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# federal register

Tuesday
July 26, 1983

## Selected Subjects



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# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 425

[Amdt. No.7]

### Peanut Crop Insurance Regulations

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

**ACTION:** Interim rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) hereby amends the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1983 and succeeding crop years, by adding a new subsection to prescribe procedures providing the insured peanut grower with a higher price election for non-quota peanuts under the provisions of such regulations. The intended effect of this rule is to be responsive to grower desires for a price election that more nearly approximates the higher contract prices available in the market place for non-quota peanuts. In addition, FCIC is issuing a new subsection in these regulations to contain the control numbers issued by the Office of Management and Budget (OMB) to information collection requirements of these regulations. This complies with OBM directives to include the information collection requirements control numbers in the codification of 7 CFR Part 425.

**EFFECTIVE DATE:** July 26, 1983.

Comment date: Written comments on this interim rule must be submitted not later than September 26, 1983, to be sure of consideration.

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

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

The Impact Statement describing the options considered in developing this rule and the impact of implementing each option is available upon request from Peter F. Cole.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Secretary's Memorandum No. 1512–1 (June 11, 1981).

Information collection requirements contained in the regulations to which this amendment applies (7 CFR Part 425) have been approved by the Office of Management and Budget (OBM) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563–0003 and 0563–0007.

Merritt W. Sprague, Manager, FCIC, has determined that (1) this action is not a major rule as defined in Executive Order No. 12291 (February 17, 1981) (2) this action will not increase the Federal paperwork burden for individuals, small businesses, or other persons, and (3) this action conforms to the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), and other applicable law.

The title and number of the Federal Assistance Program to which this amendment applies is: Title—Crop Insurance; Number 10.450.

This action will not have a significant impact specially upon area and community development; therefore, review as established in Executive Order No. 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

It has been determined that this action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512–1 (June 11, 1981). That review will be completed prior to the sunset review date of November 28, 1985.

It has also been determined that this action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Impact Statement was prepared.

Merritt W. Sprague, Manager, FCIC, has determined that an emergency situation exists which warrants publication of this rule without providing the normal 60 days for public comment prior to its implementation because the purpose of this amendment is to provide the insured peanut grower with a higher price election for non-quota peanuts while there is still time for the grower to decide on this additional program benefit and before he is required to submit an acreage report under the provisions of 7 CFR Part 425. There would not be sufficient time to permit a comment period and still allow the insured grower time to decide on this new offer. The insured grower is required to submit a price election agreement option at least 10 days before the acreage reporting date for peanuts which establishes a price at which indemnities will be computed for all non-quota peanuts.

Under the provisions for insuring peanuts found in 7 CFR Part 425 (published at 44 FR 67953, November 28, 1979), as amended, a peanut grower may insure both quota and non-quota peanuts. Insured growers have expressed dissatisfaction with FCIC's price election on non-quota peanuts. Growers are able to contract for a price on such peanuts that is far in excess of this level and have expressed a desire for a price election that more nearly approximates 90 percent of the market price (contract price) for non-quota peanuts, with an attendant increase in premium, as an option to the insured grower. This action amends the Peanut Crop Insurance Regulations (7 CFR Part 425) for this purpose.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register.** This rule will be scheduled for review so that all comments may be considered and any amendment made necessary by such comments can be published in the **Federal Register** as quickly as possible thereafter.

Written comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., during regular business hours, Monday through Friday.

### List of Subjects in 7 CFR Part 425

Crop Insurance, Peanuts, Reporting requirements.

### Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance

Act, as amended (7.U.S.C 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Peanut Crop Insurance Regulations (7 CFR Part 425), effective for the 1983 and succeeding crop years, in the following instances:

1. The Authority citation for 7 CFR Part 425 is:

**Authority:** Secs. 506, 516, Pub. L. 75-430, 52 Stat. 72, 77, as amended (7 U.S.C 1506, 1516).

**Part 425—[AMENDED]**

2. The Table of Contents for Subpart-Regulations for the 1980 and Succeeding Crop Years in 7 CFR Part 425 is revised to read as follows:

**Subpart—Regulations for the 1980 and Succeeding Crop Years**

Sec.



3. 7 CFR Part 425 is amended by adding a new § 425.3 to read as follows:

**§ 425.3 Office of Management and Budget (OMB) control numbers assigned pursuant to the Paperwork Reduction Act.**

The information collection requirements contained in these regulations (7 CFR Part 425) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C., Chapter 35, and have been assigned OMB Nos. 0563-0003 and 0563-0007.

4. 7 CFR Part 425 is amended by adding a new § 425.8 to read as follows:

**§ 425.8 Price election agreement for non-quota peanuts.**

(a) Notwithstanding the provisions of § 425.7 of this part, an insured producer may, upon submission and approval of a Contract Price Election Agreement Option form approved by the Corporation, elect as the price at which indemnities will be computed for all non-quota peanuts, the price stipulated on such agreement option form for the current crop year: *Provided*, That (1) all non-quota peanuts are contracted as provided under regulations established by the Secretary of Agriculture, (2) the contract(s) is dated on or before the date planting begins, and shows the pounds contracted and the applicable contract price(s), and (3) the pounds contracted equal or exceed the pounds of guarantee of non-quota peanuts for the insured's share on all units.

(b) If the pounds of non-quota peanuts contracted is less than the non-quota guarantee, the price at which indemnities will be computed will be the price for non-quota peanuts elected by the insured from the actuarial table.

(c) When non-quota peanuts are contracted at different prices, the contract price applicable shall be the weighted average of the individual contract prices.

(d) The Contract Price Election Agreement Option shall be applicable for the current crop year. A new option must be submitted for each subsequent crop year.

Done in Washington, D.C. on June 16, 1983.

**Peter F. Cole,**

*Secretary, Federal Crop Insurance Corporation.*

Approved by:

**Edward Hews,**

*Deputy Manager, Federal Crop Insurance Corporation*

June 16, 1983.

[FR Doc. 83-16671 Filed 7-25-83; 8:45 am]

BILLING CODE 3410-08-M

## Agricultural Stabilization and Conservation Service

## 7 CFR Part 701

## Conservation and Environmental Programs

**AGENCY:** Agricultural Stabilization and Conservation Service (ASCS), USDA.

**ACTION:** Interim rule.

**SUMMARY:** The purpose of this interim rule is to amend the regulations governing the Conservation and Environmental Programs found at 7 CFR Part 701 to provide that the Agricultural Stabilization and Conservation Service (ASCS) is authorized to recover, under certain circumstances, amounts of cost-share assistance which have been paid to participants to carry out practices under the Agricultural Conservation Program (ACP), Emergency Conservation Program (ECP) and the Forestry Incentives Program (FIP). A participant in one of the programs would be liable for a refund of all cost-share assistance received under such program when a practice is terminated prior to the expiration of the lifespan of the practice as the result of voluntary loss of title or possession of the land on which the practice has been installed. In addition, a producer must agree as a condition of eligibility for receiving cost-share assistance that a recordable lien may be filed by the county ASC committee with respect to land on which ACP practices are installed in designated Salinity Control Project areas. However, this requirement may be waived by the county ASC committee under certain circumstances.

**DATE:** This interim rule shall be effective July 26, 1983. Comments must be received on or before September 26, 1983, in order to be assured of consideration.

**ADDRESS:** Interested persons are invited to submit written comments to: Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202-447-6221.

**FOR FURTHER INFORMATION CONTACT:** Gordell A. Brown, Director, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, D.C. 20013, telephone 202-447-6221. The Final Regulatory Impact Analysis describing the options considered in developing this rule will be available when completed, upon request, from the above-named individual.

**SUPPLEMENTARY INFORMATION:** This interim rule has been reviewed for compliance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individuals, industries, Federal, State or local government agencies or geographic regions; or (3) cause significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The titles and numbers of the Federal Assistance Program to which this rule applies are: Title—Agricultural Conservation Program; Number—10.063; Title—Emergency Conservation Program, Number—10.054; Title—Forestry Incentives Program, Number—10.064; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since ASCS is not required by 5 U.S.C. 553 on any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Since county ASC committees are currently in the process of accepting and

approving producers' requests for cost-share assistance under the related conservation and environmental programs to which the amendments of this interim rule would be applicable, it has been determined that this rule shall become effective upon date of publication in the **Federal Register**. However, comments will be solicited for 60 days after publication of this interim rule in the **Federal Register**. This interim rule will be scheduled for review so that a final document discussing comments received and any amendments required can be published in the **Federal Register** as soon as possible.

The ACP is authorized generally by Sections 7–17 of the Soil Conservation and Domestic Allotment Act of 1936, as amended (16 U.S.C. 590g *et seq.*) The program provides financial incentives and technical assistance to encourage agricultural producers to voluntarily perform enduring soil and water conservation and pollution abatement measures, including practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, or prevent increased cost of production. The purpose of the program is to assure a continuous supply of food and fiber necessary for the maintenance of strong and healthy people.

The ECP is authorized by the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*). This program is designed to provide cost-share assistance for emergency work to meet only the critical needs of agricultural producers due to severe drought or other natural disaster.

The FIP is authorized by Section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103) and is designed to increase the Nation's supply of timber products from private nonindustrial forest lands. The purpose of FIP is to encourage private landowners to apply forestry practices that will provide for afforestation of suitable open lands and reforestation of cut-over or other nonstocked forest lands, and to encourage intensive multipurpose forest resource management and protection so as to provide for cost-effective timber production and other related forest resources needs.

The current regulations provide that in order to be eligible for cost-share assistance under each of these related conservation and environmental programs, a program participant must agree to carry out the practice for which cost-share assistance is requested in accordance with accepted technical specifications. In addition, the program participant must agree to maintain the approved practice(s) for the conservation or forestry purpose for which program assistance was authorized for the established lifespan of the practice as determined by ASCS. If ASCS finds that the practice has not been properly maintained, the program participant receiving the cost-share assistance is required to refund all or a part of such assistance. However, the authority to request any such refund extends only so long as the land on which the practice is located is under the control of the person who received the cost-share assistance. Recently, ASCS has received several complaints from Members of Congress, county ASC committees and others that land on which ACP, ECP or FIP practices are installed is being sold or converted to nonagricultural use by the original applicant prior to the expiration of the required practice lifespan. Thus, the conservation practices for which cost-share assistance has been provided are being terminated prior to the expiration of the established lifespan for the conservation practice.

Accordingly, this interim rule provides that a participant in the ACP, ECP, or FIP will be required to repay to ASCS the amount of any cost-share assistance received by such participant under any of these programs if the practice is terminated prior to its designated lifespan. This includes those situations where there is a voluntary loss of control of the land by the program participant receiving the cost-share assistance prior to the expiration of the lifespan of the practice and the person acquiring the land does not elect to continue the practice.

In addition, Title II of the Colorado River Basin Salinity Control Act (43 U.S.C. 1571 *et seq.*) directs the Secretary of Agriculture to cooperate with the Secretary of the Interior in the planning and construction of on-farm measures under programs available in the Department of Agriculture. ASCS is cooperating in this effort by identifying Salinity Control Project areas through its organization of county committees and by providing ACP cost-share assistance to producers in designated Salinity Control Project areas which are designed to reduce the amount of salt returning to the Colorado River. In these designated Salinity Control Project areas, ASCS has approved the use of ACP pooling agreements. This permits two or more farmers having contiguous farms to install conservation practices which contribute to the overall goal of the program. Under the pooling agreements program, eligible producers may receive up to $10,000 in cost-share assistance for each fiscal year. Thus, pooling agreements have resulted in relatively large amounts of cost-share assistance being expended under the ACP to install conservation practices on farms in some areas of the Salinity Control Program. In many instances, there is a high probability that the land may be converted to a nonagricultural use by the present owner or sold to a new owner who is not interested in maintaining the conservation practice and who will discontinue the practice. Accordingly, the benefits of the cost-sharing for the installation of these conservation practices may be lost. The practices which are being installed in designated Salinity Control Project areas for which cost-share assistance has been made available by ASCS also may be terminated prior to the expiration of its established lifespan.

To forestall such occurrences, it has been determined that the program regulations should be amended to provide that the owner of land in Salinity Control Project areas must agree, at the time an ACP cost-share agreement is initially executed, to an encumbrance of such land. The purpose of this encumbrance is to guarantee the recovery of the cost-share assistance which has been made available by ASCS where title or possession of the land is lost voluntarily and the new owner is not willing to enter into an agreement to maintain the practice for the remainder of its established lifespan or, in other instances, where the present owner converts the land to a nonagricultural use. This requirement may be waived under certain circumstances.

Information collection requirements contained in this regulation (§§ 701.1 through 701.85) have been approved by OMB under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0112.

**List of Subjects in 7 CFR Part 701**

Disaster assistance, Forests and forest products, Grant programs, Agriculture grant programs, Natural resanding rural area, Soil conservation, Water resources, and Wildlife.

**Interim Rule**

## PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

Accordingly, the regulations at 7 CFR Part 701 are amended as follows:

1. A new § 701.20 is added to read as follows:

### § 701.20 Encumbering land.

In order to receive cost-share assistance for a conservation practice in a Salinity Control Project area, a person participating in the program shall agree,

as a condition of eligibility to receive such assistance, that a recordable encumbrance may be filed by ASCS with respect to the land on which the conservation practice is installed. Such encumbrance shall reflect the amount of the cost-share assistance which is received by the program participant for the practice and shall continue until such time as the established lifespan for the practice has expired. Notwithstanding the foregoing, this requirement may be waived by the county committee if such committee determines, with the concurrence of the State committee and after consultation with appropriate Federal, State and local authorities, that the land will not likely be converted to a nonagricultural use within the next five years.

2. Section 701.79 is revised to read as follows:

**§ 701.79 Maintenance and use of practice.**

Each person receiving cost-share assistance under these programs is responsible for the maintenance and proper use of the practice. Each practice shall have an established lifespan or minimum period of time that it is expected to function as a conservation practice with proper maintenance. If it is determined that a practice has not been properly maintained for the established lifespan, the person receiving the cost-share assistance shall refund all or any part of such cost-share assistance as determined to be appropriate by the county committee. Further, any agreement providing for cost-share assistance will be terminated with respect to the land on which the practice is located if there is voluntary loss of control of the land by the person receiving the cost-share assistance and the person acquiring control of such land elects not to become a successor in interest to the agreement. If the agreement providing for cost-share assistance is terminated as a result of the voluntary loss of control of the land, each person receiving cost-share assistance under that agreement shall be liable for refunding to ASCS any cost-share assistance which has been received with respect to the practice. In addition, such person shall forfeit any right to receive any further cost-share assistance with respect to the land on which the practice is located.

(Pub. L. 74-46, Secs. 4, 7-15, 16(a), 16(f), 16A and 17, 49 Stat. 163, as amended (16 U.S.C. 590d, 590g-590o, 590p(a), and 590q); Pub L. 93-86, secs. 1001-1010, 87 Stat. 241 (16 U.S.C. 1501-1510); Pub. L. 95-313, secs. 4, 8(a), 10, 92 Stat. 365 (16 U.S.C. 1510, 1606, 2101-2111); Pub. L. 95-334, secs. 401-402, 404-405, 92 Stat. 433 (16 U.S.C. 2201, 2204-2205))

Signed at Washington, D.C., July 20, 1983.

**C. Hoke Leggett,**

*Acting Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 83-20104 Filed 7-25-83; 8:45 am]

BILLING CODE 3410-05-M

## Agricultural Marketing Service

## 7 CFR Part 910

## Lemons Grown in California and Arizona; Amendment to Rules and Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule amends rules and regulations issued under this marketing order to permit the optional use of upward adjustments by handlers in Districts 1 and 3 up to 100 percent of their average weekly pick. This action would provide such handlers an option of receiving a larger proportion of their allotment earlier in the season, enabling them to market their lemons more advantageously.

**DATE:** Effective August 1, 1983 through July 31, 1984.

**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 marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendations and information submitted by the 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.

The marketing order provides that the prorate base of each handler be based upon the handler's average weekly pick (the average weekly amount of lemons harvested and delivered to such handler's packinghouse during a specified number of weeks preceding the computation date). In recognition of the fewer number of weeks during which lemons are harvested in Districts 1 and 3, the marketing order provides in § 910.53(f)(1) that handlers in these districts may make a request to the committee that their average weekly pick be increased by an amount, not exceeding 50 percent of such average, to accelerate their receipt of allotment during the first half of their season, subject to payback during the last half of their season.

Section § 910.53(h) provides that the percentage of adjustment specified in § 910.53(f)(1) may be changed through amendment of the rules and regulations issued under the marketing order. Last season such percentage was adjusted upward to 100 percent for the period August 1, 1982, through July 31, 1983, by amending § 910.153(e)(3). Unless extended the maximum percentage of upward adjustment permitted will revert to 50 percent on August 1, 1983. The committee unanimously recommended that such percentage of adjustment be established at 100 percent for the period August 1, 1983, through July 31, 1984. This action would provide handlers the option of receiving a larger proportion of their allotment earlier during the 1983-84 season, enabling them to use their proportionate share of the marketing opportunity more advantageously.

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this final rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) in that the time intervening between the date when information upon which this final rule is based became available and the time when this final rule must become effective in order to effectuate the declared policy of the Act is insufficient. Interested persons were given an opportunity to submit information and views on the provisions specified in this final rule at an open meeting, at which the committee without opposition recommended issuance of such provisions. It is necessary to effectuate the declared purposes of the Act to make this final rule effective as specified. This final rule relieves restrictions on the handling of lemons, 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.

Part 910—[AMENDED]

Therefore, § 910.153(e)(3) in Subpart—Lemon Administrative Committee Rules and Regulations (7 CFR 910.100–910.180) is amended by revising the first sentence of the paragraph to read as follows:

§ 910.153 Prorate bases and allotments.

* * * * *

(e) * * *

(3) *Granting of upward adjustment for Districts 1 and 3 applicants.* Upon receiving a duly filed application for an upward adjustment by a District 1 or 3 handler pursuant to § 910.53(f)(1) the committee shall adjust the average weekly pick of such handler by increasing such picks in the amount requested, but not in excess of 50 percent of such handler's average weekly pick: *Provided*, that during the period August 1, 1983, through July 31, 1984, upon request of any such handlers, the committee shall adjust such handler's average weekly pick in the amount requested but not in excess of 100 percent. * * *

* * * * *

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

Dated: July 21, 1983.

**Charles R. Brader,**

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

[FR Doc. 83-20166 Filed 7-25-83; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1131

[Milk Order No. 131]

## Milk in the Central Arizona Marketing Area; Order Suspending Certain Provisions

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

**ACTION:** Suspension of rules.

**SUMMARY:** This action suspends for the months of August and September 1983 the performance standard for pooling a cooperative association's manufacturing plant that is located in the Central Arizona marketing area. The suspension was requested by United Dairymen of Arizona, a cooperative association that represents producers who supply the market. The cooperative requested the action to enable the cooperative to efficiently handle an increasing supply of milk that is in excess of fluid milk needs. The suspension is based on evidence presented at a public hearing held in November 1982 to consider amendments to the order including a proposal to lower the pooling standard for the cooperative's manufacturing plant. The action for August and September, which continues a suspension effective during April through July, will promote the efficient handling of the market's reserve milk supply and the pooling of milk of producers who have regularly been associated with the market, pending a decision on whether the order should be amended to lower the pooling standard.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C., (202) 382–9360.

**SUPPLEMENTARY INFORMATION:** Prior documents in this proceeding: Notice of Hearing—Issued October 20, 1982, published October 25, 1982 (47 FR 47259). Suspension Order—Issued April 27, 1983, published May 2, 1983 (48 FR 19699). Recommend Decision—Issued June 28, 1983, Published July 5, 1983 (48 FR 30641).

This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

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 lessens the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agriculture Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Central Arizona marketing area.

After considering all relevant information, it is hereby found and determined that for the months of August and September 1983, the following provisions of the order do not tend to effectuate the declared policy of the Act.

In § 1131.7(c), the provisions, "65 percent or more of its".

### Statement of Consideration

The action suspends during the months of August and September 1983 the performance standard for pooling a cooperative association's manufacturing plant that is located in the marketing area. The action continues a suspension effective for the months of April through July 1983. Absent the suspension, the order provides for the pooling of such a plant if at least 65 percent of the cooperative association's member producer milk is received at pool plants of other handlers during the current month or the previous 12-month period ending with the current month.

The continuation of the suspension was requested by United Dairymen of Arizona (UDA), a cooperative association that represents a substantial number of the dairy farmers who supply the market. UDA also operates a manufacturing plant that serves as an outlet for the market's reserve milk supplies. Such plant, which had been pooled continuously under the order, failed to qualify as a pool plant in March. As a result, UDA was not able to pool a portion of its member's milk at its manufacturing plant in March and absent the suspension action will also be unable to qualify the plant as a pool plant in August and September.

The issue of the appropriate pooling standard for the plant was the subject of a public hearing held November 9–10, 1982. UDA proposed that the current pooling standard be lowered to 50 percent. Also, proponent testified that in the event amendatory action could not be completed early in 1983, a suspension action would be necessary to avoid uneconomic shipments of milk to pool the milk of its member producers. Proponent requested that evidence of marketing conditions that was presented at the hearing serve as a basis for any suspension action that the cooperative found necessary to request.

Testimony presented at the hearing indicated that changes in the market's supply-demand situation would make it impossible for UDA to continue to qualify its manufacturing plant as a pool plant under the current provisions of the order. Additional testimony indicated that, although the milk of the cooperative's member producers could continue to be pooled without a lowering of the pooling standards, costly and inefficient changes in milk movements would have to made in order to do so.

Based on available information concerning the market's supply conditions, the continuation of the suspension for the months of August and September 1983 is warranted. The suspension will accommodate the pooling and efficient handling of milk supplies of the market pending a

decision on whether the order should be amended to lower the pooling standard in the manner proposed. In the absence of a suspension, costly and inefficient movements of producer milk would have to be make solely for the purpose of pooling the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) This suspension is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area in that without the suspension costly and inefficient movements of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who have historically supplied the fluid milk needs of the market.

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) The marketing problems that provide the basis for this suspension action were fully reviewed at a public hearing held on November 9–10, 1982, where all interested parties had an opportunity to be heard on this matter.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

**List of Subjects in 7 CFR Part 1131**

Milk marketing orders, Milk, Dairy products.

**PART 1131—[AMENDED]**

**§ 1131.7 [Amended]**

*It is therefore ordered,* That the aforesaid provisions in § 1131.7(c) of the order are hereby suspended for the months of August and September 1983.

*Effective date:* July 25, 1983.

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

Signed at Washington, D.C. on: July 21, 1983.

**C. W. McMillan,**

*Assistant Secretary, Marketing and Inspection Service.*

[FR Doc. 83-20167 Filed 7-25-83; 8:45 am]

BILLING CODE 3410-02-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts 20 and 50

### Licensee Event Report System

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is amending its regulations to require the reporting of operational experience at nuclear power plants by establishing the Licensee Event Report (LER) system. The final rule is needed to codify the LER reporting requirements in order to establish a single set of requirements that apply to all operating nuclear power plants. The final rule applies only to licensees of commercial nuclear power plants. The final rule will change the requirements that define the events and situations that must be reported, and will define the information that must be provided in each report.

**EFFECTIVE DATE:** January 1, 1984. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 1, 1984.

**FOR FURTHER INFORMATION CONTACT:** Frederick J. Hebdon, Chief, Program Technology Branch, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Telephone (301) 492–4480.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On May 6, 1982, the NRC published in the **Federal Register** (47 FR 19543)[1] a Notice of Proposed Rulemaking that would modify and codify the existing Licensee Event Report (LER) system. Interested persons were invited to submit written comments to the Secretary of the Commission by July 6, 1982. Numerous comments were received. After consideration of the comments and other factors involved, the Commission has amended the proposed requirements published for public comment by clarifying the scope and content of the requirements, particularly the criteria that define which operational events must be reported.

The majority of the comments on the proposed rule: (1) Questioned the meaning and intent of the criteria that defined the events which must be reported, (2) questioned the need for reporting certain specific types of events, and (3) questioned the need for certain information that would be required to be included in an LER. Section III of this notice discusses the comments in more detail.

[1] Copies of the documents are available for public inspection and copying for a fee at the Public Document Room at 1717 H Street NW, Washington, D.C.

**II. Rulemaking initiation**

The Nuclear Plant Reliability Data (NPRD) system is a voluntary program for the reporting of reliability data by nuclear power plant licensees. On January 30, 1980 (45 FR 6793),[1] the NRC published an Advance Notice of Proposed Rulemaking that described the NPRD system and invited public comment on an NRC plan to make it mandatory. Forty-four letters were received in response to the advanced notice. These comments generally opposed making the NPRD system mandatory on the grounds that reporting of reliability data should not be made a regulatory requirement.

In December 1980, the Commission decided that the requirements for reporting of operational experience data needed major revision and approved the development of an Integrated Operational Experience Reporting (IOER) system. The IOER system would have combined, modified, and made mandatory the existing Licensee Event Report (LER) system and the NPRD system. SECY 80–507[1] discusses the IOER system.

As a result of the Commission's approval of the concept of an IOER system, the NRC published another advance notice on January 15, 1981 (46 FR 3541). This advance notice explained why the NRC needed operational experience data and described the deficiencies in the existing LER and NPRD systems.

On June 8, 1981, the Institute of Nuclear Power Operations (INPO) announced that because of its role as an active user of NPRDs data it would assume responsibility for management and funding of the NPRD system. Further, INPO decided to develop criteria that would be used in its management audits of member utilities to assess the adequacy of participation in the NPRD system.

The two principal deficiencies that had previously made the NPRD system an inadequate source of reliability data were the inability of its committee management structure to provide the necessary technical direction and a low level of participation by the utilities. The commitments and actions by INPO provided a basis for confidence that these two deficiencies would be corrected. For example, centralizing the management and funding of NPRDS within INPO should overcome the previous difficulties associated with management by a committee and funding from several independent organizations. Further, with INPO focusing upon a utility's participation in

NPRDS as a specific evaluation parameter during routine management and plant audit activities, the level of utility participation, and therefore, the quality and quantity of NPRDS data, should significantly increase. However, the Commission will continue to have an active role in NPRDS by participating in an NPRDS User's Group, by periodically assessing the quality and quantity of information available from NPRDS, and by auditing the timely availability of the information to the NRC.

Since there was a likelihood that NPRDS under INPO direction would meet the NRC's need for reliability data, it was no longer necessary to proceed with the IOERS. Hence, the collection of detailed technical descriptions of significant events could be addressed in a separate rulemaking to modify and codify the existing LER reporting requirements. See SECY 81-494 for additional details concerning IOERS.

However, the Commission wishes to make it explicitly clear that it is relaxing the reporting requirements with the expectation that sufficient utility participation, cooperation, and support of the NPRD system will be forthcoming. If the NPRD system does not become operational at a satisfactory level in a reasonable time, remedial action by the Commission in the form of additional rulemaking may become necessary.

On October 6, 1981, the NRC published an advanced notice (46 FR 49134) that deferred development of the IOER system and sought public comment on the scope and content of the LER system. Six comment letters were received in response to this ANPRM. All of the comments received were reviewed by the staff and were considered in the development of the proposed LER rule. See SECY 82-3 [1] for additional details.

This rule identifies the types of reactor events and problems that are believed to be significant and useful to the NRC in its effort to identify and resolve threats to public safety. It is designed to provide the information necessary for engineering studies of operational anomalies and trends and patterns analysis of operational occurrences. The same information can also be used for other analytic procedures that will aid in identifying accident precursors.

The Commission believes that the NRC should continue to seek an improved operational data system that will maximize the value of operational data. The system should encompass and integrate operational data of events and problem sequences identified in this rule, NPRDS data, and such other information as is required for a comprehensive integrated analytically-versatile system.

The Brookhaven Study, published as BNL/NUREG 51609, NUREG/CR 3206, discusses data collection and storage procedures to support multivariate, multicase analysis. While the range of reactor configurations in the U.S. nuclear industry presents some methodological and interpretative problems, these difficulties should not be insurmountable. The Commission believes that the NRC should have as a specific objective the development, demonstration, and implementation of an integrated system for collecting and analyzing operational data that will employ the predictive and analytical potential of multicase, multivariate analyses. Accordingly, the staff has been directed to undertake the work necessary to develop and demonstrate such a cost-effective integrated system of operational data collection and analyses.

If the design of the system demonstrates that such a system is feasible and cost-effective, development of the system to the point of initiating rule should be completed by July 1986.

## III. Analysis of Comments

The Commission received forty-seven (47) letters commenting on the proposed rule. Copies of those letters and a detailed analysis of the comments are available for public inspection and copying for a fee at the NRC Public Document Room at 1717 H Street, NW., Washington, D.C. A number of the more substantive issues are discussed below.

*Licensee Resources*

Of particular concern to the Commission was the impact that the proposed rule would have on the resources used by licensees to prepare LERs. The Commission's goal was to assure that the scope of the rule would not increase the overall level of effort above that currently required to comply with the existing LER requirements. Thirty letters of the 47 received contained comments on the overall acceptability of the proposed rule or commented directly on the question of scope and/or resources associated with the proposed rule. The views of the commenters can be characterized as follows:

1. Five commenters felt that the scope and level of effort would be greatly expanded by the proposed rule. Estimates included an increase of 100 man-years for the entire industry, an increase of three times the current effort, and an increase of $100,000 and 2 man-years annually for each plant.

2. Four commenters felt that the level of effort would be increased but not significantly.

3. One commenter felt that the proposed rule would have a minimal effect on the level of effort required.

4. Two commenters felt that the proposed rule would significantly reduce the number of LERs filed.

5. Thirteen commenters endorsed the objective of improving LER reporting but felt that changes in the proposed rule were needed. These commenters did not directly address the resource issue.

6. Five commenters endorsed the proposed rule and/or felt that it was a significant improvement over the existing reporting requirements.

Based on these comments and its own assessment of the impact of this rule, the Commission has concluded that the impact of this rule will be no greater than the impact of the existing LER requirements, and this rule will not place an unacceptable burden on the affected licensees.

*Relationship Between the LER Rule (§ 50.73) and the Immediate Notification Rule (§ 50.72)*

As a parallel activity to the preparation of § 50.73, the Commission is amending its regulations (§ 50.72) which require that licensees for nuclear power plants notify the NRC Operations Center of significant events that occur at their plants. On December 21, 1981, the Commission published in the **Federal Register** a proposed rule (46 FR 61894) that described the planned changes in § 50.72.

The **Federal Register** notice accompanying the proposed LER rule (i.e., § 50.73) stated that additional changes anticipated to § 50.72 would be made but they would be "* * * largely administrative and the revised § 50.72 would not be significantly modified nor would it be published again for public comment." Several commenters disagreed with this conclusion.

The commenters did, however, agree with the Commission's position that inconsistencies and overlapping requirements between the two rules need to be eliminated.

The Commission has carefully reviewed the proposed requirements in the LER and Immediate Notification rules and has concluded that although changes to both have been made (largely in response to public comments) to clarify the intent of the rules, the original intent and scope have not been significantly changed. Therefore, the Commission has concluded that these two rules need not be published again for public comment.

*Engineering Judgment*

In the **Federal Register** notice that accompanied the proposed rule, the Commission stated that licensee's engineering judgment may be used to decide if an event is reportable. Several commenters expressed the belief that some wording should be added to the rule of reflect that the NRC will also use judgment in enforcement of this regulation where the licensee is requested to use engineering judgment.

The Commission believes that the LER rule adequately discusses the need for and application of the concept of "engineering judgment." The concept itself includes the recognition of the existence of a reasonable range of interpretation regarding this rule, and consequently the Commission recognizes and hereby acknowledges the need for flexibility in enforcement actions associated with this rule. The Commission believes that this concept is sufficiently clear and that additional explicit guidance is not necessary.

*Reporting Schedule*

In the **Federal Register** notice that accompanied the proposed rule, the Commission stated that it had not yet decided if the reports should be submitted in fifteen days or thirty days following discovery of a reportable event. Many commenters stated that the time frame for reporting LERs should not be less than thirty days after the discovery of a reportable event.

One commenter estimated the impact of a requirement to submit a report sooner than 30 days following discovery of a reportable event would be an increase of approximately 40 man years per year for the currently operating plants. In addition the commenter estimated that if a summary report were also required the reporting burden would increase an additional 12 man years for the currently operating plants.

In response to these comments, the Commission has decided to require that LERs be submitted within 30 days of discovery of a reportable event or situation.

*Reporting of Reactor Trips*

Section 50.73(a)(1) of the proposed rule (§ 50.73(a)(2)(iv) of the final rule) required reporting of any event which results in an unplanned manual or automatic actuation of any Engineered Safety Feature (ESF) including the Reactor Protection System (RPS). Many commenters agreed that these events should be trended and analyzed, but disagreed that they deserve to be singled out as events of special significance (i e., events reportable as LERs). They noted that reports of RPS actuations are already reported to the NRC in the Monthly Operating Status Report, as well as telephoned to the NRC Operations Center.

In addition, the Institute of Nuclear Power Operations (INPO) analyzed the frequency of reactor scrams during a one-month period. This analysis indicated that an average of 55 reactor trips would be reportable each month under the proposed rule. INPO equated this to 660 additional LERs per year for all currently operating plants, or approximately 32 man-years of additional effort for all the currently operating plants based upon the assumption that each LER requires 100 man-hours of effort to prepare and analyze.

The Commission still believes that ESF actuations, including reactor trips, frequently are associated with significant plant transients and are indicative of events that are of safety significance. In addition, if the ESFs are being challenged during routine transients, that fact is of safety significance and should be reported.

In addition, the Commission does not agree with the estimate that each LER submitted for a routine reactor trip would require, on the average, 100 man-hours to prepare and analyze. Licensees are already required to make internal evaluation of and document significant events, including reactor trips. Therefore, the incremental impact of preparing and analyzing the LER should be significantly less than 100-man hours. In addition, the actual increase in burden would be offset by reductions in the burden of reporting less significant events that would no longer be reportable.

*Coordination With Other Reporting Requirements*

Several commenters noted that the proposed rule did not appear to be coordinated with other existing reporting requirements, and that duplication of licensee effort might result. They recommended that LER reporting be consolidated to eliminate potential duplication of other existing reporting requirements.

The Commission has reviewed existing NRC reporting requirements (e.g., 10 CFR Parts 20 and 21, § 50.55(e), § 50.72, § 50.73, § 73.71, and NUREG–0654) and has attempted, to the extent practicable, to eliminate redundant reporting and to ensure that the various reporting requirements are consistent. Many of the changes in the final LER rule are as a result of this effort. These changes resulted in extensive revisions in the wording of criteria contained in this rule, but did not change the original scope of intent of the requirements. In addition, in order to make the requirements in §§ 50.72 and 50.73 more compatible, the order (i.e., numbering) of the criteria in § 50.73 has been changed. The changes are noted in the discussion of each paragraph below.

Finally, conforming amendments are being made to various sections of Parts 20 and 50 in order to reduce the redundancy in reporting requirements that apply to operating nuclear power plants. In general, these amendments will require that:

1. Licensees that have an Emergency Notification System (ENS) make the reports required by the subject sections via the ENS. All other licensees will continue to make the reports to the Administrator of the appropriate NRC Regional Office.

2. Written reports required by the subject sections be submitted to the NRC Document Control Desk in Washington, D.C., with a copy to the appropriate Regional Offices.

3. Holders of licenses to operate a nuclear power plant submit the written reports required by the subject sections in accordance with the procedures described in § 50.73(b).

The criteria contained in the subject sections which define a reportable event have not been modified.

Similar changes are also planned as part of curent activities to make more substantive changes to Part 21, § 50.55(e), and § 73.71.

*Nonconservative Interdependence*

Several commenters expressed difficulty in understanding the meaning of the phrase "nonconservative interdependence" as used in the proposed § 50.73(a)(3). The wording of § 50.73(a)(3) (§ 50.73(a)(2)(vii) of this final rule) has been changed to eliminate the phrase "non conservative interdependence" by specifically defining the types of events that should be reported. The revised paragraph does not, however, change the intent of the original paragraph.

*Sabotage and Threats of Violence*

Several commenters noted that the security-related reporting requirements of § 50.73(a)(6) (§ 50.73(a)(2)(iii) of this final rule)) were already contained in greater detail in 10 CFR 73.71. For instance, § 73.71 requires an act of sabotage to be reported immediately, followed by a written report within 15 days. The proposed rule would have required an LER to be filed within 30 days. Although distribution of reports is somewhat different, redundant reporting

would have occurred. The commenters recommended that the Commission ensure consistency between §§ 50.73 and 73.71.

In response to these comments the Commission has deleted the reporting of sabotage and threats of violence from § 50.73 because these situations are adequately covered by the reporting requirements contained in § 73.71.

*Evacuation of Rooms or Buildings*

Many commenters stated that the reporting of in-plant releases of radioactivity that require evacuation of individual rooms (§ 50.73(a)(7) in the proposed rule or (§ 50.73(a)(2)(x) of this final rule) was inconsistent with the general thrust of the rule to require reporting of significant events. They noted that minor spills, small gaseous waste releases, or the disturbance of contaminated particulate matter (e.g., dust) may all require the temporary evacuation of individual rooms until the airborne concentrations decrease or until respiratory protection devices are utilized. They noted that these events are fairly common and should not be reportable unless the required evacuation affects the entire facility or a major portion thereof.

In response to these comments the wording of this criterion (§ 50.73(a)(2)(x) in the final rule) has been changed to significantly narrow the scope of the criterion to include only those events which significantly hamper the ability of site personnel to perform safety-related activities (e.g., evacuation of the main control room).

*Energy Industry Identification System*

Many commenters noted that the requirement to report the Energy Industry Identification System (EIIS) component function identifier and system name of each component or system referred to in the LER description would be a significant burden on the licensee.

They suggested instead that the NPRDS component identifiers be used in place of the EIIS component identifiers which are not yet widely used by the industry.

The Commission continues to believe that EIIS system names and component function identifiers are needed in order that LERs from different plants can be compared. We do not, however, suggest that the EIIS identifiers be used throughout the plant, but only that they be added to the LER as it is written. A simple, inexpensive table could be used to translate plant identifiers into equivalent EIIS identifiers.

The Commission considered the system and component identifiers used in NPRDS as an alternative. It is our understanding, however, the NPRDS will soon adopt the EIIS system titles, so a distinction should no longer exist. In addition, LERs frequently include systems that are not included in the scope of NPRDS (i.e., an NPRDS system identification does not exist) while EIIS, on the other hand, includes all of the systems commonly found in commercial nuclear power plants. Further, NPRDS includes only 39 component identifiers (e.g., valve, pump). The Commission believes that this limited number does not provide a sufficiently detailed description of the component function involved.

*Function of Failed Components and Status of Redundant Components*

Many commenters said that information required in (§ 50.73(b)(2) (vi) and (vii) of the proposed rule should not be a requirement in the LER. They argued that this information is readily available in documents previously submitted to the NRC by licensees and are available for reference.

The final rule (§ 50.73(b)(2)(i)(G)) has been modified to narrow the scope of the information requested by the Commission.

While this general information may be available in licensee documents previously submitted to the NRC, the Commission believes that a general understanding of the event and its significance should be possible without reference to additional documentation which may not be readily or widely available, particularly to the public.

The Commission continues to believe that the licensee should prepare an LER in sufficient depth so that knowledgeable readers who are conversant with the design of commercial nuclear power plants, but are not familiar with the details of a particular plant, can understand the general characteristics of the event (e.g., the cause, the significance, the corrective action). As suggested by the commenters, more detailed information to support engineering evaluations and case studies will be obtained, as needed, directly from the previously submitted licensee documents.

*Engineering Evaluations*

The overview discussion of the proposed rule contains the following statement: "If the NRC staff decides that the event was especially significant from the standpoint of safety, the staff may request that the licensee perform an engineering evaluation of the event and describe the results of that evaluation."

Several commenters argued that the inclusion of the requirement that the licensee perform an engineering evaluation of certain events at the staff's request appeared unjustified and would add substantially to the burden of reporting. They argued that the licensee should be required to submit only the specific additional information required for the necessary engineering evaluation rather than to perform the evaluation.

The rule has been modified to require only the submittal of any necessary additional information requested by the Commission in writing.

**IV. Specific Findings**

*Overview of the LER System*

When this final LER rule becomes effective, the LER will be a detailed narrative description of potentially significant safety events. By describing in detail the event and the planned corrective action, it will provide the basis for the careful study of events or conditions that might lead to serious accidents. If the NRC staff decides that the event was especially significant from the standpoint of safety, the staff may request that the licensee provide additional information and data associated with the event.

The licensee will prepare an LER for those events or conditions that meet one or more of the criteria contained in § 50.73(a). The criteria are based primarily on the nature, course, and consequences of the event. Therefore, the final LER rule requires that events which meet the criteria are to be reported regardless of the plant operating mode or power level, and regardless of the safety significance of the components, systems, or structures involved. In trying to develop criteria for the identification of events reportable as LERs, the Commission has concentrated on the potential consequences of the event as the measure of significance. Therefore, the reporting criteria, in general, do not specifically address classes of initiating events or causes of the event. For example, there is no requirement that all personnel errors be reported. However, many reportable events will involve or have been initiated by personnel errors.

Finally, it should be noted that licensees are permitted and encouraged to report any event that does not meet the criteria contained in § 50.73(a), if the licensee believes that the event might be of safety significance, or of generic interest or concern. Reporting requirements aside, assurance of safe operation of all plants depends on accurate and complete reporting by each

licensee of all events having potential safety significance.

*Paragraph-by-Paragraph Explanation of the LER Rule*

The significant provisions of the final LER rule are explained below. The explanation follows the order in the proposed rule.

Paragraph 50.73(a)(2)(iv) (proposed paragraph 50.73(a)(1)) requires reporting of: "Any event or condition that resulted in manual or automatic actuation of any Engineered Safety Feature (ESF), including the Reactor Protection System (RPS). However, actuation of an ESF, including the RPS, that resulted from and was part of the preplanned sequence during testing or reactor operation need not be reported."

This paragraph requires events to be reported whenever an ESF actuates either manually or automatically, regardless of plant status. It is based on the premise that the ESFs are provided to mitigate the consequences of a significant event and, therefore: (1) They should work properly when called upon, and (2) they should not be challenged frequently or unnecessarily. The Commission is interested both in events where an ESF was needed to mitigate the consequences (whether or not the equipment performed properly) and events where an ESF operated unnecessarily.

"Actuation" of multichannel ESF Actuation Systems is defined as actuation of enough channels to complete the minimum actuation logic (i.e., activation of sufficient channels to cause activation of the ESF Actuation System). Therefore, single channel actuations, whether caused by failures or otherwise, are not reportable if they do not complete the minimum actuation logic.

Operation of an ESF as part of a planned operational procedure or test (e.g., startup testing) need not be reported. However, if during the planned operating procedure or test, the ESF actuates in a way that is not part of the planned procedure, that actuation must be reported. For example, if the normal reactor shutdown procedure requires that the control rods be inserted by a manual reactor trip, the reactor trip need not be reported. However, if conditions develop during the shutdown that require an automatic reactor trip, such a reactor trip must be reported.

The fact that the safety analysis assumes that an ESF will actuate automatically during certain plant conditions does not eliminate the need to report that actuation. Actuations that need not be reported are those initiated for reasons other than to mitigate the consequences of an event (e.g., at the discretion of the licensee as part of a planned procedure or evolution).

Sections 50.73(a)(2) (v) and (vi) (proposed § 50.73(a)(2)) require reporting of:

* * * * *

(v) Any event or condition that alone could have prevented the fulfillment of the safety function of structures or systems that are needed to:

(A) Shut down the reactor and maintain it in a safe shutdown condition;

(B) Remove residual heat;

(C) Control the release of radioactive material; or

(D) Mitigate the consequences of an accident.

(vi) Events covered in paragraph (a)(2)(v) of this section may include one or more personnel errors, equipment failures, and/or discovery of design, analysis, fabrication, construction, and/or procedural inadequacies. However, individual component failures need not be reported pursuant to this paragraph if redundant equipment in the same system was operable and available to perform the required safety function.

The wording of this paragraph has been changed from the proposed rule to make it easier to read. The intent and scope of the paragraph have not been changed.

The intent of this paragraph is to capture those events where there would have been a failure of a safety system to properly complete a safety function, regardless of when the failures were discovered or whether the system was needed at the time.

This paragraph is also based on the assumption that safety-related systems and structures are intended to mitigate the consequences of an accident. While § 50.73(a)(2)(iv) of this final rule applies to actual actuations of an ESF, § 50.73(a)(2)(v) of this final rule covers an event or condition where redundant structures, components, or trains of a safety system could have failed to perform their intended function because of: one or more personnel errors, including procedure violations; equipment failures; or design, analysis, fabrication, construction, or procedural deficiencies. The event must be reported regardless of the situation or condition that caused the structure or systems to be unavailable, and regardless of whether or not an alternate safety system could have been used to perform the safety function (e.g., High Pressure Core Cooling failed, but feed-and-bleed or Low Pressure Core Cooling were available to provide the safety function of core cooling).

The applicability of this paragraph includes those safety systems designed to mitigate the consequences of an accident (e.g., containment isolation, emergency filtration). Hence, minor operational events involving a specific component such as valve packing leaks, which could be considerd a lack of control of radioactive material, should not be reported under this paragraph. System leaks or other similar events may, however, be reportable under other paragraphs.

It should be noted that there are a limited number of single-train systems that perform safety functions (e.g., the High Pressure Coolant Injection System in BWRs). For such systems, loss of the single train would prevent the fulfillment of the safety function of that system and, therefore, must be reported even though the plant Technical Specifications may allow such a condition to exist for a specified limited length of time.

It should also be noted that, if a potentially serious human error is made that could have prevented fulfillment of a safety function, but recovery factors resulted in the error being corrected, the error is still reportable.

The Commission recognizes that the application of this and other paragraphs of this section involves the use of engineering judgment on the part of licensees. In this case, a technical judgment must be made whether a failure or operator action that did actually disable one train of a safety system, could have, but did not, affect a redundant train within the ESF system. If so, this would constitute an event that "could have prevented" the fulfillment of a safety function, and, accordingly, must be reported.

If a component fails by an apparently random mechanism it may or may not be reportable if the functionally redundant component could fail by the same mechanism. Reporting is required if the failure constitutes a condition where there is reasonable doubt that the functionally redundant train or channel would remain operational until it completed its safety function or is repaired. For example, if a pump in one train of an ESF system fails because of improper lubrication, and engineering judgment indicates that there is a reasonable expectation that the functionally redundant pump in the other train, which was also improperly lubricated, would have also failed before it completed its safety function, then the actual failure is reportable and the potential failure of the functionally redundant pump must be discussed in the LER.

For safety systems that include three or more trains, the failure of two or more trains should be reported if, in the

judgement of the licensee, the functional capability of the overall system was jeopardized.

Interaction between systems, particularly a safety system and a non-safety system, is also included in this criterion. For example, the Commission is increasingly concerned about the effect of a loss or degradation of what had been assumed to be non-essential inputs to safety systems. Therefore, this paragraph also includes those cases where a service (e.g., heating, ventilation, and cooling) or input (e.g., compressed air) which is necessary for reliable or long-term operation of a safety system is lost or degraded. Such loss or degradation is reportable if the proper fulfillment of the safety function is not cannot be assured. Failures that affect inputs or services to systems that have no safety function need not be reported.

Finally the Commission recognizes that the licensee may also use engineering judgment to decide when personnel actions *could* have prevented fulfillment of a safety function. For example, when an individual improperly operates or maintains a component, he might conceivably have made the same error for all of the functionally redundant components (e.g., if he incorrectly calibrates one bistable amplifier in the Reactor Protection System, he could conceivably incorrectly calibrate all bistable amplifiers). However, for an event to be reportable it is necessary that the actions actually affect or involve components in more than one train or channel of a safety system, and the result of the actions must be undesirable from the perspective of protecting the health and safety of the public. The components can be functionally redundant (e.g., two pumps in different trains) or not functionally redundant (e.g., the operator correctly stops a pump in Train "A" and, instead of shutting the pump discharge valve in Train "A," he mistakenly shuts the pump discharge valve in Train "B").

Section 50.73(a)(2)(vii) (proposed § 50.73(a)(3)) requires the reporting of: "Any event where a single cause or condition caused at least one independent train or channel to become inoperable in multiple systems or two independent trains channels or to become inoperable in a system designed to:

(A) Shut down the reactor and maintain it in a safe shutdown condition,

(B) Remove residual heat,

(C) Control the release of radioactive material; or

(D) Mitigate the consequences of an accident."

This paragraph has been changed to clarify the intent of the phrase "nonconservative interdependence." Numerous comment letters expressed difficulty in understanding what this phrase meant; so the paragraph has been changed to be more specific. The new paragraph is narrower in scope than the original paragraph because the term is specifically defined, but the basic intent is the same.

This paragraph requires those events to be reported where a single cause produced a component or group of components to become inoperable in redundant or independent portions (i.e., trains or channels) of one or more systems having a safety function. These events can identify previously unrecognized common cause failures and systems interactions. Such failures can be simultaneous failures which occur because of a single initiating cause (i.e., the single cause or mechanism serves as a common input to the failures); or the failures can be sequential (i.e., cascade failures), such as the case where a single component failure results in the failure of one or more additional components.

To be reportable, however, the event or failure must result in or involve the failure of independent portions of more than one train or channel in the same or different systems. For example, if a cause or condition caused components in Train "A" and "B" of a single system to become inoperable, even if additional trains (e.g., Train "C") were still available, the event must be reported. In addition, if the cause or condition caused components in Train "A" of one system and in Train "B" of another system (i.e., a train that is assumed in the safety analysis to be independent) to become inoperable, the event must be reported. However, if a cause or condition caused components in Train "A" of one system and Train "A" of another system (i.e., trains that are not assumed in the safety analysis to be independent), the event need not be reported unless it meets one or more of the other criteria in this section.

In addition, this paragraph does not include those cases where one train of a system or a component was removed from service as part of a planned evolution, in accordance with an approved procedure, and in accordance with the plant's Technical Specifications. For example, if the licensee removes part of a system from service to perform maintenance, and the Technical Specifications permit the resulting configuration, and the system or component is returned to service within the time limit specified in the Technical Specifications, the action need not be reported under this paragraph. However, if, while the train or component is out of service, the licensee identifies a condition that could have prevented the whole system from performing its intended function (e.g., the licensee finds a set of relays that is wired incorrectly), that condition must be reported.

Section 50.73(a)(2)(i) (proposed § 50.73(a)(4)) requires reporting of:

"(A) The completion of any nuclear plant shutdown required by the plant's Technical Specifications; or

"(B) Any operation prohibited by the plant's Technical Specifications; or

"(C) Any deviation from the plant's Technical Specifications authorized pursuant to § 50.54(x) of this part."

This paragraph has been reworded to more clearly define the events that must be reported. In addition, the scope has been changed to require the reporting of events or conditions "prohibited by the plant's Technical Specifications" rather than events where "a plant Technical Specification Action Statement is not met." This change accommodates plants that do not have requirements that are specifically defined as Action Statements.

