsor that the investigations described in the amendment are subject to a clinical hold under § 312.42, or (2) on earlier notification by FDA that the clinical investigations described in the protocol amendment may begin.

(e) An IND that remains on inactive status for 5 years or more may be terminated under § 312.44.

§ 312.47 Meetings.

(a) *General.* Meetings between a sponsor and the agency are frequently useful in resolving questions and issues raised during the course of a clinical investigation. FDA encourages such meetings to the extent that they aid evaluation of the drug and the solution of scientific problems concerning the drug and to the extent that FDA's resources permit. The general principle underlying the conduct of such meetings is that there should be free, full, and open communication about any scientific or medical question that may arise during the clinical investigation. These meetings shall be conducted and documented in accordance with Part 10.

(b) *"End-of-Phase 2" meetings and meetings held before submission of a marketing application.* At specific times during the drug investigation process, meetings between FDA and a sponsor can be especially helpful in minimizing wasteful expenditures of time and money and thus in speeding the drug development and evaluation process. In particular, FDA has found that meetings at the end of Phase 2 of an investigation (end-of-Phase 2 meetings) are of considerable assistance in planning later studies and that meetings held near completion of Phase 3 and before submission of a marketing application ("pre-NDA" meetings) are helpful in developing methods of presentation and submission of data in the marketing application that facilitate review and allow timely FDA response.

(1) *End-of-Phase 2 meetings.*—(i) *Purpose.* The purpose of an end-of-Phase 2 meeting is to determine the safety of proceeding to Phase 3, to evaluate the Phase 3 plan and protocols, and to identify any additional information necessary to support a marketing application for the uses under investigation.

(ii) *Eligibility for meeting.* The end-of-Phase 2 meeting is designed primarily for IND's involving new molecular entities or major new uses of marketed drugs. However, a sponsor of any IND may request and obtain an end-of-Phase 2 meeting.

(iii) *Timing.* To be most useful to the sponsor, end-of-Phase 2 meetings should be held before major commitments of effort and resources to specific Phase 3 tests are made. The scheduling of an end-of-Phase 2 meeting is not, however, intended to delay the transition of an investigation from Phase 2 to Phase 3.

(iv) *Advance information.* At least 1 month in advance of an end-of-Phase 2 meeting, the sponsor should submit background information on the sponsor's plan for Phase 3, including summaries of the Phase 1 and 2 investigations, the specific protocols for Phase 3 clinical studies, plans for any additional nonclinical studies, and, if available, tentative labeling for the drug. The recommended contents of such a submission are described more fully in an FDA Staff Manual Guide (NCDB 4850.6) that is publicly available under FDA's public information regulations in Part 20.

(v) *Conduct of meeting.* Arrangements for an end-of-Phase 2 meeting are to be made with the division responsible for review on the IND. The meeting will be scheduled by FDA at a time convenient to both FDA and the sponsor. Both the sponsor and FDA may bring consultants to the meeting. The meeting should be directed primarily at establishing agreement between FDA and the sponsor of the overall plan for Phase 3 and the objectives and design of particular studies. The adequacy of technical information to support Phase 3 studies and/or a marketing application may also be discussed. Agreements reached at the meeting on these matters will be recorded in minutes of the conference that will be taken by FDA in accordance with § 10.65 and provided to the sponsor. The minutes along with any other written material provided to the sponsor will serve as a permanent record of any agreements reached. Barring a significant scientific development that requires otherwise, studies conducted in accordance with the agreement shall be presumed to be sufficient in objective and design for the purpose of obtaining marketing approval for the drug.

(2) *"Pre-NDA" meetings.* FDA has found that delays associated with the initial review of a marketing application may be reduced by exchanges of information about a proposed marketing application. The primary purpose of this kind of exchange is to acquaint FDA reviewers with the general information to be submitted in the marketing application, to uncover any major unresolved problems, to identify those studies that the sponsor is relying on as adequate and well-controlled to establish the drug's effectiveness, to discuss appropriate methods for statistical analysis of the data, and to discuss the best approach to the presentation and formatting of data in the marketing application. Arrangements for such a meeting are to be made by the sponsor with the division responsible for review of the IND. To permit FDA to provide the sponsor with the most useful advice on preparing a marketing application, the sponsor should submit to FDA's reviewing division at least 1 month in advance of the meeting the following information:

(i) A brief summary of the clinical studies to be submitted in the application.