This paragraph now requires events to be reported where the licensee is required to shut down the plant because the requirements of the Technical Specifications were not met. For the purpose of this paragraph, "shutdown" is defined as the point in time where the Technical Specifications require that the plant be in the first shutdown condition required by a Limiting Condition for Operation (e.g., hot standby (Mode 3) for PWRs with the Standard Technical Specifications). If the condition is corrected before the time limit for being shut down (i.e., before completion of the shutdown), the event need not be reported.

In addition, if a condition that was prohibited by the Technical Specifications existed for a period of time longer than that permitted by the Technical Specifications, it must be reported even if the condition was not discovered until after the allowable time had elapsed and the condition was rectified immediately after discovery.

Section 50.73(a)(2)(ii) (proposed § 50.73(a)(5)) requires reporting of: "Any event or condition that resulted in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded, or that resulted in the nuclear power plant being:

"(A) In an unanalyzed condition that significantly compromised plant safety;

"(B) In a condition that was outside the design basis of the plant; or

"(C) In a condition not covered by the plant's operating and emergency procedures."

This paragraph requires events to be reported where the plant, including its principal safety barriers, was seriously degraded or in an unanalyzed condition.

For example, small voids in systems designed to remove heat from the reactor core which have been previously shown through analysis not to be safety significant need not be reported. However, the accumulation of voids that could inhibit the ability to adequately remove heat from the reactor core, particularly under natural circulation conditions, would constitute an unanalyzed condition and must be reported. In addition, voiding in instrument lines that results in an erroneous indication causing the operator to significantly misunderstand the true condition of the plant is also an unanalyzed condition and must be reported.

The Commission recognizes that the licensee may use engineering judgment and experience to determine whether an unanalyzed condition existed. It is not intended that this paragraph apply to minor variations in individual parameters, or to problems concerning single pieces of equipment. For example, at any time, one or more safety-related components may be out of service due to testing, maintenance, or a fault that has not yet been repaired. Any trivial single failure or minor error in performing surveillance tests could produce a situation in which two or more often unrelated, safety-related components are out-of-service. Technically, this is an unanalyzed condition. However, these events should be reported only if they involve functionally related components or if they significantly compromise plant safety.

Finally, this paragraph also includes material (e.g., metallurgical, chemical) problems that cause abnormal degradation of the principal safety barriers (i.e., the fuel cladding, reactor coolant system pressure boundary, or the containment).

Additional examples of situations included in this paragraph are:

(a) Fuel cladding failures in the reactor or in the storage pool, that exceed expected values, that are unique or widespread, or that resulted from unexpected factors.

(b) Reactor coolant radioactivity levels that exceeded Technical Specification limits for iodine spikes or, radioactivity levels at a BWR air ejector monitor that exceeded the Technical Specification limits.

(c) Cracks and breaks in piping, the reactor vessel, or major components in the primary coolant circuit that have safety relevance (steam generators, reactor coolant pumps, valves, etc.)

(d) Significant welding or material defects in the primary coolant system.

(e) Serious temperature or pressure transients (e.g., transients that violate the plant's Technical Specifications).

(f) Loss of relief and/or safety valve operability during test or operation (such that the number of operable valves or man-way closures is less than required by the Technical Specifications).

(g) Loss of containment function or integrity (e.g., containment leakage rates exceeding the authorized limits).

Section 50.73(a)(2)(iii) (proposed § 50.73(a)(6)) requires reporting of: "Any natural phenomenon or other external condition that posed an actual threat to the safety of the nuclear power plant or significantly hampered site personnel in the performance of duties necessary for the safe operation of the nuclear power plant."

This paragraph has been reworded to make it clear that it applies only to acts of nature (e.g., tornadoes) and external hazards (e.g., railroad tank car explosion). References to acts of sabotage have been removed because they are covered by § 73.71. In addition, threats to personnel from internal hazards (e.g., radioactivity releases) are now covered by a separate paragraph (§ 50.73(a)(2)(x)).

This paragraph requires those events to be reported where there is an actual threat to the plant from an external condition or natural phenomenon, and where the threat or damage challenges the ability of the plant to continue to operate in a safe manner (including the orderly shutdown and maintenance of shutdown conditions).

The licensee is to decide if a phenomenon or condition actually threatened the plant. For example, a minor brush fire in a remote area of the site that was quickly controlled by fire fighting personnel and, as a result, did not present a threat to the plant need not be reported. However, a major forest fire, large-scale flood, or major earthquake that presents a clear threat to the plant must be reported. Industrial or transportation accidents that occurred near the site and created a plant safety concern must also be reported.

Section 50.73(a)(2)(x) (proposed § 50.73(a)(7)) requires reporting of: "Any event that posed an actual threat to the safety of the nuclear power plant or significantly hampered site personnel in the performance of duties necessary for the safe operation of the nuclear power plant including fires, toxic gas releases, or radioactive releases."

This paragraph has been reworded to include physical hazards (internal to the plant) to personnel (e.g., electrical fires). In addition, in response to numerous comments, the scope has been narrowed so that the hazard must hamper the ability of site personnel to perform safety-related activities affecting plant safety.

In-plant releases must be reported if they require evacuation of rooms or buildings containing systems important to safety and, as a result, the ability of the operators to perform necessary safety functions is significantly hampered. Precautionary evacuations of rooms and buildings that subsequent evaluation determines were not required need not be reported.

Proposed § 50.73(a)(8) was intended to capture an event that involved a controlled release of a significant amount of radioactive material to offsite areas. In addition, "significant" was based on the plant's Technical Specification limits for the release of radioactive material. However, this section has been deleted because the reporting of these events is already required by § 50.73(a)(2)(i) and § 20.405.

Section 50.73(a)(2) (viii) and (ix) (proposed § 50.73(a)(9)) require reporting of:

* * * * *

(viii)(A) Any airborne radioactivity release that exceeded 2 times the applicable concentrations of the limits specified in Table II of Appendix B to Part 20 of this chapter in unrestricted areas, when averaged over a time period of one hour.

(B) Any liquid effluent release that exceeded 2 times the limiting combined Maximum Permissible Concentration (MPC) (see Note 1 of Appendix B to Part 20 of this chapter) at the point of entry into the receiving water (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases, when averaged over a time period of one hour.

(ix) Reports submitted to the Commission in accordance with paragraph (a)(2)(viii) of this section also meet the effluent release reporting requirements of paragraph 20.405(a)(5) of Part 20 of this chapter.

* * * * *

Paragraph (viii) has been changed to clarify the requirements to report releases of radioactive material. The paragraph is similar to § 20.405 but places a lower threshold for reporting events at commercial power reactors. The lower threshold is based on the significance of the breakdown of the

licensee's program necessary to have a release of this size, rather than on the significance of the impact of the actual release.

Reports of events covered by § 50.73(a)(2)(viii) are to be made in lieu of reporting noble gas releases that exceed 10 times the instantaneous release rate, without averaging over a time period, as implied by the requirement of § 20.405(a)(5).

Paragraph 50.73(b) describes the format and content of the LER. It requires that the licensee prepare the LER in sufficient depth so that knowledgeable readers conversant with the design of commercial nuclear power plants, but not familiar with the details of a particular plant, can understand the complete event (i.e., the cause of the event, the plant status before the event, and the sequence of occurrences during the event).

Paragraph 50.73(b)(1) requires that the licensee provide a brief abstract describing the major occurrences during the event, including all actual component or system failures that contributed to the event, all relevant operator errors or violations of procedures, and any significant corrective action taken or planned as a result of the event. This paragraph is needed to give LER data base users a brief description of the event in order to identify events of interest.

Paragraph 50.73(b)(2) requires that the licensee include in the LER a clear, specific narrative statement of exactly what happened during the entire event so that readers not familiar with the details of a particular plant can understand the event. The licensee should emphasize how systems, components, and operating personnel performed. Specific hardware problems should not be covered in excessive detail. Characteristics of a plant that are unique and that influenced the event (favorably or unfavorably) must be described. The narrative must also describe the event from the perspective of the operator (e.g., what the operator saw, did, perceived, understood, or misunderstood).

Paragraph 50.73(b)(3) requires that the LER include a summary assessment of the actual and potential safety consequences and implications of the event. This assessment may be based on the conditions existing at the time of the event. The evaluation must be carried out to the extent necessary to fully assess the safety consequences and safety margins associated with the event. An assessment of the event under alternative conditions must be included if the incident would have been more severe (e.g., the plant would have been in a condition not analyzed in the Safety Analysis Report) under reasonable and credible alternative conditions, such as power level or operating mode. For example, if an event occurred while the plant was at 15% power and the same event could have occurred while the plant was at 100% power, and, as a result, the consequences would have been considerably more serious, the licensee must assess and report those consequences.

Paragraph 50.73(b)(4) requires that the licensee describe in the LER any corrective actions planned as a result of the event that are known at the time the LER is submitted, including actions to reduce the probability of similar events occurring in the future. After the initial LER is submitted only substantial changes in the corrective action need be reported as a supplemental LER.

Paragraph 50.73(c) authorizes the NRC staff to require the licensee to submit specific supplemental information beyond that required by § 50.73(b). Such information may be required if the staff finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. Such requests for supplemental information must be made in writing, and the licensee must submit the requested information as a supplement to the initial LER within a time period mutually agreed upon by the NRC staff and the licensee.

Paragraph 50.73(f) gives the NRC's Executive Director for Operations the authority to grant case-by-case exemptions to the reporting requirements contained in the LER system. This exemption could be used to limit the collection of certain data in those cases where full participation would be unduly difficult because of a plant's unique design or circumstances.

Paragraph 50.73(g) states that the reporting requirements contained in § 50.73 replace the reporting requirements in all nuclear power plant Technical Specifications that are typically associated with Reportable Occurrences.

The reporting requirements superseded by § 50.73 are those contained in the Technical Specification sections that are usually titled "Prompt Notification with Written Followup" (Section 6.9.1.8) and "Thirty Day Written Reports" (Section 6.9.1.9). The reporting requirements that have been superseded are also described in Regulatory Guide 1.16, Revision 4, "Reporting of Operating Information–Appendix A Technical Specification," Paragraph 2, "Reportable Occurrences." The special report typically described in Section 6.9.2 "Special Reports" of the Technical Specifications are still required.

## V. Regulatory Analysis

The Commission has prepared a regulatory analysis for this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission. A copy of the regulatory analysis is available for inspection and copying for a fee at the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. Single copies of the analysis may be obtained from Frederick J. Hebon, Chief, Program Technology Branch, Office for Analysis and Evaluation of Operational Data, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Telephone (301) 492–4480.

## VI. Paperwork Reduction Act Statement

The Nuclear Regulatory Commission has submitted this rule to the Office of Management and Budget for such review as may be appropriate under the Paperwork Reduction Act, Pub. L. 96–511. The date on which the reporting requirements of this rule become effective reflects inclusion of the 60-day period which the Act allows for such review.

## VII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This final rule affects electric utilities that are dominant in their respective service areas and that own and operate nuclear utilization facilities licensed under sections 103 and 104b of the Atomic Energy Act of 1954, as amended. The amendments clarify and modify presently existing notification requirements.

Accordingly, there is no new, significant economic impact on these licensees, nor do these licensees fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

## List of Subjects

*10 CFR Part 20*

Licensed material, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

*10 CFR PARTS 50*

Incorporation by reference, Antitrust, Classified information, Fire protection,

Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reporting and recordkeeping requirements.

Under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the following amendments to 10 CFR Parts 20 and 50 are published as a document subject to codification.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for Part 50 continues to read as follows:

**Authority:** Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2134, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846), unless otherwise noted.

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sections 50.58, 50.91 and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Sections 50.100—50–102 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273), §§ 50.10 (a), (b), and (c), 50.44, 50.46, 50.48, 50.54, and 50.80(a) are issued under sec. 161b, 68 Stat. 948, as amended (42 U.S.C. 2201(b)); §§ 50.10 (b) and (c) and 50.54 are issued under sec. 161i, 68 Stat. 949, as amended (42 U.S.C. 2201(i)); and §§ 50.55(e), 50.59(b), 50.70, 50.71, 50.72, and 50.78 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

2. A new § 50.73 is added to read as follows:

### § 50.73 Licensee event report system.

(a) *Reportable events.* (1) The holder of an operating license for a nuclear power plant (licensee) shall submit a Licensee Event Report (LER) for any event of the type described in this paragraph within 30 days after the discovery of the event. Unless otherwise specified in this section, the licensee shall report an event regardless of the plant mode or power level, and regardless of the significance of the structure, system, or component that initiated the event.

(2) The licensee shall report:

(i)(A) The completion of any nuclear plant shutdown required by the plant's Technical Specifications; or

(B) Any operation or condition prohibited by the plant's Technical Specifications; or

(C) Any deviation from the plant's Technical Specifications authorized pursuant to § 50.54(x) of this part.

(ii) Any event or condition that resulted in the condition of the nuclear power plant, including its principal safety barriers, being seriously degraded, or that resulted in the nuclear power plant being:

(A) In an unanalyzed condition that significantly compromised plant safety;

(B) In a condition that was outside the design basis of the plant; or

(C) In a condition not covered by the plant's operating and emergency procedures.

(iii) Any natural phenomenon or other external condition that posed an actual threat to the safety of the nuclear power plant or significantly hampered site personnel in the performance of duties necessary for the safe operation of the nuclear power plant.

(iv) Any event or condition that resulted in manual or automatic actuation of any Engineered Safety Feature (ESF), including the Reactor Protection System (RPS). However, actuation of an ESF, including the RPS, that resulted from and was part of the preplanned sequence during testing or reactor operation need not be reported.

(v) Any event or condition that alone could have prevented the fulfillment of the safety function of structures or systems that are needed to:

(A) Shut down the reactor and maintain it in a safe shutdown condition;

(B) Remove residual heat;

(C) Control the release of radioactive material; or

(D) Mitigate the consequences of an accident.

(vi) Events covered in paragraph (a)(2)(v) of this section may include one or more procedural errors, equipment failures, and/or discovery of design, analysis, fabrication, construction, and/or procedural inadequacies. However, individual component failures need not be reported pursuant to this paragraph if redundant equipment in the same system was operable and available to perform the required safety function.

(vii) Any event where a single cause or condition caused at least one independent train or channel to become inoperable in multiple systems or two independent trains or channels to become inoperable in a single system designed to:

(A) Shut down the reactor and maintain it in a safe shutdown condition;

(B) Remove residual heat;

(C) Control the release of radioactive material; or

(D) Mitigate the consequences of an accident.

(viii)(A) Any airborne radioactivity release that exceeded 2 times the applicable concentrations of the limits specified in Appendix B, Table II of Part 20 of this chapter in unrestricted areas, when averaged over a time period of one hour.

(B) Any liquid effluent release that exceeded 2 times the limiting combined Maximum Permissible Concentration (MPC) (see Note 1 of Appendix B to Part 20 of this chapter) at the point of entry into the receiving water (i.e., unrestricted area) for all radionuclides except tritium and dissolved noble gases, when averaged over a time period of one hour.

(ix) Reports submitted to the Commission in accordance with paragraph (a)(2)(viii) of this section also meet the effluent release reporting requirements of paragraph 20.405(a)(5) of Part 20 of this chapter.

(x) Any event that posed an actual threat to the safety of the nuclear power plant or significantly hampered site personnel in the performance of duties necessary for the safe operation of the nuclear power plant including fires, toxic gas releases, or radioactive releases.

(b) *Contents.* The Licensee Event Report shall contain:

(1) A brief abstract describing the major occurrences during the event, including all component or system failures that contributed to the event and significant corrective action taken or planned to prevent recurrence.

(2)(i) A clear, specific, narrative description of what occurred so that knowledgeable readers conversant with the design of commercial nuclear power plants, but not familiar with the details of a particular plant, can understand the complete event.

(ii) The narrative description must include the following specific information as appropriate for the particular event:

(A) Plant operating conditions before the event.

(B) Status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event.

(C) Dates and approximate times of occurrences.

(D) The cause of each component or system failure or personnel error, if known.

(E) The failure mode, mechanism, and effect of each failed component, if known.

(F) The Energy Industry Identification System component function identifier

and system name of each component or system referred to in the LER.

*(1)* The Energy Industry Identification System is defined in: IEEE Std 803–1983 (May 16, 1983) Recommended Practices for Unique Identification Plants and Related Facilities—Principles and Definitions.

*(2)* IEEE Std 803–1983 has been approved for incorporation by reference by the Director of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register.** Copies may be obtained from the Institute of Electrical and Electronics Engineers, 345 East 47th Street, New York, NY 10017. A copy is available for inspection and copying for a fee at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Office of the Federal Register, 1100 L St. NW., Washington, D.C.

(G) For failures of components with multiple functions, include a list of systems or secondary functions that were also affected.

(H) For failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service.

(I) The method of discovery of each component or system failure or procedural error.

(J)*(1)* Operator actions that affected the course of the event, including operator errors, procedural deficiencies, or both, that contributed to the event.

*(2)* For each personnel error, the licensee shall discuss:

*(i)* Whether the error was a cognitive error (e.g., failure to recognize the actual plant condition, failure to realize which systems should be functioning, failure to recognize the true nature of the event) or a procedural error;

*(ii)* Whether the error was contrary to an approved procedure, was a direct result of an error in an approved procedure, or was associated with an activity or task that was not covered by an approved procedure;

*(iii)* Any unusual characteristics of the work location (e.g., heat, noise) that directly contributed to the error; and

*(iv)* The type of personnel involved (i.e., contractor personnel, utility-licensed operator, utility nonlicensed operator, other utility personnel).

(K) Automatically and manually initiated safety system responses.

(L) The manufacturer and model number (or other identification) of each component that failed during the event.

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event.

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future.

(5) Reference to any previous similar events at the same plant that are known to the licensee.

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the plant's characteristics.

(c) *Supplemental information.* The Commission may require the licensee to submit specific additional information beyond that required by paragraph (b) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing and the licensee shall submit the requested information as a supplement to the initial LER.

(d) *Submission of reports.* Licensee Event Reports must be prepared on Form NRC 366 and submitted within 30 days of discovery of a reportable event or situation to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, D.C. 20555. The licensee shall also submit an additional copy to the appropriate NRC Regional Office listed in Appendix A to Part 73 of this chapter.

(e) *Report legibility.* The reports and copies that licensees are required to submit to the Commission under the provisions of this section must be of sufficient quality to permit legible reproduction and micrographic processing.

(f) *Exemptions.* Upon written request from a licensee including adequate justification or at the initiation of the NRC staff, the NRC Executive Director for Operations may, by a letter to the licensee, grant exemptions to the reporting requirements under this section.

(g) *Reportable occurrences.* The requirements contained in this section replace all existing requirements for licensees to report "Reportable Occurrences" as defined in individual plant Technical Specifications.

The following additional amendments are also made to Parts 20 and 50 of the regulations in this chapter.

## PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. In § 20.402, paragraph (a) is revised; the introductory text of paragraph (b) is revised; and a new paragraph (e) is added to read as follows:

### § 20.402 Reports of theft or loss of licensed material.

(a)(1) Each licensee shall report to the Commission, by telephone, immediately after it determines that a loss or theft of licensed material has occurred in such quantities and under such circumstances that it appears to the licensee that a substantial hazard may result to persons in unrestricted areas.

(2) Reports must be made as follows:

(i) Licensees having an installed Emergency Notification System shall make the reports to the NRC Operations Center in accordance with § 50.72 of this chapter.

(ii) All other licensees shall make reports to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part.

(b) Each licensee who makes a report under paragraph (a) of this section shall, withing 30 days after learning of the loss or theft, make a report in writing to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of this part. The report shall include the following information:

* * * * *

(e) For holders of an operating license for a nuclear power plant, the events included in paragraph (b) of this section must be reported in accordance with the procedures described in § 50.73 (b), (c), (d), (e), and (g) of this chapter and must include the information required in paragraph (b) of this section. Events reported in accordance with § 50.73 of this chapter need not be reported by a duplicate report under paragraph (b) of this section.

4. In § 20.403, the introductory text of paragraphs (a) and (b) is revised, and paragraph (d) is revised to read as follows:

### § 20.403 Notifications of incidents.

(a) *Immediate notification.* Each licensee shall immediately report any events involving byproduct, source, or special nuclear material possessed by the licensee that may have caused or threatens to cause:

* * * * *

(b) *Twenty-four hour notification.* Each licensee shall within 24 hours of discovery of the event, report any event involving licensed material possessed

by the licensee that may have caused or threatens to cause:

* * * * *

(d) Reports made by licensees in response to the requirements of this section must be made as follows:

(1) Licensees that have an installed Emergency Notification System shall make the reports required by paragraphs (a) and (b) of this section to the NRC Operations Center in accordance with § 50.72 of this chapter.

(2) All other licensees shall make the reports required by paragraphs (a) and (b) of this section by telephone and by telegram, mailgram, or facsimile to the Administrator of the appropriate NRC Regional Office listed in Appendix D of this part.

5. In § 20.405, paragraphs (a) and (c) are revised, and new paragraphs (d) and (e) are added to read as follows:

**§ 20.405 Reports of overexposures and excessive levels and concentrations.**

(a)(1) In addition to any notification required by § 20.403 of this part, each licensee shall make a report in writing concerning any one of the following types of incidents within 30 days of its occurrence:

(i) Each exposure of an individual to radiation in excess of the applicable limits in §§ 20.101 or 20.104(a) of this part, or the license;

(ii) Each exposure of an individual to radioactive material in excess of the applicable limits in §§ 20.103(a)(1), 20.103(a)(2), or 20.104(b) of this part, or in the license;

(iii) Levels of radiation or concentrations of radioactive material in a restricted area in excess of any other applicable limit in the license;

(iv) Any incident for which notification is required by § 20.403 of this part; or

(v) Levels of radiation or concentrations of radioactive material (whether or not involving excessive exposure of any individual) in an unrestricted area in excess of ten times any applicable limit set forth in this part or in the license.

(2) Each report required under paragraph (a)(1) of this section must describe the extent of exposure of individuals to radiation or to radioactive material, including:

(i) Estimates of each individual's exposure as required by paragraph (b) of this section;

(ii) Levels of radiation and concentrations of radioactive material involved;

(iii) The cause of the exposure, levels or concentrations; and

(iv) Corrective steps taken or planned to prevent a recurrence.

* * * * *

(c)(1) In addition to any notification required by § 20.403 of this part, each licensee shall make a report in writing of levels of radiation or releases of radioactive material in excess of limits specified by 40 CFR Part 190, "Environmental Radiation Protection Standards for Nuclear Power Operations," or in excess of license conditions related to compliance with 40 CFR Part 190.

(2) Each report submitted under paragraph (c)(1) of this section must describe:

(i) The extent of exposure of individuals to radiation or to radioactive material;

(ii) Levels of radiation and concentrations of radioactive material involved;

(iii) The cause of the exposure, levels, or concentrations; and

(iv) Corrective steps taken or planned to assure against a recurrence, including the schedule for achieving conformance with 40 CFR Part 190 and with associated license conditions.

(d) For holders of an operating license for a nuclear power plant, the incidents included in paragraphs (a) or (c) of this section must be reported in accordance with the procedures described in paragraphs 50.73 (b), (c), (d), (e), and (g) of this chapter and must also include the information required by paragraphs (a) and (c) of this section. Incidents reported in accordance with § 50.73 of this chapter need not be reported by a duplicate report under paragraphs (a) or (c) of this section.

(e) All other licensees who make reports under paragraphs (a) or (c) of this section shall, within 30 days after learning of the overexposure or excessive level or concentration, make a report in writing to the U.S. Nuclear Regulatory Commission, Document Control Desk, Washington, D.C. 20555, with a copy to the appropriate NRC Regional Office listed in Appendix D of this part.

## PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

6. In § 50.36, new paragraphs (c)(6) and (7) are added to read as follows:

**§ 50.36 Technical specifications.**

* * * * *

(c) * * *

(6) *Initial Notification.* Reports made to the Commission by licensees in response to the requirements of this section must be made as follows:

(i) Licensees that have an installed Emergency Notification System shall make the initial notification to the NRC Operations Center in accordance with § 50.72 of this part.

(ii) All other licensees shall make the initial notification by telephone to the Administrator of the appropriate NRC Regional Office listed in Appendix D, Part 20, of this chapter.

(7) *Written reports.* Holders of an operating license for a nuclear power plant shall submit a written report to the Commission concerning the incidents included in paragraphs (c) (1) and (2) of this section in accordance with the procedures described in § 50.73 (b), (c), (d), (e), and (g) of this part. Incidents reported in accordance with §50.73 of this part need not also be reported under paragraphs (c) (1) or (2) of this section.

Dated at Washington, D.C. this 20th day of July 1983.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 83-20168 Filed 7-25-83; 8:45 am]

BILLING CODE 7590-01-M

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## DEPARTMENT OF THE TREASURY

## Customs Service

## 19 CFR Part 134

[T.D. 83-155]

## Customs Regulations Amendments Relating to Country of Origin Marking

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to establish certification requirements for importers with respect to the country of origin marking of certain articles repacked in the United States after release from Customs custody. This change requires importers to certify to the district director having custody of the articles that: (a) If the importer does the repacking, the new container must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements. The purpose of this change is to ensure that an ultimate purchaser in the United States is aware of the country of origin of the imported article.

**EFFECTIVE DATE:** October 24, 1983.

**FOR FURTHER INFORMATION CONTACT:**
Anthony L. Piazza, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8468).

**SUPPLEMENTARY INFORMATION:**

**Background**

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless expressly excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the article or container will permit, in such manner as to indicate to an ultimate purchaser, the English name of the country of origin of the article.

Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements and the exceptions of 19 U.S.C. 1304. The general exceptions to marking are contained in 19 U.S.C. 1304(a)(3) and § 134.32, Customs Regulations.

Among the exceptions to the country of origin marking requirements are: (1) Articles which the Secretary of the Treasury, pursuant to public notice published in the Treasury Decisions before July 1, 1937, determined "were imported in substantial quantities during the 5-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin" * * * (19 U.S.C. 1304(a)(3)(j)). The full list of articles excepted from the marking requirements under 19 U.S.C. 1304(a)(3)(j) is set forth in section 134.33, Customs Regulations, referred to as the "J-list"; and (2) articles which are incapable of being marked (19 CFR 134.32(a)).

Generally, whenever an article is excepted from the marking requirements, the container or holder in which the article reaches the ultimate purchaser is required to be marked to indicate the country of origin of the article whether or not the article itself is marked (19 U.S.C. 1304(b)).

The "ultimate purchaser", as defined in § 134.1, Customs Regulations, is generally the last person in the United States who will receive the article in the form in which it was imported. It is not feasible to state who will be the ultimate purchaser in every circumstance. However, the following examples may be helpful:

(1) If an imported article will be used in manufacture, the manufacturer may be the ultimate purchaser if he subjects the imported article to a process which results in a substantial transformation of the article, even though the process may not result in a new or different article.

(2) If the manufacturing process is merely a minor one which leaves the identity of the imported article intact, the consumer or user of the article, who obtains it after the processing, will be regarded as the ultimate puchaser.

(3) If an article is to be sold at retail in its imported form, the purchaser at retail is the ultimate purchaser.

When an article is imported in the container in which it will reach the ultimate purchaser it is relatively simple for Customs to determine the sufficiency of the country of origin marking. However, a problem exists with J-list articles, and articles incapable of being marked, which are imported in bulk and repacked in the United States by the importer or a subsequent purchaser after release from Customs custody. In these cases, while the container in which the article is imported is usually marked, the container in which the article is repacked for sale to an ultimate purchaser is frequently not. Although the problem appears to be greatest involving steel wire rope, it also involves numerous other articles whose containers are required to be marked.

To minimize the practice of not disclosing country of origin information on the new containers, by notice published in the **Federal Register** on September 10, 1982 (47 FR 39866), Customs proposed a procedure to require importers of repacked J-list articles, and articles incapable of being marked, to certify to the district director having custody of the articles that: (a) If the importer repacks the article, he shall do so in accordance with the marking requirements; or (b) if the article is sold or transferred, the importer shall notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking must conform to these requirements.

At present, repacked articles do not come under Customs scrutiny because Customs and the Treasury Department have taken the position (based on a restrictive interpretation of 19 U.S.C. 1304) that the statute applies only to articles or their containers at the time of importation. However, this position, and Customs lack of enforcement of the marking requirements after articles are released from Customs custody, has resulted in many articles reaching the ultimate purchaser in unmarked containers, which otherwise should have been marked. Rather than permitting the repacking rationale to serve to frustrate the clear intent of the statute (ie., to notify an ultimate purchaser of an article's foreign origin), Customs seeks to enforce the statute with respect to repacked articles by applying the rationale in *U.S. Wolfson Bros. Corp.* v. *United States*, 52 CCPA 46, C.A.D. 856 (1965). In that case the court held that if the article will not reach the ultimate purchaser in the container in which it is imported, then Customs cannot find the marking of the imported container to satisfy the requirement of the statute.

**Discussion of Comments**

Over twelve hundred and fifty (1250) comments were received in response to the notice of September 10, 1982. Approximately twelve hundred (1200) commenters favored the proposal; fifty (50) or so opposed it on various grounds. Several commenters made suggestions that Customs believes would increase the effectiveness of the proposal and reduce the administrative burden for Customs and importers.

The commenters favoring the proposal argued that the present regulations fail to implement effectively the purpose of 19 U.S.C. 1304. They commented that if the change is adopted it will be of paramount importance in providing country of origin information to ultimate purchasers, and will reduce the incidences of fraudulent and deceptive practices which have led to unfair competition in many cases.

A commenter representing the Hand Tools Institute, an association consisting of domestic producers of hand tools, suggested that the proposal not be limited to overcoming difficulties which have attended the repacking of unmarked articles, but should also resolve marking problems with respect to the packing and repacking of marked articles, especially where the marking on the article is concealed. For example, various foreign-made tools are entering the United States in bulk, properly marked with the country of origin marking. Once in the United States however, these tools are repacked in such a way to conceal the country of origin marking by placing the items face down in sealed, unmarked blister packs. To correct this problem, the commenter suggested that the certification include language that "any packing or repacking must not obscure or conceal the country of origin information appearing on the articles, or else the outermost container must be marked in accordance with the applicable law or regulation."

Customs believes that this suggestion constitutes a major change to the proposal, which is limited to unmarked articles. Such a change would require additional notice to the public and an opportunity to comment before being adopted. Accordingly, a separate notice will be published in the **Federal Register** soliciting public comment on the

concealment of marking problem as it relates to the repacking of marked articles.

A second commenter suggested allowing the importer to file with the district director at each port where the article is entered a blanket certification to cover all importations of that article for a given period (e.g., calendar year), rather than requiring a certification for each entry filed.

Customs has adopted this modification because it will greatly reduce the paperwork burden for importers.

A third commenter argued that to require a certification broadly for every repacked article would sweep in many products not intended to be covered by the law and regulations. Therefore, it was suggested that the words "and not subject to an exemption under the act or regulations" be inserted after the word "possession" in the first sentence of the proposed certification, to minimize this situation.

Customs also agrees with this suggestion and has modified the certification to include similar exempting language.

Certain opposing commenters apparently misinterpreted the proposal. They stated that it requires the importer "to ensure that repackers correctly mark each individual package."

The only obligation that an importer has with respect to repackers is to notify them that the country of origin information is required on the new package.

Other opposing commenters claimed that the proposal involves the establishment of a non-tariff trade barrier.

The mere certification that an importer will abide by the marking law, which binds the importer in any event, does not prevent or otherwise restrict importations. It merely ensures an importer's compliance with a rule that now imposes sanctions for its violation.

One commenter opposed the proposal upon grounds that similar requirements are not imposed on domestic industry and its products. The Congress in its wisdom saw fit to require country of origin marking only on articles that are produced in foreign countries. The fundamental objective of country of origin marking legislation, since the first enactment appeared as section 6 of the Tariff Act of 1890, has been to notify an ultimate purchaser of an article's foreign origin before determining whether to buy the article or its domestic counterpart. This choice was provided in large part because Congress recognized that if given a choice, consumers prefer domestic goods. The failure to provide country of origin information on foreign articles or their containers prevents consumers from exercising this right.

Many domestic food processors objected that labeling requirements would be prohibitive. Customs believes that most of the products concerned will be substantially transformed and therefore will not be subject to the rule. The regulation is intended to apply to articles which are repacked after importation but not to articles substantially changed by manufacture or processing which results in an article having a name, character, or use differing from that to the imported article. For example, meat imported in 60-pound boxes would have to carry country of origin labeling as long as it remained physically in the form in which it is imported, even if repacked in smaller size containers. However, if such meat is further processed or combined with other products to make ground beef or other consumer meat products, the processor, as the ultimate purchaser of the meat in the form in which it was imported, would not be responsible for continued country of origin labeling.

Another commenter opposed the certification requirement upon grounds that the Federal Trade Commission (FTC) has the authority to compel marking after articles are imported.

Customs does not believe the rule impinges upon the authority of the FTC. Nothing in the law or regulations should be construed as excepting any particle (or its container) from the particular requirements of marking provided for in any other provision of law, such as those of the FTC, Food and Drug Administration, and other such agencies. The certification merely attaches sanctions to obligations which already exist under 19 U.S.C. 1304 and Part 134, Customs Regulations. The case cited by the commenter, *L. Heller & Son v. Federal Trade Commission*, 191 F. 2d 954 (7th Cir. 1951), is inapposite for the proposition that seeks to bar Customs from promulgating the rule. The court recognized that the two statutes, 19 U.S.C. 1304 and section 5 of the Federal Trade Commission Act, are not repugnant. The court stated that 19 U.S.C. 1304 was "concerned solely with the extent to which the Treasury Department, incidentally to its collection of Customs duties, should regulate the labeling of imported goods."

A commenter for the steel importing community challenged the measure as beyond the jurisdiction of Customs. The point is made that articles entering the domestic commerce after clearing Customs are not susceptible to continuing regulation by Customs.

Clearly, the Secretary of the Treasury has power to attach conditions to any exemption in order to carry out Congressional intent and prevent subversion of the marking statute. As such, the Secretary has announced the certification process as a framework for obtaining compliance with the statute.

A commenter representing a foreign meat producer claimed that the proposed rule is inconsistent with the General Agreement on Tariffs and Trade (GATT).

This is incorrect as the marking statutes antidated the GATT and were not repealed thereby.

Section 134.34, Customs Regulations, provides that an exception from marking under section 134.32(d), Customs Regulations, may be authorized in the discretion of the district director for articles which are repacked after leaving Customs custody and the containers will be marked. One commenter believed that the proposal, if adopted, should supersede the discretionary exemption in § 134.34.

Customs agrees. Since, unless expressly excepted, the marking of the new containers will be mandatory, § 134.34 will be removed.

Customs recognizes that the change will not eliminate all marking problems. However, we are convinced that it is a proper response to an increasing administrative burden. We are hopeful that it will strike a balance between administrative concern for compliance with the marking statute and the desire of interested parties to understand the parameters of their responsibility for satisfying country of origin marking requirements.

Many commenters stated their views on the rule's applicability to specific articles. However, Customs obviously cannot in this document answer all of the questions raised in this context. Such questions should be submitted to the Director, Entry, Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in accordance with the ruling procedures set forth in Part 177, Customs Regulations (19 CFR Part 177).

After consideration of the comments and further review of the matter, it has been determined to adopt the proposal, with the changes noted above. However, rather than amending § 134.22 as proposed, a new § 134.25 is being added to Part 134 to deal more specifically with the marking of containers of repacked articles which are the subject of this rule.

**Executive Order 12291**

It has been determined that this document does not contain a "major rule" requiring preparation of a regulatory impact analysis under Executive Order 12291.

**Regulatory Flexibility Act**

It is certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this rule will not have a significant economic impact on a substantial number of small entities.

**Drafting Information**

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service (202-566-8237). However, personnel from other Customs offices participated in its development.

**Lists of Subjects in 19 CFR Part 134**

Customs duties and inspection, Imports, Importers, Labeling, Packaging, and Containers.

**Amendments to the regulations**

Part 134, Customs Regulations (19 CFR Part 134), is amended as set forth below.

**Alfred R. De Angelus,**
*Acting Commissioner of Customs*

Approved:

**Robert E. Powis,**
*Acting Assistant Secretary of the Treasury.*
July 18, 1983.

## PART 134—COUNTRY OF ORIGIN MARKING

1. Part 134, Customs Regulations (19 CFR Part 134), is amended by adding a new § 134.25 to read as follows:

**§ 134.25 Containers or holders for repacked J-list articles and articles incapable of being marked.**

(a) *Certification requirements.* If an article subject to these requirements is intended to be repacked in new containers for sale to an ultimate purchaser after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (1) If the importer does the repacking, the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this Part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

**Certificate of Marking—Repacked J-List Articles and Articles Incapable of Being Marked**

(Port of entry) _____

I, _____ of _____, certify that if the article(s) covered by this entry (entry no.(s) _____ dated _____), is (are) repacked in a new container(s), while still in my possession, the new containers, unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article is entered.

(b) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(c) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this section, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(d) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

**Notice to Subsequent Purchaser or Repacker**

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR Part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(e) *Duties and Penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under section 134.54(a) and for the additional duty under 19 U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

**§ 134.34 [Removed]**

2. Part 134 is further amended by removing § 134.34.

(R.S. 251, as amended (19 U.S.C. 66), section 304, 624, 46 Stat. 731 as amended, 759, (19 U.S.C. 1304, 1624), 77A Stat. 14 (19 U.S.C. 1202))

[FR Doc. 83-20136 Filed 7-25-83; 8:45 am]
BILLING CODE 4820-02-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 73

**[Docket No. 83C-0041]**

### 2-[[2,5-Diethoxy-4-[(4-Methylphenyl)Thio]Phenyl]AZO]-1,3,5-Benzenetriol; Listing as a Color Additive For Use in Soft (Hydrophilic) Contact Lenses; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration.

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

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of June 21, 1983, for a regulation that provides for the safe use of 2-[[2,5-diethoxy-4-[(4-methylphenyl)-thio]phenyl]azo]-1,3,5-benzenetriol as a color additive in marking soft (hydrophilic) contact lenses with the letter R or the letter L for identification purposes. The agency is taking this action in response to a petition filed by Precision-Cosmet Co., Inc.

**DATE:** Effective date confirmed: June 21, 1983.

**FOR FURTHER INFORMATION CONTACT:** George C. Murray, National Center for Devices and Radiological Health (HFK-460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7940.

**SUPPLEMENTARY INFORMATION:** In a final rule published in the **Federal Register** of May 20, 1983 (48 FR 22705), FDA amended the color additive regulations

to provide for the safe use of 2-[[2,5-diethoxy-4-[(4-methylphenyl)thio]phenyl]azo]-1,3,5-benzenetriol as a color additive in marking soft (hydrophilic) contact lenses with the letter R or the letter L for identification purposes. The final rule added new Subpart D, consisting of § 73.3115, to 21 CFR Part 73 to provide for the listing of color additives that are exempt from certification for use in medical devices.

In the final rule, FDA gave interested persons until June 20, 1983, to file objections. The agency received no objections or requests for a hearing on the final rule. Therefore, FDA has concluded that the final rule published in the **Federal Register** of May 20, 1983, for 2-[[2,5-diethoxy-4-[(4-methylphenyl)-thio]phenyl]azo]-1,3,5-benzenetriol should be confirmed.

**List of Subjects in 21 CFR Part 73**

Color additives, Cosmetics, Drugs, Medical devices.

## PART 73—LISTING OF COLOR ADDITIVES EXEMPT FROM CERTIFICATION

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701(e), 706, 70 Stat. 919 as amended, 74 Stat. 399–407 as amended (21 U.S.C. 371(e), 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the final rule of May 20, 1983. Accordingly, the final rule adding § 73.3115 *2-[[2,5-diethoxy-4-[(4-methylphenyl)-thio]phenyl]azo]-1,3,5-benzenetriol* to provide for the safe use of 2-[[2,5-diethoxy-4-[(4-methylphenyl)thio]phenyl]azo]-1,3,5-benzenetriol as a color additive in marking soft (hydrophilic) contact lenses with the letter R or the letter L for identification purposes became effective June 21, 1983.

Dated: July 14, 1983.

**William F. Randolph, ,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 83-19967 Filed 7-25-83; 8:45 am]

BILLING CODE 4160-01-M

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**21 CFR Part 510**

## New Animal Drugs; Change of ZIP Code

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of zip code for Elanco Products Co.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** David L. Gordon, Bureau of Veterinary Medicine (HFV–238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6243.

**SUPPLEMENTARY INFORMATION:** Elanco Products Co., Division of Eli Lilly & Co., 740 South Alabama St., Indianapolis, IN 46285, has informed FDA of a change in its postal zip code number. This is an administrative change which does not in any other way affect sponsor name and address nor the approval of any NADA. The agency is amending the regulations to reflect the change.

**List of Subjects in 21 CFR Part 510**

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

## PART 510—NEW ANIMAL DRUGS

**§ 510.600 [Amended]**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended by changing the zip code to "46285" in the entry for "Elanco Products Co." in paragraph (c)(1) and in the entry for No. "000986" in paragraph (c)(2).

*Effective date.* July 26, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(1)))

Dated: July 20, 1983.

**Max L. Crandall,**

*Associate Director for Surveillance and Compliance.*

[FR Doc. 83-20032 Filed 7-25-83; 8:45 am]

BILLING CODE 4160-01-M

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**21 CFR Part 540**

## Penicillin Antibiotic Drugs for Animal Use; Amoxicillin Trihydrate Tablets; Clarification

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is clarifying a regulation published in the **Federal Register** of May 10, 1983 (48 FR 20901) reflecting approval of NADA 65–492 sponsored jointly by A. H. Robins Co., Inc., and Biocraft Laboratories, Inc. This document amends the regulation to properly reflect certain conditions of use.

**EFFECTIVE DATE:** May 10, 1983.

**FOR FURTHER INFORMATION CONTACT:** Sandra K. Woods, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of May 10, 1983 (48 FR 20901), FDA published a document reflecting approval of A. H. Robins Co.'s and Biocraft Laboratories' NADA 65–492 for amoxicillin trihydrate tablets (Robamox®–V). The drug is for oral treatment of dogs for soft tissue infections and bacterial dermatitis. In that document, the limitations stated "use for 5 to 7 days for 48 hours after" rather than "use for 5 to 7 days or 48 hours after." This document amends the regulation to reflect this change.

**List of Subjects in 21 CFR 540**

Animal drugs, Antibiotics, penicillin.

## PART 540—PENICILLIN ANTIBIOTIC DRUGS FOR ANIMAL USE

**§ 540.103f [Amended]**

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 540.103f *Amoxicillin trihydrate tablets* is amended in paragraph (c)(3)(i)(*c*) by revising the phrase "5 to 7 days for 48 hours" to read "5 to 7 days or 48 hours."

*Effective date.* May 10, 1983.

(Sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n)))

Dated: July 20, 1983.

**Max L. Crandall,**

*Associate Director for Surveillance and Compliance.*

[FR Doc. 83-20033 Filed 7-25-83; 8:45 am]

BILLING CODE 4160-01-M

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**21 CFR Part 555**

## Chloramphenicol Drugs for Animal Use; Chloramphenicol Tablets

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) sponsored by Pfizer, Inc., providing for safe and effective oral use of chloramphenicol

tablets for treating dogs for certain bacterial infections.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** Sandra K. Woods, Bureau of Veterinary Medicine (HFV–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3420.

**SUPPLEMENTARY INFORMATION:** Pfizer, Inc., 235 East 42nd St., New York, NY 10017, is sponsor of NADA 65–489 which provides for use of tablets each containing 250 milligrams of chloramphenicol for treating dogs for bacterial pulmonary infections, urinary tract infections, enteritis, and infections associated with canine distemper that are caused by organisms susceptible to chloramphenicol. The application is approved and the regulations are amended to reflect the approval.

The basis for approval is discussed in the freedom of information (FOI) summary.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this 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.

**List of Subjects in 21 CFR Part 555**

Animal drugs, Antibiotics, chloramphenicol.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n))) and under authority delegated to the Commissioner of Food and Drug (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 555.110a is amended by revising paragraph (c)(1)(ii) to read as follows:

## PART 555—CHLORAMPHENICOL DRUGS FOR ANIMAL USE

**§ 555.110a Chloramphenicol tablets.**

* * * * *

(c) * * *

(1) * * *

(ii) *Sponsor.* In § 510.600(c) of this chapter, No. 000010 for 100-, 250-, and 500-milligram and 1-gram tablets; No. 000071 for 100-, 250-, and 500-milligram tablets; No. 017030 for 100-milligrams tablets; No. 013983 for 100-, 250-, and 500-milligram and 1- and 2.5-gram tablets; No. 000069 for 250-milligram tablets.

* * * * *

*Effective date:* July 26, 1983.

(Sec. 512 (i) and (n), 82 Stat. 347, 350–351 (21 U.S.C. 360b (i) and (n)))

Dated: July 19, 1983.

**Gerald B. Guest,**

*Acting Director, Bureau of Veterinary Medicine.*

[FR Doc. 83–20031 Filed 7–25–83; 8:45 am]

**BILLING CODE 4160–01–M**

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**21 CFR Part 558**

**New Animal Drugs For Use in Animal Feeds; Tylosin**

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed for Henwood Feed Additives, Inc., providing for the manufacture of 40-gram-per-pound tylosin premix. The premix is used to make finished feeds for swine, cattle, and chickens.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

**SUPPLEMENTARY INFORMATION:** Henwood Feed Additives, Inc., 211 Western Rd., Box 577, Lewisburg, OH 45338, is the sponsor of a supplement to NADA 45–690 submitted on its behalf by Elanco Products Co. This supplement provides for the manufacture of a 40-gram-per-pound premix subsequently used to make finished feeds for swine, beef cattle, and chickens for use as in 21 CFR 558.625(f)(1)(i) through (vi). The basis for approval of this supplement is discussed in the freedom of information (FOI) summary. Based on the data and information submitted, the supplement is approved and the regulations are amended to reflect the approval.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this 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.

**List of Subjects in 21 CFR Part 558**

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.625 is amended by revising paragraph (b)(15) to read as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

**§ 558.625 Tylosin.**

* * * * *

(b) * * *

(15) To No. 026186: 1.6, 4, 10, and 20 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

*Effective date.* July 26, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: July 20, 1983.

**Robert A. Baldwin,**

*Associate Director for Scientific Evaluation.*

[FR Doc. 83–20086 Filed 7–25–83; 8:45 am]

**BILLING CODE 4160–01–M**

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**21 CFR Part 558**

**New Animal Drugs For Use in Animal Feeds; Tylosin**

**AGENCY:** Food and Drug Administration

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of several supplemental new animal drug applications providing for use of 40-gram-per-pound tylosin premixes for making finished swine, beef cattle, and chicken feeds. The supplements were submitted by Elanco Products Co. for Cadco, Inc., Lavergne

Supplement Co., Quali-Tech Products, Inc., and V.P.O., Inc.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** Benjamin A. Puyot, Bureau of Veterinary Medicine (HFV–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4913.

**SUPPLEMENTARY INFORMATION:** Cadco, Inc., P.O. Box 3599, 10100 Douglas Ave., Des Moines, IA 50322, is sponsor of NADA 91–783 for use of tylosin premix in making finished animal feed; Lavergne Supplement Co., 1038 Space Park South, Nashville, TN 37211, is sponsor of NADA 116–030 for use of tylosin premix in making finished animal feed; Quali-Tech Products, Inc., 318 Lake Hazeltine Drive, Chaska, MN 55318, is sponsor of NADA 97–980 for use of tylosin premix in making finished animal feed; and V.P.O., Inc., 4444 South 76th St., Omaha, NE 68127, is sponsor of NADA 98–431 for use of tylosin premix in making finished animal feed.

Elanco has submitted a supplement to each of the NADA's above providing for use of 40-gram-per-pound tylosin premixes for making finished swine, beef cattle, chicken, and layer, broiler, and replacement chicken feed. The swine feed is used for increased rate of weight gain and improved feed efficiency, for prevention, treatment, and control of swine dysentery, and for maintenance of weight gains and feed efficiency in the presence of atrophic rhinitis; the beef cattle feed for reduction of incidence of certain liver abscesses; the chicken feed for increased rate of weight gain and improved feed efficiency; the layer feed for improved feed efficiency; and the broiler and replacement chicken feed for control of chronic respiratory disease. The supplements are approved and the regulations are amended accordingly. The basis for approval is discussed in the freedom of information (FOI) summary referred to below.

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

The Bureau of Veterinary Medicine has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this 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.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i) 82 Stat. 347 (21 U.S.C. 360(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), § 558.625 is amended by revising paragraph (b)(4), (14), (25), and (65) to read as follows:

## PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

§ 558.625 Tylosin.

* * * * *

(b) * * *

(4) To No. 011490: 4 and 8 grams per pound, paragraph (f)(1)(vi)(*a*) of this section: 10 and 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

(14) To No. 016968: 1, 2, 4, 8, and 10 grams per pound, paragraph (f)(1)(i), (iii), (iv), and (vi) of this section; 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

(25) To No. 043743: 4, 8, and 10 grams per pound, paragraph (f)(1)(vi)(*a*) of this section; 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section.

* * * * *

(65) To No. 022422: 10 grams per pound, paragraph (f)(1)(i), (iii), (iv), and (vi) of this section; 40 grams per pound, paragraph (f)(1)(i) through (vi) of this section

* * * * *

*Effective date.* July 26, 1983.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: July 20, 1983.

**Robert A. Baldwin,**

*Associate Director for Scientific Evaluation.*

[FR Doc. 83-20087 Filed 7-25-83; 8:45 am]

BILLING CODE 4160-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FL–006; A–4–FRL 2361–8]**

### Approval and Promulgation of Implementation Plans; Florida: Variance for FP&L and Miscellaneous SIP Revisions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** On February 29, 1980 (45 FR 13455), EPA approved for a two-year period a Florida implementation plan revision which gave certain units of Florida Power and Light Company (FP&L) a variance from the plan's limitations on particulate, sulfur dioxide, visible, and excess emissions. EPA disapproved the revision for the Turkey Point and Port Everglades plants on the grounds that the relaxed particulate limitations for these plants would allow FP&L to burn higher sulfur fuel and thereby violate the Prevention of Significant Deterioration (PSD) sulfur dioxide Class I increments in the Everglades National Park. On October 15, 1980 (45 FR 68405), EPA had proposed to disapprove a request by Florida that the two-year term of the variance be extended indefinitely. Upon petition by FP&L, the U.S. Court of Appeals for the Fifth Circuit vacated EPA's two-year limitation on the variance and remanded the disapproval action on the above plants for agency reconsideration in light of amended PSD regulations. *Florida Power and Light* v. *Costle*, 650 F. 2d 579 (1981).

Pursuant to the court remand, the Agency on May 12, 1982 (47 FR 20327) proposed action on the revision for these two plants consistent with EPA's amended PSD regulations. On that basis, EPA today disapproves the variance for the Turkey Point and Port Everglades plants. EPA also expressly removes the two-year limitation on the variance for the other plants.

**DATE:** These actions are effective August 25, 1983.

**ADDRESSES:** Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460

Air Planning Section, EPA, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365

Library, Office of the Federal Register, 1100 L Street NW., Room 8401, Washington, D.C. 20005

Bureau of Air Quality Management, Florida Department of Environmental Regulation, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32301.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Gilbert, Air Management Branch, EPA Region IV at the above address and telephone number 404/881–3286 or FTS 257–3286.