(ii) A Proposed format for organizing the submission, including methods for presenting the data.

§ 312.48 Request for reconsideration or clarification of technical requirements or informal opinions.

FDA is committed to resolving differences between sponsors and FDA reviewing divisions with respect to IND's as quickly and amicably as possible through the cooperative exchange of information and views. That exchange may take place through written correspondence, telephone conversations, or informal meetings. In addition, FDA has established administratively a specific procedure under which a sponsor may ask the agency to reconsider or clarify an agency action or an informal opinion expressed to a sponsor by an agency employee with respect to an IND. Examples of issues contemplated for resolution under the procedure include requests by FDA for specific studies or information, requests to modify or delay a study, and unfavorable responses by FDA to requests from sponsors for waivers or special technical approaches to a scientific problem. The procedure will be marked by the sponsor's submission of a written request for reconsideration of clarification to the division that is responsible for reviewing the application, the division's prompt response to the applicant, and, if the division's response is not acceptable to the applicant, automatic review of the issue by managment to the National Center for Drugs and Biologics. FDA will attempt to issue a final decision within 60 days of the applicant's request. This procedure is described more fully in an FDA Staff Manual Guide (NCDB 4820.5) that is publicly available under FDA's public information regulations in Part 20.

Subpart D—Responsibilities of Sponsors and Investigators

§ 312.50 General responsibilities of sponsors.

Sponsors are responsible for selecting qualified investigators, providing them with the information they need to conduct an investigation properly, ensuring proper monitoring of the investigation(s), ensuring that the investigation(s) is conducted in accordance with the general investigational plan and protocols contained in the IND, maintaining an effective IND with respect to the

investigations, and ensuring that FDA and all participating investigators are promptly informed of significant new adverse effects or risks with respect to the drug. Additional specific responsibilities of sponsors are described elsewhere in this part and in Part 52.

§ 312.53 Selecting investigators and monitors.

(a) *Selecting investigators.* A sponsor shall select only investigators qualified by training and experience as appropriate experts to investigate the drug.

(b) *Control of drug.* A sponsor shall ship investigational new drugs only to investigators participating in the investigation.

(c) *Obtaining information from the investigator.* The sponsor shall obtain from each clinical investigator the following:

(1) A signed investigator statement (Form FDA–1572) containing:

(i) The name and address of the investigator;

(ii) The name and code number, if any, of the protocol(s) in the IND identifying the study(ies) to be conducted by the investigator.

(iii) The name and address of any medical school, hospital, or other research facility where the clinical investigation(s) will be condicted;

(iv) The name and address of any clinical laboratory facilities to be used in the study;

(v) The name and address of the IRB that is responsible for review and approval of the study(ies);

(vi) A commitment by the investigator that he or she—

(*a*) Will conduct the study(ies) in accordance with the relevant, current protocol(s) and will only make changes in a protocol after consultation with the sponsor;

(*b*) Will comply with all requirements of Part 54 regarding the obligations of clinical investigators and all other pertinent requirements in this part;

(*c*) Will personally conduct or supervise the described investigation(s);

(*d*) Will ensure that the requirements relating to obtaining informed consent and institutional review board review and approval are met;

(*e*) Will report to the sponsor immediately any unsuspected or serious side effects that occur in the course of the investigation(s);

(*f*) Has read and understands the information in the investigator's brochure, including the potential risks and side effects of the drug; and

(*g*) Will ensure that all associated, colleagues, and employees assisting in the conduct of the study(ies) are informed about their obligations in meeting the above commitments.

(vii) A list of the names of the subinvestigators (e.g., research fellows, residents, colleagues) who will be assisting the investigator in the conduct of the investigation(s).

(2) *Curriculum vitae.* A curriculum vitae for the investigator showing the education, training, and experience that qualifies the investigator as an expert in the clinical investigation of the drug for the use under investigation.

(3) *Clinical plan.* (i) For Phase 1 investigations, a general outline of the planned investigation including the estimated duration of the study and the maximum number of subjects that will be involved.

(ii) For Phase 2 or 3 investigations, an outline of the plan of investigation including an approximation of the number of subjects to be treated with the drug and the number to be employed as controls, if any; the clinical uses to be investigated; characteristics of subjects by age, sex, and condition; the kind of clinical observations and laboratory tests to be conducted; the estimated duration of the study; and copies or a description of case report forms to be used.