**SUPPLEMENTARY INFORMATION:** On August 28, 1979, the Florida Department of Environmental Regulation (DER) issued an order granting FP&L a variance from certain limitations of the State implementation plan on particulate, sulfur dioxide, visible, and excess emissions from seventeen of the company's units. These units are at the company's Cape Canaveral, Fort Myers, Manatee, Riviera, Sanford, Turkey Point, and Port Everglades plants. A Final Supplemental Order issued by DER on October 18, 1979, limited the variance to a period of two years. On February 29, 1980 (45 FR 13455), EPA approved the FP&L variance for all the units except those of the Turkey Point and Port Everglades plants, for which it disapproved the variance. This partial disapproval was based on EPA's finding that the relaxation of particulate emission limits for these two plants would cause a calculated violation of the Class I sulfur dioxide increments of 40 CFR 52.21, Prevention of Significant Deterioration (PSD), in the Everglades National Park. This determination was made using the PSD baseline date (August 7, 1977) specified in the PSD regulations then in effect.

On June 23, 1980, DER requested that EPA withdraw the two-year time limit on the variance. EPA proposed on October 15, 1980 (45 FR 68405), to disapprove the State's request.

Following suit brought by the company against EPA, the United States Court of Appeals for the Fifth Circuit ruled on June 29, 1981, in *Florida Power & Light Co. v. Costle* 650 F. 2d 579 (1981), that EPA should reconsider the variance for the Turkey Point and Port Everglades plants using the baseline criteria contained in the Agency's PSD regulations as amended on August 7, 1980. Accordingly, EPA has recalculated the increment consumption for these two plants using the present definition of "baseline date"—that is, the baseline is reckoned as the air quality on the date of the first complete application (after August 7, 1977) for a PSD permit in the area. Using the current baseline definition, the Agency has found that the relaxed limits for Turkey Point and Port Everglades will still cause a calculated violation of the Class I sulfur dioxide increments in the Everglades National Park. Accordingly, on May 12, 1982 (47 FR 20327), EPA proposed again to disapprove the variance for these two plants.

The court also voided the two-year limit on the variance. Accordingly, EPA proposed to expressly withdraw this feature of the revision in keeping with the State's request and the court's decision and leave the relaxed emission limits in effect until revised by the State.

FP&L submitted two comments on the proposal. The first comment supported the deletion of the two-year limitation on the variance. The second comment was that FP&L believed the PSD baseline in Southeast Florida had not been triggered as of June 29, 1979, the date of FP&L's petition to Florida. Therefore, FP&L states, the increased emissions from the Turkey Point and Port Everglades plants are part of the baseline and do not consume any of the Class I increment in the Everglades.

FP&L notes that in the definition of "baseline date" in EPA's PSD regulations, triggering of the baseline date is dependent upon the EPA attainment status designation, and since no designation was made before March 3, 1978, the regulation would seem to preclude the triggering of any baseline date before March 3, 1978, the date of EPA's attainment status designations for Florida. FP&L states further that another part of the definition creates a potential conflict with this position, by stating the earliest baseline date is the date after August 7, 1977, that a PSD application is submitted.

EPA has analyzed the situation with respect to the SIP revision now under consideration and found that the potentially conflicting regulatory language is irrelevant to action on the SIP revision. FP&L's position, that revising the baseline date beyond March 3, 1978, would throw the increased FP&L emissions into the baseline, is based upon an erroneous reading of the regulation. FP&L asserts that the PSD application from U.S. Sugar Corporation on May 11, 1978, did not trigger the $SO_2$ baseline because the increased $SO_2$ emissions from the modification were not "major," i.e., were less than 250 tons per year. However, in order to trigger a baseline, increased emissions from a source which is already major for any pollutant must only be "significant," which EPA has by regulation defined as 40 tons per year for $SO_2$. The allowable $SO_2$ emissions from the U.S. Sugar Corporation boiler in question are limited in such a way as to keep the rate slightly less than 250 tons per year, which is far greater than the significance level of 40 tons per year. Therefore, the PSD baseline for the area under consideration is in no event later than May 11, 1978. Since actual emissions increases at the two plants were not accomplished by that date, the SIP revision being considered here would allow emissions which consume increment. It has already been demonstrated (45 FR 13455, February 29, 1980) that if those emissions consume increment, they violate the Class I increment in Everglades National Park.

*Action.* Based on the foregoing, EPA hereby disapproves that portion of the variance which relaxes limits for Turkey Point and Port Everglades. Since the court also voided the two-year limit on the variance, EPA hereby expressly withdraws this feature of the revision for the other plants. This action is effective August 25, 1983.

On July 2, 1979 (44 FR 38578), EPA proposed approval of SIP revisions submitted by Florida on November 6, 1978, and February 3, 1979. These revisions set new sulfur dioxide ($SO_2$) emission limits for several power plants, including Tampa Electric Company's Big Bend Station, Gulf Power's Crist Station and the Monsanto Textiles Company in Pensacola. On August 27, 1981 (46 FR 43150), EPA approved these revisions but neglected to remove from paragraph (a) of § 52.528, Control strategy: Sulfur oxides, language dealing with the previous disapproval of $SO_2$ limits for those three plants. On September 8, 1981 (46 FR 44785), EPA proposed approval of revised $SO_2$ emission limits for Tampa Electric Company's Gannon Station, submitted by Florida as an SIP revision on December 3, 1980, and February 16, 1982. On June 29, 1982 (47 FR 28096), EPA approved the revision but neglected to remove from paragraph (a) of § 52.528, Control strategy: Sulfur oxides, language dealing with the previous disapproval of revised $SO_2$ limits for this plant. EPA today removes paragraph (a) of § 52.528 to correct these oversights.

Under Section 307(b)(1) of the Act, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by September 26, 1983. These actions may not be challenged later in proceedings to enforce their requirements. (See Sec. 307(b)(2).)

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review. Any comments from OMB to EPA and any response are available for public inspection at the EPA Region IV office (see address above).

**List of Subjects in 40 CFR Part 52**

Air pollution control, Intergovernmental relations, Ozone, Sulfur oxides, Nitrogen dioxide, Lead.

Particulate matter, Carbon monoxide, Hydrocarbons.

Incorporation by reference of the State Implementation Plan for the State of Florida was approved by the Director of the Federal Register on July 1, 1982.

(Secs. 110 and 163 of the Clean Air Act (42 U.S.C. 7410 and 7473))

Dated: July 19, 1983.

**William D. Ruckelshaus,**

*Administrator.*

## PART 52—[AMENDED]

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

### Subpart K—Florida

1. In § 52.520 is amended by revising paragraph (c)(19) to read as follows:

**§ 52.520 Identification of Plan.**

* * * * *

(c) The plan revisions listed below were submitted on the dates specified.

* * *

(19) Variance from particulate, sulfur dioxide, and visible emission limits of the plan for units of Florida Power and Light Company's Cape Canaveral, Ft. Myers, Manatee, Riviera, and Sanford plants, submitted on August 31, 1979, and June 23, 1980, by the Florida Department of Environmental Regulation. (The particulate variance for the Port Everglades and Turkey Point plants is disapproved.)

* * * * *

2. Section 52.528 is amended by changing its title from "Control strategy: sulfur oxides" to "Control strategy: sulfur oxides and particulate matter", by removing paragraph (a), and by adding a new paragraph (b) as follows:

**§ 52.528 Control strategy: Sulfur oxides and particulate matter.**

(a) [Reserved]

(b) The variance granted to the Turkey Point and Port Everglades plants of Florida Power and Light Company from the particulate emission limits of the plan is disapproved because the relaxed limits would cause violation of the Class I increment for sulfur dioxide in the Everglades National Park. These plants must meet the 0.1#/MMBTU particulate limit of the plan.

[FR Doc. 83-20117 Filed 7-25-83; 8:45 am]

BILLING CODE 6560-50-M

## 40 CFR Part 60 and 61

**[A-6-FRL 2400-3]**

## Delegation of Additional Authority to Oklahoma State Department of Health and Subdelegation of Authority to the Tulsa City-County Health Department for the New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) Programs

**AGENCY:** Enviromental Protection Agency (EPA), Region 6.

**ACTION:** Final rule.

**SUMMARY:** On June 10, 1983 EPA delegated to the Oklahoma State Department of Health (OSDH) the additional authority to subdelegate the NSPS and NESHAP programs to qualified local air pollution control authorities in the State of Oklahoma. The OSDH has subdelegated the authority to implement and enforce the programs in Tulsa County to the Tulsa City-County Health Department (TCCH). Except as specifically limited, all of the authority and responsibilities delegated to the OSDH by EPA which are found in 40 CFR Parts 60 and 61 are subdelegated to the TCCHD. Any such authority and responsibilities may be redelegated by the TCCHD to its staff. The subdelegation will allow for the implementation and the enforcement of these programs at the local level.

**EFFECTIVE DATE:** June 10, 1983.

**ADDRESS:** Copies of the delegation of addition authority to the OSDH allowing for subdelegation, as well as copies of the TCCHD request and the TCCHD/OSDH agreement for this subdelegation of authority are available for public inspection at the Air Branch, Air and Waste Management Division, Environmental Protection Agency, Region 6, Inter-First Two Building, 28th Floor, 1201 Elm Street, Dallas, Texas 75270.

**FOR FURTHER INFORMATION CONTACT:** William H. Taylor, Jr., Air Branch, EPA, address above (214) 767-2746.

**SUPPLEMENTARY INFORMATION:** On January 21, 1983, the TCCHD requested the OSDH to delegate to them the authority to implement and enforce the NSPS and NESHAP programs as specified under 40 CFR Parts 60 and 61 for sources located in Tulsa County. On February 7, 1983, the OSDH approved subdelegating to the TCCHD this authority.

On June 10, 1983, EPA delegated the additional authority to the OSDH to subdelegate the authority for the NSPS and NESHAP programs to local air pollution control agencies in Oklahoma. Effective on this date, the authority is granted to the TCCHD to administer the requirements for the NSPS and NESHAP programs specified in 40 CFR Parts 60 and 61, as delegated to the OSDH by EPA.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of Section 3 of Executive Order 12291.

Sources locating in Tulsa County should submit all information pursuant to 40 CFR Parts 60 and 61 directly to the Tulsa City-County Health Department, 4616 East Fifteenth Street, Tulsa Oklahoma 74112.

I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Dated: June 24, 1983.

**Myson O. Knudson,**

*Acting Regional Administrator.*

## PART 60—NEW SOURCE PERFORMANCE STANDARDS

Part 60 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 60.4 paragraph (a) is amended by removing "to the attention of the Director, Enforcement Division." and by changing the address for Region VI to read as follows:

**§ 60.4 Address.**

(a) * * *

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1201 Elm Street, Dallas, 75270.

2. Section 60.4 paragraph (b)(LL) is amended by adding paragraphs (i) and (ii) to read as follows:

**§ 60.4 Address.**

* * * * *

(b) * * *

(LL) * * *

(i) [Reserved]

(ii) Tulsa County: Tulsa City-County Health Department, 4616 East Fifteenth Street, Tulsa, Oklahoma 74112.

## PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Part 61 of Chapter 1, Title 40 of the Code of Federal Regulations is amended as follows:

1. Section 61.04 paragraph (a) is amended by removing the following words "to the attention of the Director, Enforcement Division." and by revising

the address for Region VI to read as follows:

**§ 61.04 Address.**

(a) * * *

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1201 Elm Street, Dallas, Texas 75270.

2. Section 61.04 paragraph (b)(LL) is amended by adding paragraphs (i) and (ii) to read as follows:

**§ 61.04 Address.**

* * * * *

(b) * * *

(LL) * * *

(i) [Reserved]

(ii) Tulsa County: Tulsa City-County Health Department, 4616 East Fifteenth Street, Tulsa, Oklahoma 74112.

[FR Doc. 83-20134 Filed 7-25-83; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 271**

**[SW-3-FRL 2404-5]**

## Hazardous Waste Management Program; Region III States; District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia; Request for Extension of Application Deadline for Interim Authorization.

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

**ACTION:** Notice of extension of application submission and interim authorization period.

**SUMMARY:** All States in Region III have requested an extension beyond the July 26, 1983 deadline for application for the appropriate Phase I and Phase II Components of Interim Authorization or Final Authorization of the Resource Conservation and Recovery Act of 1976, as amended. EPA is granting these extensions. One effect of this action is to allow the States to submit their applications after July 26, 1983. It also avoids termination on July 26 of the Interim Authorization which EPA granted previously to Delaware, Maryland, Pennsylvania, and Virginia for Phase I of the hazardous waste program. This action also allows West Virginia and the District of Columbia to apply for, receive, and maintain an EPA approved interim authorized program beyond the July 26, 1983 deadline.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** Anthony J. Donatoni, Chief, State Programs Section, Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, PA 19106, Telephone (215) 597-7937.

**SUPPLEMENTARY INFORMATION:**

*Background:* 40 CFR 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases/Components of Interim Authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, Interim Authorization terminates except where the State has submitted by the date an application for all Phases/Components of Interim Authorization or Final Authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the Interim Authorization application and the deadline for termination of the EPA approved State program. [Note: 40 CFR Part 123, including the July 26, 1982 amendments (47 FR 32373), was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14248).]

*District of Columbia*

It is the intent of the District to apply only for Interim Authorization for Phase I and II, Components A and B. This decision was made due to the additional time required to revise the enabling legislation which is necessary to support regulations prohibiting land disposal. Anticipation the adoption of enabling legislation by August, 1984, the District of Columbia, Department of Environmental Services, committed to the following schedule for applying for Interim and Final Authorization:

- July, 1983—Submission of complete application for Phase I and II, Components A and B, Interim Authorization.
- October, 1983—Introduce to District Council for adoption, proposed amendments to DC's hazardous waste management legislation.
- February, 1984—Submission of the draft application for Final Authorization.
- August, 1984—Submission of the complete application for Final Authorization.

*Decision:* In consideration of the Department of Environmental Services' efforts to obtain the necessary legislation, and DC's renewed commitment to managing and implementing a hazardous waste program, I find there is good cause to grant DC's request for a thirteen (13) month extension beyond July 26, 1983 to apply for Final Authorization. Therefore, the District of Columbia must officially submit an application to EPA on or before August 26, 1984 for Final Authorization. If the District fails to submit a complete application for Final Authorization by August 26, 1984, the EPA approved District program will terminate automatically and administration of the hazardous waste management program will revert to EPA. Although this decision relates to the submission of the District's application for Final Authorization, it is my intention to ensure that the schedule presented above for Interim Authorization is also adhered to.

*Delaware*

Delaware received Phase I Interim Authorization on February 25, 1981. Delaware's ability to apply for Phase II Interim Authorization before July 26, 1983 was delayed due to the lack of personnel to implement the Phase II program. Anticipating the hiring of additional resources by October 1983, Delaware opted to apply directly for Final Authorization and has committed to the following schedule for applying for Final Authorization.

- July 1983—Hold public hearing on the proposed regulations for permitting facilities, and the Final Authorization application.
- July 1983—Submit complete Final Authorization application to EPA.

*Decision:* In consideration of Delaware's efforts to obtain the necessary regulations and personnel to implement the full hazardous waste program, and in consideration of the above schedule, I find there is good cause to grant an extension of two (2) months beyond the deadline of July 26, 1983 for submitting a complete application for Final Authorization. This extension has the effect of avoiding reversion of Delaware's Phase I Interim Authorization due to unforeseen issues that may prevent Delaware from submitting their application by July 26, 1983. Therefore, Delaware must submit a complete application for Final Authorization by September 26, 1983. If the State fails to submit a complete application by September 26, 1983, the EPA approved State program will terminate automatically and administration of the RCRA hazardous waste management program will revert to EPA.

*Maryland*

Maryland received Phase I Interim Authorization on July 8, 1981. The State of Maryland also applied for phase II, Component A on January 19, 1983 and a final decision on that application by EPA is expected shortly. However, due

to the State's desire to thoroughly review and consider modifications to the EPA RCRA regulations for Components B and C, Maryland can not meet the July 26, 1983 deadline to apply for all of Phase II. The State now fully expects to propose its own regulations for Components B and C in the near future and has committed to the following schedule for applying for Interim and Final Authorization:

- August 1983—Submit draft application for Phase II Components B and C.
- October 1983—Submit a complete application for Phase II Components B and C.
- January 1984—Submit draft Final Authorization application.
- July 1984—Submit complete Final Authorization application.

*Decision:* In consideration of Maryland's efforts to obtain Interim Authorization, its commitment to Final Authorization and the State's past performance in managing and implementing an effective hazardous waste management program, I find there is good cause to grant a five (5) month extension beyond the deadline for applying for Phase II, Components B and C. This extension has the effect of avoiding reversion of Maryland's Phase I Interim Authorization due to unforeseen issues that may prevent Maryland from submitting their application in October 1983. Therefore, Maryland must officially submit a complete application for Phase II, Components B and C on or before January 1, 1984. If the State fails to submit a complete application by January 1, 1984, the EPA approved State program will terminate automatically and administration of the RCRA hazardous waste management program will revert to EPA.

*Pennsylvania*

Pennsylvania received Phase I Interim Authorization on May 26, 1981. Pennsylvania's ability to apply for Phase II Interim Authorization before July 26, 1983 was delayed because Pennsylvania's Environmental Quality Board did not adopt the necessary financial responsibility regulations enabling the Department of Environmental Resources to require owners and operators of hazardous waste facilities to obtain financial instruments for closure and post-closure care and to obtain liability insurance. Anticipating promulgation of the necessary regulations in December 1983, Pennsylvania has committed to the following schedule for applying for Interim and Final Authorization:

- September 1983—Publish, as proposed rulemaking, financial responsibility regulations that will meet the test of substantial equivalence.
- December 1983—Request the Environmental Quality Board to adopt the financial responsibility regulations to become effective upon publication.
- January 1984—Submit a complete application for Phase II Components A, B, and C.
- January 1984—Submit draft Final Authorization application.
- August 1984—Submit complete Final Authorization application.

*Decision:* In consideration of the Department of Environmental Resources' efforts to promulgate the necessary regulations, its commitment to Final Authorization and Pennsylvania's past performance in managing and implementing a hazardous waste management program, I find there is good cause to grant a seven (7) month extension beyond the deadline for applying for Phase II Components A, B, and C. This extension has the effect of avoiding reversion of Pennsylvania's Phase I Interim Authorization due to unforeseen issues that may prevent Pennsylvania from submitting their application in January, 1984. Therefore, Pennsylvania must officially submit a complete application for all Phase II Components to EPA on or before February 26, 1984. If the State fails to submit a complete application by February 26, 1984, the EPA approved State program will terminate automatically and administration of the RCRA hazardous waste management program will revert to EPA.

*Virginia*

Virginia received Phase I Interim Authorization on November 3, 1981. The Commonwealth submitted a complete application for Phase II, Components A and B, Interim Authorization on April 29, 1983. However, Virginia's lengthy regulation adoption process precluded the Commonwealth from applying for Phase II, Component C, Interim Authorization before July 26, 1983. Based on the lengthy regulation adoption process, the Commonwealth of Virginia desires to apply directly for Final Authorization instead of first applying for Phase II, Component C. Virginia has committed to the following schedule for applying for Final Authorization:

- December 1983—Submit draft Final Authorization application.
- June 1984—Submit complete Final Authorization application.

*Decision:* In consideration of Virginia's lengthy regulation adoption process and the Commonwealth's past performance in managing and implementing a hazardous waste management program, I find there is good cause to grant the Commonwealth an extension of eleven (11) months beyond the July 26, 1983 deadline for applying for Final Authorization. Therefore, Virginia must submit a complete application by June 26, 1984. If the Commonwealth fails to submit a complete application by June 26, 1984, approval of the Virginia program will terminate automatically and administration of the hazardous waste management program will revert to EPA.

*West Virginia*

With the amendment to 40 CFR § 123.125 on July 26, 1982, West Virginia became eligible to apply for Interim Authorization. It is the intent of West Virginia to apply only for Interim Authorization for Phase I and II Components A and B. This decision was made because of the lack of available resources to operate Component C of the hazardous waste program. However, West Virginia plans to obtain adequate resources prior to Final Authorization and has committed to the following schedule for applying for Interim and Final Authorization.

- July 1983—Submit complete application for Interim Authorization Phase I and II Components A and B.
- March 1984—Submit draft application for Final Authorization.
- July 1984—Submit complete application for Final Authorization.

*Decision:* In consideration of West Virginia's efforts to obtain the necessary regulations and resources and the State's past performance in assisting EPA in implementing the hazardous waste management program under the Cooperative Arrangement, I find there is good cause to grant the State an extension for twelve (12) months beyond the July 26, 1983 deadline for applying for Final Authorizatrion. Therefore, West Virginia must officially submit a complete application for Final Authorization to EPA on or before July 26, 1984. If the State fails to submit a complete application by July 26, 1984, approval of West Virginia's program will terminate automatically and administration of the hazardous waste management program will revert to EPA. Although this decision relates to the submission of West Virginia's application for Final Authorization, it is my intention to ensure that the schedule presented above for Interim Authorization is adhered to.

**List of Subjects in 40 CFR Part 271**

Hazardous materials, Indian-lands, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

Authority: This notice is issued under the authority of Section 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926 and 6974(B).

Dated: July 18, 1983.

Thomas P. Eichler,

*Regional Administrator.*

[FR Doc. 83-20119 Filed 7-25-83; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 271**

[SW-2; FRL 2404-4]

## Hazardous Waste Management Program; New Jersey and Puerto Rico Request Extension of Application Deadline for Interim Authorization

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

**ACTION:** Notice of Extension of Application Submission and Interim Authorization Period.

**SUMMARY:** The State of New Jersey and the Commonwealth of Puerto Rico requested an extension on May 13, 1983 and May 17, 1983, respectively, of the July 26, 1983 deadline under the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, for termination of EPA's approval of their Phase I interim authorization programs. EPA is extending the deadline to January 26, 1985, provided that New Jersey and Puerto Rico make substantial progress in meeting the agreed upon May 1984 date for development of complete applications for final authorization. If there will be a significant delay in New Jersey and Puerto Rico meeting this commitment, EPA will consider the initiation of action to terminate their interim authorizations. New Jersey also requested an extension of the July 26, 1983 deadline for applying for Phase II A-B interim authorization (ie., component A—authority to permit tanks and containers, and component B—authority to permit incinerators). EPA is also granting this extension. Today's action will avoid termination on July 26, 1983 of the interim authorizations which EPA granted previously to New Jersey and Puerto Rico for the Phase I portion of the hazardous waste program. It will also allow New Jersey to submit its Phase II A-B interim authorization application to EPA after July 26, 1983.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** Deborah A. Graig, Environmental Scientist, Solid Waste Branch, Air and Waste Management Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 905, New York, New York 10278, 212-264-0505.

**SUPPLEMENTARY INFORMATION:**

### Background

40 CFR § 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377, July 26, 1982) requires that States which have received any but not all Phases/Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 217.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim authorization application and the deadline for termination of the approval of the State program. [Note.—40 CFR Part 123, including the July 26, 1982 amendments (47 FR 32373), was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14248).]

EPA granted Phase I interim authorization to New Jersey on February 2, 1983. New Jersey submitted a draft application for Phase II A-B interim authorization to EPA on May 16, 1983, which is currently under Agency review. EPA's land disposal regulations, which form the basis of the Phase II-C interim authorization component (ie., authority to permit land disposal facilities), were adopted in final form and became effective on January 26, 1983. The six month lead time is not sufficient for New Jersey to develop land disposal regulations based on EPA's regulations, conduct public participation activities and apply for Phase II-C interim authorization by July 26, 1983. New Jersey has initiated work on developing land disposal regulations, and intends to apply for permitting authority for land disposal facilities when it applies for final authorization. In addition, the necessary statutory amendments for final authorization were introduced by New Jersey to the State Legislature in May 1983.

New Jersey has committed to the following schedule for applying for Phase II A-B interim authorization and final authorization:

November 1983—New Jersey submits complete application for Phase II A-B interim authorization to EPA.

September 1983—New Jersey provides public notice of comment period and opportunity for a hearing on the State's proposed land disposal regulations.

January 1984—New Jersey submits draft application for final authorization to EPA.

May 1984—New Jersey provides public notice of comment period and opportuntiy for hearing on the State's complete final authorization application. Regulations and statutory amendments are adopted by the time the State issues its public notice.

EPA granted Phase I interim authorization to Puerto Rico on October 14, 1983. As is the case in New Jersey, the six month lead-time is not sufficient for Puerto Rico to develop land disposal regulations based on EPA's regulations, conduct public participation activities and apply for Phase II-C interim authorization by July 26, 1983. Puerto Rico intends to apply for final authorization directly from Phase I interim authorization. Puerto Rico has initiated work on developing the necessary regulations for final authorization. In addition, Puerto Rico introduced the necessary statutory amendments for final authorization to Legislature in January 1983.

Puerto Rico has committed to the following schedule for applying for final authorization:

November 1983—Puerto Rico provides public notice of comment period and opportunity for a hearing on Puerto Rico's proposed regulations with respect to financial responsibility and the permit program, including administrative requirements, procedures for decisionmaking, and technical standards for hazardous waste storage, treatment and disposal facilities which have effective federal standards.

February 1984—Puerto Rico submits draft final authorization application to EPA.

May 1984—Puerto Rico provides public notice of comment period and opportunity for a hearing on the Commonwealth's complete final authorization application. All regulations and statutory amendments are adopted by the time Puerto Rico issues its public notice.

**Decision**

On July 15, 1983, in consideration of New Jersey's and Puerto Rico's efforts to develop the necessary regulations and statutory amendments for final authorization, I found there was good cause to grant their requests for an extension of the July 26, 1983 deadline for termination of their Phase I authorized programs. I am granting the extension to January 26, 1985, provided that New Jersey and Puerto Rico make substantial progress in meeting the agreed upon May 1984 date for development of complete applications for final authorization. If there will be a significant delay in New Jersey and Puerto Rico meeting this commitment, I will consider the initiation of action to terminate their interim authorizations. I will provide public notice in the **Federal Register** of any such decisions to withdraw approval of Puerto Rico's and New Jersey's authorized programs, in which case, the administration of the hazardous waste management program will revert to EPA. In consideration of New Jersey's efforts in developing a draft Phase II A–B interim authorization application, I have also found good cause to grant New Jersey's request to allow the State to submit a complete Phase II A–B interim authorization application after the July 26, 1983 deadline.

**List of Subjects in 40 CFR Part 271**

Hazardous materials, Indianlands, Reporting and recordkeeping requirements, waste treatment and disposal, Water pollution control, Water supply, Intergovernmental relations, Penalties, Confidential business information.

(Secs. 2002(a), 3006 and 7004(b), Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912(a), 6926 and 6974(B)))

Dated: July 15, 1983.

**Jacqueline E. Schafer,**

*Regional Administrator, Region II.*

[FR Doc. 83-20121 Filed 7-25-83; 8:45 am]

BILLING CODE 6560-50-M

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**40 CFR Part 720**

**[OPTS-50002G; TSH-FRL-2998-5]**

**Premanufacture Notification; Premanufacture Notice Requirements and Review Procedures**

*Correction*

In FR Doc. 83–12401 beginning on page 21722 in the issue of Friday, May 13, 1983, make the following correction:

On page 21751, first column, the heading **§ 270.78 Recordkeeping** should have read **§ 720.78 Recordkeeping.**

BILLING CODE 1505-01-M

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**FEDERAL EMERGENCY MANAGEMENT AGENCY**

**44 CFR Part 205**

**Temporary Housing Assistance Program**

*Correction*

In FR Doc. 83–18945 beginning on page 32734 in the issue of Monday, July 18, 1983, make the following corrections:

1. In § 205.52 (d), on page 32735, third column, fifteenth line of text from the top of the page, "assistance this" should have read "assistance under this".

2. In § 205.52 (q)(2)(viii), on page 32740, center column, fifteen lines from the bottom of the page, "determination paragraph" should have read "determination under paragraph".

3. In § 205.52 (r)(2)(iii)(C)(*3*), on page 32741, first column, the twenty-eighth and twenty-ninth lines from the bottom of the page should have read "(*3*) Subtract item (r)(2)(iii)(C)(*2*) of this section from item (r)(2)(iii)(C)(*1*) of this".

BILLING CODE 1505-01-M

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**OFFICE OF PERSONNEL MANAGEMENT**

**45 CFR Part 801**

**Voting Rights Program, Georgia**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** This notice identifies the location of a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael D. Clogston, Coordinator, Voting Rights Program, Office of Personnel Management, Washington, D.C. 20415, 202–632–5691.

**SUPPLEMENTARY INFORMATION:** The Attorney General has designated Burke County, Georgia, as an additional examination point coming under the provisions of the Voting Rights Act of 1965, as amended. He has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote.

**E.O. 12291, Federal Regulation**

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because its purpose is the addition of one county to the list of counties in the regulation concerning OPM's responsibilities under the Voting Rights Act.

**List of Subjects in 45 CFR Part 801**

Administrative practice and procedures, Voting rights.

Office of Personnel Management.

**Donald J. Devine,**

*Director.*

**PART 801—AMENDED**

Accordingly, the Office of Personnel Management amends 45 CFR Part 801, Subpart B, Appendix A, by adding Burke County, Georgia, to read as follows:

**Georgia**

| County: | Place for filing: | Beginning date. |
|---|---|---|
| • | • | • |
| Burke: | Waynesboro-U.S. Post Office, 721 Liberty Street, Room 204: | November 2, 1982. |

(5 U.S.C. 1103.; Secs. 7, 9, 79 Stat. 440, 441 (42 U.S.C. 1973c, 1973g))

[FR Doc. 83-19377 Filed 7-25-83; 8:45am]

BILLING CODE 6325-01-M

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**45 CFR Part 801**

**Voting Rights Program, Mississippi**

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** This notice identifies the location of a new office for filing applications or complaints under the Voting Rights Act of 1965, as amended.

**EFFECTIVE DATE:** July 26, 1983.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael D. Clogston, Coordinator, Voting Rights Program, Office of Personnel Management, Washington, D.C. 20415, 202–632–5691.

**SUPPLEMENTARY INFORMATION:** The Attorney General has designated Ruleville, Mississippi, as an additional examination point coming under the

provisions of the Voting Rights Act of 1965, as amended. He has determined that this designation is necessary to enforce the guarantees of the Fourteenth and Fifteenth amendments to the Constitution. Accordingly, pursuant to Section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d, the U.S. Office of Personnel Management will appoint Federal examiners to review the qualifications of applicants to be registered to vote.

Pursuant to Section 553(b)(3)(B) of title 5 of the United States Code, the Director finds that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of OPM's legal responsibilities under 42 USC 1973e(a) and other parts of the Voting Rights Act of 1965, as amended, which require OPM to publish counties certified by the U.S. Attorney General and locations within these counties where citizens can be Federally listed and become eligible to vote.

Pursuant to Section 553(d)(3) of title 5 of the United States Code, the Director finds that good cause exists to make this amendment effective in less than 30 days. The regulation is being made effective immediately to allow Federal examiners to immediately register voters under the authority of the Voting Rights Act of 1965, as amended.

*E.O. 12291, Federal Regulation*

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

*Regulatory Flexibility Act*

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because its purpose is the addition of one new location to the list of counties in the regulation concerning OPM's responsibilities under the Voting Rights Act.

**List of Subjects in 45 CFR Part 801**

Administrative practice and procedures, Voting rights.

Office of Personnel Management.

**Donald J. Devine,**

*Director.*

**PART 801—AMENDED**

Accordingly, the Office of Personnel Management amends 45 CFR Part 801, Subpart B, Appendix A, by adding a new examination point in Sunflower County, Mississippi, to read as follows:

**Mississippi**

| County | Place for filing | Beginning date |
|---|---|---|
| * * * * * | | |
| Sunflower | (1) Indianola–Post Office Building | May 2, 1967. |
| | (2) Ruleville–U.S. Post Office, 120 South Ruby Avenue | June 16, 1983. |

(5 U.S.C. 1103; Secs. 7, 9, 79 Stat. 440, 441 (42 U.S.C. 1973c, 1973g))

[FR Doc. 83-19378 Filed 7-25-83; 8:45 am]

BILLING CODE 6325-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 2, 21, 74**

**[Gen. Docket Nos. 80-112 & 80-116; RM-3540; File Nos. 8938-ED-MR-82 & BPEX-820802KH; FCC 83-243]**

# Amendment of the Commission's Rules With Regard to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service; and Applications for an Experimental Station and Establishment of Multi-Channel Systems

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action reallocates spectrum from the Instructional Television Fixed Service to the Multipoint Distribution Service (MDS). In particular, two four-channel groups of ITFS channels are made available for MDS use. The action also allows existing ITFS licensees to lease excess capacity on their facilities. The reason for this action is to make possible multichannel MDS and to provide a possible source of revenue for ITFS licensees.

**DATES:** The effective date of the Rules adopted is August 24, 1983. Multichannel MDS applications will be accepted only on September 8, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Kevin Kelley, Common Carrier Bureau, (202) 634-1817.

**List of Subjects**

47 CFR Part 2—Frequency allocations.

47 CFR Part 21—Point-to-multipoint microwave transmission.

47 CFR Part 74—Point-to-multipoint microwave television.

**Report and Order**

In the matter of an amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations in regard to frequency allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service, and the Private Operational Fixed Microwave Service, General Docket No. 80-112; inquiry into the development of regulatory policy with regard to future service offerings and expected growth in the Multipoint Distribution Service and Private Operational Fixed Microwave Service, and into the development of provisions of the Commission's Rules and Regulations in regard to the compatibility of the operation of satellite services with other services authorized to operate in the 2500-2690 MHz band, Amendment of Part 21 of the Commission's Rules to Permit the Use of Alternative Procedures in Choosing Applicants for Radio Authorizations in the Multipoint Distribution Service, CC Docket No. 80-116; petition for Rulemaking filed by Microband Corporation of America to amend Section 21.901 of the Commission's Rules and Regulations, RM-3540; application of Channel View Inc. for an Experimental (Developmental) station at Salt Lake City, File No. 8938-ED-MR-82; application of Contemporary Communications Corporation for Developmental Authorizations to Establish Multi-Channel Systems (MCS) in New York, Chicago, Los Angeles, St. Louis and Philadelphia, File No. BPEX-820802KH.

Adopted May 26, 1983.

Released July 15, 1983.

By the Commission: Commissioner Quello concurring and issuing a statement; Commissioner Fogarty not participating; Commissioner Jones concurring in the result; Commissioner Dawson concurring and issuing a statement at a later date; Commissioner Rivera concurring in part, dissenting in part and issuing a statement at a later date; Commissioner Sharp absent.

**Table of Contents**



**I. Introduction and Summary**

1. On May 2, 1980 the Commission released a *Notice of Inquiry and Proposed Rulemaking and Order* in General Docket 80-112, 45 FR 29,323 (1980) (hereinafter *Notice*), in which it proposed to reallocate the 2500-2690 MHz band to provide additional channels for the Multipoint Distribution

Service (MDS) and the Private Operational Fixed Microwave Service (OFS) and to reduce the number of channels available for the Instructional Television Fixed Service (ITFS). The *Notice* referred to these services as "area wide microwave distribution services" (AMDS) and inquired into their future prospects and anticipated growth.

2. Approximately 200 entities submitted comments and reply comments in response to the *Notice*. On February 10, 1982 Microband Coropration of America (Microband) submitted a 3 volume proposal to create what it termed a "wireless cable system" using frequencies in the 2500–2690 MHz band. Proposal of Microband Corporation of America, General Dockets 80–112 and 80–113 (February 10, 1982) (hereinafter Microband Proposal). Microband simultaneously submitted a "Motion for Acceptance of Additional Comments" requesting that its proposal be accepted as additional comments in this proceeding and in the companion proceeding in General Docket 80–113.[1] On April 20, 1982 the Chief of the Common Carrier Bureau, acting pursuant to delegated authority, issued an order accepting the Microband Proposal as additional comments in these dockets and inviting interested parties to submit reply comments. *Order Accepting Additional Comments* 47 FR 18,932 (1982). Approximately 190 reply comments were received in response to the Microband proposal.[2]

3. On August 2, 1982 Contemporary Communications Corporation (CCC) submitted a set of applications in which it requested development authority to construct what it termed Multi-Channel Systems (MCS) in New York, Philadelphia, Chicago, St. Louis and Los Angeles. The CCC applications are similar in some respects to the Microband proposal and to the experimental authoriztion we granted to Channel View in Salt Lake City (see note 24, *infra*). They are different in that Microband filed additional comments in response to the the *Notice* while Channel View requested authority to construct experimental facilities in Salt Lake City. CCC specifically requested authority to conduct market trails in five cities. It made two basic claims in support of its MCS proposal. First, it claimed that the Commission would receive valuable information concerning certain technical aspects of multichannel operation such as adjacent channel operation and propagation characteristics at ITFS frequencies. Second, CCC claimed the proposed five market developmental operation would provide the industry and the Commission with needed information concerning what CCC referred to as the "intermixture of programming and pricing" for multichannel systems. While we agreed that such additional information might be useful, we do not believe that it would be in the public interest to delay introduction of multichannel service while CCC conducts its developmental program. For this reason, we are denying CCC's developmental applications.

4. Our review of the extensive record in this proceeding and our experience with these and other services leads us to the conclusion that the public interest would best be served by a limited reallocation of spectrum from the ITFS to the MDS. There are a substantial number of unused ITFS channels in many areas of the country (several states have no ITFS licensees), and it appears that, while some growth in the ITFS service will occur, this growth is unlikely to exhaust the supply of channels. The market studies presented in this proceeding appear to demonstrate a substantial demand for multichannel MDS. Creating a multichannel MDS service offers a number of public interest benefits including expanding consumer choice, creating lower cost equipment, and providing competition to other services (such as cable television) which should lead both services to construct more quickly and provide better service at lower cost. Accordingly, we herein reallocate the E and F groups to MDS. This will nominally permit us to authorize two systems in each area. Each system would have four channels, which appears to be a sufficient number to satisfy the perceived customer demand. Importantly, four channel systems are consistent with the existing channel plans for this band, and preserving the existing group design should minimize disruption to ITFS operations in the band. Our choice of the E and F groups is prompted by our desire to minimize disruption to the ITFS and other services (such as the potential use of the band by satellite systems). To further minimize disruption to existing ITFS operations, we are "grandfathering" ITFS permittees, licensees and applicants in the E and F groups. A potential MDS entrant will have to demonstrate to the Commission prior to commencing operation that grandfathered ITFS entities will not suffer harmful interference as a result of the operation of the MDS station. We are by a further notice in this docket proposing to select licensees by lottery. We also are permitting ITFS licensees to lease excess capacity on their existing systems. We believe these actions will result in a more intensive use of the spectrum and represent an appropriate balance of the conflicting public policy interests presented.

## II. Background

### *A. MDS*

5. The origin of this service may be traced to July 31, 1970, when the Commission removed the 3.5 MHz bandwidth limitation that had been imposed on stations using the 2150–2160 MHz band. *Amendment of Part 21.703(g)*, 47 FCC 2d 957 (1970). This action precipitated a number of applications that proposed to use this spectrum for the common carrier distribution of television programming from a central location to numerous points selected by the common carriers' subscribers. At that time, this spectrum was administered as a part of the Point-to-Point Microwave Radio Service. The Commission subsequently concluded the point-to-point rules were not appropriate for administering what had become a point-to-multipoint service and hence proposed to establish a new common carrier service to be known as the Multipoint Distribution Service. *Multipoint Distribution Service*, 34 FCC 2d 719 (1972). In January of 1974 the Commission adopted rules to govern the service. *Multipoint Distribution Service*, 45 FCC 2d 616 (1974), *recon. denied*, 57 FCC 2d 301 (1975). These rules provide for two 6 MHz channels in 50 of the largest metropolitan areas. The channels are designated channel 1 (2150–2156 MHz) and channel 2 (2156–2162 MHz). In all other areas of the country, where the 2160–2162 MHz band is used for rural telephone service, the second channel bandwidth is limited to 4 MHz (2156–2160 MHz) and is designated channel 2A. This channel cannot be used to transmit a standard television signal, which requires 6 MHz of spectrum

6. The majority of the transmission time now leased by MDS common carrier licensees is used by their customers to transmit premium

[1] *Notice of Inquiry and Proposed Rulemaking* in Gen. Docket No. 80–113, FCC 80–137, 45 FR 29,350 (April, 1980). In that proceeding the Commission proposed to revise certain technical rules applicable to the Multipoint Distribution Service, operating in the 2150–2162 MHz band, and inquired into the feasibility of applying the proposed rules to 2500–2690 MHz band.

[2] A list of all those submitting comments in this proceeding is contained in Appendix A. This list includes all comments both formal and informal. Comments that were not filed in a timely manner are hereby accepted as informal comments. Some entities submitted more than one set of comments and hence are listed more than once.

television [3] to hotels, motels, apartment complexes and single family residences.

*B. The 2500–2690 MHz Band*

7. This band is divided into thirty-one 6 MHz channels and thirty-two 125 KHz response channels. Twenty-eight of the 6 MHz channels and the same number of response channels are allocated to the ITFS. 47 CFR 74.902, 74.939. The remaining three 6 MHz channels and three response channels are allocated to the OFS. 47 CFR 94.65(f). The remaining 125 KHz response channel is not assigned to either service.

*C. ITFS*

8. The ITFS was created by a Report and Order in Docket No. 14744 adopted by the Commission in 1963. *Educational Television*, 39 FCC 846 (1963), *recons. denied*, 39 FCC 873 (1964) (hereinafter ETV). By this action the Commission allowed the newly created ITFS to use the 2500–2690 band on a shared basis with the existing OFS stations with the proviso that no new OFS stations be authorized in the band for 3 years except for modifications or expansions of existing stations, or for the use of the band by OFS eligible entities for television transmission in accord with ITFS technical standards. Prior to this action the band had been allocated to the Fixed Service for shared use by Operational Fixed Stations and International Control Stations. In taking this action, the Commission stated its intention to observe the amount of use of these channels by educators and "(to) determine what course of action should be taken to encourage the fullest development of the 2500–2690 Mc/s band * * *" at the end of the three year period. *Id.* at 851.

9. The Commission stated in 1963 that the purpose of the service was to transmit:

> instructional material to selected receiving locations in accredited public and private schools, colleges and universities for the formal education of students. Systems which have been licensed for this purpose may also be used for other incidental purposes among which are the transmission of cultural material and entertainment to these same receiving locations; the transmission of special training material to selected receiving locations outside the school system such as hospitals, nursing homes, training centers, clinics, rehabilitation centers, commercial and industrial establishments, etc.; the transmission of special material to professional groups or individuals to inform them of new developments and techniques in their fields and instruct them in their use; and to perform other related services directly concerned with formal or informal instruction and training. When not being used for such purposes, the facilities licensed under these rules may be used for handling administrative traffic of the licensee such as the transmission of reports and assignments, conferences with personnel, etc. Individual stations or complete systems will not be licensed solely for handling administrative traffic.

*ETV*, 39 FCC at 853. The Commission further stated that this service could also be used for the relay of such material. *Id.* These service limitations are contained in § 74.931 of the rules, 47 CFR 74.931. Elsewhere in this Order, we are amending § 74.931 to allow ITFS licensees to lease any excess capacity available on their channels (paragraphs 110–127, *infra*). In addition, we are today opening another proceeding in which we propose, *inter alia*, to broaden permissible uses of the ITFS channels.

10. The Commission limited the eligibility to hold an ITFS license to accredited institutions providing a program of formal education and to those eligible to hold a non-commercial educational TV license. *ETV*, 39 FCC at 853–854. The eligibility standards for the ITFS are contained in § 74.932 of the rules, 47 CFR 74.932.

11. The Commission did not consider the use of this band again until 1971 when it adopted the Second Report and Order in Docket No. 14744. *Instructional Television*, 30 FCC 2d 197 (1971) (hereinafter *ITV*). In that proceeding the Commission made the present exclusive allocation of 28 channels to the ITFS.

*D. OFS*

12. As noted above, prior to 1963 the 2500–2690 MHz band was allocated to what was then known as the Fixed Service. When the Commission established the ITFS it allowed the newly created service to use this band and limited the Fixed Service use of the band for three years to expansion or modification of existing stations, or the establishment of new television transmission stations. The traditional Fixed Service use of this band was not for television transmission but rather was for more traditional private microwave communications uses such as multichannel voice and data circuits. The Commission recognized that there were certain traditional OFS users such as municipalities that might have television transmission needs and, although it declined to allow such entities to apply as ITFS applicants, it did invite them to apply for facilities under the rules governing the public safety radio services. *ETV*, 39 FCC at 854. When the Second Report and Order was adopted in Docket No. 14744 the Commission determined that the video transmission needs of municipalities and other entities eligible for Fixed Service licenses could be met by a 3 channel allocation. It based this conclusion on the fact that only 16 stations had been licensed to such entities. *ETV*, 39 FCC at 200. The Commission further suballocated these channels to the Public Safety Service on a primary basis and to all other fixed service eligibles on a secondary basis.[4] This preference was deleted in 1975 when the Commission created what is now known as the Private Operational Fixed Microwave Service. *Private Operational Fixed Microwave Service*, 52 FCC 2d 894, 900 (1975). That action made the three channels available to all eligible entities on an equal basis.

13. In 1973 the Commission authorized Columbia Pictures to use what was then known as Business Radio Service spectrum for the distribution of "feature motion picture films" and associated promotional material to "guests" in "hotels". *Columbia Pictures Industries, Inc.*, 39 FCC 2d 411, 413 (1973). In making this grant, the Commission questioned whether this was an approprate use of the Business Radio Service spectrum and as a result specifically conditioned the grant on the result of the inquiry and rulemaking proceeding in General Docket 19671 [5] that was initiated simultaneously with the grant. *Id.* at 412, n.1.

14. In 1981 the Commission issued the First Report and Order in Docket No. 19671. *Use of Private Microwave Frequencies*, 86 FCC 2d 299 (1981), *stay denied sub nom. Operational Fixed Microwave Services*, 87 FCC 2d 768 (1981). After considering the comments submitted in response to its inquiry, the Commission concluded "that it is in the public interest to allow the use of the OFS frequencies for distribution purposes and, more generally, to restrict as little as possible alternative uses of the spectrum." *Id.* at 306. In allowing this use of the OFS spectrum, the Commission noted that it was only "authorizing a licensee to distribute products and services in which the licensee has an ownership or other

[3] The term premium television refers to television entertainment programming for which the viewer pays a fee and that is not supported by advertising revenues.

[4] When the Commission allowed the newly created ITFS to use the 2500–2690 MHz band, the move was resisted by the traditional users of this band on the basis that what was being created was a "quasibroadcast" service and that other portions of the spectrum were more suitable for the new service. It was further argued that the decision could result in the permanent exclusion of operational fixed users from the band. ETV, *supra*, at 874

[5] *Transmitting Program Material to Hotels*, 39 FCC 2d 527 (1973).

interest to the licensee's own customers or subscribers." *Id.* at 309. The Commission also specifically declined to authorize a licensee of "point-to-multipoint" microwave facilities in the OFS to transmit any video programming directly to apartment houses, MATV systems or private homes pending resolution of the question of whether the similarity of such services to services such as subscription television requires that they be similarly regulated. *Id.* at 311.

15. In the *Notice* the Commission concluded that if it were to authorize the use of the OFS to distribute entertainment programming to subscribers there would be an increase in demand for the OFS channels in the 2500–2690 MHz band. *Notice, supra* at para 37. Since the adoption of the First Report and Order in Docket 19671, we have received more than 1,400 applications from 60 different entities seeking to provide video entertainment services on the 3 OFS channels. In a separate action, we are today excluding the distribution of video entertainment material on OFS frequencies lower than 21.2 GHz for two years.[6] 47 CFR 94.9(a)(1), 94.9(b)(2)(iii).

16. Because we have decided not to allow the distribution of video entertainment material on the OFS channels in the 2500–2690 MHz band at this time, we have concluded that there is no reason to provide additional spectrum for that service in this band. Thus, we will not consider OFS further in this order.

## III. Discussion

### *A. Spectrum Utilization*

17. The Commission based its proposals to reallocate the 2500–2690 MHz band on three tentative conclusions. First, it concluded that the demand for MDS service exceeded the supply. This conclusion was based primarily on the observation that there were a large number of situations in which more than one party had failed for the same channel and that many applicants were proposing to "short space" stations. *Notice,* at paras. 19–23. Second, it was concluded that the 2500–2690 MHz band was under-utilized. *Id.* at para. 28. Finally, it was concluded that if the existing restrictions on the use of the OFS channels were removed there would be increased demand for these channels. *Id.* at para. 57. The Commission recognized a need to develop a better record concerning the facts on which these tentative conclusions were based. For this reason a series of questions was included in the *Notice* to elicit the kind of information needed to make a reasoned decision on the issues before the Commission. *Id.* at para. 52 and Appendix C.

#### 1. *ITFS Spectrum Use*

18. Very few of the comments filed in this proceeding contained quantative information concerning the use of the ITFS spectrum. Most of the comments filed by the ITFS community expressed the view that the spectrum should not be reallocated and supported this proposition with public policy arguments rather than spectrum utilization data. The policy arguments raised in these comments are discussed below. *See* paras. 52–64 *infra.*

19. The most extensive analysis of current ITFS spectrum use was submitted by the Center for Excellence (Centex) of Williamsburg, Virginia.[7] The Centex data showed that as of August 1980 there were 82 operating ITFS stations using 492 channels. The 82 systems were spread over 27 states. California had 15 operating systems and New York had 11 operating systems. Of the 27 states that had operating systems 13 had only one system operating. The Centex analysis also contained data on ITFS channel use in the top 50 markets as defined by the 1979 Arbitron population book. These data showed that in only one market, Los Angeles, were all the ITFS channels being used. In fact, the data showed that the Los Angeles market had 40 channels in use with applications pending for 8 more channels. The data also showed heavy use in several other markets. New York, Chicago, San Francisco, Boston, Cleveland, Dallas, Ft. Worth, San Diego, and Milwaukee all had 10 or more channels in use. On the other hand Pittsburgh, St. Louis, Seattle, Baltimore, Hartford, and many other large cities had no current channel use. The total number of channels being used in the top 50 Arbitron markets was 319. Of these, 232 were operating in the 9 cities listed above as having more than 10 channels operating. Comments of Center for Excellence, Inc., General Docket 80–112, Attachment C, (September 26, 1980) (hereinafter Centex comments).

20. Microband included as part of its proposal an "ITFS Spectrum Utilization Study." In making this study, Microband claimed that it had been unable to find a "single authoritative source or data base identifying the location and ownership of all ITFS channel licenses." Microband Proposal, *supra,* Appendix H, 1. Microband produced its analysis on the basis of data from: "(a) the FCC non-Government Frequency List, (b) TV Fact Book, (c) Compucon and (d) copies of licenses obtained through Downtown Copy Center." *Id.*[8][9]

21. The Microband survey was different from the Centex survey in several respects. The Centex survey was a compilation of existing and proposed licensees by channel group on a city-by-city and a state-by-state basis. The Microband survey listed on a city-by-city basis for each channel whether there was an existing licensee either within 25 or 50 miles of the coordinates of the channel 1 MDS station.[10] This methodology could have resulted in Microband showing a channel in use where Centex showed it vacant or vice-versa. It is likely, however, that Microband would show a channel as being occupied that Centex showed to be vacant because the Microband data was based on a 50 mile spacing and was on a channel by channel basis as opposed to the channel group basis used by Centex. Thus, the Microband data represents a finer grain analysis of channel use than the Centex study. On the basis of its study, Microband concluded that within 25 miles of the location of the MDS channel 1 station 75% of the ITFS channels are not licensed. It also showed that in 38 of the 50 markets surveyed less than half the channels were licensed.