(d) *Selecting monitors.* A sponsor shall select a monitor qualified by training and experience to monitor the investigation in accordance with this part and Part 52.

§ 312.55 Informing investigators.

(a) Before the investigation begins, a sponsor (other than a sponsor-investigator) shall give each participating clinical investigator an investigator brochure containing the information described in § 312.23(a)(5).

(b) The sponsor shall, as the overall investigational plan proceeds, keep each participating investigator informed of new observations discovered by or reported to the sponsor on the drug, particularly with respect to adverse effects and safe use. Such information may be distributed to investigators by means of periodically revised investigator brochures, reprints or published studies, reports or letters to clinical investigators, or other appropriate means. Important safety information should be relayed orally, but shall be followed as soon as practicable by a written communication.

§ 312.56 Monitoring investigations.

(a) A sponsor who discovers that an investigator is not complying with the signed agreement (Form FDA–1572), the general investigational plan, or the requirements of this part or other applicable parts shall promptly either secure compliance or discontinue shipments of the investigational new drug to the investigator and end the investigator's participation in the investigation. If the investigator's participation in the investigation is ended, the sponsor shall require that the investigator dispose of or return the investigational drug in accordance with the requirements of Part 52 and shall notify FDA.

(b) The sponsor shall monitor the progress of all clinical and nonclinical investigations and evaluate the evidence relating to the safety and effectiveness of the drug as it is obtained from the investigators. The sponsors shall make such reports to FDA regarding adverse drug experiences as are required under § 312.31.

(c) A sponsor who determines that safety information presents an unreasonable and significant risk to subjects shall discontinue those investigations that present the risk, notify FDA, all institutional review boards, and all investigators who have at any time participated in the investigation of the discontinuance, assure the disposition of all stocks of the drug outstanding as required by § 52.41, and furnish FDA with a full report of the sponsor's actions. The sponsor shall discontinue the investigation as soon as possible, and in no event later tha 5 working days after making the determination that the investigation should be discontinued. Upon request, FDA will confer with a sponsor on the need to discontinue an investigation.

§ 312.58 Inspection of sponsor's records and reports.

(a) Upon the request at reasonable times of a scientifically trained and properly authorized employee of FDA, the sponsor shall make available for inspection and copying the records and reports required to be maintained under this part and under other applicable parts of this chapter. Upon written request by FDA, the sponsor shall submit the records or reports (or copies of them) to FDA. The sponsor shall discontinue shipments of the drug to any investigator who has failed to maintain or make available records or reports of the investigation as required by this part or Part 54.

(b) If an investigational new drug is a substance listed in any schedule of the Controlled Substances Act (21 U.S.C. 801; 21 CFR 1308), records concerning shipment, delivery, receipt, and disposition of the drug, which are required to be kept under this part or other applicable parts of this chapter

shall, upon the request of a properly authorized employee of the Drug Enforcement Administration of the U.S. Department of Justice, be made available by the investigator or sponsor to whom the request is made, for inspection and copying.

§ 312.60 General responsibilities of investigators.

An investigator is responsible for ensuring that an investigation is conducted according to the signed investigator statement, the investigational plan and applicable regulations, for protecting the rights, safety, and welfare of subjects under the investigator's care and for the control of drugs under investigation. Specific responsibilities of clinical investigators are set forth in Parts 54 and 56.

§ 312.62 Investigator records and reports.

An investigator shall make such reports and maintain such records as are required in accordance with Part 54.

Subpart E—Miscellaneous

§ 312.63 Import and export requirements.

(a) *Imports.* An investigational new drug offered for import into the United States complies with the requirements of this part if it is subject to an effective IND under § 312.40 and either (1) the consignee in the United States is the sponsor of the IND or (2) the consignee is a qualified investigator named in the IND.

(b) *Exports.* An investigational new drug intended for export from the United States complies with the requirements of this part as follows:

(1) If an IND is in effect for the drug under § 312.40 and each person who receives the drug is an investigator named in the application; or

(2) If FDA authorizes shipment of the drug for use in clinical investigation. Authorization may be obtained as follows:

(i) Through submission to FDA of a written request from the person that seeks to export the drug. A request must provide adequate information about the drug to satisfy FDA that the drug is appropriate for the proposed investigational use in humans, that the drug will be used for investigational purposes only, and that the drug may be legally used by that consignee in the importing country for the proposed investigational use. The request shall specify the quantity of the drug to be shipped per shipment and the frequency of expected shipments. If FDA authorizes exportation under this subparagraph, the agency shall concurrently notify the government of the importing country of such authorization.

(ii) Through submission to FDA of a formal request from an authorized official of the government of the country to which the drug is proposed to be shipped. A request must specify that the foreign government has adequate information about the drug and the proposed investigational use, that the drug will be used for investigational purposes only, and that the foreign government is satisfied that the drug may legally be used by the intended consignee in that country.

(iii) Authorization to export an investigational drug under paragraph (b)(2) (i) or (ii) of this section may be revoked by FDA if the agency finds that the conditions underlying its authorization are no longer met.

(3) This paragraph applies only where the drug is to be used for the purpose of clinical investigation. Export of an investigational drug for commercial marketing or for use in routine medical practice is not permitted.

§ 312.120 Foreign clinical studies not conducted under an IND.

(a) *Introduction.* This section describes the criteria for acceptance by FDA of foreign clinical studies not conducted under an IND. In general, FDA accepts such studies provided they are well designed, well conducted, performed by qualified investigators, and conducted in accordance with ethical principles acceptable to the world community. Studies meeting these criteria may be utilized to support clinical investigations in the United States and/or marketing approval. Marketing approval of a new drug or antibiotic drug based solely on foreign clinical data is governed by § 314.106 (proposed in the **Federal Register** of October 19, 1982; 47 FR 46622, 46655).

(b) *Data submissions.* A sponsor who wishes to rely on a foreign clinical study to support a U.S. study in the IND shall submit to FDA the following information:

(1) A description of the investigator's qualification;

(2) A description of the research facilities;

(3) A detailed summary of the protocol and results of the study, and, should FDA request, case records maintained by the investigator or additional background data such as hospital or other institutional records;

(4) A description of the drug substance and drug product used in the study, including a description of components, formulation, specifications and bioavailability of the specific drug product used in the clinical study, if available; and

(5) If the study is intended to support the effectiveness of a drug product, information showing that the study is adequate and well controlled under § 314.126 (proposed in the **Federal Register** of October 19, 1982; 47 FR 46622, 46656).

(c) *Conformance with ethical principles.* (1) Foreign clinical research is required to have been conducted in accordance with the ethical principles stated in the "Declaration of Helsinki" (see paragraph (c)(5) of this section) or the laws and regulations of the country in which the research was conducted, whichever represents the greater protection of the individual.

(2) For each foreign clinical study submitted under this section, the sponsor shall explain how the research conformed to the ethical principles contained in the "Declaration of Helsinki" or the foreign country's standards, whichever were used. If the foreign country's standards were used, the sponsor shall explain in detail how those standards differ from the "Declaration of Helsinki" and how they offer greater protection.

(3) When the research has been approved by an independent review committee, the sponsor shall submit to FDA documentation of such review and approval, including the names and qualifications of the members of the committee. In this regard, a "review committee" means a committee composed of scientists and, where practicable, individuals who are otherwise qualified (e. g., other health professionals or laymen). The investigator may not vote on any aspect of the review of his or her protocol by a review committee.

(4) When the research has not been approved by a review committee, the sponsor shall describe how the research conformed to the ethical standards in the country in which the research was conducted, so as to meet the goals of the "Declaration of Helsinki" In compensating for the lack of review committee approval.

(5) The "Declaration of Helsinki" states as follows:

Recommendations Guiding Medical Doctors in Biomedical Research Involving Human Subjects

I. *Basic Principles*

1. Biomedical research involving human subjects must conform to generally accepted scientific principles and should be based on adequately performed laboratory and animal experimentation and on a thorough knowledge of the scientific literature.

2. The design and performance of each experimental procedure involving human subjects should be clearly formulated in an experimental protocol which should be transmitted to a specially appointed independent committee for consideration, comment and guidance.

3. Biomedical research involving human subjects should be conducted only by scientifically qualified persons and under the supervision of a clinically competent medical person. The responsibility for the human subject must always rest with a medically qualified person and never rest on the subject of the research, even though the subject has given his or her consent.