22. The Commission staff conducted its own spectrum utilization studies based on all stations licensed as of November 1, 1982.[11] The staff study

[6] *Memorandum Opinion and Order,* Docket No. 19671, FCC 83–245, released June 23, 1983.

[7] The Center for Excellence, Inc. (Centex) "is a non-profit Virginia Corporation engaged in educational, medical and social services delivery, research and research development." Comments of Center for Excellence, Inc. General Docket No. 80–112, at 1 (September 26, 1980). In 1979 Centex began a study program that included a "a biennial study of the use of ITFS across the Nation". This study was updated in 1980. *Id.* Attachment C, 7–8. This data was referred to by several commenters from the ITFS community and many included portions of it with their comments.

[8] The Downtown Copy Center is a private organization that contracts with the Commission to reproduce our public records and sell the reproductions to the public.

[9] The 50 cities that Microband submitted data for were not the same cities that were the subject of the Centex survey. Centex surveyed the 50 Arbitron markets, whereas Microband surveyed the 50 cities listed in § 21.901 of the Rules, 47 CFR 21.901. The two surveys contain 40 common cities. The cities in the Microband survey that were not in the Centex survey were Akron, Anaheim, Gary, Rochester, San Antonio, San Bernadino, San Jose, Syracuse and Toledo. Ft. Worth was considered separately from Dallas in the Microband Survey. The two were consolidated in the Centex Survey. The Cities in the Centex survey that were not surveyed by Microband were Nashville, Charlotte, Greenville, Grand Rapids, Orlando/Daytona Beach, Charleston, Raleigh, Harrisburg, Salt Lake, and Wilkes Barre.

[10] Microband conducted its surveys at 25 and 50 miles because it is generally assumed that if

showed that there were 124 licensed ITFS operators using 808 channels. These operators were distributed over 29 states and the District of Columbia. More than half of the licensed channels were located within 25 miles of a major metropolitan area. There were 21 states with no ITFS licensees, 9 states with 1 licensee and 5 states with 2 licensees. On the other hand, California had 22 licensees using 167 channels, New York had 13 licensees using 76 channels, Florida had 12 licensees using 22 channels and Pennsylvania had 8 licensees using 53 channels.

23. The Commission staff also did a computer analysis of the ITFS channel use in the same markets Microband used in its study. The staff analysis was only done for 25 miles. That is, the analysis only considered those ITFS stations located within 25 miles of the MDS station coordinates. The results of the staff analysis were not identical to the results submitted by Microband; however, they were similar. The staff analysis showed more ITFS stations than the Microband study because the staff study was done later and hence included more recently licensed ITFS stations. It should also be noted that the staff analysis also included stations for which construction permits had been granted but which had not yet been licensed. Neither study included pending applications.

24. In its comments on the Microband proposal, the Corporation for Public Broadcasting (CPB) pointed out that the issue of adjacent channel operation must be considered before any conclusions can be drawn concerning spectrum use or availability. The 2500–2690 MHz spectrum is divided in 7 groups of four 6 MHz channels and 1 group of three 6 MHz channels. The channels within each group are not adjacent; they are alternated with those of another group to provide a 6 MHz guard band between the channels within each group. Traditionally ITFS licensees have been granted up to 4 channels in a single group. The operation on these channels is protected from adjacent channel interference where feasible by not licensing the guard band channel in the same area. This means that if the A group channels (A1, A2, A3, A4) were licensed in a given area, the B group channels that serve as the guard band channels for the A group channels (B1, B2, B3, B4) would not be licened in the same area. For these reasons, CPB suggests that in analyzing channel use the adjacent channels should also be considered occupied.[12] CPB redid the analysis submitted by Microband on the basis that if a cochannel were licensed within 50 miles of a given set of coordinates or an adjacent channel were licensed within 25 miles of the same coordinates, the channel was in use in that area. CPB also included all channels applied for as well as those licensed in its analysis. The CPB analysis indicates much greater channel use in the 50 metropolitan areas than either the Microband survey or the Commission staff analysis. The CPB analysis does, however, indicate that in 24 of the 50 cities surveyed there are 8 or more adjacent channels available. Further Comments of the Corporation for Public Broadcasting, Engineering Statement, 8, 9, and Figure 11 (July 2, 1982).

25. Although the studies submitted and the study made by the Commission's staff did not produce identical results, the results are similar enough to allow certain conclusions to be drawn. First, in several large metropolitan areas the ITFS channels are heavily licensed. On the other hand, there are several large metropolitan areas in which there are no licensed ITFS stations. Finally, there is little ITFS spectrum in use outside the large metropolitan areas. We believe these conclusions tend to confirm the tentative findings made in the *Notice* that while the ITFS channels are heavily licensed in some metropolitan areas, they are not heavily licensed in other metropolitan areas. Further, neither CPB nor any other commenter offered any evidence that the ITFS channels are heavily licensed outside the major metropolitan areas.

2. *MDS Spectrum Use*

26. As of December 22, 1982 there were 234 licensed MDS channel 1 stations. These licensees were distributed over 50 states, the District of Columbia, Puerto Rico and the Virgin Islands. Construction permits had been granted for an additional 114 stations. There were 194 pending channel 1 applications. Of these, 172 were mutually exclusive with at least 1 other application. There were 5 licensed channel 2 stations. Construction permits had been granted for 3 additional stations. There were 143 pending applications for channel 2 licenses in 42 cities. All of these applications were mutually exclusive with at least 1 other application. There were 3 licensed channel 2A stations. Construction permits had been granted for 16 additional channel 2A stations. In addition, there were 9 pending channel 2A applications for 4 cities. Of these applications, 8 were mutually exclusive with at least one other application.

27. The Commission does not keep records of whether licensed MDS stations are actually operating. Since MDS is a common carrier service, whether a station is on the air at a given time is not determined by the licensee but rather by whether a customer has purchased time from the licensee. At least one private concern, Paul Kagan Associates, Inc., collects such data. According to its latest report, as of August 3, 1982, there were 82 MDS stations operating and an additional 120 stations licensed that had not yet obtained a customer. "Statistical Progress of MDS", *The MDS Data Book*, 64 (October 1982).

28. MDS channel 1 licenses have been granted in 49 of the 50 markets listed in § 21.901(c) of the Rules, 47 CFR 21.901(c). A construction permit has been granted for the remaining city. Of the 49 stations licensed, 43 have customers. Outside of these markets there were, as of the date of the Kagan survey, 152 stations licensed. Of these 39 had customers. On the basis of these facts, it can be concluded that the MDS channel 1 is heavily used in the larger metropolitan areas but less used outside these areas.

29. All the channel 2 applications that are not mutually exclusive have been granted. As of December 12, 1982 five stations had been licensed and construction permits had been granted for three additional cities. Only one of these channels has a customer. As was pointed out in the *Notice*, there are certain technical problems that limit the simultaneous use of channel 1 and channel 2 in the same area. The nature of the downconversion equipment used in MDS is such that if different operators are using channel 1 and channel 2, the channel 1 subscribers will be able to receive the channel 2 programming and the channel 2 subscribers will be able to receive the channel 1 programming. Scrambling of both signals would negate this problem, but it is expensive to add scrambling to existing MDS systems. This means that if we were to authorize

cochannel MDS stations are located more than 50 miles apart, there is unlikely to be harmful cochannel interference. It is also assumed that if cochannel stations are closer then 25 miles that harmful interference will occur. When the separation is between 25 and 50 miles, a detailed interference study must be done to assess the possibility that harmful cochannel interference will occur. Thus, if there are cochannel stations within 25 miles of a proposed transmitter location, the channel is deemed to be in use and not available. If ther is no cochannel station within 50 of the proposed transmitter location, the channel is likely to be available.

[12] We do not agree that use of one channel group necessarily precludes use of the interleaved channel group. See paras. 65–78, *infra*.

a channel 2 station in an area that already has a channel 1 station delivering unscrambled programming and the channel 2 station offered scrambled service, the customers of the channel 2 operator could receive both the scrambled channel 2 programming and the unscrambled channel 1 programming. There is a channel 1 station authorized in every locale that has a channel 2 available. Furthermore, because channel 1 and channel 2 have no guard band between them, it is possible that noncolocated channel 1 and channel 2 transmitters could cause unacceptable adjacent channel interference.

30. These factors have contributed to the light use of MDS channel 2. In one city, Phoenix, Arizona, these problems have been overcome. There, Microband is the licensee of channel 1 and Contemporary Communications Corporation is the licensee of channel 2. American Cable Television is the subscriber of both Microband and Contemporary and programs both channels and has a common set of customers receiving two-channel service.

30. *Projected ITFS Growth*

31. One of the most controversial issues raised in this proceeding concerns the projected ITFS growth. In the *Notice*, the Commission concluded that there are reasons to expect some growth in the demand for ITFS channels, but not such a significant amount that most vacant channels could be expected to be filled. Several commenters from the ITFS community took issue with these conclusions. The comments submitted by the University of Maryland were typical. It claimed that the Commission's conclusion was a "vast under estimation of future ITFS demand." Comments of the University of Maryland, General Docket 80–112, at 3 (September 26, 1980). Those commenting on this issue gave several reasons why they believed the future demand for ITFS channels was much greater than the Commission envisioned.

32. The most commonly made argument concerned availability of funding. Many commenters pointed out that ITFS growth took place without any federal funding until the Public Telecommunications Financing Act of 1978, 92 Stat. 2405 (1978) (47 U.S.C. 390–399), authorized The National Telecommunications and Information Administration (NTIA) to make funds available for ITFS facilities. The NTIA has informed us that in 1979 $1,130,000 was made available for 4 ITFS systems. In 1980 $211,937 was made available for 3 systems; in 1981 $815,260 was made available for 4 systems and in 1982 $570,485 was made available for 4 systems. Thus, NTIA records show that since ITFS has become eligible to receive such funds 15 ITFS systems have received a total of $2,727,682.[13]

33. Other commenters have stressed that the increased use of ITFS to deliver graduate level engineering, scientific and business training directly into the work places of those needing such training will result in accelerated demand for ITFS channels. Typical of the systems referred to are those operated by Stanford University and the Illinois Institute of Technology. Stanford operates a 4 channel ITFS system known as the Stanford Instructional Television Network that is used to transmit graduate level engineering courses and continuing education courses to approximately 20 high technology companies located in California's "Silicon Valley". In its comments, Stanford indicated that it will likely need more channels in the future to satisfy the increased demand for this type of educational service. Comments of the Leland Stanford Junior University, General Docket 80–112, Attachment B (September 26, 1980).

34. The Illinois Institute of Technology (IIT) operates a 4 channel ITFS system known as Interactive Instructional Television (IIT/V) that is used to provide graduate level engineering education to over "1200 professional engineers, scientists, and managers annually in the greater Chicago area." Comments of the Illinois Institute of Technology relative to Microband Proposal, Dockets 80–112 and 80–113, at 2 (July 2, 1982). In its comments, IIT presented data that indicated the level of enrollment in its program has risen constantly from approximately 100 students per semester in 1976 to approximately 550 students per semester in 1980. (Comments of Illinois Institute of Technology, Docket 80–112, at 8 (September 26, 1980).)

35. In some states graduate level and other post secondary instructional television is handled on a state-wide basis by a single entity. For example in Indiana, the Indiana General Assembly established the Indiana Higher Education Telecommunications System (IHETS) to provide for the development of telecommunications systems to meet the needs of public and private post secondary institutions in Indiana. IHETS operates 23 ITFS stations in sixteen Indiana cities using 28 ITFS channels.[14] IHETS intends to add three additional channels to this system in the near future. In the longer term, IHETS sees the need for 19 more channels in Indiana. These stations are used to distribute medical, engineering, and other forms of post secondary education throughout the state of Indiana. Comments in Opposition to Microband Proposal, General Dockets 80–112 and 80–113, ames R. Potter, Indiana Higher Education Telecommunications System (July 8, 1982). The IHETS plan is typical of State wide plans to use the IHETS channels. Other states have similar systems either operating or planned.

36. Less comment was received on the future growth in the use of the ITFS channels by elementary schools, junior high schools, and high schools. Dr. Gerald A. Rosander, County Superintendent of Schools, Department of Education, San Diego County, submitted extensive comments showing that virtually all the ITFS channels are used in San Diego. Much of this use is for primary, junior high, and high school education. Comments were received from most of the school districts in San Diego County articulating the value of ITFS delivered programming at these educational levels. Comments expressing the same view were also submitted by several teachers from San Diego County Schools. Thus, while very little comment was received on the projected growth in the use of ITFS for the delivery of educational programming at this level it is possible that if other school systems followed the lead of San Diego County there would be increased demand for ITFS channels by such secondary school systems.

37. Some comments suggested, on the other hand, that the future growth of ITFS may be limited at this time by what was referred to in the comments submitted by the National Education Association and others as "the proposition 13 mentality". Comments of the National Education Association, Docket 80–113, Appendix A, at 2 (September 30, 1980). These commenters note that when the amount of money available for public schools is being reduced by taxpayers, expenses for educational technologies such as ITFS are usually among the first to be

[13] This information was furnished by the Policy Branch of the Office of Policy Coordination and Management of the National Telecommunications and Information Agency.

[14] It is useful to note that IHETS provides these 28 channels of service using only 12 different ITFS channels. Furthermore, it does not use more than 4 channels in any city. It uses 4 channels in one city, 3 channels in another city, 2 channels in six cities, and 1 channel in nine cities. Of the 12 channels used, channel $A_1$, $B_1$, and $D_1$ are used 4 times, channels $A_2$ and $G_2$ are used 3 times, channels $C_1$, $D_2$, and $E_2$ are used twice and channels $B_2$, $E_3$, $F_1$ and $F_2$ are used once.

reduced or eliminated. NEA also pointed out that there is a general reluctance on the part of educators to use new technologies. It stated that "many teachers and administrators tend to view educational innovations as fads that will pass if they are ignored." *Id.*

38. Another commenter, the United States Catholic Conference (USCC), indicated that when the Catholic Church institutes its nationwide satellite network, to be known as the Catholic Telecommunication Network of America, local dioceses will use ITFS facilities to connect the satellite earth stations with the end user of the communication service. It is estimated that at least 700 and perhaps as many as 1,050 ITFS channels may be required to fill this need. Comments of Department of Communications, United States Catholic Conference, General Dockets 80-112 and 80-113, 3 (July 2, 1982). The services to be offered on these channels are described as:

(a) Church-related communications capabilities and (b) community-related uses of the system. Among the Church-related communication capabilities are:

1. National and regional teleconferencing for Church organizations.

2. Data and facsimile transmission of the Church's national news service to the 150 newspapers of the American Catholic press.

3. In-service training for specialized Catholic social service organizations, for example, schools, hospitals, Catholic charities, etc.

4. Electronic message and related internal digitalized communications.

The community-related uses include:

1. Educational programming services to local cable systems.

2. Specialized community-related digital services. (For example, CAT scanner interconnections to regional centralized computer facilities * * *.)

3. Regional teleconferencing for civic organizations.

4. Inter-connection for national, non-profit, educational/cultural/inter-religious organizations (via cost-sharing arrangements).

*Id.* at 4. The growth projected by the USSC is difficult to categorize. Data subsequently submitted by the Catholic Television Network [15] show that 11 Catholic Dioceses are now operating systems that use 108 channels. These 11 systems reach 28% of the U.S. population. Another 7 Dioceses are building systems that will use 84 channels and serve 9% of the U.S. population. Thus, the 18 Diocesan systems either in existence or under construction use 192 channels to serve 37% of the U.S. population. Contrasted with these data are the data concerning the 60 Diocesan systems to be constructed in 2 to 5 years for CTN. These 60 systems will require 720 channels to reach 30% of the U.S. population. On the basis of these figures, it can be concluded that much of the growth projected by USCC will occur in areas where ITFS channels have traditionally been most underutilized.

39. In addition, it is not clear what is encompassed by each of the uses listed. It appears that some of what is to be transmitted is not "instructional and cultural material * * * for the primary purpose of providing a formal education and development to students enrolled in accredited public and private schools, colleges and universities" as required by § 74.931(a) of the Rules, 47 CFR 74.931(a). Furthermore, much of the demand projected by CTN will not occur for many years, and when it does occur it will be concentrated in those areas where ITFS channels have been underutilized. Thus, it appears that even if all the channel requirements projected by CTN do materialize it is most likely that sufficient channels will be available to meet the projected demand regardless of the reallocation authorized by this order.

40. Finally, the Association of Hospital Television Networks (AHTN), a national non-profit consortium whose 32 members operate or are planning to operate systems to provide instructional programming for health professions, indicated that although not all these systems use ITFS frequencies to distribute their programming, it is expected that some of the systems not yet constructed will use ITFS channels if they are available. Comments of the Association of Hospital Networks, General Dockets 80-112 and 80-113, (July 2, 1982).

41. The growth of ITFS channel use during the pendency of this proceeding has been robust. As noted above, just after this proceeding was started Centex reviewed ITFS channel use and determined that there were 82 ITFS systems using 492 channels. Our own analysis conducted approximately two years later showed that there were 124 ITFS systems using 808 channels. Thus the number of ITFS operators has grown by approximately 50% and the number of licensed channels has grown by over 60%. In addition, as of October 1982, we had 183 applications pending for new construction permits. [16] As discussed below, many in the MDS community have expressed the view that this growth was triggered by our instituting this proceeding. This may or may not be accurate. In any event, if an applicant is eligible and otherwise qualified and intends to use the spectrum for the purposes stated in our Rules, we have no basis to question its motivation for deciding to proceed at any particular time.

42. On the basis of the above, the following conclusions can be made. It is likely there will be an increase in demand for ITFS channels for use by institutions of higher education for the delivery of graduate level training to the workplaces of engineers, scientists, and other professionals. There is less evidence that there will be substantial growth of ITFS use by elementary, junior high, and high school systems. There is also some evidence that there will be growth in the delivery of health services information, but such growth is not likely to be substantial. It also is likely that growth projected by CTN that is appropriate for ITFS will occur in areas where ITFS utilization already is low. Finally, in a companion *Notice* adopted today, we are proposing to relieve ITFS licensees of a number of regulatory burdens thereby encouraging the fuller use of the ITFS channels.

4. *Projected MDS Growth*

43. It is very difficult to make predictions about the future growth of MDS. In the *Notice*, the Commission observed that in the 50 major markets and in many of the secondary markets further acceptance of MDS applications is precluded by the cutoff rules. *Notice, supra* at para. 19. As noted above, there are mutually exclusive channel 1 applications pending in 84 cities and mutually exclusive channel 2 applications pending in 42 cities. Thus there are no MDS channels available for growth in any major metropolitan, and many non-metropolitan, areas of the country. Furthermore, unless the mutually exclusive applicants reach an agreement among themselves, a comparative hearing is required to

[15] On February 7, 1983, the Catholic Television Network (CTN) submitted a document titled "Information Indicating Current and Projected ITFS Utilization by Catholic Dioceses" and simultaneously requested pursuant to § 1.41 of the Rules, 47 CFR 1.41, that the information be made part of the record in this proceeding and in the proceeding in General Docket 80-113. The information submitted by CTN on February 7, 1983 is hereby accepted in this proceeding and in General Docket 80-113. This action is taken pursuant to § 1.415(d) of the Rules, 47 CFR 1.415(d).

[16] About 120 of the applications were filed by the Public Broadcasting Service (PBS) and its member stations to provide what PBS terms a National Narrowcast Service. Whether PBS is eligible to be an ITFS licensee is presently under review.

resolve each mutually exclusive situation.

44. The principal factor that most of the MDS entities commenting in this proceeding cited as limiting the growth of MDS is the lack of a multichannel capability. Virtually ever member of the MDS community that filed comments in this proceeding expressed the view that if MDS is to survive as an industy, multichannel operation is an absolute necessity. These views were summarized in the comments submitted by the Ad Hoc Committee for Wireles Cable which argued "the expansion of existing MDS service to a multichannel, over-the-air delivery in competition with cable and other forms of distribution is essential to the continued viability of the MDS industry and of its existing carriers and operators." Comments of the Ad Hoc Committee for Wireless Cable, General Dockets 80–112 and 80–113, at 3 (July 2, 1982). This claim is especially noteworthy because the Committee is made up of "representatives from substantially all the Carriers and Operators in the MDS Industry." *Id.* at 2.[17] In addition, Microband and others have submitted data in this proceeding to support the proposition that there is a large unmet demand for multiple channels of premium television that is unlikely to be met by cable television or any other available technologies. (*See* paras. 57–64 *infra*). Microband also submitted studies which it claims establish that the per channel cost for a 5 channel system will be 60% less than for a single channel system because of common equipment and operations. It argues that consumer appeal increases substantially when the number of channels increases but the cost is not substantially higher. Microband Proposal at 57–72.

45. There are two reasons why there is only one multichannel MDS system in operation today. The first reason is, of course, that there are not enough channels available to allow multichannel operation. As noted above, there are only two MDS channels capable of transmitting a standard television signal available in the top 50 markets. Outside of these markets there is only one such channel available. Furthermore, in most of the top 50 markets, a comparative hearing may be required before the second channel is licensed. Even when it is licensed there will be very limited opportunty for even two-channel MDS operation. In general, this appears feasible only if the same operator becomes the customer of both licensees as has occurred in Phoenix (paragraph 30, *infra*).

46. The other reason is that § 21.901(d) of our Rules, 47 CFR 21.901(d), precludes a licensee from obtaining a second channel in the same metropolitan area until it has operated the first channel for at least one year and can show that there is a public demand for additional service that is not likely to be met by a competing carrier. In the *Notice*, the Commission proposed to repeal this rule and it will be discussed below. The rule is pertinent here because it has been shown to be an impediment to MDS growth. Except for this rule, existing channel 1 licensees would be better able to work out arrangements with the channel 2 applicants that would facilitate 2-channel operation. Or the same entity could have applied for both channels and offered 2-channel service to one customer or offered one channel service to two customers.

47. On the other hand, as was observed in the *Notice* and by most of the ITFS commenters in this proceeding, the fact that there are a large number of applications for authority to construct MDS stations does not necessarily mean there is an unmet demand for MDS service. In fact many have claimed that the MDS applications on file are merely a reflection of a "land rush mentality" rather than real demand. Typical of these comments was the view that:

> demand for MDS channels, manifested through applications filed with the Commission and the demand for MDS service, are two entirely different things. Many MDS applicants, like land speculators, are applying for spectrum with no certain knowledge of what they would do with an MDS channel and, in many cases, with no immediate plans for using any MDS channel which may be granted to them.

Comments of the Association for Higher Education of North Texas, et al., General Dockets 80–112 and 80–113, at 14 (July 2, 1982).

48. Many members of the ITFS community submitting comments regarding MDS channel use and projected growth did so on the basis of information supplied by Centex. For this reason, we believe it is appropriate to comment on the Centex MDS analysis. Centex submitted an analysis of the growth of MDS from 1972 thru 1980 that Centex claims "points to fundamental errors in the FCC analysis of MDS channel needs." Centex Comments, *supra*, Attachment C, 12. Centex claims that during this period a total of 1,771 MDS applications of various types were filed. Centex also states that "there are, in fact 21 different types of applications listed by the FCC, of which *only 8 deal directly with construction permits and licenses*, while 13 deal with modifications or additions. The FCC dockets fail to make this important point clear." *Id.* The Centex data shows that of 1,771 applications filed 1,137 were for construction permits and 102 were for station licenses. Because of this Centex exclaims "the number of applications for licenses for new stations is, however, only 102 or *5.8% of all applications!*" *Id.* at 13 (emphasis in original). The Centex data also shows that of a total of 239 channel 2 applications, only 2 were for licenses. On the basis of this data Centex makes the following assertion:

> Since serious operators—both profit and non-profit entities—usually aggressively pursue their applications for construction permits and assiduously pursue station construction authorizations, one could rightly ask, why has this not occurred in the case of MDS? Is it because applications are being made on the basis of Oklahoma-type land-grabs with the hope that valuable "mineral" or "farm lands" may be acquired? Regardless of the basis for the current status of MDS applications, the fact that only 1 of every 14, or 7%, of all MDS channel applications has developed into an FCC-licensed operation is indicative of the real status of MDS.

*Id.* at 14.

49. We recognize and appreciate that Centex in the most reliable private source of ITFS facility data; however, we believe that these comments suggest a misunderstanding of the MDS industry and Commission processing procedures on Centex's part. When an entity desires to construct a MDS facility it submits a construction permit application to the Commission. If the application is *not mutually exclusive with another construction permit application* and is complete in all respects and if the Commission finds that the applicant is legally, technically and otherwise qualified, the Commission will grant the requested construction permit. After the permittee constructs the station it will then apply for a station license. As is clear from the statistics quoted by Centex, there are many more construction permit applications than there are channels available and thus most of the construction permit applications received are mutually exclusive with at least one other application. None of these mutually exclusive applications can be granted until either a comparative hearing is held or the mutually exclusive applicants reach a satisfactory settlement agreement. This situation

[17] The Committee is made of both licensed MDS carriers and the MDS operators who are the customers of the licensees. The carriers represent more than 80% of the existing or potential MDS licensees in the top 50 markets and the operators provide programming for 70% of all active MDS channels. Ad Hoc Committee Comments, *supra*, 2 and 1.

accounts in part for the slow growth in the number of MDS stations.[18]

50. It also may be that there is some truth in these assertions. It does appear that in many areas the development of MDS has been slow (*see* para. 28, *supra*). The data submitted by MDS interests suggest that the marginal cost of providing additional channels is sufficiently low that additional penetration could be anticipated were multichannel operations authorized (*see* para. 44, *supra*).

51. On the basis of the information presented, we conclude that there will be little growth in the use of MDS channels as long as there are only two channels available and each licensee is only allowed to use one channel per metropolitan area (*see* para. 44, *supra*). The market for single channel MDS in many areas is limited (*see* para. 28, *supra*). We further conclude that if more channels were made available and if the restrictions on multiple channel operation are removed there could be a rapid acceleration in the growth of MDS.

*B. Public Policy Considerations*

52. Several ITFS commenters in this proceeding claimed that even if the ITFS channels are not now fully utilized, as a matter of public policy, the Commission should continue to keep all 28 channels reserved for ITFS. For example, the American Library Association asserted that "as a matter of public policy the Commission should retain this spectrum for noncommercial educational use. As the guardian of the airwaves for the public, the Commission has a special responsibility—in our judgment—to set aside a portion of the spectrum for the benefit of the public, just as is done in the case of land development in Alaska and the Far West." Comments of the American Library Association, General Docket 80-112, at 3 (September 5, 1980). The National Association of Educational Broadcasters stated that:

> The growth of instructional telecommunications systems depends on the concept of reservation. Educational and public telecommunication interests should not be forced into the "marketplace" with commercial and private microwave system operators. The ITFS band is the last "free" resource available to the country for educational purposes. The Commission maintains the noncommercial reservation of the lower 4 MHz of the FM radio band and of unused assignments in the TV Table of Allocations, despite the pressures from would-be commercial broadcasters to invade this reserved territory. Maintenance of the reserved nature of the 2500–2690 MHz band is also warranted by the same policy considerations.

Comments of the National Association of Educational Broadcasters, General Docket 80-112, 6 (September 26, 1980).

53. We recognize that there are sound public policy reasons for creating spectrum reserves. In the order granting the exclusive use of the 28 channels to the ITFS, the Commission concluded that "[b]y providing the exclusivity desired by the educators, planning of the system as well as usage should be simplified since they will not need to consider the questions of new non-ITFS systems." *ITV, supra*, at 200. In the same order, the Commission recognized that it should wait longer to review the use of spectrum allocated for educational use "because it was aware of the problems encountered by educational interests in preparing funding and implementing the new tool as well as developing the operational expertise * * *." *Id.* at 199. We continue to believe that the concept of a spectrum reservation for educational and other public service entities is valid. We also continue to recognize, as many of the ITFS commenters in this proceeding have again emphasized, that the nature of educational institutions is such that it will generally take them much longer than it would take a commercial entity to begin using a new technology such as ITFS.[19] It has been pointed out in this proceeding that educators are slow to accept new technologies and that many of the funding sources for education are even slower to make funds available for innovative endeavors such as ITFS. We also note in this regard that in its comments, Microband stated that "[w]hile it might be argued that school systems, which must pay for land, buildings, supplies, electricity and other facilities, should otherwise compete in the free market for these channels, we do not subscribe to such an approach. Instead, we would urge the retention of a number of channels for exclusive ITFS use." Comments of Microband Corporation of America, General Docket 80-112, at 27 (October 9, 1980). We agree. Thus, we continue to believe it is in the public interest to have a spectrum reserve for the ITFS.

54. Deciding that it is the public interest to have a spectrum reserve does not mean, however, that a 28 channel nationwide reserve is in the public interest. In this proceeding, we have tried to determine whether the channels that have been available for the ITFS since 1963 are now being used or will be used in the future. As summarized above, the evidence indicates that in some of the largest metropolitan areas most of the ITFS channels have been licensed. In other metropolitan areas, there has been limited or no use of the channels. In many states, there are no channels in use, and in most of the other states, there is little use outside of the metropolitan area. Although it is difficult to make accurate projections concerning the future use of these channels, the evidence available indicates that there will be some growth, but not enough to fully utilize all the channels on a nationwide basis.

55. Having found that there are ITFS channels that are not now being used and are unlikely to be used in the near future, we are faced with the question of whether it would be in the public interest to reallocate some of them for use by MDS as proposed in the *Notice*. MDS is now used primarily for the distribution of premium television to hotels, motels, apartments and single family residences. In its proposal, Microband submitted extensive evidence that there is a large unmet demand for multichannel premium television and that "cable (television) is not capable of meeting the existing demand * * * now or any time in the foreseeable future." Microband proposal, *supra*, at 55. Microband further argues that making more channels available for MDS would act as a competitive spur to the cable television industry and that "[s]ince there are no alternative distribution systems authorized to provide multichannel broadband service, cable has been able to behave as a monopoly industry, building at a schedule suited to its own pace, with little incentive to upgrade antiquated systems." *Id.* at 12 (footnotes omitted). Microband concludes that an expanded MDS would "provide a competitive spur to cable, thereby moderating its monopoly characteristics and speeding its growth." *Id.* at 25.

56. On the other hand, most of the ITFS commenters expressed the view

[18] The Centex comments also included a table that represented a statistical comparison of MDS, OFS, and ITFS. In this table, Centex claimed that 98 MDS stations served a total of 133 receive sites with an average 1.4 receiving sites per installation. *Id.* at 19. It is not clear where Centex obtained these figures, but it is clear that they represent a gross misstatement of MDS channel use. According to the figures compiled by Paul Kagan Associates, Inc. as of June 30, 1980 the MDS industry was providing premium television service to 352,000 individual locations. MDS Data Book, *supra*, at 12. It may be that what Centex did in its analysis was confuse the number of entities purchasing time from MDS stations with the number of locations receiving service via MDS. In the usual MDS situation there is a single MDS licensee with a single subscriber who provides service to a large number of customers.

[19] It could be argued that ITFS can no longer be considered a new technology since it has been available for almost 20 years. However, it is only recently that many of the school systems and universities have become aware of its potential.

that expanding the MDS was unnecessary in view of the number of alternative methods of delivering entertainment programming to the public. The Public Broadcasting Services (PBS) comments were typical. PBS asserted that:

> Microband's argument that multichannel MDS systems should be used to increase competition for cable television does not justify a departure from the nation's long established and sound policy of assuring adequate telecommunications resources for educational purposes, especially when that competition is provided by numerous other technologies. Nor are multichannel MDS systems required to fill in service gaps where cable television is not available. With the explosion of STV, and DBS and low power television on the short-term horizon, there will be more than sufficient alternative services available to the public in both urban and rural areas. Low power television and DBS, in particular, have been highly touted as solutions to the problem of underserved rural areas.

Comments of the Public Broadcasting Service, General Dockets 80–112 and 80–113 (June 2, 1982).

57. These comments do not demonstrate that there is no substantial public demand for additional premium entertainment programming. Rather, they address the matter of how the demand should be met. As to the timing of the introduction of other new services, we note that there is no multichannel alternative to cable available now. STV is a one channel service. A high power Direct Broadcast Satellite service, transmitting entertainment programming directly to individual homes on a widespread basis, is several years away.[20] Low power television as a means for delivering subscription television is basically a low power version of STV. In any case, multichannel MDS will expand consumer options, and expanding consumer options is a legitimate public interest justification for reallocating spectrum. If those who claim there is no market for multichannel MDS are correct then whatever spectrum is allocated for multichannel MDS will go unused and can be reallocated back to the ITFS or to some other appropriate use.

58. If, on the other hand, a market does develop for mutichannel MDS there would be benefits to the public at large and there could be large benefits to the users of the ITFS channels as well. For example, in both this proceeding and in the companion proceeding in Docket 80–113, we have been informed by ITFS licensees that there has been no reduction in the cost of the equipment they are being offered by manufacturers. This is in direct contrast to the MDS industry where the cost of the downconversion equipment has decreased from over one thousand dollars to less than one hundred dollars. We believe that if there is widespread use of multichannel MDS there could be similar reductions in the cost of ITFS equipment. These savings would result from economies of scale in the manufacture of reception equipment. This could result in dramatic decreases in the cost of constructing ITFS systems thereby making them affordable to many who cannot now afford to build these systems.[21] Lower cost ITFS reception equipment could also make it possible. For existing ITFS systems to expand the market for their programming. It could become economically and technically feasible to deliver instructional programming directly to private homes.

59. Microband further claims that authorizing multichannel MDS would be in the public interest because it would "promote economic activity in a high technology field which is important to the nation's future." Id., at 73. Microband estimates that the authorization of the multichannel MDS could provide 20,000 new jobs. *Id.* Bogner Broadcast Equipment claims that the authorization of multichannel MDS would cause equipment manufacturers such as itself "to develop new, improved and competitively priced multichannel reception equipment." Bogner futher claims that "the stimulus will have a ripple effect throughout the industry benefitting manufacturers, marketers, retailers, MDS licensees, MDS programmers, and most of all the consumer." Comments on Proposal, Bogner Broadcast Equipment Corporation, General Dockets 80–112 and 80–113, at 2 (June 2, 1982). Other equipment manufacturers have expressed similar views. Conifer Corporation asserts that authorization of multichannel MDS "will create new business opportunities and will benefit the economy." Comments on Proposal, Conifer Corporation, General Dockets 80–112 and 80–113, at 2 (June 2, 1982). Lance Industries states that authorizing multichannel MDS "will cause a re-vitalization of a significant segment of the American-based electronics manufacturing industry" and thereby "create jobs and benefit society as a whole." Comments in Support of Rulemaking Proposal, Lance Industries, General Dockets 80–112 and 80–113, at 2 (May 28, 1982).

60. Another public interest argument made by some commenters is that authorizing multichannel MDS will make multiple premium television channels available to rural areas that may never be served by conventional cable television. One citizen from West Virginia made the following observation:

> Any survey of rural America will demonstrate that the presently allocated instructional television fixed channels are not being used or are used only in a minimal fashion in rural areas. The likelihood that a multichannel MDS service would impinge on the availability of such channels for instructional purposes is most remote at best.
>
> I really believe that it is about time that your agency give as much consideration to expanding various electronic services to rural America as you give to increasing the plethora of electronic services that are available in the larger markets.

Informal comment of S. Craig Curtis, General Dockets 80–112 and 80–113 (May 8, 1982). An MDS operator from New Hampshire surveyed potential multichannel MDS customers and submitted the following summary of the responses received:

> Most of these residents cited a recent article that appeared in the newspapers concerning a small town that was considering Cable Television, wherein one of the politicians stated that "Only 50% of the residents in the State of New Hampshire will ever have Cable Television Service." Their general reaction to this article is that when an electonic type of service is available to provide them with this service, which will not cost the taxpayers any additional money and will actually employ more people in the State, why should they be deprived of this service simply because they choose to build their home and raise their family in a surbuban type of atmosphere? Others expressed views that they realized that it was more costly for their water, sewage system and fire insurance rates where their homes have been erected, but their reaction was, "Isn't this what the United States is all about—Freedom of choice?" And they felt as long as they were willing to pay the cost for their freedom, the FCC should provide them the same equal opportunity that is provided to those who have elected to live in a large city, provided the cost is paid for by themselves, and not the State or Government.

[20] A number of entities (e.g. United Satellite Communications, Inc.) have announced plans to attempt to use low power fixed satellites to deliver video entertainment programming to individual homes, in addition to traditional fixed satellite reception points (cable television systems, MDS systems, hotels, etc.). The fixed satellite service is at a comparative technical disadvantage vis-a-vis the direct broadcast satellite service because, among other things, the lower power transmitters require larger receiver antennas and the satellites are spaced more closely together which increases the possibility of interference. In any event such systems are nascent in design and may be subject to further regulatory considerations.

[21] This does not argue against reallocation of a portion of the band to MDS because the premise of the reallocation is based on commercial operation.

Comments of Dynamic Sound, General Dockets 80–112 and 80–113, at 3 (June 1, 1982).

61. Two major public interest arguments favoring the authorization of multichannel MDS are efficieny and flexibility. It is clear that substantial demand exists for multichannel premium television service. In uncabled areas (some of which may never be cabled), multichannel MDS is a means for satisfying consumer demand for additional premium television service. In areas that are or are about to be cabled, competition from multichannel MDS may spur cable systems to build promised systems faster, improve existing systems, and keep prices low. The efficient production of goods and services and the efficient use of spectrum are promoted when competition among providers is present.

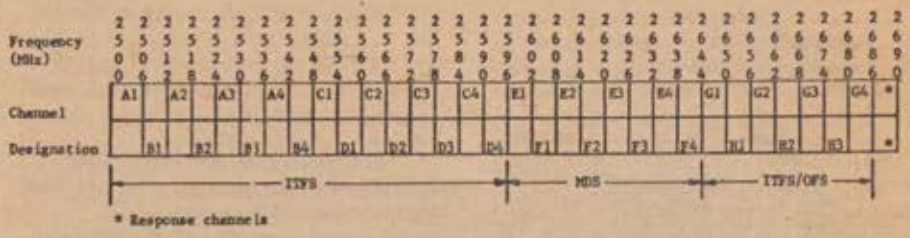
62. Multichannel MDS is also a particularly flexible service. While current indications are that its primary use would be for premium video, many other uses are possible (*e.g.*, high speed data transmission or transmission of educational programing). The common carrier nature of MDS means that the type of service provided can change on public demand. Thus, frequencies authorized for multichannel MDS use are likely to be employed in their highest valued use.

63. In addition to these two advantages, it is also possible that multichannel MDS would stimulate equipment innovations that would lower the cost of ITFS equipment. This could make ITFS service more widely available.

64. The major argument raised in opposition to the reallocation, other than the spectrum reservation argument discussed above, is that multichannel MDS is not needed because there are other technologies available to meet whatever demand exists. After carefully considering all these arguments, we have concluded that reallocating some ITFS channels to MDS will serve the public interest. We believe the benefits noted above are sufficiently likely to permit MDS entrepreneurs an opportunity to expand consumer choice by offering a multichannel MDS service. Should these benefits not materialize, a further reallocation may be undertaken. We do not believe our reallocation plan, discussed below, compromises the legitimate needs of the ITFS community for channels of communication.

*C. Reallocation Plans*

65. Before reviewing the reallocation plans considered, we believe it is useful to review the existing allocation scheme used for the 2500–2690 MHz band. The band is divided into thirty-one 6 MHz channels and the same number of 125 KHz response channels.[22] (The final 125 KHz of the band is not allocated for these services.) The thirty-one 6 MHz channels are contained in the portion of the band from 2500 MHz to 2686 MHz and the thirty-one 125 KHz response channels are contained in the band from 2686 MHz to 2689.8750 MHz. The thirty-one 6 MHz channels are further divided into 7 groups of 4 channels each and a single group of 3 channels. The 4 channel groups are designated channel groups A through G and are assigned to the ITFS. The 3 channel group is designated the H group and is assigned to the OFS. Within each group there is a 6 MHz gap between each of the channels. That is, channels within each group are not adjacent; they are alternated with those of another group to provide a 6 MHz guard band between the channel within each group. The chart below illustrates the allocation plan.




66. ITFS licensees are limited to no more than 4 channels in a single area, all of which must come from the same group. 47 CFR § 74.902(c). If an applicant is not ready to use all four channels when it first applies, it may request the remaining channels be reserved for it for future use. *Id.* In those situations in which there are two ITFS licensees in the same area, the channel groups are assigned in so far as is possible so that there is no adjacent channel operation. For example, if there were an A group licensee in a given area, we would try to avoid granting a B group license in the area. It should also be pointed out in this regard that our rules provide for reusing channels in the same area if doing so would not cause harmful interference. 47 CFR § 74.902(d).

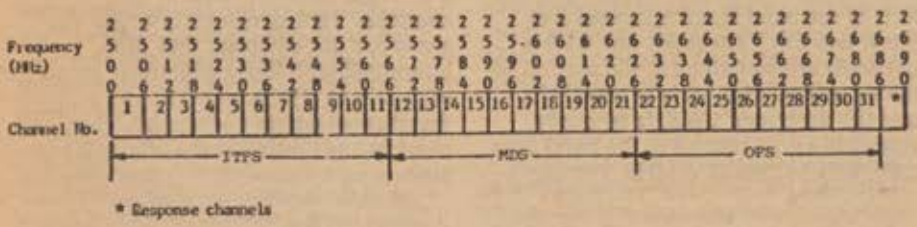
67. The principal reason for adopting the present scheme was that it allowed the use of simple and inexpensive reception equipment. *Instruction Television Fixed Service*, 2 RR2d 1615 (1964). The equipment used to receive an ITFS signal consists of an antenna, a downconverter and a conventional television receiver. The downconverter simultaneously converts the incoming signals from the four ITFS channels (if four channels are being transmitted) to four VHF television channels. The VHF channels used are usually either 7, 9, 11 and 13, or 8, 10, 12 and 13(+).[23] Which set to use is determined by which VHF channels are used in the area. This eliminates the possibility of the VHF stations interfering with the downconverted ITFS channel. It also allows the local television channels to be distributed on the same cable as the downconverted ITFS channels. *Id.* at 1617.

68. In the *Notice*, we proposed a plan whereby the 31 channels in the 2500–2690 MHz band would be reallocated for shared use by the ITFS, the MDS and the OFS. Under this plan there was to be a primary allocation of 11 channels to

[22] The response channels are used by some existing ITFS channels to allow students in the remote class rooms to speak with the instructor at the studio. Other systems use telephone lines for this purpose and their response channels are unused.

[23] The designation 13+ refers to the use of the spectrum immediately above channel 13. This is made possible by adjusting certain circuits within the television receiver. Further Comments of the Corporation for Public Broadcasting, General Dockets 80–112 and 80–113, Engineering Statement, at 6 (July 2, 1982).

the ITFS, 10 channels to the OFS, and 10 channels to the MDS. We also proposed that if the primary allocation of a service was fully used in one area any unused channels in the other two allocations could be used to satisfy the excess demand in the fully used service. The proposed plan did away with the channel groups described above and replaced them with contiguous allocations. The chart below illustrates the proposed allocation plan.




* Response channels

69. This plan received virtually no support from the commenters in this proceeding. It was criticized as being technically not feasible and unduly disruptive of the existing ITFS allocation scheme.

70. The claims that is was technically not feasible were all based on the belief that adjacent channel operation cannot readily be achieved. Several reasons were given to support the claim. First, some claimed that adjacent channel operation would preclude the use of the block downconversion equipment now used by virtually all ITFS systems. One of the major advantages of the block downconversion technique is that it "avoids interference created from 'direct pickup' of a VHF television station by the television receiver, or by a 'MATV' system used to distribute converted ITFS signals to school classrooms." Further Comments of the Corporation for Public Broadcasting, General Dockets 80–112 and 80–113, Engineering Statement, at 5 (July 2, 1982). If adjacent channel operation were required, the local VHF television signal would be picked up by the television receiver being used to display the ITFS signal and cause a degraded picture. CPB outlined a downconversion scheme that would mitigate this problem but that would also produce another problem, interference with the reception of the local VHF signals carried on the same distribution system. *ID.* at 6. The equipment required to implement the downconversion scheme was much more complicated and expensive than existing ITFS downconversion equipment.

71. CPB also mentioned two other problems that could occur with adjacent channel operation: unavoidable unauthorized reception of the adjacent channel programming and downconverter overloading. *Id.* at 2. The unauthorized reception referred to by CPB would occur when different licensees were using interleaved channel groups. For example if one ITFS licensee were using the A group and another ITFS licensee were using the B group in the same area, the block downconversion equipment used at the receiving sites of both licensees would be capable of receiving programming from both licensees. The other problem raised by CPB, downconverter overloading, could result if 8 strong signals were received at a single location from two nearby ITFS stations. CPB claims that the presence of eight signals in the downconverter would produce intermodulation interference to both systems.

72. Notwithstanding the theoretical merits of CPB's criticisms, we note that there are many large metropolitan areas where interleaved channel groups are being used. For example, the A and B groups are licensed in Los Angeles, San Francisco, New York and Milwaukee, and we have received no reports of the problems raised by CPB. This is not to say that problems do not exist, but we can only assume that they are not great since we have not received any reports of this arrangement producing problems.

73. Another commenter claimed that adjacent channel operation would eliminate the ability of ITFS operators to use the same transmitter for both the aural and the visual channels as is done now and force them to the expense of using a separate transmitter for each channel. It was claimed the present "mode of operation simplifies the transmitter and makes it less expensive but also complicates the suppression of energy outside the particular channel transmitted." Comments of National Instructional Telecommunications Council, Inc. and Catholic Television Network, General Docket 80–112, Attachment H, Engineering Statement by Jules Cohen & Associates, at 2 (July 26, 1980). According to Mr. Cohen single transmitter operation would produce so much interference that adjacent channel operation would be impossible. Finally, Dr. William Kincheloe, Jr., Adjunct Professor of Electrical Engineering at Stanford University concludes, "that such a major change in policy for frequency allocations as that proposed by the adjacent channel assignment in Docket 80–113 should be done with great care if a situation is not to develop where many instances of degraded service would be experienced to the embarrassment of the FCC." Comments of the Leland Stanford Junior University, Attachment A at 6 (September 26, 1980).

74. These and other commenters are only claiming that the adjacent channel operation that was implicit in our proposal is not technically feasible *using existing ITFS equipment.* None has claimed that such operation is not technically feasible using state-of-the-art engineering practices. In fact, the Corporation for Public Broadcasting made the following claim in its first set of comments:

> With present state-of-the-art engineering practices, it is no longer necessary to restrict distribution systems to alternate channels. Primarily by careful control and maintenance of signal strength ratios, systems can be constructed to successfully utilize adjacent channels, as in the now common cable television distribution systems where all 12 VHF channels are filled.

Comments of the Corporation for Public Broadcasting, General Docket 80–112, Appendix 1, at 57, n.1 (September 26, 1980).

75. In its proposal Microband expressed some doubt about adjacent channel operation using *existing* MDS equipment. It stated:

> We rejected a scheme which would make use of a block of contiguous channels all operating on the same polarization. The major difficulty associated with this plan is not knowing what the adjacent channel

interference performance of such a system would be. *Existing equipment* type accepted for MDS and ITFS operation would not be capable of operating without significant adjacent channel interference because the vestigial sideband attenuation required by § 73.687 of these Rules does not provide for sufficient isolation between adjacent channels. Thus, without additional isolation provided by orthogonal polarization operation and/or a significant increase in the vestigial sideband filtering, interference-free adjacent channel operations will not be possible.

Microband Proposal, *supra* at 33 n. 37 (emphasis added). Contrasted with Microband's view was that of Richard Vega who claimed that "the transmission of copolarized adjacent channels can easily be accomplished by relatively *simple and inexpensive modifications* to existing type accepted MDS transmitters." Comments of Richard L. Vega, General Dockets 80–112 and 80–113, at 5 (July 2, 1982) (emphasis added). Mr. Vega further claims that the multichannel experiment being conducted in Salt Lake City supports this claim. *Id.*[34] In its comments, Contemporary Communications Corporation (CCC), while agreeing with Microband's claim that the existing MDS and ITFS transmitters will not allow adjacent channel operation, contends that "state-of-the-art transmitters are readily available today whose technical specifications will permit adjacent channel operation using the same polarization without causing interference." Additional Comments of Contemporary Communications Corporation, General Dockets 80–112 and 80–113, at 19 (July 2, 1982). CCC also suggests that modifications of some sections of the rules would make adjacent channel operation easier. *Id.*

[34] On December 3, 1981, the Commission granted Channel View, Inc. an experimental station license to test the technical feasibility of transmitting eight adjacent channels from a single site. The station is designated KM2XBN. File No. 886–ED–PL–81. The early results submitted by Channel View indicated some difficulty in reducing the spurious emissions from the transmitter more than 60 dB below the peak visual transmitter output; however, subsequent design adjustments in the transmission equipment have solved this problem and the tests have demonstrated that operating an 8 channel system using adjacent channels appears to be technically feasible. Channel View subsequently sought permission to conduct a "market experiment" using these frequencies. File No. 8938–ED–MR–82. In particular, Channel View requested authorization to program its multichannel system with premium programming and to provide service to the public for profit. The original experimental authorization prohibited Channel View from offering multichannel service to the public for profit. In view of our action reallocating spectrum, a market experiment would serve no useful purpose and that portion of Channel View's application therefore is denied.

76. Many ITFS operators have claimed that even if adjacent channel operation were technically feasible the costs of the necessary equipment changes would be prohibitive. For example, the University of Southern California stated "the suggested channel reallocation would entail significant additional costs which educational institutions in their present financial circumstances, can ill afford." USC further argued that "[a]ny new allocation schemes that would increase the technical complexity of existing ITFS equipment would undermine the very basis upon which the low cost educational use of ITFS was originally promoted." Comments of the University of Southern California Instructional Television Network, General Docket 80–112, at 3 (September 29, 1980).

77. Many of the existing ITFS licensees claimed that the proposed plan would result in substantial reductions in the service they are now providing. For example the California Public Broadcasting Commission (CPBC) claimed that if the plan in the *Notice* were adopted "there would be a net loss of two-thirds of the channels now operating or imminent in Los Angeles, San Francisco and San Diego," and "that California's principal cities will face massive reductions in their present ITFS service * * *." Comments of the California Public Broadcasting Commission, General Docket 80–112, at 7 (September 26, 1980). We are aware that these California cities represent areas of unusually heavy ITFS channel use, and that there is some validity to the concerns that our initial proposal could cause dislocations or additional expense.

78. On the basis of these considerations, we have reached the following conclusions regarding the reallocation plan in the *Notice*. Adjacent channel operation is technically feasible but it can only be implemented using transmission and reception equipment that is different from existing ITFS equipment. We believe implementation of the allocation plan in the *Notice* would be expensive and would put an undue financial burden on existing ITFS licensees.[35] Furthermore, the plan would be disruptive of many existing and planned ITFS system. For these reasons and since we have concluded there are less disruptive methods to make spectrum available for MDS use, we have concluded that adoption of the allocation plan in the *Notice* would not be in the public interest.

[35] It is difficult to make precise estimates of the costs that would be incurred in converting existing ITFS systems to adjacent channels systems. It is likely that in most situations the existing transmitters would need to be replaced at a cost in excess of $100,000 per transmitter. It is also possible that existing downconverters would need to be replaced or modified. The total cost involved would be a function of the number of receiver sites and the cost per site could be several hundred dollars.

79. The *Notice* also discussed other allocation plans. One was that each service be allocated specific channels within the band. We rejected that plan for two reasons. First, it required us to make predictions concerning the future needs of the services, a prediction we felt unable to make at the time. Second, we felt that such a plan would not be flexible enough to deal with regional variations in the number of channels required for the services. For these reasons, we proposed the primary allocation plan that allowed sharing of unused channels by the other two services. As articulated above, the voluminous record in this proceeding has enabled us to develop a better sense of the future growth of these services. It also has demonstrated that our concerns about regional variations were valid. There are wide regional variations in the use of both MDS and ITFS.

80. We also considered the alternative of unlimited sharing of the band by all three services. We rejected this plan because we believed it would be difficult to administer, especially if different technical rules were applied for each of the services sharing the band. After reviewing the record in this proceeding, we have also concluded as set out above, that such a plan would be contrary to the public interest in that it would not insure that some spectrum would continue to be reserved for potential ITFS applicants.

81. On the basis of these conclusions, we have reviewed the reallocation options available and have concluded that a plan that considers regional variations in spectrum use while at the same time reserving some channels for potential ITFS applicants would best serve the public interest. Several of those commenting in this proceeding also expressed the view that an allocation plan that reflected regional differences in spectrum use also made more sense than a uniform nationwide plan. *See* Comments of Oklahoma State Regents For Higher Education, General Docket 80–112 (June 16, 1980); Comments of C. Peter Magrath, President, University of Minnesota, General Docket 80–112, 3 (September 29, 1980); Comments of the State University of New York, General Docket 80–112, 4 (September 24, 1980).

82. We have considered various methods to take into account the regional variations in the demand for ITFS stations and multichannel MDS.

One method suggested by President Magrath of the University of Minnesota was to hold local or regional public hearings to determine, *inter alia*, "the views of the community effected concerning the merits of the existing and proposed services." Comment of the University of Minnesota, General Docket 80–113 at 3 (September 5, 1980). Such public hearings could also be used to get accurate detailed information on the projected demand for ITFS channels and the demand for multichannel MDS for each area. We believe that holding such hearings would be a lengthy and expensive process, requiring a substantial amount of travel and administrative support. We do not believe that such a procedure is feasible and even if it were we do not believe that results obtained would be so substantially better than those obtained by other methods as to justify the expense and delay involved.

83. We have also considered reallocating channels to provide multichannel MDS only in those areas where there has been little or no use of the existing ITFS channels. Proceeding in this manner has two distinct disadvantages. First, it could involve the Commission in a protracted process to determine the boundaries of such areas. The only realistic way this could be done would be to wait until a multichannel application was received and then determine the ITFS channel use within a specified distance of the proposed MDS station. Only after conducting such an analysis could we accurately determine ITFS channel use in the proposed MDS service area. Of course, we could require MDS applicants to include this analysis as a part of their applications. This would likely cause many existing and potential ITFS licensees to challenge the accuracy of the MDS applicant's analysis thereby involving the Commission staff in a series of contested proceedings. This would clearly delay the introduction of multichannel service in many areas.

84. The other difficulty with such a plan is that there would be little possibility of multichannel MDS in those metropolitan areas where the ITFS channels are extensively used. Thus, even where existing ITFS licensees were willing, or even desired, to tranfer their license to an MDS operator, MDS operations would not be permissible.

85. The plan we have settled upon takes into consideration regional variations in ITFS channel use, "grandfathers" all existing ITFS licensees, permittees, and applicants and reallocates a specific set of channels for MDS use on a strict noninterference basis. The plan works as follows:

a. The E and F groups are reallocated for multichannel MDS use on a nationwide basis.

b. A multichannel MDS permittee will not be authorized to begin construction until it submits a statement from all existing cochannel and adjacent channel ITFS users with transmitters located within 50 miles of the new MDS station that the operation of the multichannel MDS station will not interfere with the ITFS operation or that the ITFS operator would accept any interference that did occur. This means that the MDS permittee is authorized to negotiate with existing cochannel and adjacent channel users of the ITFS channels to attempt to reach an accommodation whereby the needs of each can be satisfied. In those areas where there are no ITFS operators within 50 miles of the proposed MDS transmitter location that are using the authorized channels or any adjacent channels, the MDS permittee must so state.[26]

c. All ITFS licensees and permittees of, and applicants for, the channels as of the adoption date of this order will be grandfathered with rights of renewal. That is, all ITFS licensees of E or F group channels will be allowed to renew their licenses. Furthermore, all permittees of and applicants for either E or F group channels that ultimately obtain a license will be allowed to renew such licenses. No assignments, other than *pro forma* assignments of ITFS E or F group licenses, applications, or construction permits will be authorized.

d. No new ITFS applications for the E or the F group channels filed after adoption of this order will be accepted.

86. The elements of this plan have several advantages that other plans lack. Reallocating a specific set of channels on a nationwide basis means that in those areas where the reallocated channels are not being used, channels will be immediately available for multichannel MDS. It also creates at least the possibility that multichannel MDS will be available even in those areas where the reallocated channels are being used by ITFS service providers. It does this by granting conditioned construction permits for multichannel MDS in such areas and allowing the holders of these construction permits to negotiate with the existing cochannel and adjacent channel users to attempt to reach an accommodation whereby the requirements of both can be met.

87. We expect that such negotiations would consider, *inter alia*, the relocation of the existing ITFS users to other available ITFS channels, the use of frequency reuse techniques such as cross-polarization, site shielding and frequency offsets, and even the possibility of satisfying some of the communication requirements of the existing ITFS users in other areas of the spectrum. In this regard, we note that some members of the MDS community have argued that ITFS channel use is inefficient in the large metropolitan areas. For example, in its proposal, Microband claimed that many of the licensed ITFS channels were being used for point-to-point communications rather than for omnidirectional communication and concluded that, "[t]he significance of these point-to-point uses is that when intermixed with an intended omnidirectional use, they lead to a significant waste of spectrum." Microband Proposal, *supra*, Appendix H, at 6. In his first set of comments, Richard L. Vega, concluded that, "[i]n many cases, the ITFS authorized channel is for point-to-point microwave thereby creating a wasteland of co-channel and adjacent channels over a relatively large geographical area due to the potential for harmful interference." Comments of Richard L. Vega, General Docket 80–112, at 2 (September 30, 1980). In many cases, the use of ITFS channels for point-to-point communications is complementary to point-to-multipoint or omnidirectional use in the same area. The point-to-point use of the ITFS channels is usually for studio to transmitter links (STLs). For example, under the proper set of circumstances, it could be possible to use one group of a pair of interleaved channel groups in an omnidirectional configuration and to use the other group as an STL in the same area. Furthermore, the use of an ITFS channel group for point-to-point communications allows the ITFS operator to use simpler and less expensive equipment than would be required by conventional point-to-point service. Finally, of course, such use is specifically provided for in § 74.931(d) of the Rules, 47 CFR 74.931(d). We do believe, however, that it may be possible to accommodate such users in

[26] We expect existing and potential ITFS operators to cooperate with MDS permittees in determining whether the operation of the MDS facilities will interfere with the ITFS operators. If the MDS permittee is not able, after making reasonable efforts, to obtain the desired statement from the ITFS operator it may substitute evidence to the Commission on the issue of whether harmful interference will occur. The MDS permittee must also detail the efforts it made to obtain the desired statement and must serve a copy of all evidence submitted to the Commisison to all affected ITFS operators. We expect such submission to represent extraordinary cases.

other portions of the spectrum. In regard to these negotiations, we would expect the multichannel MDS permittee to give reasonable compensation for any dislocations caused by the operation of its facilities.

88. Another advantage to reallocating a specific set of channels and requiring an agreement prior to construction of the multichannel facilities is that it is easy to administer. This is in a sense a double advantage. It makes it easier for applicants to file acceptable applications and it makes it easier for the staff to review the applications. Under this plan, an applicant is not required to conduct an interference analysis until after he has received an authorization. Thus, all applicants are expected to comply with all pertinent Sections of Part 21 including those we are adopting today except that they are not required to show non-interference with existing and proposed cochannel and adjacent channel ITFS users of the reallocated channels until after a construction permit has been granted. This procedure will save unsuccessful applicants the time and expense required to prepare such analysis and it will save the staff the time required to review each analyses submitted. Furthermore, we expect that the analysis that are submitted by permittees will be of a much higher quality than those submitted by applicants. Another administrative advantage is that under all of the other plans considered it may have been necessary to freeze the acceptance of all further ITFS applications for some period of time. This plan does not require such a procedure because it does not change the application process for the twenty channels still allocated for ITFS use.

89. A final advantage to a uniform nationwide allocation for multichannel MDS is that it avoids, to the greatest extent possible, disrupting the authorized satellite use of the 2500–2690 MHz band. The use of the band by the broadcast satellite service is limited domestically "to domestic and regional systems for community reception of educational television programming and public service information." 47 CFR 2.106, n. NG 101. The bands 2500–2535 MHz (space to earth) and 2655–2690 MHz (earth to space) are also shared with the fixed satellite service for common carrier use in Alaska and certain areas in the Western Pacific and in the contiguous United States, Alaska and the Mid and Western Pacific areas for education use. 47 CFR 2.106, n. NG 102.

90. Several of those filing comments in this proceeding suggested that if we were to reallocate spectrum from the ITFS use to the MDS use we would reduce the possibility of any satellite service sharing the band.

91. The shared use of the band by terrestrial and satellite services poses two distinct problems. First, the broadcast satellite transmissions can interfere with the reception of terrestrial signals. In general, this would be a problem for any terrestrial service, but it could be more of a problem for MDS than for ITFS users because of the receiving antennas used. ITFS receiver sites generally are equipped with higher gain and hence more directional antennas than MDS receiver sites. The latter in many cases use low gain less directional antennas that are much more likely to pick up interfering signals from satellites than are the higher gain ITFS antennas. The Corporation for Public Broadcasting submitted an extensive analysis of the impact of sharing this band between terrestrial and satellite users that indicated that terrestrial ITFS users could co-exist with satellite users. CPB was unwilling to extend this analysis to include MDS because of the antenna differences. Comments of the Corporation for Public Broadcasting *supra.*, at 31, 32.

92. Terrestrial transmissions in the shared band can interfere with the reception of the satellite signal by nearby earth stations. Here also CPB claimed that the sharing of the band between ITFS and the satellite service was possible but it was again unwilling to extend its analysis to the MDS sharing. CPB claimed that the studies that it presented for ITFS sharing were not valid for MDS because MDS uses omnidirectional antennas and higher power whereas many ITFS stations use directional antennas and lower power transmitters. *Id.* The argument is that terrestrial transmitters of whatever kind create "holes" where no frequency sharing satellite receive stations can be located and that MDS transmitting stations create larger "holes" than ITFS. We agree. However, others have argued that the creation of such holes should not be used as a justification for precluding terrestrial operation in the same band. The Public Service Satellite Consortium (PSSC) commented as follows:

PSSC respectfully urges that limiting the development of 2.5 GHz terrestrial distribution, by claiming that it limits potential satellite distribution in the same band, is not sufficiently strong justification for such action. To limit the developmental potential which 2.5 GHz terrestrial distribution service has, by claiming that such terrestrial distribution causes interference "holes" in potential satellite coverage in this same band, has few merits when the potentials are viewed together. It is true that "holes" would be made in satellite coverage in the presence of local ITFS (or other uses of the 2500 to 2690 MHz band), and that satellite earth stations in this band would require careful placement or other precautions to avoid being interfered with. But to limit development of terrestrial networks, which have at least an order of magnitude of more program capacity and flexibility, would be unwise. The total variety of potential programs which could be distributed via satellite on these frequencies is relatively small. In contrast, the variety of programming which could be aired terrestrially within the same band, is about five to six programs for each location where terrestrial transmitters can be coordinated. This would represent thousands of program possibilities which could be tailored to local or regional needs.

Another consideration which should be recognized as a factor in this argument relates to the demographic distribution of potential "holes" in satellite coverage. If an assumption is made that a local entity wants to receive a satellite-distributed public service or instructional program, and can point its antenna to one of five or six satellites to receive it, it could do it. But if the program content did not match its needs for programming, either generally or at that particular time, it would probably choose from alternative sources. This is where the demographic distribution enters in. The more densely a city or region is populated, the more likely it will be that diverse programs are available to the public, and therefore less likely that a small selection of nationally distributed material will be useful. Where the satellite-distributed material will be most useful is in the more rural areas of the country where alternatives are not as plentiful.

Carrying the argument further, rural areas are not as likely to have as great economic justification for installing ITFS transmitters as the more populated regions would have. In rural areas, low-cost satellite receivers installed to serve small towns, and having local signal distribution via low-power VHF or UHF transmitters, would seem to fit the need best. Terrestrial distribution at 2.5 GHz band frequencies would not be justifiable for individual users who would have to invest in additional receiving equipment to get the programs.

Simplistically then, there would be no interference "holes" in satellite beam coverage, where such coverage is most appropriate in areas where terrestrial distribution at these frequencies is less appropriate and economical.

Comments of the Public Service Satellite Consortium, General Docket 80–113, at 8–10 (Sept. 2, 1980) incorporated by reference in Comments of the Public Service Satellite Consortium, General Docket 80–112, at 4 (September 2, 1980). Perhaps more important in this regard is the fact that we are not aware of any existing plans to construct a public service satellite using this band. Many of those that used the ATS–6 satellite that operated in this band are now leasing transponders from existing satellite communications providers that operate in a different band.

93. The National Aeronautics and Space Administration (NASA) has indicated that it is exploring the use of this band to provide what it terms "feeder links" to provide communications between a "satellite and fixed earth stations, to facilitate interconnection of a mobile satellite service with the terrestrial telephone network." Further Comments of the National Aeronautics and Space Administration, General Dockets 80–112 and 80–113, at 2, 3 (July 2, 1982). NASA is proposing to use the 806–890 MHz band to communicate between a mobile user and a satellite and to use the feeder link to communicate from the satellite back to the feeder link earth station. This would allow for the extension of mobile telephone service to users beyond the range of planned terrestrial networks. NASA has proposed to use the 2500–2535 MHz for the space to earth segment and the 2655–2690 MHz band for the earth to space segment of the feeder links. NASA's proposal is not an allowed use under the existing table allocation and thus would require a separate rulemaking proceeding before it could be implemented.[27] In light of its plan, NASA suggests that any additional use of the 2500–2690 MHz by terrestrial users would make sharing of the band by satellite users more difficult.

94. Reallocating specific groups of ITFS channels for MDS would mitigate the problems pointed out by CPB and NASA and would move in the direction suggested by PSSC. Allocating a specific set of channels for MDS use would mean that any future public service satellite use of this band could be structured to avoid sharing the MDS frequencies. Thus, the analysis presented by CPB would be valid in most of the band. Further, the use of the frequencies NASA proposed for its feeder links could also be avoided. Of course, proceeding in this manner will increase the use of the channels that remain available to ITFS but if the CPB analysis is correct, and ITFS use of these is much less inimical to sharing of the band than is MDS use, sharing can still be accommodated.

95. Grandfathering all existing licensees and permittees of and applicants for the reallocated channels accounts for regional variations in ITFS channel use without extensive Commission involvement or analysis. It does not require any existing ITFS licensees, permittees or applicants to alter planned or present use of their authorizations. Where the channels are not being used multichannel MDS applicants have immediate access to the channels,[28] and where the channels are licensed or applied for MDS operations cannot commence without negotiations with affected ITFS entities.

96. The final element of the plan we are adopting—not accepting any ITFS applications for the reallocated spectrum after adoption of this order—is necessary in order to keep the reallocated channels available for multichannel MDS and to avoid having mutually exclusive, fundamentally different applicants for the same channel. In most cases, the would-be ITFS applicants will be able to be accommodated in the 20 channels that will continue to be available for ITFS.

97. On the basis of this analysis, we have concluded this plan strikes a reasonable balance between the need to continue to make spectrum available for traditional ITFS users and, at the same time, makes spectrum available for multichannel MDS. It does so by minimizing the disruption to the plans of existing ITFS licensees, permittees, or applicants. It is easy to administer and provides at least the possibility of multichannel MDS on a nationwide basis. It also preserves, to the greatest extent possible, the future satellite use of this band.

98. We now address the question of how many channels to reallocate for multichannel MDS. This question really involves three separate questions. First, how many channels constitute a viable multichannel MDS system? Second, how many multichannel systems should be provided for in each market? Third, how many channels should be kept in reserve for ITFS use?

99. The existing MDS rules do not allow MDS licensees to operate even a two channel system. Specifically § 21.901(d), 47 CFR 21.901(d), precludes an existing licensee from applying for at least one year and even then it must show that there is a public demand for additional service that is unlikely to be satisfied by a competing carrier. The new rules proposed in the *Notice* did not contain this restriction. However, the proposed repeal of the section was not discussed in the *Notice* and we did not receive much comment on it in the first set of comments filed in this proceeding. Virtually all the MDS entities that filed reply comments in response to the Microband Proposal strongly supported the concept of multichannel MDS. Microband itself also noted that the existing restrictions "for all practical purpose, limit carriers to a single channel in any one market," because "it is virtually impossible for MDS carriers to prove a negative—that no other carrier is likely to provide service." Microband Proposal, *supra* at 38, and 39. n. 48. In its filing, Contemporary Communications Corporation (CCC) argued strongly for multiple channel MDS. CCC claimed that:

For both technical and economic reasons, the public would be better served by a single entity operating multiple channels, as opposed to many operators, each limited to one channel. Studies have shown that if multiple channels are to be provided to subscribers, careful control must be exercised over the transmitting parameters of the channels. In particular, for best operation, transmitting locations should be the same. Even better operation will result if common transmitting antennas are used. To achieve satisfactory reception, relative frequencies of the several transmitters must be controlled with

[27] On November 29, 1982 NASA filed a Petition for Rulemaking in which it formally proposed, *inter alia*, that this band be made available for this purpose.

[28] It could be argued that if the reallocated channels were the only channels not used in a particular area, and if an applicant were just about to file for these channels, such an applicant would be left with nowhere to apply. We believe that such occurrences will be rare and when they do occur it may be possible to reuse some of the 20 channels that will continue to be available for ITFS use to satisfy the needs of the would-be applicant. Furthermore, in regard to frequency reuse, we have recently been furnished data that indicate there is extensive frequency reuse in several of the large metropolitan areas where ITFS use is heavy. For example, in New York 19 of the 27 authorized channels are reused at least once; in Los Angeles 24 of the 28 authorized channels are reused at least once; in San Francisco 10 of the 28 authorized channels are reused at least once; and in Boston 14 of the 26 authorized channels are reused at least once. "Letter from Victor E. Ferrall, Jr.," General Docket Nos. 80–112 and 80–113, attachment titled "ITFS Channel Utilization in the Top 25 Markets," (May 4, 1983). The letter and the data attached thereto are hereby accepted as informal comments in this proceeding.

respect to one another, to a degree much finer than that required for a single channel. Power levels must also be related among the several transmitters, transmission lines, and transmitting antennas if interference is to be reduced. In sum, only a single operator can insure efficient operation of a multiple channel system.

In addition to technical operating factors, economic factors also support common ownership of multiple channels. Common transmission line (often costing as much as $25 per foot) and common antennas, costing thousands of dollars, can be utilized for multiple channels if there is only one operator. Rent can be reduced, since only one antenna would be employed, and multiple equipment can be operated in the same room, thereby decreasing the total floor space, as compared to a multiplicity of rooms that might be required for multiple operators. Common maintenance personnel can also reduce the maintenance cost per channel. Further, the number of spare parts needed by a single operator of multiple channels is obviously less than the number required by separate operators each operating one channel. Even electricity costs will be less for multiple channel operations.

Additional Comments of CCC, *supra* at 7–8.

100. Of course, it is possible to have multichannel MDS systems where each of the channels is licensed to a different carrier. As mentioned earlier, this is the situation in Phoenix where Microband and Contemporary are the carriers and both have the same customer, American Cable Television, offering two-tier programming with the two channels. We believe that for technical reasons, this is probably the only way a two-channel operation will be achieved under the existing rules. Allocating a single channel to each licensee has done little to promote diversity of ownership, and has the significant detriments of increased system complexity, cost, and regulatory delays in providing service to the public. The increased complexity and costs result from the factors listed by CCC in its comments. In a service where the licensee is not permitted to exercise program control the benefits of diversity are less pronounced than they might be where the licensee controls the material transmitted. Although diversity may lead to competition in such things as quality of service, allocating a single channel to each carrier means that there will likely be a comparative hearing for each channel as compared to a single hearing for a multiple channel application. For these reasons, we have concluded that there is no reason to continue to limit MDS carriers to a single channel operation and that the public interest would be better served by the repeal of the single channel limitation contained in Section 21.901(d) of the rules.

101. Given that multichannel MDS operation will benefit the public interest, we must address the question of how many channels should be in each system. In its proposal Microband suggested that a five channel system was optimum. It based this conclusion on an analysis that showed that "four channels of Pay TV will satisfy 85% of consumer demand." It thus concluded a multichannel system should consist of "four video channels plus a data channel." Microband Proposal, *supra*, at 48. Another commenter, Tekkom, suggested that 10 channels per system would be in the public interest. Comments of Tekkom, Inc., General Dockets 80–112 and 80–113, 11 (June 28, 1982). CBS, on the other hand, argued that the demand in each market should determine the number of channels in multichannel systems. CBS comments on the Microband Proposal for Multichannel MDS Service, General Dockets 80–112 and 80–113, at 10 (July 1, 1982). We agree with CBS's claim that there may be regional variations in the number of channels that would be optimum in a multichannel system. On the other hand, we recognize that we are making this reallocation from a band that is divided into four channel groups and that four channel systems would, therefore, be less disruptive of the existing scheme. Also the Microband analysis suggested that 4 channels would satisfy nearly all the consumer demand for premium channels. Furthermore, the fact that MDS is a common carrier service means that market forces will still play a part in determining how users acquire the channels and offer services to the public. Depending on the particular market conditions, a licensee may find it desirable, in a system of carrier initiated tariffs, to offer channels in a variety of different ways. *See e.g., Metrock Corporation*, 73 FCC 2d 802 (1979). This variety would reflect the particular needs and desire of users in different areas. Not only may the terms of the offering of channels vary, but also the uses to which they are put may vary. For example, although it appears the channels will at least initially be used for the distribution of premium television programming, our rules permit "any kind of communications service consistent with the Commission's Rules * * *." 47 CFR 21.903. For these reasons, we have concluded that authorizing 4 channel MDS systems serves the public interest.

102. We also recognize that it is possible that the same entity could lease all of the capacity of each common carrier, thereby, precluding others from becoming MDS programmers. Since the public only deals with the customers of the common carrier—and not the common carrier itself—the public could be forced to deal with a single multichannel MDS provider. We have considered requiring multichannel MDS licensees to so tariff their service that such an eventuality could not occur. We have decided not to adopt such a requirement for several reasons. First, we believe that the fact that an entity desiring to lease all available MDS channels will be required to deal with two common carriers somewhat reduces the possibility this will occur. Furthermore, since we are also by this order allowing ITFS licensees to lease excess capacity in their facilities, it is possible that an entity that wishes to provide premium television service to the public could do so using such excess capacity. It is also possible that in many areas, the public will be offered a choice between multichannel MDS and cable. Finally, we believe that restricting MDS tariffs would prevent market forces from determining the optimum mix of channels. Adopting such a requirement would create an artificial upper limit on the maximum number of channels a single entity could program.

103. Finally, we must address the related questions of how many channels to reallocate for MDS and how many channels to hold in reserve for future growth in ITFS. What we must do here is balance the need to make a reasonable number of multichannel MDS systems available with the need to ensure that an adequate number of channels are available for future ITFS growth.

104. In its proposal, Microband suggested that we reallocate three full ITFS groups or twelve channels for MDS use. Microband Proposal, *supra*, at 33. Microband claims to have based this suggestion on its analysis of the potential number of customers for multichannel MDS service in the top 50 markets. Microband did not submit any analysis to support its suggestion. It did present data on the number of potential multichannel MDS customers in the top 50 markets but it did not relate this data to the number of competitive MDS systems that would be optimum or even reasonable. The data presented show that on the average, there are 1,770,800 potential multichannel MDS subscribers

in the top 5 markets and 70,400 in markets 46 through 50. Microband took these figures and divided each by 18,000, the break even number of subscribers for a multichannel system, to produce what it called a coverage ratio. What this figure purports to represent is the number of systems that could reach a financial break even point if all the potential customers were to subscribe to a single service and if each of the competing services were to have an equal share of the available customers. The coverage ratio for the top 5 markets was 98.4 and the coverage ratio for markets 46–50 was 3.9. All that the Microband data really show is that there are potential customers for multichannel MDS systems. We believe that there are factors other than the number of homes not passed by cable that will determine the number of multichannel MDS systems that can profitably serve an area. These include the nature and quality of the programming available, the quality of signal that can be delivered, the availability of competitive services, the price of the service, and the discretionary income of the residents of the area. These factors may combine in one area in such a way that only one MDS system can be profitable and in another area in such a way that 3 or more systems could be profitable.

105. Consideration of all there factors does not lead to clear choice for the number of multichannel systems that should be authorized in each area. However, it does appear that in many large areas at least two systems could be viable. Moreover, authorization of more than one system should provide a number of public interest benefits. Competition between competing systems could stimulate technological innovation, could increase system availability and could also make lower cost service available to the public. We also believe that we should continue to hold a substantial amount of spectrum in reserve for ITFS use. For these reasons, we have concluded that we should make two groups of ITFS channels available for multichannel MDS. This will allow two competitive MDS operators to offer multichannel service in those areas and will keep 20 channels in reserve for existing and future ITFS use.[29]

106. Another issue to be resolved is what channels to reallocate. In its proposal, Microband suggested that the E, F and G groups be reallocated for MDS use. It based this recommendation on its conclusion that these were the bands least used by ITFS licenses. We do not agree. Our records show that the distribution of ITFS licenses among groups is as follows: A group—225, B group—93, C group—128 D group—82, E group—112, F group—91, and G group—113. Thus, it would appear that except for the A–B group, use of the interleaved ITFS frequency groups is about the same. It should also be noted that the A, C and E groups are significantly more used than the groups with which they are interleaved. This is to be expected because the use of channels in one pair of an interleaved group tends to preclude use of the other group in the same area. Because the interleaved ITFS group use does not vary significantly by group except for the A–B group, we must look to other criteria to select the group to assign to MDS.

107. The most important factor in selecting the groups to be reallocated is minimum interference to the remaining ITFS licensees. This means that we should reallocate an interleaved pair of groups. Proceeding in this manner will result in only two ITFS channels being adjacent to MDS channels. Choosing non-interleaved groups could result in there being as many as 9 ITFS channels adjacent to MDS channels. We also believe that we should avoid reallocating either the group of channels that share the band (2500–2535 MHz and 2665–2690 HHz) that NASA is proposing to use for its feeder link operation so as not to jeopardize consideration of that proposal. This eliminates the A–B pair and G group. This reduces the choice to either the C–D pair or the E–F pair. We also believe that it would be useful to leave the widest possible contiguous band available for ITFS because this would result in the largest possible contiguous bandwidth being left available for shared use by ITFS and Public Service satellite use. This means that if there is a public service satellite use of this band, it would be shared with only ITFS over the largest possible contiguous band. For these reasons, we have concluded that the best pair of channels to reallocate for MDS are the E and F groups.

108. Finally, we must address the question of how to divide the eight channels in the E and F groups between the two MDS operators licensed. We could follow the ITFS assignment method discussed above and assign the 4 channel E group to one licensee and the 4 channel F group to the other licensee. Proceeding in this manner has the advantage of allowing the use of simpler transmitters and downconversion equipment, but it has the disadvantage that widespread adjacent channel interference could occur if the transmitters of the two operators were not colocated. We could also authorize each operator to use 4 adjacent channels; that is assign channels $E_1$, $F_1$, $E_2$, $F_2$ to one operator and channels $E_3$, $F_3$, $E_4$, $F_4$ to the other operator. Thus, there would only be one pair of adjacent channel $F_2$ and $E_3$. Of course with either method, channel $E_1$ will be adjacent to ITFS channel $D_4$ and channel $F_4$ will be adjacent to ITFS channel $G_1$, both of which may be in use in the area where the MDS channels are being authorized. Thus, by licensing adjacent channels to the same operator, we would be leaving the possibility of adjacent channel interference with existing ITFS stations unchanged and would be eliminating most of the non-colocated adjacent operation from the reallocated spectrum. This could require that the multichannel operators use more complicated transmission and reception equipment.

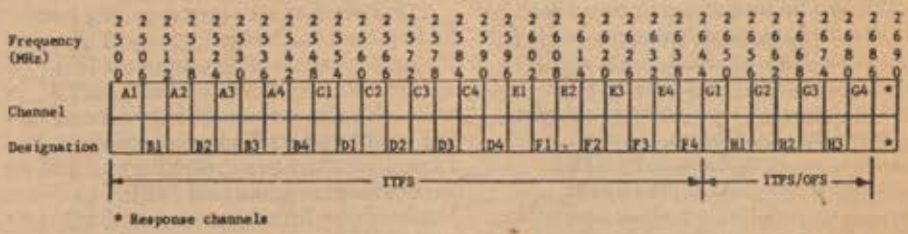
109. We did not address this issue extensively in the companion *Notice*, and, although we did not receive much comment on it in response to the companion *Notice*, some of those commenting on the Microband proposal did address the issue. One commenter, the Microwave Communications Association (MCA), noted that because we did not specifically propose rules for multichannel operation, we would be required to do so in the future. MCA further expressed the view that "this is fortuitous, because it will permit the Commission to consider multichannel systems' operating experience. Actual operating experience is clearly preferable to a lengthy technical rulemaking based only upon theoretical calculations." Comments of MCA *supra*, at 9. There is some validity to MCA's claim; however, we cannot reallocate spectrum without specifying what channels are available for each applicant.[30] For this reason, we have concluded that the best course to follow is to have each applicant apply for a four channel MDS authorization using the interleaved channel plan now used by ITFS licensees. We also will require each applicant to include, as part of its application, an analysis of the potential for adjacent channel interference with a non-colocated licensee operating on the interleaved channel group. If the two successful applicants determine either before or after initiation of service that

[29] Each applicant will only be allowed to file a single multi-channel application in each service area.

[30] We will apply existing technical rules to multichannel MDS. We expect to adopt new technical rules for MDS prior to or shortly after the authorization of the first multichannel MDS station. (*See* Note 1, *supra*).

there would be less adjacent channel interference by operating on adjacent channels, we will allow such operation. We believe that the two licensees in each area will be in a better position to make the final determination as to which channelization scheme is best.

110. To summarize we conclude that it is in the public interest to reallocate 8 of the channels now allocated for ITFS for use by the MDS nationally. Existing ITFS licensees (as well as existing permittees and applicants that eventually become licensees) of the reallocated channels would be grandfathered in perpetuity. Further, we have concluded that reallocating the E and F groups for MDS use would be least disruptive of the existing and potential uses of the 2500–2690 MHz band. We will accept applications for multichannel MDS in all areas of the country regardless of whether the reallocated channels have been previously applied for by an ITFS applicant. In those situations where there is an existing ITFS licensee, permittee, or applicant we shall issue multichannel MDS construction permits conditioned on the permittee obtaining, prior to commencing construction, a statement from each adjacent channel and cochannel ITFS licensee, permittee, or applicant whose transmitter is located within 50 miles of the proposed MDS transmitter site, that the operation of the MDS facility will not cause harmful interference to the ITFS operation or if it does the ITFS operator will accept the interference. We expect that the MDS permittees and the ITFS users of the reallocated channels will negotiate in good faith to mutually accommodate each others' communications requirements. We believe that this process will be beneficial to all concerned. The MDS permittees will be able to offer a potentially profitable new communications service to the public. Existing ITFS users of the reallocated spectrum may end up with better and more efficient communication facilities at no expense, will most likely benefit from technical expertise of the commercial users of the band and will likely benefit from the decreased costs of equipment that will result from the partial commercial exploitation of the band. Finally, the public will benefit from the more efficient use of a valuable national resource, the electromagnetic spectrum. We recognize that there may be some large cities in which no reallocation will occur despite the steps we take today. It is likely in those areas in which this plan does not make multichannel MDS available there will be alternative means available by which the public will be able to obtain multichannel MDS including leasing the excess capacity of existing ITFS channels. The following chart illustrates the channel plan we are adopting.




*D. Time Sharing and Leasing*

111. In the *Notice*, we invited comments on the "technical and practical feasibility" of permitting ITFS stations to share unused transmission time with MDS users. We stated that because most educational use occurs during daytime hours while entertainment televisison occurs in the evening, sharing appeared to be practical. Three forms of sharing were discussed: separate station facilities sharing the same frequency, jointly licensed facilities, and lease of unused transmission time by ITFS licensees. We also asked whether sharing ought to be mandated. *Notice, supra*, at para. 51.

112. Several ITFS entities accepted our invitation and submitted comments on time sharing of the ITFS Channels. Most of the comments received were not favorable. For example, the Joint Council on Educational Telecommunicatons commented that colleges, universities and hospitals use their channels in evening hours and on weekends, and that entertainment programming often is transmitted on a 24-hour basis. Comment of the Joint Council on Educational Telecommunications, General Docket 80–112, at 5–6 (September 29, 1980). The National Education Association (NEA) reiterated the concerns of JCET and added that sharing is not feasible for other reasons. For example, it stated that ITFS systems are configured to reach designated educational sites while MDS systems that are used to transmit pay television are configured to reach the greatest population possible. Comments of the National Education Association, General Docket 80–112, at 6–7 (September 25, 1980).

113. Several others raised another reason why time-sharing is not feasible. In its comments, the Archdiocese of Los Angeles made the following observations:

> "Education has for its object the formation of character". Under the second and third Commission sharing schemes, ITFS licensees would lose control over the content of certain transmissions from their facilities. Much of the programming being broadcast today via MDS is considered by many people to be objectionable—even, at times, pornographic. Proposals for construction of new ITFS facilities, and continued funding of present stations, will likely meet strong opposition from university regents, local boards of education, private institutions and concerned parent/teacher groups if they are placed in the position of having to purvey material which they consider disconsonant with their responsibilities as educators. Thus, these sharing schemes could discourage further ITFS growth—and perhaps result in a reduction of the present number of stations.
>
> Indeed, the Los Angeles Archdiocese is totally opposed to imposition of either of the latter sharing schemes. The Archdiocese would be forced into a difficult moral decision if it faced the prospect of its facilities being used for the transmission of programming which it considered offensive to Catholic values. If the Archdiocese lacked the ability to discriminate as to users of its facilities, it might well have to decide to give up its station altogether so as to avoid becoming party to transmissions contrary to the mission of the Church.
>
> Comment of the Archdioceses of Los Angeles, General Docket 80–112, at 14–15 (September 26, 1980) (footnote omitted) (quoting Herbert Spencer, *Social Statistics*, pt. 1 ch. 2(1851)).

114. We agree with the majority of commenters who oppose any requirement that ITFS licensees share or lease their excess channel capacity. Contrary to the belief of those commenters, however, we believe that it is in the public interest to *permit* ITFS licensees to lease their excess channel capacity. The decision to lease excess capacity thus remains entirely up to the individual ITFS licensee. As a result of the current decrease in federal funding for ITFS, we believe it is appropriate to modify our rules to permit ITFS operators to generate revenues by using

their excess capacity for a variety of non-ITFS purposes.[31] As the excess capacity of ITFS operators is put to use serving the public, greater use of the available spectrum should result.[32]

115. We think that the changes that we are making today are appropriate for two basic reasons. First, the cost of constructing and operating an ITFS system represents a significant burden to licensees. In addition, the cost of education is increasing daily. ITFS provides a low-cost alternative to specialized instruction, adult education and other instructional modes. However, new revenue sources are necessary in order to give ITFS every chance to grow and succeed. Second, increased interest has been generated in the ITFS band including demand for broader use of the spectrum.

116. Thus, substantial benefits to the public may be derived from allowing ITFS licensees to use excess channel capacity, either by directly utilizing it themselves or through leasing it to others. The income derived from such service could enable stations to be on the air for a greater portion of the day and to increase programming availability. In addition, new revenues might prove sufficient to bring currently vacant channels on the air.

117. Increased revenue would widen ITFS' base of support and contribute to the service's ability to withstand a diminution in any one source of funding without being forced to significantly reduce its overall service to the community. If federal government funding declines, the success of licensees in recouping at least part of the loss may be crucial to ITFS growth and development. The option licensees have to lease excess ITFS channel capacity is consistent with several recent actions taken by the Commission. The Commission amended Part 74 of its rules to permit the shared use of broadcast auxiliary facilities with other broadcast and non-broadcast entities.[33] It also recently has authorized non-broadcast uses of non-main channel operations, such as teletext and FM subcarriers.[34] We are adopting policies in this proceeding for leased uses of ITFS excess channel capacity that are consistent with the decisions in the Part 74, teletext and FM subcarrier rule proceedings.

118. Therefore, we are amending Part 74 to permit use of facilities by ITFS licensees for non-ITFS purposes. This authorization includes use of the ITFS station's main broadcast channel and the use of non-main channel excess capacity including subcarriers and the vertical blanking interval (VBI). Furthermore, licensees are permitted to make this excess capacity available to others, if they so choose, on a profit-making basis. We will not, at this time, adopt specific time limitations on non-ITFS use of licensee excess channel capacity. By declining to specify any such limitations, we hope to maximize the spectrum efficiencies that shared use will provide. This will also afford ITFS licensees flexibility in offering their excess capacity to other entities. However, we do expect ITFS licensees to utilize each of their ITFS main channels substantially for legitimate ITFS use. Since we cannot anticipate in advance how much time is requred for each licensee to address its ITFS needs, we do not wish to force ITFS channels to remain idle when other legitimate demands for the channels exist. Such an outcome is precisely the situation that we are attempting to avoid by allowing shared use of the channels. This policy is consistent with action taken by the Commission in amendment of Part 74, Subpart F of the Commission's Rules to permit shared use of broadcast auxiliary facilities with other broadcast and non-broadcast entities, 48 FR 17081 (published April 21, 1983). As in the proceedings discussed above, if ITFS licensees do make excess capacity available, the question arises as to whether the licensee is engaging in common carrier activity. After briefly explaining the legal requirements under which we must decide the common carriage issue, we shall apply those requirements to the two types of excess capacity at issue, in turn, below.

119. In *National Association of Regulatory Utility Commissioners* v. *FCC*, 525 F. 2d 630 (D.C. Cir), *cert. denied* 425 U.S. 992 (1976) (*NARUC I*), the court specifically stated that a carrier will not be a common carrier where its practice is to make individualized decisions, in particular cases, whether and on what terms to deal. 525 F. 2d at 641. The court continued, moreover, that the distinction between common and private carriers was not based on the services offered or the clientele served, but rather on "the manner and terms by which they approach and deal with their customers." Id. at 642. The court then stated that in determining whether a particular carrier should be accorded common carrier status, a finding must be made as to whether any legal compulsion to serve indifferently exists, or whether there are reasons implicit in the nature of the operation to expect an indifferent holding out.

120. With respect to leasing of the main ITFS channel, we see no reason to require ITFS licensees who engage in such leasing to be common carriers. One purpose of this proceeding is to make unused channels in the 2500–2690 MHz band available for use on a common carrier basis. We are reallocating channels from ITFS to MDS to serve this purpose, and we believe experience with the reallocation is necessary before we take an additional step and find the need for common carrier channels is so great that all excess capacity should be offered on that basis. Moreover, the requirements of Title II may well discourage or inhibit ITFS licensees from making spare capacity available, if they could only do so as common carriers. For these reasons, we will not require that spare capacity on the main channel be leased on a common carrier basis.

121. With respect to the second test for classifying common carriers, whether there are reasons implicit in the nature of the operation to expect an indifferent holding out, we believe that main channel leasing should not, at least initially, be considered a common carrier activity. Our reasoning closely parallels the decision recently adopted in BC docket No. 81–794, in which we stated that the selling of excess capacity on television broadcast auxiliary stations would not be treated as common carriage. *Shared Use of Broadcast Auxiliary Facilities*, 48 FR 17081 (April 21, 1983). We believe ITFS will not engage in a generalized holding out of their excess capacity, but instead will carefully select lessees for long-term contracts. The comments demonstrate that licensed facilities do not readily lend themselves to widespread MDS use. They have been tailored to the particular requirements of the licensee, and, if they do lend themselves to use by another, careful coordination will be necessary. The licensee also must consider its own growth requirements, and likely will limit the availability of the excess capacity so it will be able to use the facilities for its own primary purpose

[31] The Public Broadcasting Amendments Act of 1981 (Public Law (97–35) Section f(a)).

[32] The Commission today is also adopting a *Notice of Proposed Rule Making* that would further assist ITFS licensees in their operations. *See* Amendment of Part 74 of the Commission's Rules and Regulations in regard to the Instructional Television Fixed Service, FCC 83–244, (adopted) May 26, 1983.

[33] 48 FR 17081 (April 21, 1983).

[34] *See* Amendment of Parts 2, 73 and 76 of the Commission's Rules to Authorize the Transmission of Teletext by TV Stations, *Report and Order* in BC Docket No. 81–741, adopted March 24, 1983; and Amendments of Parts 2 and 73 of the Commission's Rules Concerning the Use of Subsidiary Communications Authorizations, *Report and Order* in BC Docket No. 82–536, adopted April 7, 1983.

when the need arises. Individual contractual arrangements would better serve this purpose than would a general offer to deal with the public indiscriminately. This individualized selection of clients due to the need to protect the licensee's own use of the facilities was one factor, thought by the court in *NARUC I* to be inconsistent with common carrier status. 525 F.2d at 642. We find nothig inherent in the potential leasing activities of ITFS licensees that would lead them to make indifferent offerings of excess capacity on the main channel. Accordingly, we do not believe that ITFS licensees will act as common carriers.[35]

122. We recognize that permitting ITFS licensees to lease their main channels for other than traditional ITFS purposes may effectively result in a diminution of the channels reserved for traditional purposes, but we believe this risk is acceptable. First, only excess capacity may be leased. We presume the channels were obtained, and are primarily utilized for, satisfying a legitimate ITFS requirement. Because these requirements appear to be increasing in a number of areas, we presume the traditional uses will continue. Second, the pleadings indicate, if anything, a reluctance on the part of licensees to engage in any form of sharing. Finally, any wholesale abandonment of the primary purpose of the facility could jeopardize the entity's license.

123. Just as we find ITFS main channel sharing analogous to our recent Broadcast Auxiliary proceeding, 48 FR 17081 (April 21, 1983), we believe that the regulatory status of subcarrier and VBI leasing can be resolved in essentially the same manner as in the recently adopted FM–SCA and Teletext decisions.

124. Depending on the nature of the information disseminated via an ITFS station's subcarriers or VBI, the regulatory status accorded the service may vary. As noted in the FM–SCA *Report and Order*, the provision of "broadcast-related services on subchannels is well established and does not raise any new issues of appropriate regulation". Thus, so long as the services provided over the station's subcarriers or VBI are broadcast related, no extraordinary regulatory treatment will attach to the profit-making activity.

125. However, other subchannel or VBI uses may be similar to services being provided by licensees in the private radio or common carrier services. To the extent that services offered via ITFS facilities are private radio or common carrier services, these ITFS-delivered services will be treated in the same manner, and with all the same benefits, obligations and responsibilities as the providers of similar services. Thus, with regard to non-broadcast related uses of the ITFS station's subcarriers and VBI, it will be necessary to determine whether the service offered constitutes private or common carriage under *NARUC I* and applicable statutes.

126. With one exception, the determination as to whether a particular non-broadcast service offered on an ITFS subchannel or VBI is private or common carriage will be made in accordance with the guidance given in *NARUC I*, as discussed above. Essentially, if the ITFS operator indiscriminately offers the station's subcarriers and VBI to other users, the operator will be regarded as a common carrier and will be treated accordingly. If, on the other hand, the licensee does not engage in an indiscriminate holding out, common carrier obligations will not attach and private carriage rules will apply. The one exception to utilizing the *NARUC I* test involves land mobile services.

127. With regard to land mobile services, the Communications Amendments Act of 1982, Section 120, establishes a demarcation between private and common carrier land mobile services, and indicates that the test contained in the new Section 331(c) of the Communications Act is intended to supersede the *NARUC I* standard. Public Law No. 97–259, 96 Stat. 1087. We believe that the test in the new legislation would apply to some of the communications services that could be offered on ITFS subchannels or the VBI. The Act defines a "Mobile Service" as * * * a radio communication service carried on between mobile stations or receivers and land stations, * * *, and includes both one-way and two-way radio communication services." Public Law 97–259 at Section 120(b)(2), 96 Stat. 1097, 47 U.S.C. 153(n). It is clear that potential ITFS subchannel and VBI services such as paging would therefore be governed by the new legislation, and such services will be judged by the test in the new Section 331(c). The new statutory test is based on the manner in which a multiple licensed or shared private land station is interconnected with a telephone exchange or interexchange service or facility.[36] *See also* H.R. Rep. No. 765, 97th Congress, 2nd Session, pp. 52–56 (1082).[37] The statute also makes it clear that if it is a private system, it is exempt from state and local regulation. 47 U.S.C. 331(c)(3).

128. Once an ITFS licensee has determined whether the proposed service is private or common carriage, either under the *NARUC I* standard or, for land mobile services, Section 331(c) of the Act, the licensee, in order to provide a common carrier service, must seek the appropriate authorization from the FCC.[38] The ITFS licensee will be in the same position, entitled to the same privileges and subject to the same obligations and regulations as a traditional offerer of common carrier services.[39]

129. ITFS licensees seeking to provide private carrier service on an ITFS subchannel or VBI must notify the Licensing Division of the Private Radio Bureau at Gettysburg, Pennsylvania, 17325, by letter, prior to initiating service. In the letter, they must certify that their facilities will be used in this regard only for permissible purposes. *See* 47 CFR Parts 90 and 94. When providing land mobile service, they must also certify that service will be offered only to users eligible under Part 90 of the Commission's Rules, and that any

[35] If out initial analysis is incorrect, and ITFS licensees do in fact begin offering main channel excess capacity on an indifferent basis, it would be incumbent on the Commission to determine the extent to which traditional Title II regulation should be applied. *See NARUC I at 644; Shared use of Auxiliary Broadcast Facilities at para. 28.*

[36] New Section 331(c)[1] of the Act provides, in pertinent part, that "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 obtained such interconnection directly from a duly-authorized carrier."

[37] The Commission's interpretation of the test in the new legislation will be fully explored in our reconsideration of the *Second Report and Order*, Docket No. 20846, 89 F.C.C. 2d 741 (April 8, 1982), and our treatment of land mobile services herein is expressly subject to the outcome of that proceeding.

[38] These authorization and filing requirements are illustrated in greater detail in the FM–SCA *Report and Order* at paragraphs 25–27.

[39] In all cases, involving either private or common carrier services, the applicant will not be seeking approval for the technical facilities of the ITFS station. The Commission regards ITFS subcarrier and VBI use as a secondary privilege that runs with the primary ITFS station license. That right is conferred on the primary station licensee only. In this regard, it should be noted that an ITFS licensee that elects to use a subchannel for private or common carriage remains an ITFS licensee for all other purposes. Only the use of the subchannel for non-broadcast related purposes would be regulated in accordance with private radio or common carrier regulation.

interconnection of the station with a telephone exchange or interexchange service or facility will be obtained in accordance with new Section 331 of the Communications Act, *supra*. Such notifications will not give rise to a comment period, and no separate authorization will be issued by the Commission. As in the case of common carrier services, the ITFS operator offering a private service will be in the same position, entitled to the same privileges and subject to the same obligations and regulations as a traditional offerer of such services.

*E. Selection Procedures*

130. Several of the commenters in this proceeding expressed the view that if the Commission decided to reallocate spectrum to the MDS, it should simultaneously act to ensure that the application processing procedure will not unduly delay the offering of multichannel MDS service to the public. The Ad Hoc Committee for Wireless Cable outlined the perceived problem as follows:

> Our primary concern in this regard is that the Commission might adopt a procedure involving comparative hearings for all of the allocated frequencies. It is inevitable that this will lead to interminable delays in conflict with the public interest. Recent Commission experience has established that a certain "gold-rush" mentality has accompanied reallocation of frequencies. The reallocation of frequencies to the Low Power Television Service spawned thousands of applicants and swamped the processing mechanism. Even the recently allocated spectrum for the Digital Electronic Message and Cellar Radio Service have been sought by more applicants than can be licensed.
>
> Moreover, many of the applications would probably not meet minimum qualifications necessary to operate a multi-channel MDS system. The development, construction, operation and maintenance of multichannel MDS systems will require substantial and sophisticated experience in construction and operation of microwave facilities. The time and effort needed to evaluate the qualifications of potential applicants and then compare these applicants would delay the introduction of the service indefinitely, thereby eliminating the prompt introduction of new and innovative programming and the competition such an introduction would bring. Moreover, it would place substantial burdens on Commission resources and personnel.

Ad Hoc Committee Comments, *supra* at 5–6 (footnotes omitted). The National Association of MDS Service Companies (NAMSCO), the trade organization for users of licensed MDS facilities, expressed the view that "without a concurrently established procedure for processing new MDS applications, the benefits of the long awaited action in this proceeding will be rendered academic." Comments of the National Association of MDS Service Companies, General Dockets 80–112 and 80–113, at 5 (July 2, 1982).

131. In its proposal Microband suggested that these problems could be avoided if the Commission were to "[expand] the capacity of existing MDS channel 1 and channel 2 in the top 50 markets by separate allocation." Microband Proposal, *supra*, at 87. In particular, what Microband proposed was that we reallocate three ITFS channel groups to the MDS and that we allow only existing MDS channel 1 licensees, permittees and applicants to apply for one of the reallocated groups for 1 year after the date of the order. A second reallocated channel group would be similarly reserved for channel 2 applicants, permittees and licensees. The third group would be available to any applicant that met the requirements of Section 21.900 of the Rules, 47 CFR 21.900. *Id.* Appendix F at 3. Thus, what Microband proposed is that two channel groups be made available for existing MDS licensees, permittees, and applicants and that another channel group be made available for all other applicants.