4. Biomedical research involving human subjects cannot legitimately be carried out unless the importance of the objective is in proportion to the inherent risk to the subject.

5. Every biomedical research project involving human subjects should be preceded by careful assessment of predictable risks in comparison with foreseeable benefits to the subject or to others. Concern for the interests of the subject must always prevail over the interests of science and society.

6. The right of the research subject to safeguard his or her integrity must always be respected. Every precaution should be taken to respect the privacy of the subject and to minimize the impact of the study on the subject's physical and mental integrity and on the personality of the subject.

7. Doctors should abstain from engaging in research projects involving human subjects unless they are satisfied that the hazards involved are believed to be predictable. Doctors should cease any investigation if the hazards are found to outweigh the potential benefits.

8. In publication of the results of his or her research, the doctor is obliged to preserve the accuracy of the results. Reports of experimentation not in accordance with the principles laid down in this Declaration should not be accepted for publication.

9. In any research on human beings, each potential subject must be adequately informed of the aims, methods, anticipated benefits and potential hazards of the study and the discomfort it may entail. He or she is free to withdraw his or her consent to participation at any time. The doctor should then obtain the subject's given informed consent, preferable in writing.

10. When obtaining informed consent for the reasearch project the doctor should be particularly cautious if the subject is in a dependent relationship to him or her or may consent under duress. In that case the informed consent should be obtained by a doctor who is not engaged in the investigation and who is completely independent of this official relationship.

11. In case of legal incompetence, informed consent should be obtained from the legal guardian in accordance with national legislation. Where physical or mental incapacity makes it impossible to obtain informed consent, or when the subject is a minor, permission from the responsible relative replaces that of the subject in accordance with national legislation.

12. The research protocol should always contain a statement of the ethical considerations involved and should indicate that the principles enunciated in the present Declaration are complied with.

II. Medical Research Combined With Professional Care (Clinical Research)

1. In the treatment of the sick person, the doctor must be free to use a new diagnostic and therapeutic measure, if in his or her judgment it offers hope of saving life, reestablishing health or alleviating suffering.

2. The potential benefits, hazards and discomfort of a new method should be weighed against the advantages of the best current diagnostic and therapeutic methods.

3. In any medical study, every patient—including those of a control group, if any—should be assured of the best proven diagnostic and therapeutic methods.

4. The refusal of the patient to participate in a study must never interfere with the doctor-patient relationship.

5. If the doctor considers it essential not to obtain informed consent, the specific reasons for this proposal should be stated in the experimental protocol for transmission to the independent committee (I, 2).

6. The doctor can combine medical research with professional care, the objective being the acquisition of new medical knowledge, only to the extent that medical research is justified by its potential diagnostic or therapeutic value for the patient.

III. Non-Therapeutic Biomedical Research Involving Human Subjects (Non-Clinical Biomedical Research)

1. In the purely scientific application of medical research carried out on a human being, it is the duty of the doctor to remain the protector of the life and health of that person on whom biomedical research is being carried out.

2. The subjects should be volunteers—either healthy persons or patients for whom the experimental design is not related to the patient's illness.

3. The investigator or the team should discontinue the research if in his/her or their judgment it may, if continued, be harmful to the individual.

4. In research on man, the interest of science and society should never take precedence over considerations related to the well-being of the subject.

§ 312.130 Availability for public disclosure of data and information in an IND.

(a) The existence of an investigational new drug application will not be disclosed by FDA unless it has previously been publicly disclosed or acknowledged.

(b) The availability for public disclosure of all data and information in an investigational new drug application for a new drug or antibiotic drug file will be handled in accordance with the provisions established in § 314.430 (proposed in the **Federal Register** of October 19, 1982; 47 FR 46664) for the confidentiality of data and information in applications submitted under Part 314. The availability for public disclosure of all data and information in an investigational new drug application for a biological product will be governed by the provisions of §§ 601.50 and 601.51.

(c) Notwithstanding the provisions of § 314.430, FDA shall disclose upon request to an individual to whom an investigational new drug has been given a copy of any IND safety report relating to the use in that individual.

§ 312.140 Address for correspondence.