132. In support of its plan, Microband claimed "that the Commission has routinely established separate frequency allocations where the need for the new service was immediate." Comments of Microband Corporation of America, General Dockets 80–112 and 80–113, at 9 (July 2, 1982) (hereinafter cited as 2nd Microband Comments). In Cellular Communications Systems, the most recent Commission decision cited by Microband to support this proposition, we did state that "the Commission in the past has routinely established separate *wireline and non-wireline* frequency allocations" *Cellular Communications Systems, 86 FCC 2d 469, 492 (1981), on recon.*, 89 FCC 2d 58 (1982) (emphasis added) (hereinafter *Cellular Order* and *Cellular Order on Reconsideration*). In the Cellular Order, we reviewed the line of cases now relied upon by Microband and concluded that there is:

> [a] firm legal foundation for establishing a separate *wireline* allocation in a situation where, * * * (1) there is an immediate need for service to the public, (2) this need can be addressed quickly by a *wireline company's* expertise, (3) the separate allocation licensing scheme is a reasonable means of avoiding long delays in the availability of *any* cellular service attributable to comparative hearings, and (4) we have taken reasonable steps to guard against anticompetitive practices.

Cellular Order, *supra*, at 493 (emphasis added). Before applying these tests to the present situation, we first note that, in the past, we have only authorized separate allocations for wireline carriers in various mobile communications services. Wireline carriers and non-wireline carriers were two distinct classes of applicants for the services. There are not two distinct classes of MDS carriers. For this reason, we believe that Microband's reliance on our policy of making separate frequency allocations for wireline and non-wireline carriers providers of the same service to support its plan is misplaced.

133. Disregarding this fundamental distinction, we nevertheless apply the tests articulated in the *Cellular Order* to the Microband plan. First, is there an immediate need for service to the public? Microband and other MDS licensees and their customers have argued that there is an unmet public demand for a multichannel premium television service that multichannel MDS will satisfy. We do not believe that this demand is analogous to the verified congestion that existed on two-way mobile systems prompting our separate allocation decision for the Cellular Service. *Id.* at 489. Rather, we believe what really is at issue here is the timing of multichannel MDS entry into the pay television market relative to the growth curve of cable television and other competitive services. As Microband itself noted, "the primary market for multiple channel MDS will shrink at a rate of ten to fifteen percent per year of delay due to increased cable penetration alone." Second Microband Comments, *supra*, at 12. What Microband is telling us is that while there is now a need for multichannel MDS, the need may decrease with the passage of time. Thus, we believe it is reasonable to conclude that there is a demand for the delivery of multichannel premium programming that multichannel MDS would be well-suited to provide; however, the need for the service does not justify the separate allocation suggested.

134. Next, do existing licensees and permittees posses some special technical expertise in operating multichannel MDS systems? It is not clear that operating a single channel system gives a licensee multichannel expertise. Even assuming that Microband and other single channel licensees have some technical expertise in operating multiple channel systems as a result of their experience with single channel systems, we do not see how those entities that have only filed applications can be said to have any expertise at all. It could be argued that the only entities with any real experience in operating multiple channel video systems are cable television operators. Thus, we conclude that the

Microband separate allocation proposal would not bring a significant special technical expertise to the multichannel MDS service. In reaching this conclusion, we are comparing the technical expertise of those that the Microband plan would favor with the expertise that wireline carriers had in cellular and related technology. The applicants that the Microband proposal would favor do not have equivalent expertise in multichannel MDS.

135. Third, would the separate allocation be a reasonable means to avoid long delays in making multichannel MDS available and, fourth, would it adequately guard against anti-competitive practices? We are considering these two criteria together because we believe that one of the fundamental elements of reasonableness is competitive effect. The Microband separate allocation scheme reasonably could be expected to result in the early availability of multichannel MDS service. The Microwave Communications Association, an industry trade organization of MDS carriers, MDS users, equipment manufacturers and others, analyzed the results of the Microband plan as follows:

> Microband owns 26 Channel 1 MDS stations outright and partially owns an additional 9 Channel 1 MDS stations in which it has management responsibilities, or a total of 35 MDS stations—70% of the top 50 markets. Further, Microband is a Channel 2 applicant in an additional 13 markets. Thus Microband potentially could have multiple channel ownership interests in 48 out of the top 50 markets. Even more significantly, since most of the Channel 2 markets are mutually exclusive with more than one applicant (there are only three Channel 2 licensees), Microband (or a Microband related company) would be the *sole* multichannel licensee in 64% of the top 50 markets until the mutually exclusive Channel 2 markets * * * were resolved.

Comments of the Microwave Communications Association, General Dockets 80–113, at 10 (July 2, 1982).

136. American Home Theatre, the MDS customer in Salt Lake City termed the Microband scheme "flagrantly anti-competitive" and concluded that what Microband was seeking was "a substantial 'leg-up' on the provision of multichannel MDS service while new entrants to the market place would still be tied up in litigation in comparative hearings before the Commission." Comments of American Home Theatre, Inc. With Respect to Proposal of Microband Corporation of America, General Docket 80–112 and 80–113, at 7 (June 2, 1982). On the other hand, Microband claims that if its plan were to be adopted, it would own only twenty-two percent of the 150 multichannel licenses and that this would result in a decrease in its percentage of ownership. Second Microband Comments, *supra*, at 8–9. Of course, because we are only authorizing two multichannel operations, rather than the three Microband proposed, Microband would have 33% of the licenses. We believe the quoted Microwave Communications Association analysis presents a more realistic view of the ownership statistics that would result if the Microband proposal were adopted. We have concluded that the adoption of the Microband separate allocation proposal would unnecessarily and unreasonably concentrate control of multiple channel MDS systems in a few entities including Microband, and that it would also give such entities a substantial head start in the provision of multichannel MDS service in most markets. Moreover, we believe that other means are available to make multichannel MDS available expeditiously, and we therefore conclude that the advantages of the Microband proposal are outweighed by its detriments.[49]

137. Having reached this conclusion, we must now decide whether to adopt any special procedure for dealing with the expected large number of applications for the newly allocated channels. If we do nothing, the comparative hearing procedures of Part 21 of our rules will apply. As discussed above, many of those filing comments in this proceeding expressed the view that proceeding in this manner would embroil the applicants in lengthy comparative hearing procedures and thereby unnecessarily delay availability of the service to the public. Before discussing other procedures that could circumvent the problems caused by the comparative procedures, we feel that it is useful to consider Microband's view of the existing Part 21 procedures. In its proposal, Microband stated:

> This MX situation has been with the industry almost since its inception. Unlike some other segments of the communications industry, however, a solution to this problem has been found: merger of competing applications. In nine years, only four MX situations have actually been decided by resorting to comparative hearings. Microband believes that the joint venture solution, which has worked well to date, will continue to solve the MX problem with a minimum of expense to the applicants and to the Commission.

Microband proposal, *supra*, Appendix A, at 1, n. 1. Thus, Microband seems to contend that we should adopt a new procedure to avoid the problems of our comparative hearing procedures, and in the same proposal, tells us that our comparative procedures have worked rather well. This position is not necessarily inconsistent. The comparative hearing procedure can work well where there are only two or three entities applying for the same frequency. If there are 5, 10, or more mutually exclusive applicants for the same frequency, the comparative procedures work less well. In the first place, it is much less likely that 10 mutually exclusive applicants will reach an agreement to form a joint venture than if there are only two or three mutually exclusive applicants. Furthermore, in those situations in which it is necessary to hold a hearing among a large number of mutually exclusive applicants, it is likely that several of the applicants will be equally well qualified and thereby force us to make a choice on the basis of very minor differences in the applicants. For these reasons, we conclude that the comparative hearing procedure may not be the best method to resolve mutually exclusive multichannel MDS applications.

138. Some of those that predicted we would receive a large number of mutually exclusive applications if we authorized multichannel MDS suggested that we use a lottery procedure to grant multichannel MDS authorizations. For example, Contemporary Communications Corporation suggested that, "In the current pro-competitive deregulatory environment, we believe the only fair method of selecting licensees is by lottery among applicants meeting threshold qualifications determined by the Commission." Additional Comments of CCC, *supra*, at 10.

139. Section 309(i) of the Communications Act authorizes us to grant licenses or permits "through the use of a system of random selection". 47 U.S.C. 309(i)(1). On March 31, 1983, we adopted the *Second Report and Order* in General Docket 81–768 in which we provided specific rules to implement a lottery scheme. In adopting the Order, we noted that Congress intended that we use a lottery where it would best serve the public interest and that we should consider the following factors in determining whether a lottery would be in the public interest: Whether there are a large number of available licenses; whether there are a large number of mutually exclusive applications for each

[49] We recognize that our decision to authorize multichannel MDS could impact upon other services. However, there is no evidence in the record before us that would support protecting existing entities from competition and we expect the public overall to benefit from these authorizations.

license, whether there is a significant backlog of applications, whether the lottery would significantly speed up the process of getting the service to the public; and whether diversity of information sources would be enhanced. Using these factors, we initially determined that 5 services are amenable to the use of random selection techniques. The services were low power television, private land mobile radio, private operational fixed microwave, aviation and marine services, and domestic public land mobile.

140. The new legislation also directs us to use notice and comment rulemaking procedures each time we intend to use a lottery in a specific service. 47 U.S.C. 309(i)(4)(A). Many of the commenters in this proceeding predicted that we would receive a large number of applications if we made spectrum available for multichannel MDS. We agree that this is a likely result. We are therefore proposing to use a lottery to select all MDS permittees, both multichannel and single channel, in a separate Further Notice of Proposed Rulemaking in this Docket.

141. In regard to using random selection procedures for MDS, we note that we had previously proposed several alternative methods for selecting from among mutually exclusive MDS applicants.[41] One of the methods proposed was a lottery. The other two methods proposed were an auction and a paper hearing. The *Lottery Notice* was primarily concerned with the question of our legal authority to employ alternatives to comparative hearings to resolve mutually exclusive situations. Since the new legislation specifically authorizes us to use a random selection procedure and provides Congressional guidance on when the expedited procedure should be used, there is no reason to consider further the selection procedure proposals contained in the *Lottery Notice*.

142. The only other issue raised in that proceeding concerned trafficking rules. In the *Lottery Notice*, we suggested that, if we were to adopt a lottery procedure, it would also be appropriate to eliminate or modify the existing anti-trafficking rules now applicable to MDS. *Lottery Notice, supra*, para. 74 and Appendix A. In Appendix A, we pointed out that the anti-trafficking provisions contained in §§ 21.27 and 21.39 of the Rules, 47 CFR 21.27, 21.39, are mandated by Section 310 of the Communications Act, 47 U.S.C. 310. We further noted that § 21.40 of the Rules, 47 CFR 21.40, was not required by the Act. This section gives us discretion to inquire whether a facility that has been operated less than 2 years by the proposed assignor or transferor had been acquired for the purpose of profitable sale rather than public service.

143. We recently considered the question of the continued usefulness of the anti-trafficking rules and policies with reference to broadcast licensees. *In the Matter of Amendment of § 73.3597 of the Commission's Rules (Applications for Voluntary Assignments or Transfers of Control), Report and Order*, BC Docket No. 81–887, FCC 82–519, (released December 2, 1982) (hereinafter *Trafficking Order*). There we eliminated what was known as the "three year rule." That rule, which was similar to Section 21.40, required that we designate for hearing all applications for transfer or assignment of broadcast station licenses that had not been held for three years. *Id.* at para. 1. After reviewing the reasons for the rule and its effect during its 20 years of existence, we concluded that it was:

> Appropriate to eliminate our * * * 'trafficking policy' and to limit Commission action in this area to enforcing the requirements of Sections 301 and 304 of the Communications Act. Such Commission inquiry will be restricted to whether any party has engaged in activity indicating action contrary to the statutory prohibition on license sales, such as attempting to profit on the transfer of a bare license. The Commission will continue to exercise its statutory authority under the Communications Act to determine that each transfer it approves is in the public interest.

*Id.* at para. 29. We also concluded that because Sections 301 and 304 state that radio station licenses do not convey a property interest, "profiting on the transfer of a construction permit is contrary to the letter and spirit [of these sections]." *Id.* at para. 32. Finally, we concluded that we should treat licensees that had obtained their license in a comparative hearing differently than other licensees. In particular, we held that a one year holding period after starting operation should be imposed on permits obtained through comparative hearings. *Id.* at para. 35.

144. Because the Part 21 common carrier trafficking rules stem from the broadcast policy, we have concluded there is no reason to continue to apply these rules to common carriers where we are no longer applying them to broadcast licensees. Therefore, for reasons analogous to those relied upon in the Trafficking Order, we have decided to eliminate those portions of § 21.40 that limit the free transferability of Part 21 licenses.[42] We shall retain those portions of § 21.40 that limit the transferability of construction permits and we shall add new language to § 21.40 to limit the transferability of station licenses that were obtained through comparative hearings. This action is independent of whether we ultimately decide to use a lottery for multichannel MDS. The new § 21.40 is included in Appendix B.

145. Finally, we recognize that, although it is our belief that elimination of the trafficking rules will in general result in the more efficient use of the spectrum in that the ultimate licensee will be the entity that values it most highly, it is possible that situations could occur in which the licensee's best interest would be in not using the spectrum. For example, it is possible that a cable television company that had been awarded a cable franchise for a particular area but had not yet constructed its system would find it in its best interest to purchase the multichannel MDS license and not use the station, thereby preventing the establishment of MDS service in the area. This would preserve the largest possible customer base for the cable company. Because this is common carrier service, the licensee is required to render service on a reasonable basis in accordance with the obligations imposed by Title II of the Act. For this reason, we believe we have adequate regulatory tools to deal with this problem should it occur.

146. We have now resolved the only unresolved issue raised in the *Lottery Notice*. We are, therefore, terminating that proceeding. Comments relating to the use of a lottery in multichannel MDS should be filed in Docket 80–112.

*F. Application Procedures*

147. One of our primary concerns in making this reallocation is to ensure that no existing ITFS operation experiences unacceptable degradation in service as a result of the operation of a multichannel MDS station. For this reason, we are adding a new subsection to the rules requiring that multichannel MDS permittees demonstrate that they will not cause any harmful interference to any ITFS receiver site located within 50 miles of the proposed MDS transmitter location. 47 CFR 21.902(d).

[41] In the Matter of Amendment of Part 21 of the Commission's Rules to Permit the Use of Alternative Procedures in Choosing Applicants for Radio Authorizations in the Multipoint Distribution Service, *Notice of Inquiry and Proposed Rulemaking*, CC Docket No. 80–116, 45 FR 29335 (May 2, 1980) (hereinafter *Lottery Notice*).

[42] Section 22.40 of the Rules is equivalent to § 21.40. In common carrier Docket 80–57, we are considering the revision and updating of Part 22. We will consider equivalent changes to § 22.40 in that proceeding.

148. We have tried to anticipate other eventualities that could unduly delay the introduction of multichannel service to the public. One such eventuality, commonly referred to as "grid-lock", could be caused by the combination of a large number of applications and the operation of § 21.31(c) of the rules, 47 CFR 21.31(c). Grid-lock refers to the situation in which applications proposing to serve widely separated geographical areas are mutually exclusive. For example, if two metropolitan areas, A and B, were separated by 75 miles and several applications were filed for each area, it is unlikely that any of the applications proposing to serve area A would be mutually exclusive with those proposing to serve area B. If, however, even one application was filed that proposed to serve the area located midway between area A and area B, it is likely that it would be mutually exclusive with all the applications proposing to serve area A *and* all the applications proposing to serve B. This means that all of the applications proposing to serve area A would be in a sense mutually exclusive with those proposing to serve area B. If another area C were located 75 miles from either A or B, a similar set of circumstances could result in all the applications filed for area C being mutually exclusive with those filed for both area A and area B and the connecting areas. It is not difficult to envision a set of circumstances in which an application that proposed to serve a location in Maine would be mutually exclusive with an application proposing to serve a location in Florida.

149. We have considered several methods to avoid this result. One of these was to enforce rigorously § 21.902(a) of the rules, 47 CFR 21.902(a), that requires all applicants to make "exceptional efforts" to avoid blocking cochannel use in nearby cities. We do not believe that this rule alone is enough to avoid the problem. For this reason, we have decided to limit the applications that will be considered to be mutually exclusive for purposes of inclusion in either a comparative hearing or a lottery—if we should decide to use such a selection procedure in this service—to those applicants that propose to locate their transmitters within a given Standard Metropolitan Statistical Area (SMSA) or within 15 miles of the boundary of the SMSA (if the transmitter is not located in another SMSA) or that propose to serve the SMSA. In those situations where the SMSA to be served is a part of a Standard Consolidated Statistical Area (SCSA), it will be considered with all other applications proposing to serve the SCSA.[43] We are requiring applicants proposing to serve any portion of an SMSA to specify what SMSA it intends to serve. In those situations where SMSAs that are not part of SCSAs are either adjacent or so close that a single transmitter could produce a signal strong enough to cause harmful interference in both SMSAs, we require that each applicant not only specify which SMSA it intends to serve but also to detail what steps it will take to prevent blocking cochannel use in the adjacent SMSA. Issues of mutual exclusivity for applications not proposing to serve SMSAs will be resolved using only existing Part 21 Rules. However, we do require all such applicants to specify the name of the primary service area. Each applicant will only be allowed to file a single application for each service area.

150. We believe that by using techniques such as cross-polarization and frequency offsets that it will be possible to avoid cochannel interference in most situations. We stress again that we expect applicants to address this problem in their applications. *Those applications that do not contain an analysis of how the applicant intends to avoid cochannel interference in adjacent areas will not be considered acceptable for filing.*

151. We expect existing ITFS licensees to cooperate with would be MDS applicants to make channels available. We believe that cooperation between MDS providers and ITFS licensees could result in benefits to each. The ITFS licensees could benefit from the technical expertise of MDS operators and the MDS operators would benefit from access to the ITFS spectrum. Most importantly, the public will benefit from more intensive use of the spectrum.

152. All MDS applications must contain a statement that the applicant will comply with the following interference protection requirements:

(1) With respect to the ITFS, the MDS operator must attempt to obtain the written consent of all licensees, permittees and applicants of cochannel and adjacent channel ITFS transmitters located within 50 miles of the MDS transmitter prior to commencing MDS construction facilities.

(2) With respect to cochannel and adjacent channel MDS operations, the MDS applicant must provide the level of interference protection proposed in Docket 80-113 until a resolution of that proceeding has occurred.

(3) To assist us in enforcing § 21.902(a) of our Rules that requires applicants to make "exceptional efforts" to avoid blocking cochannel use in nearby cities and adjacent channel use in the same city, the applicant must explain what efforts it has made to comply with this section.

Applicants will be granted construction permits conditioned on their submitting to the Commission, prior to commencing construction, a statement from all cochannel and adjacent channel ITFS licensees, permittees or applicants that have transmitter sites within 50 miles of the proposed MDS transmitter that the operation of the multichannel MDS facility will not cause harmful interference to their ITFS operations or if it does that the ITFS operator will accept such interference. If the applicant is not able, after making reasonable efforts, to obtain such a statement it may in the alternative submit evidence that the operation of the proposed MDS would not cause harmful interference to the existing ITFS operations.[44]

153. Finally, as noted above (*see* para. 88, *supra*) we do not believe it would be in the public interest to require the first group of applicants for the reallocated channels to submit the interference analysis required by § 21.902(c)(1) of our Rules, 47 CFR 21.902(c)(1). For this reason, we are hereby waiving the requirement that the first group of applicants for the reallocated channels comply with § 21.902(c)(1). If we subsequently decide to accept a second group of applications for these channels (*see* para. 154, *infra*) such applications must contain the interference analysis required by § 21.902(c)(1).

154. Because it is possible that two new MDS construction permits will be granted simultaneously in some markets, and because it is possible that MDS or ITFS operations in markets that are in close proximity may present potential interference problems, it will be difficult for applicants to comply fully with § 21.902(a). We will therefore allow MDS construction permit holders to apply for modifications to their facilities in order to minimize interference potential with other MDS and ITFS operations.

155. Section 21.43 of our Rules, 47 CFR 21.43, requires construction of an MDS facility within eight months of grant, although construction permit holders may request extensions. We believe that it is appropriate to grant extensions liberally to MDS construction permit holders in the E and F groups. The

[43] We intend to use the list of SMSAs and SCSAs to be published by the Office of Management and Budget on June 30, 1983 as our source for SMSA definitions in this service.

[44] In this regard it should be noted that lessees of the E or F group channels will not be protected from harmful interference caused by an MDS licensee operating on these channels.

reason for this is that, particularly in major markets, many of the E and F channels will be occupied. In this case, the grant of an MDS construction permit is simply an authorization for the permittee to enter into negotiations with certain ITFS licensees. While the permittee may, subject to the interference protection requirements, commence operations on as few as one channel, the enterprise may not be viable unless a larger block is assembled. Hence, while we will look favorably on requests for time extensions of construction permits, such requests must include information on the permittee's efforts to assemble a viable block of channels and an estimate of the construction timetable.

156. In general, we will use existing Part 21 procedures to process multichannel MDS applications. However, we believe it is necessary to adopt procedures to deal with what we referred to in the *Cellular Reconsideration Order* as "one-upmanship". There we stated that:

> We want all participants to file applications which would represent their best view of a service plan for the named SMSA. To do so, we do not find it necessary for participants to consult the plans of their potential competitors. Setting up a plan which allow applicants to revise their filings after viewing the applications of others would encourage applicants to engage in "one-upmanship," which has harmful consequences. This would undermine our ability to compare proposals with some measure of confidence that the applicant had participated in its development. Plans based on another proposal would no longer represent the applicants' best idea of how to serve a given area but would, instead, represent applicants' use of the administrative process to obtain an advantage over competitors. Furthermore, allowing opportunity for one-upmanship would needlessly encumber an administrative process which we must streamline to its essentials if the American public is to receive cellular service without unnecessary delay.

*Cellular Reconsideration Order, supra,* at 89 (footnotes omitted). We recognize that there are significant differences between the technical planning required to operate a cellular communication system and that required to operate a multichannel MDS system. Our experience with both MDS and the more recently authorized Digital Electronic Message Service (DEMS) has taught us that some applicants merely copy applications that have previously been filed and resubmit them with the names changed. We believe that this kind of activity does smack of the "land rush" or "gold rush" mentality that concerned many of the commenters in this proceeding. Our experience with single channel MDS applications is that in many instances a local entity will perceive the need for service in its community and file the appropriate application only to have another entity file a competing application on the final day allowed by our Rules thereby delaying the introduction of service to the public. We do not believe that such activity is in the public interest. We will, therefore, initially only accept multichannel MDS applications on the 45th day after publication of this Order in the **Federal Register**.[45] We cited the well-established legal precedent for proceeding in this manner in the *Cellular Reconsideration Order* and noted that this procedure "treats all prospective applicants equally and fairly by giving them substantial advance notice of due dates for their applications." *Id.* at 90. After processing the first set of applications, we will determine whether to proceed to accept further applications in this manner or to allow applicants to file using the existing Part 21 cut-off procedures.

*G. Other Matters*

157. Several of the commenters in this proceeding questioned the need and wisdom of continuing to regulate MDS as a common carrier service. Michael Benages claimed that:

> The Commission's rules impose on the MDS licensee its status as a common carrier, but they do not alter the fact that in operation the licensee is functionally equivalent to [a] broadcast licensee, and most specifically, the licensee of a subscription television facility.

Comments on Proposal of Microband Corporation of America, by Michael Benages, General Dockets 80–112 and 80–113, at 7–8 (July 2, 1982). In the same vein Tekkom commented that:

> Common sense would dictate a current regulatory approach to MDS similar to that adopted for STV. STV is, as a practical matter, little different from MDS. In STV, the licensee can either operate the subscription television service or sell the airtime to another under terms of a contract negotiated to meet the marketplace realities. The staff's adherence to a strict interpretation of tariff rules prevents MDS from being allowed to act on a cost efficient basis and, instead, imposes a regulator's view as to what is *"possible, practical and desirable."*

Comment of Tekkom, Inc., *supra,* at 4–5. Contrasted to these views is the view expressed by the Ad Hoc Committee for Wireless Cable.

> [T]he Commission wisely chose to establish MDS as a common carrier service. By separating the ownership of facilities from decisions over programming, the Commission permitted the risks of this new venture to be spread among different entrepreneurs with differing focuses, interests and abilities. Whereas Carriers gained expertise in system construction and operation, Operators moved into each community and provided the service which they believed was most demanded in that community. The latter invested their resources in trucks, technicians, reception equipment, programming and advertising. They were also unencumbered by the costs of regulatory compliance. This separation of investment risks has maximized the speed with which MDS has grown.
>
> The existing MDS structure has worked well and has been to the benefit of the public. It should not be changed for the sake of change. * * *

Comments of the Ad Hoc Committee, *supra,* at 11–12. Because we did not propose to change the regulatory status of MDS in this proceeding, we believe it would be inappropriate for us to act on this issue in this proceeding. Those who believe that this issue should be addressed further are invited to submit a Petition for Rulemaking.

158. The National Cable Television Association (NCTA) and Warner Amex Cable Communications, Inc. (Warner Amex) filed comments concerning another issue not raised in the *Notice.* Warner Amex and NCTA point to heavier regulatory burdens faced by cable television systems as compared to those faced by other providers of video services including MDS and conclude that the Commission should act to eliminate these disparities. The NCTA position is that:

> [I]t is crucially important that the Commission recognize that the new service that Microband proposes would enjoy significant regulatory advantages over cable that would distort competition between the two services. To promote its own objectives of fostering true competition and diversity, the Commission should accompany any authorization of Microband's proposed service with a comprehensive proceeding fashioned to level the playing field on which MDS, cable and the other old and new video services will compete.

Comments of the National Cable Television Association, Inc., General Dockets 80–112 and 80–113, at 12 (July 2, 1982). Warner Amex concludes that:

> Before considering Microband's proposal and the issues in the above-captioned rulemaking proceedings, the Commission must first address the issue of regulatory parity among competing technologies. To ignore this issue any longer, while at the same time creating additional economic advantages for cable's competitors (via preemption), is unfair to the cable industry, its subscribers and the public interest generally.

[45] If the 45th day after release of this Order falls on a holiday, applications should be filed on the next business day. 47 CFR 1.4 (i), (d).

Comments, Warner Amex Cable Communications, Inc., General Dockets 80–112 and 80–113, at 6 (July 2, 1982). It may not be possible (assuming it were desirable) to "level the playing field" on which multichannel MDS and cable "play." There are vast technological differences between multichannel MDS and cable that strongly favor cable. Cable systems have the capability of providing more than one hundred channels of television service. The multichannel MDS systems we are authorizing today are limited to four channels. Cable systems have the capability to serve all locations within a service area. Our experience with single channel MDS is that most operators, because of various propagation factors, have difficulty serving more than 50% of the locations within their service areas. Furthermore, the service areas of MDS operators are frequently much smaller than the service areas of cable companies. As far as regulatory burdens are concerned, MDS licensees are subject to the full panoply of Title II common carrier regulation. Cable has never been subject to these obligations. For these reasons, we find little merit to arguments raised by NCTA and Warner Amex as presented. Petitioners may wish to submit a petition for rulemaking addressing these issues in a substantiated, focused manner.

159. Turner Broadcasting Systems (TBS) urged that we act on its *Petition for Rulemaking* requesting the deletion of the cable television "must-carry" rules. TBS notes that Microband in its proposal claims that multichannel MDS operators will provide the "right mix" of channels on their systems to maximize subscribers and concludes that cable television systems, especially 12 channel systems, are not free to similarly provide the "right mix" of programming to their customers because of the must-carry rules. TBS's petition is now being studied by the Commission staff. However, we do not believe it would be in the public interest to delay this proceeding pending action on the TBS petition.

160. Finally, on December 21, 1979, Microband filed a *Petition for Rulemaking*, RM–3540, in which it requested that we investigate the feasibility of exchanging the existing MDS channel 2 allocation (2156–2162 MHz) with a 6 MHz band allocated to some other service. Microband suggested that we consider common carrier frequencies in the 2110–2130 MHz and 2162–2180 MHz bands or operational fixed frequencies in the 2130–2150 MHz, 2180–2200 MHz and 1850–1990 MHz bands. Microband's reason for submitting this petition was its concern that channel 2 operation would cause unacceptable adjacent channel interference with existing channel 1 operations. As discussed above, channel 1 and channel 2 are now being operated in Phoenix, Arizona and none of the interference problems suggested by Microband have materialized. Furthermore, since we are by this order removing the restriction limiting MDS operators to single channel per service area, we believe that many channel 2 operators can enter into joint ventures with existing channel 1 operators and thereby make two channel service available. For these reasons, we have concluded that there is no need to proceed with the rulemaking suggested by Microband and we will by this Order dismiss its petition.

## IV. Regulatory Flexibility Act

161. The Regulatory Flexibility Act of 1980 does not apply to rules adopted after January 1, 1981 when the underlying notice of proposed rulemaking was adopted before that date. The underlying *Notice of Proposed Rulemaking* for this proceeding was adopted March 19, 1980. Accordingly, there is no need for certification under the Regulatory Flexibility Act. See 5 U.S.C. 601.

## V. Conclusion

162. We believe that we have in this *Report and Order* arrived at equitable treatment of all concerned parties and at the same time have adopted policies that best serve the public interest. In particular, we believe that the policies and rules set out herein recognize and provide for the unique needs of the existing and potential users of the ITFS channels and also provide would-be providers of multichannel MDS service spectrum to meet anticipated public demand. This proceeding has required that we balance difficult competing interests in reaching a decision which should result in more intensive use of the spectrum while preserving legitimate needs of existing users.

163. Accordingly, it is ordered, pursuant to Sections 4(i) and 303(r) of the Communications Act, 47 U.S.C. 154(i), 303(r), that Title 47 of the Code of Federal Regulations is amended as described in Appendix B. These amendments shall become effective thirty days after publication of this Order in the **Federal Register** and we will accept multichannel MDS applications *only* on the forty-fifth day after publication of this Order in the **Federal Register.**

164. It is further ordered that the Microband Petition for Rulemaking RM–3540 is dismissed and that proceeding is terminated.

165. It is further ordered that the proceeding in Common Carrier Docket 80–116 is terminated.

166. It is further ordered, that the portion of the application of Channel View, Inc. requesting authority to conduct a market experiment, File No. 8938–ED–MR–82, is denied.

167. It is further ordered that the developmental applications of Contemporary Communications Corporation to construct and operate multichannel over-the-air pay video service facilities in New York, Chicago, Los Angeles, St. Louis, and Philadelphia, File No. BPEX–820802KH, are denied.

168. It is further ordered that Form 330P is amended as set forth in Appendix C effective upon obtaining approval of the Office of Management and Budget as required by the Paperwork Reduction Act. 44 U.S.C. 3502(4).

169. It is further ordered that applications for Channel Groups E and F filed after 12:00 PM, May 26, 1983, must be consistent with the provisions herein.

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

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

Note.—In continuing effort to minimize publishing costs, Appendix A, Summary of commenters and reply commenters, will not be printed herein but may by viewed in the FCC Dockets Branch, Room 239 and the FCC Library, Room 639, both located at 1919 M St., N.W., Washington, D.C. 20554.

## Appendix B

Parts 2, 21, and 74 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

## PART 2—[AMENDED]

1. In § 2.106, for band designated in column 5 as 2535–2655 MHz, add "Multipoint distribution" to corresponding list in column 9 designated as Class of Station in existing Table of Frequency Allocation as follows:

**§ 2.106 Table of frequency allocations.**

* * * * *

| Band (MHz) | Class of station |
|---|---|
| 5 | 9 |
| 2535–2655 | Instructional television fixed.<br>Operational fixed.<br>Space.<br>Multipoint distribution. |
| * * * * * | |
| NG 47 | |

In the band 2500–2690 MHz, channels in 2500–2686 MHz and the corresponding response frequencies 2686.0625–2689.8125 MHz may be assigned to stations in the Instructional Television Fixed Service (Part 74 of this Chapter); channels in 2596–2644 MHz and response frequencies 2686.5625–2689.6875 MHz may be assigned to Multipoint Distribution Service stations (Part 21 of this Chapter); and channels 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz and response frequencies 2686.9375 MHz, 2687.9375 MHz and 2688.9375 MHz may be assigned to stations in the Operational Fixed Service (Part 94 of this Chapter). In Alaska, however, frequencies within the band 2655–2690 MHz are not available for assignment to terrestrial stations.

* * * * *

## PART 21—[AMENDED]

2. In § 21.2, a definition for Multipoint Distribution Service response stations is added in appropriate alphabetical sequence to read as follows:

**§ 21.2 Definitions.**

* * * * *

Multipoint Distribution Service response station. A fixed station operated at an MDS receive location to provide communications with the associated station in the Multipoint Distribution Service.

* * * * *

3. Section 21.40 is amended by revising paragraph (a) and the introduction to paragraph (c) as follows:

**§ 21.40 Considerations involving transfer or assignment applications.**

(a) The Commission will review a proposed transaction to determine if the circumstances indicate "trafficking" in licenses or construction permits whenever applications (except those involving a *pro forma* assignment or transfer of control) for consent to assignment of a common carrier construction permit or license, or for transfer of control of a permittee or licensee, involve facilities which have been operated for less than one year by the proposed assignor or transferor. Only licenses that were obtained following a comparative hearing are subject to this section. At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee or permittee subsequent to the acquisition of the permit or license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

* * * * *

(c) For the purposes of this section, the one year period is calculated using the following dates (as appropriate):

* * * * *

4. Section 21.901 is amended by revising paragraphs (a), (b) and (d) as follows:

**§ 21.901 Frequencies.**

(a) Frequencies in the bands 2150–2162 MHz and 2596–2644 MHz are available for assignment to fixed stations in this service. Frequencies in the band 2150–2160 MHz are shared with non-broadcast omnidirectional radio systems licensed under other parts of the Commission's Rules, and frequencies in the band 2160–2162 MHz are shared with directional radio systems authorized in other common carrier services. Frequencies in the 2596–2644 MHz band are shared with Instructional Television Fixed Service Stations licensed under Part 74 of the Commission's Rules. The response channels $E_1$, $E_2$, $E_3$, $E_4$, $F_1$, $F_2$, $F_3$, and $F_4$ listed in § 74.939(d) are also available for assignment to fixed stations in this band and are shared with Instructional Television Fixed Service Stations licensed under Part 74 of the Commission's Rules.

(b) Applicants may be assigned a channel(s) according to one of the following frequency plans:

(1) At 2150–2156 MHz (designated as channel 1),

(2) At 2156–2162 MHz (designated as channel 2), or

(3) At 2156–2160 MHz (designated as channel 2A), or

(4) At 2596–2602 MHz, 2608–2614 MHz, 2620–2626 MHz and 2632–2638 MHz (designated as channels $E_1$, $E_2$, $E_3$ and $E_4$ respectively with the four channels to be designated the E-group channels) and the associated response channels $E_1$, $E_2$, $E_3$ and $E_4$ listed in § 74.939(d), or

(5) At 2602–2608 MHz, 2614–2620 MHz, 2626–2632 MHz, and 2638–2644 MHz (designated as channel $F_1$, $F_2$, $F_3$ and $F_4$ respectively with the four channels to be designated the F-group channels and the response channels $F_1$, $F_2$, $F_3$ and $F_4$ listed in § 74.939(d).

* * * * *

(d) Frequencies in the band 2596–2644 MHz and associated response channels will be assigned only in accordance with the following conditions:

(1) Prior to commencing construction of any facilities to use frequencies in this band permittees must submit to the Commission a written statement from all cochannel and adjacent channel Instructional Television Fixed Service Licensees, Permittees or Applicants with transmitters located within 50 miles of the permittee's transmitters that operation of the permittee's transmitter will not cause harmful interference to Instructional Television Fixed Service Operation or that the Instructional Television Fixed Service Licensee, Permittee, or Applicant will accept whatever interference occurs. If the permittee is unable to obtain such a statement from the ITFS Licensee, Permittee, or Applicant it may submit a Petition for Declaratory Ruling pursuant to § 1.2 of this chapter on the issue of whether harmful interference will occur. The Petition must be simultaneously served on the affected ITFS entity. In such cases, the Commission will determine if harmful interference will occur using accepted engineering standards. The MDS permittee must also detail what efforts it made to obtain the desired statement from the ITFS operator.

(2) The E-group channels will be assigned to a single applicant in each area and the F-group channel will be assigned to a different applicant in that area. In such areas, each applicant may submit only a single application for either the E-group channels or the F-group channels but not both. The partners, owners, trustees, beneficiaries, officers, directors or stockholders holding more than one percent of an entity's stock, or any other person or entity holding a similar cognizable interest in the applicant for, or licensee of, one group of channels in any area, shall not have a cognizable interest in the applicant for, or licensee of, either the same group, or the other group of channels in the same area.

(3) All applicants for frequencies in this band must specify the channels being applied for; however, the Commission may on its own initiative assign different channels in the band if

it is determined that such action would serve the public interest.

(4) Notwithstanding the provisions of § 21.31 of this part, applications for frequencies in this band will be accepted only on the date(s) specified by the Commission.

(5) Notwithstanding the provisions of § 21.31(a) all applications that propose to locate transmission facilities within or within 15 miles of the border of a Standard Metropolitan Statistical Area (SMSA) will be considered together. In the case of a Standard Consolidated Statistical Area (SCSA) all applications that propose to locate facilities within or within 15 miles of the boundary of any SMSA contained in the SCSA will be considered together. In those cases in which an applicant proposes to locate its transmission facilities so that it will be located in, or within 15 miles of, more than one SMSA, the applicant must specify which SMSA it intends to be its primary service area. Each application will be entitled to comparative consideration or to be included in a lottery in only one such service area.

(6) Licensees or permittees of the frequencies in this band may petition the Commission to authorize exchange of assigned channels to allow adjacent channel operation. For example, one licensee may be assigned channels $E_1$, $F_1$, $E_2$ and $F_2$ and the other licensee could be assigned channels $E_3$, $F_3$, $E_4$ and $F_4$. Such a petition will be granted if the petitioners show that the exchange will result in better service to the public.

(7) All applications for frequencies in this band must contain a showing of how interference with the operation of adjacent channels will be avoided and what steps the applicant has taken to comply with § 21.902(a) of this section.

5. A new paragraph (d) is added to existing Section 21.902 as follows:

**§ 21.902 Frequency interference.**

* * * * *

(d) All permittees of frequencies in 2596–2644 MHz band must, prior to commencing construction of any transmission facility, file with the Commission an analysis demonstrating that the facility to be constructed will not cause any harmful interference to existing cochannel or adjacent channel Instructional Television Fixed Service receiver locations within 50 miles of the transmitter, or, in the alternative, submit a statement from the ITFS licensee that the interference is acceptable.

6. A new § 21.909 is added to read as follows:

**§ 21.909 MDS response stations.**

(a) An MDS response station is authorized to provide communication by voice and/or data signals with its associated MDS station. An MDS response station may be operated only by the licensee of the MDS station or its subscriber and only at receiving location of the MDS station with which it is communicating. More than one response station may be operated at the same or different receiving locations. All MDS response stations communicating with a single MDS station shall operate within the same frequency channel. The specified frequency channel which may be used by the response station is determined by the channel assigned to the MDS station with which it communicates. The specified frequency channel may be subdivided to provide a distinct operating frequency for each of more than one response station.

(b) Authorization of an MDS response station is subject to the following terms and conditions:

(1) The response station shall not cause interference to any station operating beyond the service area of the MDS station with which it communicates.

(2) The Commission's Engineer-In-Charge of the radio district in which intended operation is located shall be notified prior to the commencement of the operation of each response station. Such notice shall include:

(i) The authorized call sign of the MDS station, the transmitter location number (assigned by the carrier in sequence of use beginning with number one) and the response station location coordinates.

(ii) The exact frequency or frequencies to be used.

(iii) Anticipated date of commencement of operation.

(3) The Engineer-In-Charge shall be notified witnin 10 days after termination of any operation. The notice shall contain similar information to that contained in the notice of commencement of operation.

(4) Each station shall have posted a copy of the notification provided to the Engineer-In-Charge.

(5) The antenna structure height employed at any location shall not exceed the criteria set forth in § 17.7 of this chapter.

## PART 74—[AMENDED]

7. The following definitions will be added in appropriate alphabetical sequence in the list of definitions in § 74.901:

**§ 74.901 Definitions.**

* * * * *

*Main channel:* The main channel is that portion of each authorized channel used for the transmission of visual and aural information as set forth in § 73.682 of this Chapter and § 74.938 of this Subpart.

* * * * *

*Subsidiary channel:* A subsidiary channel is any portion of an authorized channel not used for main channel transmissions.

8. Section 74.902 is amended by redesignating existing paragraphs (c) and (d) as paragraphs (d) and (e) respectively and adding a new paragraph (c) as follows:

**§ 74.902 Frequency assignments.**

* * * * *

(c) Channels 2596–2602, 2602–2608, 2608–2614, 2614–2620, 2620–2626, 2626–2632, 2632–2638, and 2638–2644 MHz and the corresponding response channels listed in § 74.939(d) are shared with the Multipoint Distribution Service. No new Instructional Television Fixed Service applications for these channels filed after May 25, 1983 will be accepted. In those areas where Multipoint Distribution Service use of these channels is allowed pursuant to § 21.902, Instructional Television Fixed Service users of these channels will continue to be afforded protection from harmful cochannel and adjacent channel interference from Multipoint Distribution Service stations.

* * * * *

9. Section 74.931 is amended by revising paragraph (e) and by adding a new paragraph (f) to read as follows:

**§ 74.931 Purpose and permissible service.**

* * * * *

(e) The excess capacity of each channel licensed in this service may be used for the transmission of material to be used by others in addition to material specified in paragraphs (a), (b), (c) and (d) of this section. Each station licensed in this service must use a significant portion of the main channel capacity of each authorized channel for the transmission of material specified in paragraphs (a), (b) and (d) of this section. All of the capacity available on any subsidiary channel of any authorized channel may be used for the transmission of material to be used by others. When an ITFS licensee makes excess capacity available on a common carrier basis, it will be subject to common carrier regulation. Licensees operating as a common carrier are required to apply for the appropriate authorization and to comply with all policies and rules applicable to the service. Responsibility for making the initial determination of whether a particular activity is common carriage rests with the ITFS licensee. Initial

determinations by licensees are subject to Commission examination and may be reviewed at the Commission's discretion. Leasing activity may not cause unacceptable interference to cochannel and adjacent channel operations.

(f) Material transmitted by these stations may be intended for simultaneous reception and display or may be recorded by authorized users for use at another time.

### Appendix C

1. Form 330P, Application for Authority to Construct or Make Changes in an Instructional TV Fixed Station and For Response Station(s) and Low Power Relay Station(s) is amended by adding the following:

* * * * *

Describe briefly the primary purpose of the requested authorization.

State the anticipated percentage of time for which the channel will be used by entities other than the licensee.

List the total number of existing authorizations and state the combined percentage of time for which these channels are presently used for transmissions of material for others.

**Concurring Statement of FCC Commissioner James H. Quello**

In re: Frequency Reallocation to the Multipoint Distribution Service (MDS), General Docket 80-112 & CC Docket 80-116

As you know, my consistent position on this issue has been that there is a heavy burden of proof on those who seek to take away frequencies reserved for educational purposes. I am concerned that the Commission is not adequately taking into consideration the educational community's future needs for this spectrum as this nation moves into the information age. Nevertheless, the staff and some of my colleagues do want to make additional channels available for commercial video services. Given that this is inevitable, I believe that this document represents an exceptional balancing of competing interests in a very difficult area. I believe that if reallocation must result, this document appears to be a reasonable approach which maintains priority where it belongs—with educational entities.

I have been reluctantly persuaded to concur in this document because of the following provisions and assurances:

(1) all existing ITFS applicants, permittees, and licensees have been "grandfathered";

(2) at least 20 channels are reserved exclusively for ITFS;

(3) educators will be permitted for the first time to lease excess capacity so as to provide the potential for needed additional revenues;

(4) MDS applicants will receive only a conditional construction permit and must get an agreement in writing from the existing ITFS licensee before they can begin constuction on the same channel or an adjacent channel;

(5) MDS applicants must protect ITFS operators against interference.

Finally, I must note that the Commission, in making its decision, had to give some weight to the lack of existing use of the ITFS spectrum. It is a significant argument that in a substantial number of states there are no channels in use and no applicantions on file.

While we cannot ignore the loss of potential for ITFS service resulting from this action, I strongly hope that the educational community will recognize the significant benefits which will accrue to the ITFS service as a result of this decision. We must all now look to the future and allot the highest priority to applying the ITFS service as an innovative tool for making our nation more productive and our people better able to cope with a rapidly changing world.

[FR Doc. 83-19906 Filed 7-25-83; 8:45 am]
BILLING CODE 6712-01-M

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## 47 CFR Part 13

## Commercial Radio Operators' Licensing Provisions; Editorial Amendment

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** Public Law 97-259, enacted September 13, 1982 amended Section 303(l)(1) of the Communications Act, authorizing the Commission to issue operator licenses to any qualified person who is legally eligible for employment in the United States.

The Commission's Rules implies that only those restricted permits issued to persons legally eligible for employment in the United States will have a lifetime term. Also, the term "waiver" is inappropriate in the context of the Commission's Rules.

This action is intended to remove the phrase concerning employment eligibility and the term "waiver."

**DATE:** Effective july 15, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Sharon Agee, Field Operations Bureau, (202) 632-7240.

### List of Subjects Affected in 47 CFR Part 13

Commercial Radio Operators' Licenses.

### Order

In the matter of editorial amendment of Part 13 of the Commission's Rules.

Adopted: July 13, 1983.
Released: July 15, 1983.

1. We are amending Part 13 of the Commission's Rules to clarify two sections therein. The current wording of Section 13.4 implies that only those restricted permits issued to persons legally eligible for employment in the United States will have a lifetime term. However, it is presently our intention to issue all restricted permits for a lifetime term. Accordingly, we are removing the phrase concerning employment eligibility from paragraph 13.4(b). Also, paragraph (b) of Section 13.76 contains the term "waiver" which is inappropriate in the context of that section. We are removing the word "waiver"; this has no effect on the meaning of the section.

2. Authority for this action is contained in Section 4(i) and 303(r) of the Communications Act of 1934, as amended, and Section 0.231(d) of the Commission's Rules. Since the amendments are editorial in nature, the public notice, procedure and effective date provisions of 5 U.S.C. 553 do not apply.

3. In view of the above, it is ordered, that Sections 13.4 and 13.76 of the rules are amended in accordance with the attached appendix, effective July 15, 1983.

4. Regarding questions on matters covered in this document contact Sharon M. Agee, (202) 632-7240.

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

Federal Communications Commission.

**Edward J. Minkel,**
*Managing Director.*

### Appendix

### PART 13—[AMENDED]

Part 13 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

**§ 13.4 [Amended]**

A. In § 13.4, paragraph (b) is amended by removing the words "issued to persons legally eligible for employment in the United States".

**§ 13.76 [Amended]**

B. In § 13.76, paragraph (b) is amended by removing the word "waiver".

[FR Doc. 83-20147 Filed 7-25-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 83

[PR Docket No. 82-677; FCC 83-333]

## Stations on Shipboard in the Maritime Services; Amendment of the Commission's Rules To Remove and Simplify Requirements Governing Spare Parts, Tools, Test Equipment, Instruction Books and Circuit Diagrams for Compulsory Ship Stations in the Maritime Mobile Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This action amends rules that pertain to ship radio stations on board vessels required to be equipped with radio. This action was staff initiated and is intended to simplify rules governing spare parts, tools, test equipment and circuit diagrams.

**EFFECTIVE DATE:** August 29, 1983.

**ADDRESS:** Federal Communications commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Robert P. DeYoung, Private Radio Bureau (202) 632-7175.

**List of Subjects in 47 CFR Part 83**

Ship stations.

**Report and Order; Proceeding Terminated**

In the matter of amendment of Part 83 of the rules to simplify requirements governing spare parts, tools, test equiment, instruction books and circuit diagrams for compulsory ship stations in the maritime mobile service, PR Docket No. 82-677.

Adopted: July 14, 1983.
Released: July 21, 1983.

By the Commission.

1. On October 1, 1982, the Commission released a Notice of Proposed Rule Making (NPRM) in the above captioned matter, PR Docket No. 82-677, FCC 82-421, 47 FR 46553. The NPRM proposed to delete or simplify the current rule provisions regarding requirements for compulsorily equipped ships to carry spare parts, tools, test equipment, instruction books and circuit diagrams.

2. Comments favoring the proposed rule changes were received from the American Institute of Merchant Shipping (AIMS), the Council of American-Flag Ship Operators, Arco Marine, Inc. and Chevron Shipping Company. Comments opposing the proposed rule changes were received from David B. Popkin, the American Radio Association (ARA), and District 3 of the Radio Officers Union (ROU). The ROU also filed reply comments. The comment and reply comment periods are closed.

3. The commenters opposed to the proposed rule changes make the following basic arguments:

(a) Safety considerations favor the present approach of detailed requirements set forth by rule;

(b) There has been no fundamental change in compulsory equipment and, therefore, no change in the rules is necessary; and

(c) The proposed rules are too general and conflict with legal or policy considerations favoring more specificity.

4. The commenters favoring the proposed rule changes make the following basic arguments:

(a) The proposed rules will provide flexibility in the face of rapidly changing technology;

(b) The proposed rule changes will relieve vessel operators of unreasonable, unnecessary or unduly detailed regulations; and

(c) Vessel operators exceed current equipment requirements due to operational and business necessity and appreciate the need for spare parts and other materials necessary to allow equipment to be maintained at sea.

**Discussion**

5. No commenter in this proceeding questions the basic requirement that a compulsorily equipped vessel carry various materials which will enable the radiotelegraph, radiotelephone and survival craft installations to be maintained in efficient working condition while at sea. Controversy only arises regarding questions of the format and detail with which these requirements should be reflected in our rules or otherwise be made known.

6. The traditional approach to the "spare parts" problem was to set forth detailed requirements in the rules. The present rules reflect this approach. As indicated in the *Notice* in this proceeding the Commission has been systematically reviewing regulations of this kind pursuant to the Regulatory Flexibility Act of 1980 [1] and its own deregulatory program to see if there is a better, more flexible or simpler way of implementing necessary regulations. We believe the proposed rules are simpler and, essentially adopt the approach taken in the underlying statutory and treaty language. These changes will also permit both the Commission and ship operators greater flexibility in responding to changing requirements mandated by changing equipment design or equipment technology. Extremely detailed rules are not necessary to implement the requirement for adequate spare parts, tools, test equipment, instruction books and circuit diagrams which will enable compulsory equipment to be maintained in efficient working condition while at sea. Extremely detailed rule regulations, particularly with the passage of time, might well omit some vital equipment or include unnecessary equipment. In addition, it is administratively and procedurally burdensome to update such detailed rule regulations.

7. We believe that the proposed rules are adequate to implement the requirements for the following reasons. The rules fully reflect the mandate of the Communications Act and of the Safety of Life at Sea (SOLAS) Convention that each ship station be able to be maintained in efficient working condition while at sea. While there may have been no "fundamental" change in compulsory equipment, the type approval of compulsory equipment and the availability of special spare parts lists preclude the need or the desirability of listing all, or even a selective number, of the details in the rules. Furthermore, we do not believe the requirements are too vague. It is not necessary for instance to specify, as § 83.476 does, that instruction books and circuit diagrams be provided "for the types of required transmitters, receivers and radio direction finding equipment installed." Obviously, any other books and diagrams would not meet the test of § 83.474 as proposed.