(a) Except as provided in paragraph (b) of this section, a sponsor shall send an initial IND to the Documents and Records Section (HFN–106), Office of New Drug Evaluation, National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. On receiving the IND, FDA will inform the sponsor which one of the divisions in the Office of New Drug Evaluation is responsible for the IND. Amendments, reports, and other correspondence relating to matters covered by the IND should be directed to the appropriate division. The outside wrapper of each submission shall state what is contained in the submission, for example, "IND Application", "Protocol Amendment", etc.

(b) Applications for the products listed below should be submitted to the Office of Biologics (HFN–823), National Center for Drugs and Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205: (1) Products subject to the licensing provisions of the Public Health Service Act of July 1, 1944 (58 Stat. 682, as amended (42 U.S.C. 201 et. seq.)) or subject to Part 600; (2) ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components; (3) urokinase products; (4) plasma volume expanders and hydroxyethyl starch for leukapheresis; and (5) coupled antibodies, i.e., products that consist of an antibody component coupled with a drug or radionuclide component in which both components provide a pharmacological effect but the biological component determines the site of action.

(c) All correspondence relating to biological products for human use which are also radioactive drugs shall be submitted to the Division of Oncology and Radiopharmaceutical Drug Products (HFN–150), Office of New Drug Evaluation, National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, except that applications for coupled antibodies shall be submitted in accordance with paragraph (b) of this section.

(d) All correspondence relating to export of an investigational drug under § 312.110(b)(2) shall be submitted to the International Affairs Staff (HFY–50), Office of Health Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

§ 312.145 Guidelines

(a) FDA has made available guidelines under § 10.90(b) to help persons to comply with certain requirements of this part.

(b) The National Center for Drugs and Biologics maintains a list of guidelines that apply to the Center's regulations. The list states how a person can obtain a copy of each guideline. A request for a copy of the list should be directed to the Assistant Director for Regulatory Affairs (HFN–7), National Center for Drugs and Biologics, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Subpart F—Drugs for Investigational Use in Laboratory Research Animals or In Vitro Tests

§ 312.160 Drugs for investigational use in laboratory research animals or in vitro tests.

(a) *Authorization to ship.* (1) A person may ship a drug intended solely for tests in vitro or in animals used only for laboratory research purposes if it is labeled as follows:

Caution: Contains a new drug for investigational use only in laboratory research animals, or for tests in vitro. Not for use in humans.

(2) A person shipping a drug under paragraph (a) of this section shall use due diligence to assure that the consignee is regularly engaged in conducting such tests and that the shipment of the new drug will actually be used for tests in vitro or in animals used only for laboratory research.

(3) A person who ships a drug under paragraph (a) of this section shall maintain adequate records showing the name and post office address of the expert to whom the drug is shipped and the date, quantity, and batch or code mark of each shipment and delivery. Such records are to be maintained for a period of 2 years after the shipment. Upon the request of a properly authorized FDA employee at reasonable times, the person shall make such records available for inspection and copying.

(b) *Termination of authorization to ship.* FDA may terminate authorization to ship a drug under this section, if it finds that:

(1) The sponsor of the investigation has failed to comply with any of the conditions for shipment established under this section; or

(2) The continuance of the investigation is unsafe or otherwise contrary to the public interest or the drug is used for purposes other than bona fide scientific investigation. FDS will notify the person shipping the drug of its finding and invite immediate correction. If correction is not immediately made, the person shall have an opportunity for a regulatory hearing before FDA pursuant to Part 16. If authorization to ship the drug is terminated, the person shipping the drug shall recall or have destroyed the unused supplies of the drug.

Interested persons, may, on or before August 8, 1983, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Arthur Hull Hayes, Jr.,

Commissioner of Food and Drugs.

Richard S. Schweiker,

Secretary of Health and Human Services.

Dated: February 3, 1983.

[FR Doc. 83-15452 Filed 6-8-83; 8:45 am]

BILLING CODE 4160-01-M

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.) Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

Note: **The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.**

List of Public Laws

Last Listing June 1, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

S. 967/Pub. L. 98-37 To amend the Independent Safety Board Act of 1974 to authorize appropriations for fiscal years 1984, 1985, and 1986. (June 6, 1983; 97 Stat. 204) Price: $1.50

H.R. 2681/Pub. L. 98-38 To make certain amendments to sections 4, 13, 14, 15, and 15B of the Securities Exchange Act of 1934. (June 6, 1983; 97 Stat. 205) Price: $1.50

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