8. Lastly, we agree with the commenters favoring these proposed rule changes that most ship operators have sufficient ability and incentive to ensure that the radio station is operational at sea for both business and safety reasons. Where an inspection reveals that the requirements are not met, the vessel will be cited.

9. Pursuant to Section 605 of the Regulation Flexibility Act of 1980 (Pub. L. 96-354), we certify that the proposed rules will not have a significant economic impact on a substantial number of small entities. Most vessels subject to these rules are large oceangoing vessels operated by large concerns rather than small businesses. Further, since all affected vessels currently possess adequate equipment to comply with these relaxed requirements, no additional costs will be incurred.

10. For information concerning this action contact Robert DeYoung at (202) 632-7175.

11. For these reasons, it is ordered, That Part 83 of the rules regarding spare parts, tools, test equipment and circuit diagrams is amended as set forth in the attached Appendix effective August 29, 1983.

12. Authority for this action is contained in Sections 4(i) and 303(r) of

[1] Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.

the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

13. It is further ordered, That a copy of this Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

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

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

**William J. Tricarico,**

*Secretary.*

**Appendix**

## PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. Section 83.474 is revised to read as follows:

**§ 83.474 Ship and survival craft station spare parts, tools, instruction books, circuit diagrams and testing equipment.**

(a) Each ship station shall be provided with such spare parts, tools, testing equipment, instruction books and circuit diagrams as will enable the radiotelegraph installation and survival craft station to be maintained in efficient working condition while at sea. The Commission will look to the equipment manufacturer to determine the required spare parts, tools, and test equipment, repair manuals for compliance with this sub-section. Spare parts for the survival craft will be kept on-board the survival craft while all other items will be located convenient to the radio room. Published recommended lists as applicable above are to be maintained on-board.

(b) The testing equipment shall include an instrument or instruments for measuring A.C. volts, D.C. volts and ohms.

**§ 83.476 [Removed and Reserved]**

2. Section 83.476 is removed and designated reserved.

**§ 83.477 [Removed and Reserved]**

3. Section 83.477 is removed and designated reserved.

**§ 83.478 [Removed and Reserved]**

4. Section 83.478 is removed and designated reserved.

**§ 83.479 [Removed and Reserved]**

5. Section 83.479 is removed and designated reserved.

6. Section 83.499 is revised to read as follows:

**§ 83.499 Ship station tools, instruction books, circuit diagrams and testing equipment.**

(a) Each ship station shall be provided with such tools, testing equipment, instruction books and circuit diagrams as will enable the radiotelephone installation to be maintained in efficient working condition while at sea and will be located convenient to the radio room. To determine the requirements of this sub-section, the published recommended lists as applicable above are to be maintained on-board.

(b) The testing equipment shall include an instrument or instruments for measuring A.C. volts, D.C. volts and ohms.

[FR Doc. 83-20140 Filed 7-25-83; 8:45 am]
BILLING CODE 6712-01-M

# Proposed Rules

Federal Register
Vol. 48, No. 144
Tuesday, July 26, 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 AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1106

### Milk in the Southwest Plains Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rules.

**SUMMARY:** This notice invites written comments on a proposal to suspend certain shipping standards for supply plants regulated under the Southwest Plains milk order. This proposed action for August 1983 would continue a suspension that has been in effect since March 1983 that has allowed supply plants previously associated with the market to maintain pool plant status without making shipments to distributing plants.

This action was requested by the operator of a pool supply plant. The plant operator contends that the market's supply-demand imbalance that necessitated the current suspension will continue through August. Anticipated production declines have not materialized and proponent has been advised that bulk milk from its supply plant will not be needed to furnish the fluid milk needs of distributing plants during August. Without the suspension, proponent contends that unneeded and uneconomic shipments of supply plant milk would have to be made solely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced and pooled under the order.

**DATE:** Comments are due not later than August 2, 1983.

**ADDRESS:** Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building; U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** John F. Borovies, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U. S. Department of Agriculture, Washington, D. C. 20205, (202) 447–2089.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the required suspension procedures on the timely basis necessary to make the suspension effective for the month of August 1983, if it is found necessary. The initial request for this action was received on July 13, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

## PART 1106—[AMENDED]

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for the month of August 1983:

### § 1106.6 [Amended]

1. In § 1106.6, the language "during the month".

### § 1106.7 [Amended]

2. In § 1106.7(b)(1), the language "until any month of such period in which less than 20 percent of the milk received or diverted as previously specified, is shipped to plants described in paragraph (a) of this section. A plant not meeting such 20 percent requirement in any month of such February-August period shall be qualified in any remaining month of such period only if transfers and diversions, pursuant to paragraph (b)(2) of this section to plants described in paragraph (a) of this section are not less than 50 percent of receipts or diversions as previously specified" and the language "until any month of such period in which the plant fails to meet the 20 percent shipping requirement".

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C., 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures to make the suspension effective for August 1983, if this is found necessary.

The comments that are received will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

### Statement of Consideration

The proposed suspension would allow supply plants that previously were associated with the market to maintain pool status without making the minimum shipments to distributing plants required by the order. The order defines a supply plant as a plant from which shipments are made to distributing plants during the month. Also, the order provides that supply plants that were pooled during each of the previous months of September through January under the Southwest Plains order, or during the months of September through December 1982 under any of the four predecessor orders that were merged to form the Southwest Plains order, will be pooled during the following months of February through August if not less than 20 percent of monthly receipts are shippped to pool distributing plants. During March through July 1983, a suspension of the supply plant shipping standards has eliminated the need for supply plant operators to ship milk to

distributing plants to maintain pool plant status. The proposed action would continue the suspension through August 1983.

This action was requested by a handler who operates a pool supply plant. This handler also requested the suspension now in effect. This plant was pooled during each of the months of September 1982 through January 1983 under the Southwest Plains order or its predecessor orders, and has remained pooled since March 1983 based on its previous association with the market. The plant operator contends that the one-month extension of the suspension is necessary because production continues to exceed the demand for milk in fluid use. Anticipated production declines have not materialized and the handler has been advised that shipments from the supply plant will not be needed to furnish the fluid milk needs of distributing plants in August. The proponent contends that without the continued suspension, unneeded and uneconomic shipments of milk would have to be made solely for the purpose of pooling the milk of dairy farmers who historically have supplied the fluid milk needs of the market.

**List of Subjects in 7 CFR Part 1106**

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C., on July 20, 1983.

**William T. Manley,**

*Deputy Administrator, Marketing Program Operations.*

[FR Doc. 83-20107 Filed 7-25-83; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Part 1139

## Milk in the Lake Mead Marketing Area; Proposed Suspension of Certain Provisions of the Order

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

**ACTION:** Proposed suspension of rules.

**SUMMARY:** This notice invites written comments on a proposal to continue through December 1983 the suspension of certain diversion provisions of the Lake Mead Federal milk order. The proposed suspension would remove the limit on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool plants and still be priced and pooled under the order. The requirement that 20 percent of a dairy farmer's monthly milk production be received at a pool plant in order for the remaining production to be eligible to be moved directly from the farm to nonpool manufacturing plants and still be priced and pooled under the order would also be suspended. The suspension was requested by a cooperative association to assure the efficient disposition of milk not needed for fluid use and still maintain producer status under the order for its dairy farmer members regularly associated with the market.

**DATE:** Comments are due not later than August 2, 1983.

**ADDRESS:** Comments (two copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Robert F. Groene, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-2089.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed under USDA procedures established to implement Executive Order 12291 and has been classified as a "non-major" action.

It has been determined that any need for suspending certain provisions of the order on an emergency basis precludes following certain review procedures set forth in Executive Order 12291. Such procedures would require that this document be submitted for review to the Office of Management and Budget at least 10 days prior to its publication in the **Federal Register.** However, this would not permit the completion of the required suspension procedures and the inclusion of August 1983 in the suspension period if it is found necessary. The initial request for this action was received on July 5, 1983.

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to insure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the suspension of certain provisions of the order regulating the handling of milk in the Lake Mead marketing area is being considered for the months of August through December 1983:

1. In § 1139.13(d)(2), the language "from whom at least 20 percent of his milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March through July and 20 percent in other months of the producer milk which the association causes to be delivered to pool plants during the month."

2. In § 1139.13(d)(3), the language "from whom at least 20 percent of his milk production is received during the month at a pool plant. The total quantity of milk so diverted may not exceed 30 percent in the months of March through July and 20 percent in other months of the milk received at such pool plant from producers and for which the operator of such plant is the handler during the month."

All persons who desire to submit written data, views, or arguments in connection with the proposed suspension should file two copies of such material with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C., 20250, not later than 7 days from the date of publication of this notice in the **Federal Register.** The period for filing comments is limited to 7 days because a longer period would not provide the time needed to complete the required procedures and include August 1983 in the suspension period.

The comments that are received will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

**Statement of Consideration**

This proposed action would make inoperative, for August through December 1983, the requirement that at least 20 percent of a dairy farmer's monthly milk production be received at a pool plant for the remaining production to be priced and pooled under the order. In addition, this action would continue a suspension that has been in effect since April 1982 (47 FR 17036, 47 FR 38496, 47 FR 55201, 47 FR 16028) which removes the limit on the amount of producer milk that a cooperative association or other handler may divert to nonpool plants. The order now provides that cooperatives and pool plant operators may divert to nonpool plants up to 20 percent of the producer milk which they cause to be received at pool plants during the months of August through February.

The action was requested by the Lake Mead Cooperative Association, which supplies a substantial part of the market's fluid milk needs and handles most of the market's reserve supplies.

The cooperative association requested the suspension to provide for greater efficiencies in handling the market's reserve milk supply.

The need to handle an increasing quantity of reserve milk supplies is a result of a continuing imbalance between the market's fluid milk requirements and the milk supplies available from producers. The cooperative indicates that milk production continues to be heavy without a corresponding increase in sales to fluid milk outlets. As a result of these marketing conditions, the order limits on the quantity of milk that may be moved directly from farms to nonpool plants and still be priced under the order have been suspended since April 1982. Unless the suspension is continued, the cooperative asserts that some of the milk of its member producers who regularly have supplied the fluid market would have to be moved, uneconomically, first to pool plants and then to nonpool manufacturing plants, in order to continue producer status for such milk.

A suspension of the order requirement that 20 percent of a dairy farmer's monthly milk production must be received a a pool plant in order for the remaining quantity to be eligible for diversion to nonpool plants has been in effect since may 1983. The cooperative contends that otherwise, substantial quantities of the milk of individual producers who are located farthest from the market must be shipped to pool plants solely for diversion qualification purposes. The shipment of distantly located milk supplies to pool plants displaces the milk of other producers who are located nearer to the distributing plants. Such milk must then be shipped to distant outlets for surplus disposal. Thus, the cooperative contends that without the continued suspension of the provisions indicated, it would incur unnecessary hauling costs because of the need to qualify the milk of its member producers to be eligible for diversion to nonpool plants. The cooperative indicates that suspension of these requirements would eliminate costly and inefficient movements of producer milk that are made solely for the purpose of pooling the milk of dairy farmers who have been regularly associated with the market.

The cooperative requested the suspension until a more permanent regulatory solution to the supply-demand imbalance in the market could be formulated based on the record of a public hearing. The cooperative has petitoned the Department to call a public hearing to consider proposals to amend the order that would accommodate current market conditions.

It is expected that a hearing will be held in the near future to consider these proposals.

### List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

Signed at Washington, D.C. on: July 20, 1983.

**William T. Manley,**

*Deputy Administrator, Marketing Program Operations.*

[FR Doc. 83-20108 Filed 7-25-83; 8:45 am]

BILLING CODE 3410-02-M

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## Animal and Plant Health Inspection Service

**[Docket No. 83-084]**

## 9 CFR Parts 145 and 147

## National Poultry Improvement Plan and Auxiliary Provisions on National Poultry Improvement Plan

**AGENCY:** Animal and Plant Health Inspection Service, USDA

**ACTION:** Proposed Rule; extension of comment period.

**SUMMARY:** This document extends the comment period on a previously published document which proposed amending portions of the provisions governing the National Poultry Improvement Plan and Auxiliary Provisions to incorporate changes pertaining to the control of certain poultry diseases. This action is needed to allow industry representatives and other interested persons adequate time in which to prepare comments, and therefore to provide the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture the most meaningful comments possible.

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

**ADDRESS:** Written comments should be submitted to T. O. Gessel, Director, Regulatory Coordination Staff, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Written comments received may be inspected at Room 728 of the Federal Building, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Raymond D. Schar, USDA, APHIS, VS, Room 828, Federal Building, Hyattsville, MD 20782, (301) 436-5140.

**SUPPLEMENTARY INFORMATION:** On May 27, 1983, a document was published in the **Federal Register** (48 FR 23828-23836) which proposed to amend the regulations in 9 CFR Parts 145 and 147 concerning the National Poultry Improvement Program and Auxiliary Provisions. The amendments were proposed in an effort to reduce the cost of certain blood testing programs, to provide for effective sanitizing procedures for hatching eggs and hatchery equipment, and to use more standardized laboratory techniques in screening infected or suspicious specimens. New programs were also proposed to provide qualified started poultry with certain Mycoplasma classifications. Additionally, the document proposed that poultry exhibited in U.S. Pullorum-Typhoid Clean States be required to be banded. All of these proposals were intended to continue providing valid tests for the different diseases at lower cost to the owner, to provide more definitive techniques, and to offer new testing and classification programs which would permit prospective buyers to know the health status of products before making a purchase.

When the document containing the proposed amendments was published, on May 27, 1983, it provided for receipt of comments on or before July 26, 1983. However, some poultry owners and the Poultry Press have requested additional time in which to prepare and submit their comments.

Since the Department is interested in receiving meaningful views and comments concerning this complex proposal, these circumstances, in view of the non-emergency nature of the proposed amendments, are considered sufficient justification for extending the original comment period. Therefore, the period for submission of comments concerning the proposed amendments is hereby extended until August 25, 1983.

Done at Washington, D.C., this 21st day of July 1983.

**D. F. Schwindaman,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 83-20163 Filed 7-25-83; 8:45 a.m.]

BILLING CODE 3410-34-M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 13

[Docket No. 9148]

### Flowers Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

*Correction*

In FR Doc. 83-18724, beginning on page 31871 in the issue of Tuesday, July 12, 1983, make the following corrections:

1. On page 31872, third column, a Roman numeral I should appear above the text that immediately follows paragraph (M).

2. Also on page 31872, third column, the word "deposits" in the second line of paragraph (C) should read, "depots".

3. On page 31874, first column, the word "expected" in the ninth line of paragraph (A) under Roman numeral VI should read "excepted."

BILLING CODE 1505-01-M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 35

[Docket No. RM83-62-000]

### Treatment of Purchased Power in the Fuel Cost Adjustment Clause for Electric Utilities; Extension of Time for Reply Comments

July 18, 1983.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking; extension of reply comment period.

**SUMMARY:** On May 3, 1983, the Commission issued a Notice of Proposed Rulemaking involving the treatment of purchased power in the fuel cost adjustment clause for electric utilities (48 FR 21161, May 11, 1983). The period for filing reply comments is being extended at the request of Seminole Electric Cooperative, Inc. and American Public Power Association.

**DATES:** Reply comments must be submitted on or before August 5, 1983.

**ADDRESS:** Submit comments to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Kenneth F. Plumb, Secretary, (202) 357-8400.

Kenneth F. Plumb,

*Secretary.*

[FR Doc. 83-20103 Filed 7-25-83; 8:45 am]

BILLING CODE 6717-01-M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 134

### Proposed Customs Regulations Amendment Relating to Country of Origin Marking

**AGENCY:** Customs Service, Treasury.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Customs Regulations to establish certification requirements to prohibit the concealment of country of origin information appearing on articles imported in bulk and repacked in the United States after release from Customs custody. This change would require importers to certify to the district director having custody of the articles that: (a) If the importer does the repacking, he must not obscure or conceal the country of origin marking information appearing on the article, or else the container (e.g., blister pack) must be marked in accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements. The purpose of the proposed change is to ensure that an ultimate purchaser in the United States is aware of the country of origin of the article.

**DATE:** Comments must be received on or before September 26, 1983.

**ADDRESS:** Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Anthony L. Piazza, Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8468).

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless expressly excepted, every article of foreign origin (or its container) imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the article or container will permit, in such manner as to indicate to an ultimate purchaser, the English name of the country of origin of the article.

Section 304(c) provides that any article not marked as required, shall be subject to a duty of 10 percent ad valorem, in addition to any other duty imposed by law and whether or not the article is exempt from the payment of ordinary Customs duties; unless the article is exported, destroyed, or marked, under Customs supervision. These marking duties cannot be remitted, wholly or in part.

In addition to the requirement for marking duties under section 304(c) for a country of origin marking violations, civil penalties may be incurred by the importer under section 592, Tariff Act of 1930, as amended (19 U.S.C. 1592), for entering merchandise into the domestic commerce by means of false documents; and criminal sanctions may be assessed under 18 U.S.C. 1001 for presenting false and misrepresented documents to the Government in connection with an entry. Criminal sanctions also may be assessed under 19 U.S.C. 1304(e) for concealing or obscuring country of origin markings. Further, if merchandise released from Customs custody under a bond is found not to be legally marked, liquidated damages also may be assessed for breach of the bond conditions.

Part 134, Customs Regulations (19 CFR Part 134), sets forth the country of origin marking requirements of 19 U.S.C. 1304, as well as the consequences and procedures to be followed if imported articles are not legally marked.

It has been brought to Customs attention by the Hand Tools Institute, an association consisting of domestic producers of hand tools, that various foreign-made tools are entering the United States in bulk containers, properly marked with the country of origin. Once in the United States however, these tools are repacked in sealed, unmarked blister packs in such a manner that the country of origin marking appearing on the article is concealed from view by placing the article face down in the blister pack. Samples have been submitted to Customs showing this deceptive practice.

The intent of the marking legislation, since the first enactment appeared as section 6 of the Tariff Act of 1890, has been to allow the ultimate purchaser in the United States to know the country of

origin of foreign articles. By knowing the country of origin, it allows the purchaser to make an informed choice on whether to buy the foreign article or its domestic counterpart. This choice was provided in large part because Congress recognized that if given a choice, consumers prefer domestic goods. To conceal or obscure county of origin marking information prevents consumers from exercising this preference; denies domestic producers the benefit flowing from such consumer preference; and frustrates the Congressional will.

In a related matter, by notice published in the **Federal Register** on September 10, 1982 (47 FR 39866), Customs proposed certification requirements for importers with respect to certain *unmarked* articles (i.e., J-list articles and articles incapable of being marked) imported in bulk and repacked in the United States after release from Customs custody. Customs believes that similar requirements should be adopted with respect to repacked *marked* articles, base on the same rationale. That is, if Customs knows, or has reason to believe, that the marked articles will not reach the ultimate purchaser in such a condition as to enable the purchaser to know the country of origin of the article before purchase, then Customs cannot find the marking of the article to satisfy the requirements of the statute. See *U.S. Wolfson Bros. Corp.* v. *United States*, 52 CCPA 46, C.A.D 856 (1965), upon which this rationale is based.

Accordingly, to minimize the practice of concealing country of origin information appearing on repacked marked articles, Customs proposes to require importers to certify to the district director having custody of articles that: (a) If the importer does the repacking, he must not obscure or conceal the country of origin marking information appearing on the article, or else the container (e.g., blister pack) must be marked on accordance with applicable law and regulations; or (b) if the article is sold or transferred, the importer must notify the subsequent purchaser or repacker, in writing, at the time of sale or transfer, that any repacking of the article must conform to the marking requirements.

The purpose of the proposed certification requirement is to place the responsibility on the importer to ensure, as best as possible, that the country of origin information reaches the ultimate purchaser in such a manner as to enable the purchaser by an inspection of the article (or its container) to know the country of origin of which the article is a product before he chooses to purchase it. It should be emphasized that under this proposal, the importer would not be liable to Customs if the repacker failed to comply with the marking requirements, provided that the importer follows through on his certification by informing the repacker of such requirements. If it is determined that the importer took the proper action according to his certification in this regard and the repacker failed to comply, Customs could seek criminal action against the repacker under 19 U.S.C. 1304(e). In addition, the certification and proof of compliance also may be useful in a civil action brought against a repacker under 15 U.S.C. 1125.

**List of Subjects in 19 CFR Part 134**

Customs duties and inspection, Imports, Importers, Labeling, Packaging, and Containers.

**Proposed Regulations Amendment**

## PART 134—COUNTRY OF ORIGIN MARKING

It is proposed to amend § 134.13, Customs Regulations (19 CFR 134.13), by adding a new paragraph (c) to read as follows:

**§ 134.13 Imported articles repacked or manipulated.**

(a) * * *

(c) *Certification requirements.* If an article subject to these requirements is intended to be repacked in retail containers (e.g., blister packs) after its release from Customs custody, or if the district director having custody of the article, has reason to believe such article will be repacked after its release, the importer shall certify to the district director that: (1) If the importer does the repacking, he shall not obscure or conceal the country of origin marking appearing on the article, or else the new container shall be marked to indicate the country of origin of the article in accordance with the requirements of this Part; or (2) if the article is intended to be sold or transferred to a subsequent purchaser or repacker, the importer shall notify such purchaser or transferee, in writing, at the time of sale or transfer, that any repacking of the article must conform to these requirements. The importer, or his authorized agent, shall sign the following statement.

**Certificate of Marking by Importer—Repacked Articles Subject to Marking**

(Port of entry) _____

I, _____ of _____, certify that if the article(s) covered by this entry (entry no.(s) _____ dated _____), is (are) repacked in retail container(s) (e.g., blister packs), while still in my possession, the new container(s) will not conceal or obscure the country of origin marking appearing on the article(s), or else the new container(s), unless excepted, shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the container(s) will permit, in such manner as to indicate the country of origin of the article(s) to the ultimate purchaser(s) in accordance with the requirements of 19 U.S.C. 1304 and 19 CFR Part 134. I further certify that if the article(s) is (are) intended to be sold or transferred by me to a subsequent purchaser or repacker, I will notify such purchaser or transferee, in writing, at the time of sale or transfer, of the marking requirements.

Date _____

Importer _____

The certification statement may appear as a typed or stamped statement on an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice; or it may be submitted in blanket form to cover all importations of a particular product for a given period (e.g., calendar year). If the blanket procedure is used, a certification must be filed at each port where the article(s) is entered.

(i) *Facsimile signatures.* The certification statement may be signed by means of an authorized facsimile signature.

(ii) *Time of filing.* The certification statement shall be filed with the district director at the time of entry summary. If the certification is not available at that time, a bond shall be given for its production in accordance with § 141.66, Customs Regulations (19 CFR 141.66). In case of repeated failure to timely file the certification required under this subsection, the district director may decline to accept a bond for the missing document and demand redelivery of the merchandise under § 134.51, Customs Regulations (19 CFR 134.51).

(iii) *Notice to subsequent purchaser or repacker.* If the article is sold or transferred to a subsequent purchaser or repacker the following notice shall be given to the purchaser or repacker:

**Notice to Subsequent Purchaser or Repacker**

These articles are imported. The requirements of 19 U.S.C. 1304 and 19 CFR part 134 provide that the articles or their containers must be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article or container will permit, in such a manner as to indicate to an ultimate purchaser in the United States, the English name of the country of origin of the article.

(iv) *Duties and Penalties.* Failure to comply with the certification requirements in paragraph (a) may subject the importer to a demand for liquidated damages under § 134.54(a) and for the additional duty under 19

U.S.C. 1304. Fraud or negligence by any person in furnishing the required certification may also result in a penalty under 19 U.S.C. 1592.

### Authority

This amendment is proposed under the authority of R.S. 251, as amended (19 U.S.C. 66), section 304, 624, 46 Stat. 731, as amended, 759 (19 U.S.C. 1304, 1624), 77A Stat. 14 (19 U.S.C. 1202).

### Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

### Executive Order 12291

Because this document will not result in a regulation which would be a "major" rule as defined by section 1(b) of E.O. 12291, a regulatory impact analysis and review as prescribed by section 3 of the E.O. is not required.

### Regulatory Flexibility Act

Customs has determined that an "initial" regulatory flexibility analysis will not be necessary in this instance because there is no indication that the proposed amendment will have a significant economic impact on a substantial number of small entities. Although importers of products subject to the requirements of this proposal may incur some increased costs, there is no indication that such costs will be significant or that a substantial number of small entities will be affected. However, if public comments to this notice convince us that there will indeed be a significant economic impact on a substantial number of small entities, Customs would then prepare a "final" regulatory flexibility analysis, as required by the Regulatory Flexibility Act.

### Drafting Information

The principal author of this document was Jesse V. Vitello, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

**Alfred R. De Angelus,**
*Acting Commissioner of Customs.*
Approved:
**Robert E. Powis,**
*Acting Assistant Secretary of the Treasury.*
July 18, 1983.
[FR Doc. 83-20135 Filed 7-25-83; 8:45 am]
BILLING CODE 4820-02-M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Social Security Administration

## 20 CFR Part 404

## Social Security Benefits; Disability Insurance Benefits; Time at Which Surviving Child's Relationship Requirement Must Be Met

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Social Security Administration proposes to amend its regulation for determining whether a claimant is the child of a deceased insured worker. The amendment will specify that the determination is made by looking to the inheritance laws that were in effect at the time the insured worker died in the State where the insured had his or her permanent home. With this revision, it should be unmistakeably clear that the relationship determination is not based on changes in State law which occurred since the death of the insured.

**DATES:** Comments must be submitted on or before September 26, 1983.

**ADDRESSES:** Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21203, or delivered to the Office of Regulations, Social Security Administration, 3–A–3 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

**FOR FURTHER INFORMATION CONTACT:** Jack Schanberger, Room 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594–6785.

**SUPPLEMENTARY INFORMATION:** Section 216(h)(2)(A) of the Social Security Act (the Act) states in part that in determining whether an applicant is the child of a deceased insured individual, the Secretary shall apply such law as would be applied in determining the devolution of interstate personal property by the courts of the State in which the insured individual was domiciled at the time of his or her death. When determining an applicant's relationship to the insured under § 216(h)(2)(A), we have always looked to the law that was in effect in the insured's State of domicile at the time he or she died. Some Federal courts have also interpreted the provision this way. See *Ramon* v. *Califano*, 493 F. SUPP. 158 (W.D. TEX 1980); *Allen* v. *Califano*, 452 F. SUPP. 205 (D. Md. 1978).

However, in a recent circuit court decision, *Owens* v. *Schweiker*, 692 F.2d 80 (9th Cir. 1982), the court, focusing on the ambiguous language and grammatical construction of section 216(h)(2)(A), interpreted the provision differently than we have (and differently than other Federal courts have) and concluded that the Act should be read to require the use of the State law of domicile that was in effect at the time of the Secretary's determination on the child's claim.

We believe that our longstanding interpretation of section 216(h)(2)(A) is consistent with the intent of Congress and is a realistic application of Social Security program purposes and principles. A purpose of the program is to replace in part the wages of an individual who is no longer able to work because of retirement, disability, or death, and to provide monthly benefits to the individual's survivors who were dependent on him or her when he or she died. Realistically that dependency no longer exists months or years after the individual's death, and therefore the child's relationship status beginning some time after the individual's death would seem, in terms of economic dependency, to be irrelevant. That conclusion accords with section 216(h)(3)(C) of the Act, under which an applicant qualifies as a surviving child of the worker only if documentary proof of paternity was made during the worker's lifetime, or the worker was living with or contributing to the support of the child at the time of death.

The Act provides that the relationship between an insured and a child is to be determined under section 216(h)(3)(C) when an applicant does not qualify under section 216(h)(2). However, the *Owens* decision would permit a reversal of that sequence of tests, so that an applicant who does not meet the required relationship at the crucial time under section 216(h)(3)(C) could qualify

at a later point in time under section 216(h)(2)(A).

Moreover, section 202(d)(1)(C) specifically requires that a surviving child must have been dependent upon the insured worker when he died. This is another clear indication that Congress intended that a surviving child beneficiary have the required status at the time of the insured's death.

For the above reasons, and to avoid conflicting interpretations of section 216(h)(2)(A) in the future, we are amending 20 CFR 404.354(b) to clearly state that we look to the inheritance law which was in effect in the State of the insured individual's domicile when he or she died.

### Regulatory Procedures

*Executive Order 12291*—This regulation has been reviewed under Executive Order 12291. It will have no effect on any costs or prices in any part of the economy. There will be no program or administrative costs resulting from this regulation. Therefore, it does not meet any of the criteria for a major regulation, and a Regulatory Impact Analysis is not required.

*Paperwork Reduction Act*—These regulations impose no reporting/recordkeeping requirements requiring OMB clearance.

*Regulatory Flexibility Act*—We certify that these regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities because they affect only the entitlement of individuals to monthly benefits. Therefore, a Regulatory Flexibility Analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Programs No. 13.805 Social Security—Survivors Insurance)

### List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Death benefits, Disabled, Old-Age, survivors, and disability insurance.

Dated: May 6, 1983.

John A. Svahn,
*Commissioner of Social Security.*

Approved: July 12, 1983.

Margaret M. Heckler,
*Secretary of Health and Human Services.*

Subpart D of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

## PART 404—[AMENDED]

### Subpart D—[Amended]

1. The authority citation for Subpart D reads as follows:

**Authority:** Secs. 202, 205, 216, 223, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 70 Stat. 815, 94 Stat. 449, 80 Stat. 67, 49 Stat. 647; Sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 425, 428, and 1302; and 5 U.S.C. Appendix.

2. Section 404.354 is amended by revising paragraph (b) to read as follows:

**§ 404.354 Your relationship to the insured.**

* * * * *

(b) *Use of State laws.* To decide your relationship to the insured, we look to the laws that are in effect in the State where the insured has his or her permanent home when you apply for benefits. If the insured is deceased, we look to the laws that were in effect at the time the insured worker died in the State where the insured had his or her permanent home. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we will look to the laws of the District of Columbia. For a definition of permanent home, see § 404.303. The State laws we use are the ones the courts would use to decide whether you could inherit a child's share of the insured's personal property if he or she were to die without leaving a will. If these laws would not permit you to inherit the insured's personal property as his or her child, you may still be eligible for child's benefits if you are related to the insured in one of the other ways described in §§ 404.355–404–359.

[FR Doc. 83-20040 Filed 7-25-83; 8:45 am]
BILLING CODE 4190-11-M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[LR-232-81]**

## Exclusion of Interest on Certain Savings Certificates; Withdrawal of Notice of Proposed Rulemaking

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** This document withdraws the notice of proposed rulemaking, relating to the exclusion of interest on certain savings certificates (All-Savers Certificates) that appeared in the **Federal Register** on Tuesday, October 20, 1981 (46 FR 51588). The notice is being withdrawn because the authority to issue All-Savers Certificates expired on December 31, 1982.

**FOR FURTHER INFORMATION CONTACT:** Cynthia L. Clark of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention CC:LR:T, (202-566-4336), not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Background

This document withdraws the notice of proposed rulemaking that appeared in the **Federal Register** on Tuesday, October 20, 1981 (46 FR 51588). That notice contained proposed amendments to the regulations under sections 128, 265, 584, 643, and 702 of the Internal Revenue Code of 1954 (Code). If adopted, the rules would have provided guidance to the public on the exclusion from gross income of interest earned on All-Savers Certificates. However, the Internal Revenue Service and the Treasury Department have decided that final regulations relating to All-Savers Certificates are unnecessary because the authority to issue All-Savers Certificates expired on December 31, 1982. However, the temporary regulations, T.D. 7789 (46 FR 51584), that were issued simultaneously with the notice on Tuesday, October 20, 1981, remain in effect until superseded.

### Drafting Information

The principal author of this document is Cynthia L. Clark of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing this document, both in matters of substance and style.

### List of Subjects

*26 CFR 1.61-1—1.281-4*

Income taxes, Taxable income, Deductions, Exemptions.

*26 CFR 1.581-1—1.601-1*

Income taxes, Banks.

*26 CFR 1.641-1—1.692-1*

Income taxes, Estates, Trusts and trustees, Beneficiaries.

*26 CFR 1.701-1—1.771-1*

Income taxes, Partnerships.

**Withdrawal of notice of proposed rulemaking**

The proposed amendments to 26 CFR part 1 relating to the exclusion of interest on certain savings certificates published in the **Federal Register** (46 FR 51588) on October 20, 1981, are hereby withdrawn.

**James I. Owens,**

*Acting Commissioner of Internal Revenue.*

[FR Doc. 83-20176 Filed 7-25-83; 8:45 am]

BILLING CODE 4830-01-M

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**26 CFR Part 1**

**[LR-182-78]**

## Transfers of Securities Under Certain Agreements

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to transfers of securities under certain agreements. Changes to the applicable tax law were made by the Act of August 15, 1978. The regulations would provide the public with the guidance needed to comply with that Act.

**DATES:** Written comments and requests for a public hearing must be delivered or mailed by September 26, 1983. The amendments are proposed to apply to transfers of securities under agreements described in section 1058 of the Internal Revenue Code, occurring after December 31, 1976, and are proposed to be effective on January 1, 1977.

**ADDRESS:** Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, [LR-182-78] Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Howard A. Balikov of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202-566-3288, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 1058 and 1223 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 2 of the Act of August 15, 1978, Pub. L. 95-345 (92 Stat. 481) and are to be issued under the authority contained in section 1058(b) of the Internal Revenue Code of 1954 (92 Stat. 483; 26 U.S.C. 1058) and in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

### Additional Information

Section 1058 and these regulations provide rules relating to the income tax treatment to be given to securities lending transactions. If the provisions of section 1058 and these regulations are met, the lender shall not recognize gain on the transfer of securities, or upon the return of identical securities.

### Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

### Special Analyses

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. The Internal Revenue Service has concluded that although this document is a notice of proposed rulemaking that solicits public comment, the regulations proposed herein are interpretative and the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, no Regulatory Flexibility Analysis is required for this rule.

### List of Subjects

*26 CFR 1.1001-1—1.1102-3*

Income taxes, Gain and loss, basis, Nontaxable exchanges.

*26 CFR 1.1201-1—1.1252-2*

Income taxes, Capital gains and losses, Recapture.

### Drafting Information

The principal author of these proposed regulations is Howard A. Balikov of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

### Proposed amendments to the regulations

## PART 1—[AMENDED]

The proposed amendments to 26 CFR Part 1 are as follows:

**Paragraph 1.** The following sections are added in the appropriate place.

**§ 1.1058-1 Transfers of securities under certain agreements.**

(a) *In general.* Section 1058 provides rules for the nonrecognition of gain or loss with respect to certain transfers of securities occurring after December 31, 1976. In order to qualify for treatment under this section, the transfer must be pursuant to an agreement which contains the provisions required by paragraph (b) of this section and those provisions must be complied with. If this section does apply, the lender will not recognize gain or loss on the exchange of the securities for the obligation of the borrower under the agreement nor will the lender recognize gain or loss on the exchange of the rights under such agreement in return for securities identical to the securities transferred by the lender.

(b) *Agreement requirements.* The agreement between the borrower and lender described in paragraph (a) of this section must be in writing and must—

(1) Require the borrower to return to the lender securities identical to those which were lent to the borrower. For the purposes of this section securities are defined in section 1236(c). Identical securities are securities of the same class and issue as the securities lent to the borrower. If, however, the agreement permits the borrower to return equivalent securities in the event of reorganization, recapitalization or merger of the issuer of the securities during the term of the loan, this requirement will be deemed to be satisfied.

(2) Require the borrower to make payments to the lender of amounts equivalent to all interest, dividends, and other distributions which the owner of

the securities is entitled to for the period during which the securities are borrowed.

(3) Not reduce the lender's risk of loss or opportunity for gain. Accordingly, the agreement must provide that the lender may terminate the loan upon notice of not more than 5 business days.

See section 512(a)(5) and the regulations thereunder for additional requirements with repect to loans of securities made by exempt organizations.

(c) *Basis*—(1) *Lender's basis in securities.* If this section applies, the lender's basis in the identical securities returned by the borrower shall be the same as the lender's basis in the securities lent to the borrower.

(2) *Lender's basis in contractual obligation.* If this section applies, the lender's basis in the contractual obligation received from the borrower in exchange for the lender's securities is equal to the lender's basis in the securities exchanged.

(d) *Treatment of payments to lender.* Except as otherwise provided in section 512(a)(5), a payment of amounts required to be paid by the borrower that are equivalent to all interest, dividends, and other distributions as provided in paragraph (b)(2) of this section, shall be treated by the lender as a fee for the temporary use of property. Thus, for example, an amount received by the lender that is equivalent to a dividend paid during the term of the loan shall not constitute a dividend to the lender for purposes of the Internal Revenue Code, but shall be taken into account as ordinary income.

(e) *Noncompliance with section 1058.* (1) If a transfer of securities is intended to comply with section 1058 and fails to do so because the contractural obligation does not meet the requirements of section 1058(b) and §1.1058–1(b), gain or loss is recognized in accordance with section 1001 and §1.1001–1(a) upon the initial transfer of the securities. However, see section 1091 of the Code for disallowance of loss from wash sales of stock or securities.

(2) If securities are transferred pursuant to an agreement which meets the requirements of section 1058(b) and §1058–1(b) and the borrower fails to return to the lender securities identical to the securities transferred as required by the agreement, or otherwise defaults under the agreement, gain or loss is recognized on the day the borrower fails to return identical securities as required by the agreement, or otherwise defaults under the agreement. However, see section 1091 of the Code for disallowance of loss from wash sales of stock or securities.

(f) *Special rule.* For purposes of determining the tax consequences to the lender of securities when a merger, recapitalization or reorganization (including, but not limited to, a reorganization described in section 368(a)(1) of the Internal Revenue Code) of the issuer occurs during the term of a loan to which section 1058 applies, the section 1058 loan transaction is deemed terminated immediately prior to the merger, recapitalization or reorganization and a second section 1058 transaction is deemed entered into immediately following the merger, recapitalization or reorganization. Therefore, the borrower of the securities is deemed to have returned the securities to the lender immediately prior to the merger, recapitalization or reorganization and immediately following the merger, recaptilization or reorganization the lender and borrower are deemed to have entered into a second section 1058 loan transaction, on terms identical to the original section 1058 loan transaction. The special rule in this paragraph (f) shall not apply in the case where the lender ultimately is repaid with securities identical to the securities originally transferred.

(g) *Cross reference.* For rules relating to the lender's holding period, see §1.1223–2

**§ 1.1058–2 Examples.**

The provisions of § 1.1058–1 may be illustrated by the following examples:

*Example (1).* A owns 1,000 shares of XYZ common stock. A instructs A's broker, B, to sell the XYZ stock. B sells to C. After the sale, B learns that A will not be able to deliver to B certificates representing the 1,000 shares in time for B to deliver them to C on the settlement date. B decides to effect the delivery by borrowing stock from a third party. To this end, B enters into a written agreement with D, an non-exempt corporation having a large stock portfolio of XYZ common stock. The agreement includes the following terms:

(i) D will transfer to B certificates representing 1,000 shares of XYZ common stock.

(ii) B will pay D an amount equivalent to any dividends or other distributions paid on the XYZ stock during the period of the loan.

(iii) Regardless of any increases or decreases in the market value of XYZ common stock, B will transfer to D 1,000 shares of XYZ common stock of the same issue as that of the XYZ common stock transferred from D to B.

(iv) B agrees that upon notice of 5 business days, B will return identical securities to D.

The agreement between B and D satisfies the requirements of paragraph (b) of § 1.1058–1. The agreement is in writing. It requires the borrower, B, to return to the lender, D, identical securities and to pay to the lender, D, amounts equivalent to any dividends or other distributions paid on the stock during the period of the loan. It does not reduce D's risk of loss or opportunity for gain because, regardless of fluctuations in the market value of XYZ common stock, B is obligated to return 1,000 shares of XYZ common stock.

*Example (2).* Assume the same facts as in Example (1) except that the agreement between B and D includes the following additonal terms:

(1) Upon D's transfer to B of the certificates representing the 1,000 shares of XYZ common stock, B will transfer to D, cash equal to the market value of the XYZ common stock on the business day preceding the transfer, as collateral for the stock. The collateral will be increased or decreased daily to reflect increases or decreases in the market value of the XYZ stock during the period of the loan.

(2) B agrees that upon notice of 5 business days, B will return to D 1,000 shares of XYZ common stock, or the equivalent thereof in the event of reorganization, recapitalization, or merger of XYZ druing the term of the loan. Upon delivery of the stock to D, D will return the cash collateral to B.

The agreement between B and D satisfies the requirements of paragraph (b) of this section. If XYZ is merged into another corporation and B returns to D an equivalent amount of stock in the resulting corporation, paragraph (f) of this section provides that the section 1058 transaction is deemed terminated immediately before the merger. Thus, D is deemed to be the owner of the XYZ common stock at the time of the merger. Furthermore, paragraph (a) of this section provides that D does not recognize gain or loss upon the transfer of the XYZ common stock to B or upon the return of the stock of the resulting corporation to D. Nonetheless, gain or loss may be recognized with respect to the merger. If the merger is described in section 368(a)(1), gain will be recognized to the extent section 354(a)(2) or 356 applies to the merger. If the merger is not described in section 368(a)(1), D generally will recognize the entire gain or loss with respect to such stock as a result of the merger.

*Example (3).* Assume the same facts as in example (2) and in addition that on March 1, D transfers certificates representing 1,000 shares of XYZ common stock to B. D's basis in the stock is $60,000. On the business day preceding the transfer, the stock has a market value of $75 a share. Consequently, B transfers to D $75,000 as collateral for the stock. B then uses the certificates to complete a timely delivery to C. On March 20, when the market value of XYZ common stock is $69 a share, D gives B notice of termination. On March 24, B delivers to D 1,000 shares of XYZ common stock of the same issue as that of the XYZ common stock transferred to B on March 1. D returns the $69,000 cash collateral to B. (Because the market value of the stock had declined during the period of the loan, the collateral was adjusted to reflect the new market value and the $6,000 had previously been returned to B.) Because the agreement between B and D contains the provisions required by paragraph (b) of § 1.1058–1 and such provisions were complied with, D does not recognize gain on the transfer of the XYZ common stock to B. Nor does D recognize gain upon the return of XYZ common stock.

D's basis in the XYZ common stock returned to it by B is $60,000. As to the holding period of the XYZ common stock returned to D, see § 1.1223–2(a).

*Example (4).* Assume the same facts as in example (3) and in addition that on March 3, XYZ pays a dividend on its common stock. B pays to D an amount equivalent to the dividend. The amount paid by B does not constitute a dividend to D, but rather constitutes a fee for the temporary use of property as provided in § 1.1058–1(d).

*Example (5).* (i) Assume the same facts as in example (3) except that on March 24 B notifies D that delivery of the 1000 shares of XYZ common stock, of the same issue as that of the XYZ common stock transferred to B on March 1, cannot be completed on March 24. Assume further that B informs D that delivery would be completed on March 27.

(ii) If B and D agree to extend the time period in which B is to return the identical securities to D till March 27, then the section 1058 agreement will not be treated as breached when B delivers the securities on March 27, pursuant to the modified section 1058 agreement. As a result, D does not recognize gain on the transfer of XYZ common stock to B. Nor does D recognize gain upon the return of XYZ common stock.

(iii) If B and D do not agree to extend the time period, in which B is to return the identical securities to D, then as of March 25 B's failure to transfer the identical securities as required by the agreement will be treated as a breach of the agreement. As a result D will be treated as selling the XYZ common stock on March 25. D must then recognize gain or (subject to 1091) loss, whichever is appropriate, on the sale of the securities.

**Par. 2.** The following is added immediately after § 1.1223–1.

**§ 1.1223–2 Rules relating to securities lending transactions.**

(a) *General rule.* In the case of a transfer of securities pursuant to an agreement which meets the requirements of section 1058 (relating to transfers of securities under certain agreements), the holding period in the hands of the lender of the securities received by the lender from the borrower shall include—

(1) The period for which the lender held the securities which were transferred to the borrower; and

(2) The period between the transfer of the securities from the lender to the borrower and the return of the securities to the lender.

(b) *Failure to comply with section 1058.* (1) If a transfer of securities is intended to comply with section 1058 and fails to do so because the contractual obligation does not meet the requirements of section 1058(b) and § 1.1058(b), the holding period in the hands of the lender of the securities transferred to the borrower, shall terminate on the day the securities are transferred to the borrower and the holding period in the hands of the borrower of the property transferred to it shall begin on the date that the securities are delivered pursuant to the transfer loan agreement.

(2) If securities are transferred pursuant to an agreement which meets the requirements of section 1058(b) and § 1.1058(b) and the borrower fails to return identical securities as required by the agreement or otherwise defaults under the agreement, the holding period in the hands of the lender of the securities transferred to the borrower shall terminate on the day the borrower fails to return identical securities as required by the agreement or otherwise defaults under the agreement, and the holding period in the hands of the borrower of the securities transferred to it shall begin on the day the borrower fails to return identical securities as required by the agreement or otherwise defaults under the agreement.

**James I. Owens,**

*Acting Comissioner of Internal Revenue.*

[FR Doc. 83–20177 filed 7–25–83; 8:45 am]

BILLING CODE 4830–01–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 81

**[A–5–FRL 2359–4]**

### Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations, Ohio

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

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to change the Total Suspended Particulate (TSP) attainment status designatin for portions of Cuyahoga County, Ohio. This revision is based on a request from the State of Ohio to redesignate this area and on the supporting data the State submitted. Under the Clear Air Act (Act), designations can be changed if sufficient data are available to warrant such change.

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

**ADDRESSES:** Copies of the redesignation request, technical support documents and the supporting air quality data are available at the following addresses:

U.S. Environmental Protection Agency, Region V, Air Programs Branch, 230 S. Dearborn Street, Chicago, Illinois 60604.

Ohio Environmental Protection Agency, Office of Air Pollution Control, 361 East Broad Street, Columbus, Ohio 43216.

Comments on this proposed rule should be addressed to: (Please submit an original and five copies if possible.) Gary Gulezian, Chief, Regulatory Analysis Section, Air Programs Branch (5AP–26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Anne E. Tenner, (312) 886–6036.

**SUPPLEMENTARY INFORMATION:** Under Section 107(d) of the Act, the Administrator of EPA has promulgated the National Ambient Air Quality Standards (NAAQS) attainment status for each area of every state. See 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). These area designations may be revised whenever the data warrant.

The primary TSP NAAQS is violated when, in a year, either: (1) The geometric mean value of monitored TSP concentrations exceeds 75 micrograms per cubis meter of air (75 ug/$m^3$) (the annual primary standard), or (2) the maximum 24-hour concentration of TSP exceeds 260 ug/$m^3$ more than once (the 24-hour standard). The secondary TSP is violated when, in a year, the maximum 24-hour concentration exceeds 150 ug/$m^3$ more than once.

The current designations for TSP in Cuyahoga County, Ohio, as codified in 40 CFR 81.336 are:

Primary Nonattainment—Cities of Brooklyn Heights, Newburgh Heights, Bratenahl and the City of Cleveland east of W. 117th Street and Highland Avenue.

Attainment—Townships of Olmsted and Chagrin Falls, and the Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Strongsville, North Royalton, Broadview Heights, Brecksville, Glenwillow, Solon, Bentleyville, Grange, Moreland Hills, Chagrin Falls, Pepper Pike, Hunting Valley, Lyndhurst, Mayfield Heights, Highland Heights, Mayfield, and Gates Mills.

Secondary Attainment—Remainder of the County.

On November 2, 1982, and February 11, 1983, the State of Ohio requested EPA to revise the TSP designation of Cuyahoga County, Ohio to:

Primary Nonattainment—The area enclosed by Lake Erie on the north and a line running from Edgewater Park on the Lake, south on West 65th Street to Denison Avenue, east on Denison Avenue to State Route 3, south on State Route 3 to Broadview Road, South on Broadview Road to the Penn Central (Conrail) Railroad (tracks are parallel to and just north of Brook Park Road), the Penn Central (Conrail) tracks northeast to East 71st Street, East 71st Street North to Fleet Avenue, Fleet Avenue northeast to East 75th Street, East 75th Street north to Union Avenue, Union Avenue east to East 79th

Street, East 79th Street north to Gordon Park on Lake Erie.

Secondary Nonattainment—The City of Berea, the City of Brookpark west of I-71 and the City of Cleveland east of the primary nonattainment area, north of Kinsman Road, and west of East 152nd Street.

Under the requested redesignation, the eastern third of the current primary nonattainment area would become secondary nonattainment, while the rest of the area would remain primary nonattainment. (In addition, there is a slight narrowing of the nonattainment area.) The current secondary nonattainment area would become full attainment except for an area around Berea and Brookpark.

To support the redesignation request, the State of Ohio submitted ambient air quality data collected at numerous monitors in Cuyahoga County during the period January 1980—September 1982, and from January 1980—December 1982 at a few select monitors. In addition, EPA considered modeling analyses based on 1974 actual and 1982 SIP allowable emission rates performed previously by the State. These data show that there has been a considerable improvement in ambient TSP levels in many areas of the county. These improvements can be related to sources coming into compliance with applicable emission limitations (either by fuel conversion or installation-upgrading of pollution control equipment), numerous permanent source shutdowns, and the implementation of industrial fugitive dust programs. Although the proposed nonattainment boundaries appear to be a bit convoluted, it must be realized that the sources causing and contributing to the nonattainment problem are still included in the nonattainment area.

The ambient data from the Cuyahoga County monitors, in addition to the supporting modeling data, are discussed in the technical support document which is available in EPA's Region V office.

EPA finds this designation to be acceptable based on the available monitoring and modeling data and proposes to approve the redesignation of Cuyahoga County, Ohio.

All interested persons are invited to comment on the proposed redesignation. Written comments received by the date specified above will be considered in determining whether EPA will approve the redesignation. After review of all comments submitted, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the redesignation.

Under 5 U.S.C. Section 605(b), the Administrator has certified that redesignations do not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

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

(Sec. 107(d) of the Act, as amended 942 U.S.C. 7407)

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

Air pollution control, National parks, Wilderness areas.

Dated: April 22, 1983.

**Alan Levin,**

*Acting Regional Administrator.*

[FR Doc. 83-20111 Filed 7-26-83; 8:45 am]

BILLING CODE 6560-50-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 83-623; RM-4434]**

### TV Broadcast Stations in Parker, Colorado; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** Action taken herein proposes to assign UHF TV Channel 53 to Parker, Colorado, as that community's first television assignment, in reponse to a petition filed by Arapahoe County T.V. Club.

**DATES:** Comments must be filed on or by August 29, 1983 and reply comments on or by September 13, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**Notice of Proposed Rule Making**

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Parker, Colorado); MM Docket No. 83-623, RM-4434.

Adopted: June 13, 1983.
Released: July 15, 1983.

By the Chief, Policy and Rules Division.

1. Before the Commission is a petition for rule making filed by Arapahoe County, T.V. Club ("petitioner"), requesting the allocation of UHF TV Channel 53 to Parker, Colorado, as its first television assignment. Petitioner states that it, or an entity of which it is a part, will apply for the channel, if assigned.

2. Parker (not listed in 1980 U.S. Census), in Douglas County (population 25,153),[1] is located approximately 32 kilometers (20 miles) southeast of Denver.

3. Petitioner states that Parker is an incorporated community which, as of 1981, had a population of 120, and that it is the county seat of Douglas County. Economic data with respect to Douglas County only, was supplied by petitioner.

4. Parker is not listed as a "place" in the 1980 U.S. Census; therefor, we are unable to confirm that it is in fact incorporated. Likewise, we do not have any official recognition concerning Parker's population since it is excluded from the Census Report. Further, we note that Castle Rock, Colorado, is the seat of government of Douglas County, and not Parker, as alleged by petitoner.

5. Section 307(b) necessitates that we require assignments to "communities" as a geographically identifiable population grouping. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. As here, the absence of such recognizable community status places the burden on the petitioner to provide the Commission with sufficient information to demonstrate that such a place is a geographically identifiable population grouping which may qualify as a "community" for assignment purposes. See, *Ansley, Alabama*, 46 Fed. Reg. 58688, published December 3, 1981.

6. In view of the above-noted discrepancies, we are uncertain, based on the information before us, whether petitioner wishes an allocation, to Parker, or to Castle Rock, Colorado. This it must clarify in its comments. If petitioner does intend to serve Parker, the data provided does not permit us to make a final determination as to its community status for assignment purposes.[2] Therefore, we believe it appropriate to further investigate this matter through the solicitation of comments. Petitioner is required to provide information to demonstrate how Parker may qualify as a "community" for assignment purposes.

7. If UHF TV Channel 53 is assigned to Parker, it will require a site restriction 0.6 miles southeast thereof to avoid short-spacing to a rule making (MMDocket 83-385; RM-4292) to assign UHF TV Channel 50 to Denver, Colorado.

8. In view of the foregoing, the Commission seeks comments on the

[1] Population figure was extracted from the 1980 U.S. Census, Advance Report.

[2] See, *e.g., Cascade Village, Colorado*, 48 Fed. Reg. 19917, published May 3, 1983, and cases cited therein.

proposal to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules, with respect to Parker, Colorado, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Parker, Colorado | | 53 |

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

10. Interested parties may file comments on or before August 29, 1983, and replies on or before September 13, 1983. A copy of such comments should be served on the petitioner, and its consultant in this proceeding, as follows:

Arapahoe County T.V. Club, 18100 East Berry Drive, Aurora, Colorado 80015 (petitioner)

and

Edward M. Johnson, One Regency Square, Suite 450, Knoxville, Tennessee 37915 (consultant to petitioner).

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), and 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

12. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

**Roderick K. Porter,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

## Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-20145 Filed 7-25-83; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 73**

**[MM Docket No. 83-609; RM-4433]**

## TV Broadcast Stations in Okmulgee, Oklahoma; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to assign UHF Television Channel 44 to Okmulgee, Oklahoma, in response to a petition filed by Bob Brewer. The proposed assignment could provide Okmulgee with a first television assignment.

**DATES:** Comments must be filed on or before August 29, 1983, and reply comments on or before September 13, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau (202) 634–6530.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

## Notice of Proposed Rulemaking

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Okmulgee, Oklahoma); MM Docket No. 83-609, RM-4433.

Adopted: June 8, 1983.
Released: July 15, 1983.

By the Chief, Policy and Rules Divisions.

1. Before the Commission is a petition for rule making filed April 15, 1983, by Bob Brewer ("petitioner"), seeking the assignment of UHF Television Channel 44 to Okmulgee, Oklahoma, as that community's first television assignment. Petitioner submitted information in support of the petition and expressed his interest in applying for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements and other technical criteria.

2. Okmulgee (population 16,263),[1] seat of Okmulgee County (population 39,169), is located in eastern Oklahoma, approximately 60 kilometers (38 miles) south of Tulsa, Oklahoma.

3. In view of the fact that Okmulgee could receive its first local television broadcast service, the Commissioner believes it is appropriate to invite comments on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Commission's Rules) with regard to the following community:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Okmulgee, Oklahoma | | 44 |

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before August 29, 1983, and reply comments on or before September 13, 1983, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner(s) of this proceeding: Edward M. Johnson, Consultant to Bob Brewer, P.O. Box 756, Okmulgee, OK.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

**Roderick K. Porter,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

## Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later then that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.402 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-20143 Filed 7-25-83; 8:45 am]

BILLING CODE 6712-01-M

[1] Population figures are taken from the 1980 U.S. Census Advance Report.

47 CFR Part 73

[MM Docket No. 83-611; RM-4437]

## TV Broadcast Stations in Union City, Tennessee; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This action proposes to assign UHF Television Channel 41 to Union City, Tennessee, as that community's first television assignment, in response to a petition filed by David Critchlow.

**DATES:** Comments must be filed on or before August 29, 1983, and reply comments on or before September 13, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

**List of Subjects in 47 CFR Part 73**

Television broadcasting.

**Notice of Proposed Rulemaking**

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Union City, Tennessee); MM Docket No. 83-611, RM-4437.

Adopted: June 8, 1983.

Released: July 15, 1983.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed April 18, 1983, by David Critchlow ("petitioner") proposing the assignment of UHF television Channel 41 to Union City, Tennessee, as that community's first local television service. Petitioner indicated that he, or an entity of which he is a part, will apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements and other technical criteria.

2. Union City (population 10,436),[1] seat of Obion County (population 32,781), is located in northwestern Tennessee, approximately 170 kilometers (105 miles) northeast of Memphis, Tennessee.

3. Based on the information provided by the petitioner, we believe that an adequate showing has been made for a first local television broadcast service to Union City. Comments are invited on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Rules) with regard to the following community:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Union City, Tenn. | | 41 |

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

**Note.**—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before August 29, 1983, and reply comments on or before September 13, 1983, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner(s) of this proceeding: David Critchlow, P.O. Box 567, Union City, Tennessee 38261.

6. The Commission has determined that the relevent provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* pesentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

**Roderick K. Porter,**

*Chief, Policy and Rules Division; Mass Media Bureau.*

**Appendix**

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and , if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in § 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this

[1] Population figures are taken from the 1980 U.S. Census Advance Report.

Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is direct. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-20141 Filed 7-25-83; 8:45 am]
BILLING CODE 6712-01-M

## 47 CFR Part 73

**[MM Docket No. 83-610; RM-4438]**

## TV Broadcast Stations in Conroe, Texas; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule

**SUMMARY:** This action proposes to assign UHF Television Channel 49 to Conroe, Texas, as that community's first television assignment, in response to a petition filed by Jack Clarke, III.

**DATES:** Comments must be filed on or before August 29, 1983, and reply comments on or before September 13, 1983.

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

**FOR FURTHER INFORMATION CONTACT:** Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

### List of Subjects in 47 CFR Part 73

Television broadcasting.

### Notice of Proposed Rulemaking

In the matter of amendment of § 73.606(b), Table of Assignments, TV Broadcast Stations. (Conroe, Texas); MM Docket No. 83-610, RM-4438.

Adopted: June 8, 1983
Released: July 15, 1983

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed April 19, 1983, by Jack Clarke III ("petitioner"), proposing the assignment of UHF Television Channel 49 to Conroe, Texas, as that community's first television assignment. Peititoner indicated that he, or an entity of which he is a part, will apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements and other technical critiera.

2. Conroe (population 18,034)[1], county seat of Montgomery County (population 128,487), is located in east Texas, approximately 50 kilometers (30 miles) north of Houston, Texas.

3. Based on the information provided by the petitioner, we believe that an adequate showing has been made for a first television assignment to Conroe, Texas. Comments are invited on the proposal to amend the Television Table of Assignments (§ 73.606(b) of the Rules) with regard to the following city:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| Conroe, Texas | | 49 |

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. NOTE: A showing of continiuning interest is required by paragraph 2 of the Appendix before a channel will be assigned.

6. Interested parties may file comments on or before August 29, 1983, and reply comments on or before September 13, 1983, and are advised to read the Appendix for the proper procedures.

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

8. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should not that from the time a *Notice of Proposed Rule Making* is issued until the matter is no longer subject to Commission consideration, or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

**Roderick K. Porter,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

### Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the TV Table of Assignments, § 73.606(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See

[1] Population figures are taken from the 1980 U.S. Census Advance Report.

Section 1.420(d) of the Commission's rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 20142 Filed 7-25-83; 8:45 am]
BILLING CODE 6712-01-M

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[BC Docket No. 80-494; RM-3597; RM-3754]

47 CFR Part 73

## Radio Broadcast Services; FM Broadcast Station in Appomattox and Farmville, Virginia; Changes Made in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; denial of Petition.

**SUMMARY:** This action denies petitions by HTB, Inc. and Genesis Communications, Inc. for reconsideration of the action taken in this proceeding which assigned FM Channel 274 to Appomattox, Virginia.

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

**FOR FURTHER INFORMATION CONTACT:** Philip S. Cross, Mass Media Bureau, (202) 632-5414.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**Memorandum Opinion and Order**

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Appomattox, and Farmville, Virginia); BC Docket No. 80-494, RM-3597, RM-3754.

Adopted: June 16, 1983.
Released: July 18, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has before it petitions filed by HTB, Inc. ("HTB") and Genesis Communications, Inc. ("Genesis") for reconsideration of the *Report and Order* in this proceeding published in the **Federal Register** on July 29, 1982 (47 FR 32717). The *Report and Order* assigned FM Channel 274 to Appomattox, Virginia, as requested by Fletcher Hubbard ("Hubbard") and supported by Appomattox Broadcasting Company ("ABC"). We held in the Report and Order that pursuant to the priorities set forth in *Revision of FM Assignment Policies and Procedures*, BC Docket No. 80-130, 90 F.C.C. 2d 88 (1982), that assignment of Channel 274 to Appomattox should prevail over conflicting proposals filed by Everett Broadcasting ("Everett") to assign the same channel to Farmville, Virginia, and by HTB, licensee of Stations WTTX (AM) and WTTX-FM, Appomattox, to substitute Channel 274 for 296A (on which WTTX-FM operates) and to modify the license to specify operation on 274 instead of 296A. Genesis supported the HTB proposal and, in addition, had previously filed a petition for rule making to reassign Channel 296A to Bedford, Virginia, upon its deletion from Appomattox. Since that petition was filed too late to be considered as a part of this docketed proceeding, we earlier stated that the Genesis petition would be held in abeyance pending the conclusion of this proceeding.

2. In the *Report and Order* we found that assignment of Channel 274 to Appomattox would provide a second nighttime aural service to 13,698 persons in an area of 1,500 square kilometers (582 square miles) whereas the assignment of the channel to Farmville would provide a second nighttime aural service to 3,481 persons in an area of 700 square kilometers (263 square miles). We decided primarily on that basis to assign Channel 274 to Appomattox rather than to Farmville.

3. We denied HTB's request for modification of its license to specify operation on Channel 274 since other interests had been expressed for use of the channel, and modification was not possible without comparative consideration of the mutually exclusive interests. *Ashbacker* v. *U.S.* 326 U.S. 327 (1945); *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976). HTB had requested that its petition be withdrawn if the modification were not granted. We noted that prior to adoption of *Revision of FM Assignment Policies and Procedures, supra*, we may have permitted HTB to withdraw its petition in reliance upon our general policy then against intermixture of classes of channels. However, with the adoption of the *Revision* the policy against intermixture was eliminated. We determined that it would be a worthless exercise to permit the withdrawal only to be faced with new petitions from Hubbard or ABC for the assignment of Channel 274 to Appomattox. Thus to insist upon such an exercise would be to exalt form over substance and needlessly delay the assignment of Channel 274 to Appomattox.

4. HTB petitions for reconsideration on the grounds that (1) it should have been allowed to withdraw its petition for rule making; (2) that we erroneously refused to consider the relative need for Channel 296A as between Appomattox and Bedford in accordance with Section 307(b) of the Communications Act of 1934, as amended; and (3) the *Report and Order* violated HTB's right of due process in failing to give the parties an opportunity to comment on the new assignment policy as it relates to this proceeding.

5. HTB claims that refusal to recognize the withdrawal of its petition for rule making is inconsistent with well-established Commission policy and procedure, *Statesboro, Georgia*, 40 R.R. 2d 1021 (1977). HTB charges that the only reason we gave was the ability of other parties herein to file again a petition for rule making to assign Channel 274 to Appomattox, but that this ignores the counterproposal of Genesis which we refused to consider. HTB argues that *Bonita Springs, Florida*, 45 R.R. 2d 1585 [1979] does not stand for the proposition of withdrawal only

when the assignment could not be made without deletion of the existing Class A channel, as we stated in the *Report and Order*, but clearly states that withdrawal when faced with an expression of interest can be made whether or not the Class A assignment is retained. HTB contends that to hold otherwise is to force a Class A licensee to lend unintended support to an assignment it did not propose and does not seek.

6. HTB challenges our holding in abeyance the Genesis petition for rule making pending resolution of this proceeding. Genesis petitioned to reassign Channel 296A to Bedford if we adopted HTB's proposal. HTB charges that failure to consider the assignment here violates the provisions of Section 307(b) of the Communications Act concerning fair, efficient and equitable distribution of media service among the states and communities. HTB states that when two entities seek authority to serve different communities the Commission must first determine which community has the greater need for additional service. *FCC* v. *Allentown Broadcasting Corp.*, 349 U.S. 358, 361 (1955). HTB points to a court holding that the relative balancing of the needs of the communities is not, nor should it be, a one-time thing, for the balance of demand for service will shift over time and the Commission should respond thereto. *Pasadena Broadcasting Co.* v. *FCC*, 555 F 2d 1051, (D.C. Cir. 1977). HTB states that Genesis had demonstrated that the reassignment of Channel 296A from Appomattox to Bedford would bring a first local full-time aural service to a community of approximately 6,000 whereas the assignment of Channel 274 to Appomattox and the retention there of Channel 296A would bring a third local service to a community of less than 1,500. Morever, HTB points out that it submitted engineering data showing that if Channel 296A were assigned to Bedford it could also be assigned to Chesterville, Staunton, Waynesboro or Dillwynn, Virginia. HTB contends that these considerations were ignored.

7. HTB also contends that its right to due process was violated by our applying here the new assignment standards in *Revision of FM Assignment Policies and Procedures, supra*, and by HTB's not being afforded the opportunity to comment on the applicability of the new policy to this rule making proceeding. HTB states that if filed its petition for rule making in reliance upon the Commission's policy against intermixture of Class A and Class B or C channels in the same community, a result of which was that HTB could withdraw its petition of another interest were expressed in Channel 274. HTB contends that issuance of a Report and Order herein three weeks after adoption of the new assignment criteria amounts to retroactive application of Commission policy. HTB further contends that retroactive regulations are in violation of due process where "after a balancing of th consideration on both sides it is determined that the regulation is unreasonable." Citing *Summit Nursing Home, Inc.* v. *United States*, 572 F. 2d 737, 743 (Ct. Cl. 1978). HTB claims that the unfairness of the *Report and Order* is manifest inasmuch as HTB filed and prosecuted its application in reliance upon the established policy against intermixture and would not have otherwise filed it. HTB states that in this regard a critical inquiry is needed as to how an affected party's conduct "would have differed if the law in issue had applied from the start." *Adams Nursing Home of Williamstown, Inc.* v. *Matthews*, 548 F. 2d 1077 (1st Cir. 1977).

8. Genesis petitions for reconsideration of our *Report and Order* on the ground that the Commission ignored facts which it had submitted in comments showing that the assignment to Bedford would provide for a higher priority of "first full-time aural service."

9. ABC filed an opposition to each of the petitions for reconsideration asserting that neither has met the requirements of § 1.429 of our Rules for a showing of new or changed facts and that neither has made any showing of material error or omission or raised any important public interest question. ABC points out that § 1.429 of our Rules governing petitions for reconsideration in rule making proceedings contemplates reconsideration only on facts not previously presented to the Commission and only if such facts arose since the last opportunity to present them to the Commission; or the facts were unknown through the exercise of ordinary diligence; or the Commission determines that consideration of the facts is required in the public interest. ABC contends that neither petitioner has submitted new facts as required by the Rule. ABC further contends that Genesis asks for a review of the "arguments and facts presented" during the comment period and HTB requests reconsideration based upon its disagreement with our application of the law. ABC asserts that although HTB attached an engineering report to the petition, neither HTB nor Genesis maintain that any of the facts included in the engineering report satisfy the requirements of § 1.429.

10. Regarding the claim by HTB and Genesis that we ignored the Bedford proposal, ABC asserts that the Genesis' comments were duly considered in paragraphs 2 and 5 of the *Report and Order* and that in reaching our decision we satisfied all statutory requirements for rule making proceedings and consideration of the relative material presented. ABC stresses that Genesis specifically conditioned consideration of its rule making proposal on the adoption of the HTB proposal, and, since we did not adopt the HTB proposal, consideration of the Genesis proposal was unnecessary.

11. ABC states that HTB's claim of being entitled to automatic withdrawal of its rule making proposal is not well founded; that the decision on a request to withdraw is firmly rooted in the discretion of the agency, as demonstrated in *Statesboro, Georgia*, 40 R.R. 2d 1021, 1024 (1977); *Bonita Springs, supra*, and *Homestead, Florida*, 45 R.R. 2d 1585, 1586 (1979). ABC states that none of these cases confers a right of automatic withdrawal. ABC asserts that we did not abuse our discretion in denying HTB's request for withdrawal of its petition and termination of this proceeding. In this regard, ABC notes that in a similar situation we rejected as unnecessary any requirements calling for a new petition for rule making. Citing *Lake Havasu City, Arizona*, 49 R.R. 2d 1517 (1981). There, the original proponent failed to file required comments in support of its proposal, but another party submitted late-filed comments expressing an interest in the assignment. The Bureau held that a new petition for rule making and an additional rule making proceeding were not needed.

12. ABC states that HTB essentially asks the Commission to resurrect the extinct intermixture policy for this proceeding. But to do so would be engaging in a legal fiction and would be setting bad precedent whereby parties would inevitably seek adjudication under conflicting policies depending upon which policy would, for the moment, best suit their private interests. ABC contends that if our application of the new assignment policy were retroactive, the test for applying the policy "necessarily involves a weighing of the public interest in the retroactive rule with the private interests that are overturned by it." *Adams Nursing Home of Williamstown, Inc.* v. *Matthews, supra*. ABC asserts that the Commission has already determined that adoption and implementation of the new assignment policies are in the public interest as they "bring needed

simplification to an unnecessarily cumbersome process and make for better use of the Commission's limited resources." *FM Assignment Policies supra.* ABC contends that application of the new policy to this proceeding is not an abuse of discretion.

13. ABC argues that HTB did have full opportunity to comment on the new assignment policy in response to the *Notice of Inquiry and Notice of Proposed Rule Making* in BC Docket 80–130. Moreover, ABC asserts that since the final *Order* in the proceeding stated that the new policies were effective upon publication in the **Federal Register** and, as of that date would be applied to all applicable proceedings in which a *Report and Order* had not yet been assigned, HTB should have sought to protect its interests in that proceeding.

14. HTB filed a motion to dismiss the ABC opposition and a reply to the opposition. HTB contends that ABC was not a party to this proceeding and, accordingly, its opposition should be dismissed. In support of the motion, HTB states that ABC did not file comments in this proceeding by the specified comments date set forth in the *NPRM,* and filed nothing until January 18, 1982, in rsponse to the *Request for Supplemental Information.*

15. In its reply, HTB also asserts that ABC misconstrues § 1.429 of our Rules as permitting reconsideration only where there are facts presented which were not previously submitted to the Commission. HTB contends that the portion of the rule cited by ABC has to do with the submission of a petition "which relies on facts which have not previously been presented to the Commission" and states that in such a case the new facts would only be considered under certain circumstances, all of which are present in the instant proceeding. Moreover, HTB claims that the detailed nature of the ABC opposition leaves no question that HTB has stated with particularity why the action taken in the *Report and Order* should be reversed.

16. HTB asserts that the new evidence which it has submitted, in the engineering statement with its petition, consists of new population figures which were not available at the time its initial comments were filed. HTB contends that the population figures are particularly persuasive in pointing out the efficiency of alloction by the modification of its license to operate on Channel 274 and the reassignment of Channel 296A to Bedford. The engineering statement indicates that reassignment of Channel 296A from Appomattox would make possible its assignment to a number of Virginia communities presently without local FM service and whose population has increased significantly since 1970.

17. ABC filed an opposition to the HTB motion to dismiss asserting that it is a "party" to this proceeding as defined by Section 1.400 of our Rules and an "interested person" pursuant to Section 1.429 of our Rules. ABC states that HTB is not entitled to license modification in the face of the interests in Channel 274 expressed by ABC and by Hubbard. ABC notes that HTB would not be forced into a hearing to retain its license. Rather HTB can apply for Channel 274 and, if successful, gain a Class B license or, if not, retain its station on Channel 296A.

**Discussion**

18. First we address HTB's motion to dismiss ABC's opposition to the petitions for reconsideration. HTB contends that ABC is not a party to this proceeding because it did not file timely comments by the dates specified in the *NPRM.* HTB cites no authority for its proposition that only those participants that filed pleadings at an earlier stage may submit opposition comments. We found no provision in our rules limiting participation at the reconsideration stage only to those persons that had previosuly filed timely comments to the *NPRM.*[1] Therefore we find ABC's opposition comments acceptable for consideration.

19. A threshold question before us is whether the HTB and Genesis petitions comply with the requirements of Section 1.429 concerning petitions for reconsideration of rule making proceedings.[2] It is well settled that reconsideration will not be granted for the purpose of again debating matters on which the reviewing body has once deliberated and spoken. *WWIZ, Inc.,* 3 R.R. 2d 316 (1964); *Muncie Broadcasting Company,* 51 R.R. 2d 783, 785 (Rev. Bd. 1982). We find that each of the petitions merely reargues matters already treated and resolved. HTB contends that it has submitted new facts with respect to increased population of the communities to which Channel 296A could be assigned as a first full-time aural service. These facts are said to be new because when the original petition was filed the Census figures were not available. These figures were said to become available in April, 1982.

20. We conclude that the increased population figures are neither material nor were they presented in accordance with the provisions of Section 1.429 to support a petition for reconsideration. The increased population figures were purportedly submitted to show the growth of communities to which Channel 296A could be assigned as a first full-time aural service. However we had no timely expression of interest for any of those communities. As will be discussed below the only place of interest was Bedford for which a petition was submitted in an untimely fashion. The Commission itself had 1980 Census figures during its deliberations in the proceeding well in advance of April 1982. These Census reports were also available to the public. If HTB considered the increased population data important to its proposal, the data could have been presented previous to its petition for reconsideration. The 1980 U.S. Census Advance Reports for the Commonwealth of Virginia were available in March, 1981. The Advance Reports are considered conclusive population data until a final report is issued. HTB also could have submitted data from the Advance Report in its response to our Request for Supplemental Information. § 1.429 of our rules provides that a petition which relies on facts not previously presented to the Commission will be granted only under the circumstances of the facts occurring or changing since the last opportunity to present them to the Commission, or being unknown through ordinary diligence prior to such opportunity, or the Commission determines that consideration of the facts relied upon is required in the public interest. For the reasons stated above, we conclude that the "new" facts presented by HTB meet none of these requirements.

21. As for HTB's contention that it has a right to automatic withdrawal of its petition for rule making and termination of this proceeding relying on *Bonita Springs, supra,* we disagree. There we stated that a Class A petitioner may withdraw its petition in the face of another interest "where a petitioner could *lose its license* (not simply be unsuccessful in obtaining the new frequency)," (emphasis added). HTB did not stand to lose its license for operation on Channel 296A by virtue of the counterproposal by Hubbard (supported by ABC) to assign Channel 274 to Appomattox.

22. HTB argues that we should have given consideration in accordance with Section 307(b) of the Communications Act to the Genesis proposal to reassign

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[1] As noted in paragraph 14 *supra,* ABC filed timely comments to the *Request for Supplemental Information.*

[2] We note that HTB filed its petition pursuant to Section 1.106 of our Rules, a section which does not govern reconsideration of FM assignment rule making proceedings. The appropriate Section is 1.429 of the Commission's Rules. Nevertheless we are considering the petition under the applicable rule.

Channel 296A from Appomattox to Bedford. As stated in our *Request for Supplemental Information* herein, released December 3, 1981, and in our *Report and Order*, the petition was being held in abeyance pending resolution of this proceeding. The petition was filed conditioned upon HTB's proposal being granted. Channel 296A is the channel upon which HTB's Station WTTX–FM operates and which was not available for reassignment to Bedford unless and until the channel was deleted from Appomattox. Thus we could not consider Genesis' request in this proceeding until it was determined that Appomattox no longer needed Channel 296A. Furthermore, as mentioned earlier, the petition was not filed as a timely counterproposal and therefore could not be considered in this proceeding. See § 1.420(d) of the Commission's rules. See also *Washington, D.C. and Fairfax Va.*, 46 R.R. 2d 435 (1979), *Cape Girardeau, Mo.*, 54 F.C.C. 2d 896 (1975), and *Antigo, Wisconsin and Hart, Michigan*, 45 R.R. 2d 22 (1979). This procedure is consistent with and is derived from the cut-off procedure in setting a deadline for the filing of applications for a construction permit. Setting deadlines after which no conflicting proposals would be accepted allows the Commission to make a final determination in a proceeding without having to start over again every time a new proposal is tendered.

23. HTB asserts that our applying the new assignment policies "nearly two years" after institution of this rule making proceeding amounts to retroactive application of Commission policy. The Commission stated in its *Second Report and Order, Revision of FM Assignment Policies and Procedures*, Docket No. 80–130, June 21, 1982, 90 F.C.C. 2d 88, that "the new policies are adopted effective upon publication in the **Federal Register**, and as of that date shall be applied to all applicable proceedings in which a *Report and Order* has not yet been issued." The *Report and Order* in the instant proceeding was adopted thereafter on July 16, 1982. Rather than our applying the revised policies retroactively, we agree with ABC's assertion that HTB is seeking to have the Commission resurrect the extinct intermixture policy for this proceeding. The Commission is aware that each case involving a rule or policy change will affect pending proceedings. However, had we not applied the revised intermixture policy to this case, there would be no prohibition on ABC or any other party from repetitioning to have Channel 274 added to Appomattox soon after termination of this proceeding. HTB's grievance against applying the new revisions here is one which more properly should have been directed to BC Docket 80–130.

The Commission has already determined in its *Revision of FM Assignment Policies and Procedures, supra*, that the revisions are in the public interest. The private interests of HTB are not weighted as heavily since it can apply for operation on Channel 274 and, if successful, move its operation from Channel 296A. Thus, we do not see the regulation as "unreasonable," *Summit Nursing Home, Inc.* v. *United States, supra*, or unfair, *Hochman, supra*.

24. We see no merit to HTB's citation of *Adams Nursing Home, supra*, for the proposition that a critical inquiry concerning retroactive regulations is how an affected party's conduct "would have differed if the law in issue had applied from the start" and stating that HTB would not have proposed the reassignment of a Class B channel to Appomattox if Commission policy would have precluded it from shifting from the Class A to the Class B channel. The contention misconstrues the former general policy against intermixture as being absolute rather than a discretionary one applied in relation to the circumstances of the case. Therefore in view of the above circumstances we find that the petitions provide no new information that would justify a reconsideration of our earlier decision assigning Channel 274 to Appomattox.

25. In view of the foregoing, the petitions for reconsideration filed by HTB, Inc. and Genesis Communications, Inc. are denied.

26. It is further ordered, that this proceeding is terminated.

27. For further information concerning the above, contact Philip S. Cross, Mass Media Bureau, (202) 632–5414.

**Roderick K. Porter,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 83–20144 Filed 7–25–83; 8:45 am]

BILLING CODE 6710–01–M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1102

**[Ex Parte No. 290 (Sub-2)]**

### Railroad Cost Recovery Procedures

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** In an earlier notice, in accordance with the requirements of the Staggers Rail Act, the Commission proposed to adopt a modified version of the "all inclusive" index of railroad costs. This index was proposed by the American Association of Railroads (AAR) and modified by the Commission. The Commission also proposed to change the notice period for rates increased under these provisions and to require the AAR to file its Index submissions on the first day of the last month of the quarter prior to the effective date. Also proposed was a modified version of AAR's proposal for handling wage additives and funds collected but not yet disbursed during periods of labor contract negotiations.

The proposed treatment of the element of taxes (other than payroll or income taxes) was omitted from our Notice of Proposed Rulemaking served June 20, 1983. Our proposed treatment of the tax element is included in this Additional Notice.

**DATE:** Comments are due August 23, 1983.

**FOR FURTHER INFORMATION CONTACT:**

William T. Bono, (202) 275–7354,

or

Robert C. Hasek (202) 275–0938.

**SUPPLEMENTARY INFORMATION:** The proposed handling of the element of taxes (other than payroll or income taxes) was inadvertently omitted from our Notice of Proposed Rulemaking served June 20, 1983 (48 FR 29024, June 24, 1983). The Association of American Railroads on behalf of the railroad industry proposed indexing this element using a miles of tract deflator. AAR contends that the use of a miles of tract deflator would provide a more stable measure than the use of a mile of road deflator.

Other parties criticize AAR's proposed handling of the tax element believing that it aids the railroads in a time of shrinking plant. These parties contend that, although the track miles of the railroad industry may be shrinking, the actual tax bill should remain relatively unchanged.

We do not believe that use of a miles of track deflator can properly measure this component because of the continued contraction of the size of the railroad plant. Until an acceptable method of indexing this element is proposed or the use of a miles of track deflator is adequately supported we propose to index this component using a factor of 1.0.

This decision will not significantly affect the quality of the human environment or conservation of energy resources. As to Public Law 96-354, although it is our opinion that it will not have a significant adverse impact on a substantial number of small entities, we also request comments on this issue.

**List of Subjects in 49 CFR Part 1102**

Administrative practice and procedure.

(49 U.S.C. 10321, 10707a, 5 U.S.C. 553)

Dated: July 18, 1983.

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

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 83-20005 Filed 7-25-83; 8:45 am]

BILLING CODE 7035-01-M

# Notices

Federal Register
Vol. 48, No. 144
Tuesday, July 26, 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.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Caribou National Forest Grazing Advisory Board; Meeting

The Caribou National Forest Grazing Advisory Board Committee will meet at the Soda Springs Ranger Station at 9:00 a.m., August 23, 1983.

The meeting will consist of a field tour of cattle and sheep grazing ranges on the Soda Springs Ranger District with a meeting during the day to develop and discuss recommendations for the management of allotments and the range betterment fund. Agenda items for the tour will include: (1) Update of the Forest Plan; (2) election of Board officers and operation of the Board; (3) discussion of the 1983 and 1984 range betterment funds, (4) observation of range improvements, (5) progress with noxious weed treatment; (6) observation of sheep driveway improvements; (7) discussion of new phosphate mining activities; and (8) grazing of rehabilitated mine areas.

The meeting will be open to the public. Interested persons other than committee members and Forest Service personnel desiring to attend the field trip should furnish their own transportation and lunch. During the last stop of the trip, there will be a short meeting to finalize recommendations and to receive oral statements and answer any questions from the public. Written statements may be filed at any time for the Board's consideration.

The meeting will terminate at Soda Springs about 5:00 p.m. Summary minutes of the tour, meeting, and board recommendations will be maintained in the Forest Supervisor's office in Pocatello and will be available for public review within 30 days following the meeting.

Dated: July 18, 1983.

**Frank G. Beitia,**

*Acting Forest Supervisor.*

[FR Doc. 83-20139 Filed 7-25-83; 8:45 am]

BILLING CODE 3410-11-M

### Soil Conservation Service

### Lake Flower Boat Launch Facility RC&D Measure Plan, Essex County, New York, Greater Adirondack RC&D Area; Finding of No Significant Impact

The measure concerns a plan for the development of a boat launching facility on Lake Flower. The planned works of improvement include installation of a sheet piling bulkhead, a concrete launching ramp, floodlights to provide adequate lighting, public restrooms, entrance road and parking facilities. Benefits will be derived from an increase in user days of the facility and improvement in the local economy. In addition, the cost of maintenance and repair will be reduced and public safety will be enhanced.

There essentially will be an improvement in the overall recreational experience and the local economy.

The environmental assessment prepared for this measure is available for public review at the James M. Hanley Federal Building, 100 S. Clinton Street, Room 771, Syracuse, New York 13260.

### Lake Flower Boat Launch Facility RC&D Measure

Based on the facts derived from the assessment, it was concluded that an environmental impact statement would not be necessary.

Dated: July 8, 1983.

**Paul A. Dodd,**

*State Conservationist, Soil Conservation Service, Syracuse, New York.*

[FR Doc. 83-19999 Filed 7-25-83; 8:45 am]

BILLING CODE 3410-16-M

## CIVIL AERONAUTICS BOARD

**[Docket 41329]**

### Interamerica Airlines Fitness Investigation; Hearing

Notice is hereby given pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-titled matter will commence on August 9, 1983, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C., before the undersigned.

Dated at Washington, D.C., July 21, 1983.

**William A. Kane, Jr.,**

*Administrative Law Judge.*

[FR Doc. 83-20155 Filed 7-25-83; 8:45 am]

BILLING CODE 6320-01-M

**[Docket 41531]**

### Lockheed Aircraft Service Co.; Fitness Investigation; Assignment of Proceeding

This proceeding has been assigned to Administrative law Judge Ronnie A. Yoder. Future communications should be addressed to him.

Dated at Washington, D.C. July 20, 1983.

**Elias C. Rodriguez,**

*Chief Administrative Law Judge.*

[FR Doc. 83-20152 Filed 7-25-83; 8:45 am]

BILLING CODE 6320-01-M

**[Docket 41403]**

### Mid Pacific Airlines, Inc., Enforcement Proceeding; Hearing

Notice is herby given pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-titled matter will commence on August 3, 1983, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1625 Connecticut Avenue, NW., Washington, D.C. before the undersigned.

Dated at Washington, D.C. July 21, 1983.

**William A. Kane, Jr.**

*Administrative Law Judge.*

[FR Doc. 83-20154 Filed 7-25-83; 8:45 am]

BILLING CODE 6320-01-M

**[Docket 41414]**

### Northern Air Lines Inc., Fitness Investigation; Notice of Change of Room

Notice is hereby given that the prehearing conference in the above-entitled matter scheduled to begin on August 3, 1983 at 10:00 a.m. (local time) in Room 1027 is now changed to Room 1012, Universal Building, 1825 Connecticut Avenue, NW., Washington, D.C. before the undersigned Chief Administrative Law Judge.

Dated at Washington, D.C., July 21, 1983.

**Elias C. Rodriguez,**

*Chief Administrative Law Judge.*

[FR Doc. 83-20153 Filed 7-25-83; 8:45 am]

BILLING CODE 6320-01-M

## DEPARTMENT OF COMMERCE

### Bureau of the Census

### Annual Surveys in Manufacturing Area; Consideration

Notice is hereby given that the Bureau of the Census is considering a proposal to initiate or to continue the annual surveys listed below for the year 1983 and for each year thereafter under the authority of Title 13, United States Code, Sections 131, 182, 224, and 225. These surveys, most of which have been conducted for many years, are significant in the manufacturing area. On the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of the public and industry and are not available from nongovernmental or other governmental sources.

The establishments covered by these surveys directly account for the bulk of all manufacturing employment. The information to be developed from these surveys in necessary for an adequate measurement of total industrial production. Government agencies need data on the output of these industries. Manufacturers in the industries involved, as well as their suppliers and customers and the general public, have requested such data in the interest of business efficiency and stability.

These surveys, if conducted, shall begin not earlier than 60 days after publication of this notice in the **Federal Register.**

Most of the following commodity or product surveys provided data on shipments and/or production; some provide data on stocks, unfilled orders, orders booked, consumption, and so forth. Reports will be required of all or a sample of establishments engaged in the production of the items covered by the following list of surveys. These surveys have been arranged under major group headings based on the Standard Industrial Classification Manual (1972 edition) promulgated by the Office of Management and Budget for the use of Federal Government statistical agencies.

**Major Group 20—Food and Kindred Products**
Confectionery
**Major Group 22—Textile Mill Products**
Broadwoven fabrics finished
Narrow fabrics
Yarn production
Knit fabric production
Stocks of wool and related fibers
**Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials**
Men's and boys' outerwear
Women's and children's outerwear
Underwear and nightwear
Brassieres, girdles, and allied garments
Gloves and mittens
**Major Group 24—Lumber and Wood Products, Except Furniture**
Hardwood plywood
Softwood plywood
Lumber production and mill stocks
**Major Group 25—Funiture and Fixtures**
Office furniture
**Major Group 26—Paper and Allied Products**
Slected office supplies and accessories
Pulp, paper, and board
Converted flexible packaging products
**Major Group 27—Printing, Publishing and Allied Industries**
Business forms, binders, carbon paper, and inked ribbon
**Major Group 28—Chemicals and Allied Products**
Industrial gases
Inorganic chemicals
Pharmaceutical preparations, except biologicals
Sulfuric acid
Paints, varnish, and lacquer
**Major Group 29—Petroleum Refining and Related Industries**
Asphalt and tar roofing and siding products
**Major Group 30—Rubber and Miscellaneous Plastics Products**
Rubber
Plastics products
Rubber and plastics hose and belting
**Major Group 31—Leather and Leather Products**
Footwear (by method of construction)
**Major Group 32—Stone, Clay, and Glass**
Consumer, scientific, technical, and industrial glassware
Fibrous glass
**Major Group 33—Primary Metal Industries**
Steel mill products
Insulated wire and cable
Magnesium mill products
Nonferrous castings
**Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment**
Selected heating equipment
**Major Group 35—Machinery, Except Electrical**
Internal combustion engines
Tractors, except garden tractors
Farm machinery and lawn and garden equipment
Mining machinery and mineral processing equipment
Air-conditioning and refrigeration equipment, including warm air furnaces
Computers and office and accounting machines
Pumps and compressors
Selected industrial air pollution control equipment
Construction machinery
Anti-friction bearings
Fluid power products (including aerospace)
Coin-operated vending machines
**Major Group 36—Electrical Machinery, Equipment, and Supplies**
Radios, televisions, and phonographs
Motors and generators
Wiring devices and supplies
Switchgear, switchboard apparatus, relays, and industrial controls
Selected electronic and associated products, including telephone and telegraph apparatus
Electric housewares and fans
Electric lighting fixtures
Major household appliances
Transformers
**Major Group 37—Transportation Equipment**
Aircraft propellers
**Major Group 38—Professional, Scientific, and Controlling Instruments; Photographic and Optical Goods; Watches and Clocks**
Selected instruments and related products
Atomic energy products and services
**Major Group 39—Miscellaneous Manufacturing Industries**
Pen, pencils, and marking devices

The following surveys represent an annual supplement of a monthly survey and will cover the same establishments canvassed monthly. There will be no duplication of reporting, however, since the type of data collected on the annual supplement will be different from that collected monthly.

**Major Group 32—Stone, Clay, and Glass**
Glass containers
Refractories

The following list of surveys represents annual counterparts of monthly and quarterly surveys and will cover only those establishments that are not canvassed or do not report in the more frequent surveys. Accordingly, there will be no duplication in reporting. The content of these reports will be identical with that of the monthly and quarterly reports.

**Major Group 20—Food and Kindred Products**
Flour milling products
**Major Group 22—Textile Mill Products**
Broadwoven fabric (gray)
Consumption of wool and other fibers, and production of tops and noils
Carpet and rugs
**Major Group 23—Apparel and Other Finished Products Made From Fabrics and Similar Materials**
Sheets, pillowcases, and towels
**Major Group 30—Rubber and Miscellaneous Products**
Plastics bottles
**Major Group 32—Stone, Clay, and Glass**
Glass containers
Refractories
Clay construction products
Flat glass
**Major Group 33—Primary Metal Industries**
Iron and steel castings
Inventories of steel mill shapes
Inventories of brass and copper wire mill shapes
**Major Group 34—Fabricated Metal Products, Except Machinery and Transportation Equipment**

Plumbing fixtures
Steel shipping drums and pails
Closures for containers
**Major Group 35—Machinery, Except Electrical**
Construction machinery
**Major Group 36—Electrical Machinery, Equipment, and Supplies**
Fluorescent lamp ballasts
Electric lamps
**Major Group 37—Transportation Equipment**
New complete aircraft and aircraft engines, except military
Aerospace industry (orders and sales)
Truck trailers

The annual survey of manufactures will collect industry statistics such as total value of shipments, shipments by product class, employment, payroll, work hours, capital expenditures, cost of materials consumed, gross book value of assets, retirements, and depreciation of fixed assets, rental payments, supplemental labor costs, and so forth. This survey, while conducted on a sample basis, will cover all manufacturing industries, including data on plants under construction but not yet in operation.

A survey of research and development (R&D) activities will be conducted. The major data to be obtained in this survey will include total R&D expenditures by source of funds, the number of scientists and engineers employed, the amounts spent for pollution abatement and energy R&D, and, for comparative purposes, the total net sales and receipts and the total employment of the company.

A survey of shipments to the Federal Government will be conducted to provide information on the effect of Federal procurement on selected industries and geographic areas by Federal Government agencies.

The annual survey of oil and gas will canvass the industry that provides most of the fuel produced in the United States as well as a substantial portion of the hydrocarbon raw material requirements of many industries. The survery will collect information on exploration, development, and production costs; sales volumes and values; drilling activity; and assets in the crude petroleum and natural gas industry.

The annual survey of pollution abatement expenditures is designed to collect from manufacturers the total expenditures by industry and geographic area to abate pollutant emissions. The survey covers current operating costs and capital expenditures to abate air and water pollution and solid waste. This survey also will obtain the costs recovered from abatement activities and quantities of pollutants abated.

The annual survey of plant capacity will obtain information such as the amount of time a plant is in operation; operating rates as related to preferred levels and practical capacity; the value of production and other statistics for actual, preferred, and practical capacity operating levels; and the reasons for operating at less than capacity.

Copies of the proposed forms will be made available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of these proposed surveys should be submitted in writing to the Director of the Bureau of the Census within 60 days after the date of this publication in order to receive consideration.

Dated: July 19, 1983.

**Bruce Chapman,**

*Director, Bureau of the Census.*

[FR Doc. 83-20157 Filed 7-25-83; 8:45 am]

BILLING CODE 3510-07-M

## International Trade Administration

### President's Export Council; Rescheduled Meeting

On July 12, 1983 a notice dated July 8, 1983 was published in the **Federal Register** (48 FR 31896), announcing a meeting of the President's Export Council Promotion Subcommittee on July 28, 1983 at 9:30 a.m. in Room 4830, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The purpose of this notice is to announce that the date, time, and room for the meeting have been changed. The meeting has now been rescheduled for August 3 at 2:00 p.m. in Room 6802, Main Commerce Building.

Dated: July 21, 1983.

**Henry Misisco.**

*Acting Director, Office of Planning and Coordination.*

[FR Doc. 83-20178 Filed 7-25-83; 8:45 am]

BILLING CODE 3510-25-M

## National Oceanic and Atmospheric Administration

### Membership of National Oceanic and Atmospheric Administration Performance Review Boards

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

**ACTION:** Notice of membership of NOAA Performance Review Boards.

**SUMMARY:** In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), NOAA announces the appointment of persons to serve as members of NOAA Performance Review Boards (PRB's). The NOAA PRB's are responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and amounts, and initial recommendations for potential rank awards. The appointment of these members to the NOAA PRB's will be for periods of approximately 12 months service for Group A and 24 months service for Group B; service periods for both groups will officially begin on August 1, 1983.

**DATE:** The effective date of service of appointees to the NOAA Performance Review Board is August 1, 1983.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Gajdys, Personnel Officer, NOAA, 6010 Executive Boulevard, Rockville, Maryland 20852, (301) 443-8781.

**SUPPLEMENTARY INFORMATION:** The names and titles of the members of the NOAA PRB's (NOAA officials unless otherwise identified) are set forth below:

**Group A**

John H. McElroy—Acting Assistant Administrator for Environmental, Satellite, Data, and Information Service
Elbert W. Friday—Acting Deputy Assistant Administrator for National Weather Service
Jerry B. Vance—Chief, General Services Management Division, Office of Administrative and Technical Services
Timothy R. Keeney—Deputy General Counsel, Office of the General Counsel
Augustine J. LaCovey—Director, Office of Public Affairs
Robert J. McManus—General Counsel
William Matuszeski—Acting Deputy Assistant Administrator for Ocean Services, National Ocean Service
Peter L. Tweedt—Director, Office of Ocean and Coastal Resource Management, National Ocean Service
Thomas A. Dillon—Principal Deputy Assistant Secretary for Nuclear Energy, Office of Nuclear Energy, Department of Energy
Claude C. Gravatt, Jr.—Deputy Director, Programs, National Measurement Laboratory, National Bureau of Standards
Harriet G. Jenkins—Assistant Administrator for Equal Opportunity

Programs, National Aeronautics & Space Administration
Donald R. Johnson—Director, National Measurement Laboratory, National Bureau of Standards
Rupert B. Southard—Chief, National Mapping Division, United States Geological Survey

**Group B**

Joseph W. Angelovic—Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service
Francis J. Balint—Chief, Information and Management Services Division, Office of Administrative and Technical Services
Carmen J. Blondin—Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service
William D. Bonner—Director, National Meteorological Center, National Weather Service
John J. Carey—Director, Office of Budget and Finance
Robert L. Carnahan—Chief, External Relations and Industrial Meteorology Staff, National Weather Service
Vernon E. Derr—Deputy Assistant Administrator for Oceanic and Atmospheric Research, Office of Oceanic and Atmospheric Research
Joan C. Hock—Director, Assessment and Information Services Center, National Environmental Satellite, Data and Information Services
Kikuro Miyakoda—Supervisory Research Meteorologist, Geophysical Fluid Dynamics Laboratories, Office of Oceanic and Atmospheric Research
Jeanne E. Moore—Director, Office of Congressional Affairs
Edward L. Ridley—Director, National Oceanographic Data Center, National Environmental Satellite, Data and Information Services
Arlene Schley—Director, Central Administrative Support Center

Dated: July 15, 1983.

**Samuel A. Lawrence,**

*Director, Office of Administrative and Technical Services.*

[FR Doc. 83-20130 Filed 7-25-83; 8:45 am]

BILLING CODE 3510-12-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Soliciting Public Comment on Bilateral Textile Consultations With the Government of Republic of Indonesia on Category 335 (Women's, Girls', and Infants' Cotton Coats)

On June 30, 1983, the United States Government, under article 3 of the Arrangement Regarding International Trade in Textiles, requested the Government of the Republic of Indonesia to enter into consultations concerning exports to the United States of women's, girls' and infants' cotton coats in Category 335, produced or manufactured in Indonesia.

The purpose of this notice is to advise that, if no solution is agreed upon between the two governments within sixty days of the date of delivery of the aforementioned note, entry and withdrawal from warehouse for consumption of cotton textile products in Category 335, produced or manufactured in Indonesia and exported to the United States during the twelve-month period which began on July 1, 1983, may be restrained at a level of 32,614 dozen.

Anyone wishing to comment or provide data or information regarding the treatment of Category 335 is invited to submit such comments or information in ten copies to Mr. 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, it is requested that comments 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. 20230, 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 is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Sincerely,

**Walter C. Lenahan,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 83-20122 Filed 7-25-83; 8:45 am]

BILLING CODE 3510-25-M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### President's Commission on Strategic Forces; Advisory Meeting

The President's Commission on Strategic Forces will meet in closed session on August 9–11, 1983 in the Pentagon, Arlington, Virginia.

The mission of the President's Commission on Strategic Forces is to advise the President, Vice President, Secretary of State, and Secretary of Defense on matters pertaining to the development and deployment of strategic forces and related weapon systems and issues of concern regarding arms control policies, programs, and initiatives as these subjects affect the needs of National Security.

At the meeting on August 9–11, 1983 the Commission will discuss interim findings and tentative recommendations resulting from ongoing Commission activities associated with strategic forces and arms control issues. The Commission will also discuss plans for future consideration on force development and arms control aspects of specific strategies and policies as they may affect national security posture.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, 1976)), it has been determined that this President's Commission on Strategic Forces meeting concerns matters listed in 5 U.S.C. 552b(c) (1) (1976), and accordingly this meeting will be closed to the public.

**M.S. Healy,**

*OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.*

July 21, 1983.

[FR Doc. 83-20174 Filed 7-25-83; 8:45 am]

BILLING CODE 3810-01-M

### Department of the Army

### Partially Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Subcommittee meeting:

Name of committee: United States Army Medical Research and Development Advisory Committee, Subcommittee on Medical Defense Against Chemical Agents.

Date of meeting: 25 August 1983.

Time and place: 0900 hours, Hanalei Hotel, San Diego, California.

Proposed agenda: In accordance with the provisions set forth in Section 552b(c)(6), United States Code, Title 5 and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from 0900 to 1400 on 24 August 1983 for the review, discussion and evaluation of individual programs and projects conducted by the U.S. Army Medical Research and Development Command, including consideration of personnel qualifications and performance, the competence of individual investigators, medical files of individual research subjects,

and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

COL Richard Lindstrom, U.S. Army Medical Research Institute of Chemical Defense, Aberdeen Proving Ground, MD 21010 (301/671-2833) will furnish summary minutes, roster of Subcommittee members and substantive program information.

**Harry G. Dangerfield,**

*Colonel, MC Deputy Commander.*

[FR Doc. 83-20081 Filed 7-25-83; 8:45 am]

BILLING CODE 3710-08-M

### Intent To Grant a Limited Exclusive Patent License to Cheung Associates, Inc.

Pursuant to the provisions of the General Services Administration's licensing regulations, the Department of the Army announces its intention to grant Cheung Associates, Inc., a corporation of the State of Maryland, a limited exclusive license under U.S. Patent No. 4,381,002, issued on April 26, 1983, entitled "Fluidic-Controlled Oxygen Intermittent Demand Flow Device," invented by George Mon.

This license will be granted unless compelling reasons for not granting such a license are received by the Chief, Patents, Copyrights and Trademarks Division, Office of The Judge Advocate General, Department of the Army, Washington, DC 20310 within 60 days of this notice.

For further information concerning this notice, contact: Eugene E. Stevens, III, HQDA (DAJA-IP) Pentagon—Room 2D 444, Washington, DC 20310, Telephone No. (Area Code 202) 695-9356.

**John O. Roach II,**

*DA Liaison Officer with the Federal Register.*

[FR Doc. 83-20080 Filed 7-25-83; 8:45 am]

BILLING CODE 3710-08-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

### Bi-Petro, Inc.; Proposed Remedial Order

[6COX00251]

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Bi-Petro, Inc. of Springfield, Illinois. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.93, 212.182 and 212.183. The total violation alleged during November 1973 through August 1980 is $7,968,308.17.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Tulsa, Oklahoma on the 5th day of July 1983.

**John W. Sturges,**

*Director, Tulsa Office, Economic Regulatory Administration.*

[FR Doc. 83-20078 Filed 7-25-83; 8:45 am]

BILLING CODE 6450-01-M

[6COX00280]

### Kaiser Aluminum International Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration of the Department of Energy hereby gives Notice of a Proposed Remedial Order which was issued to Kaiser Aluminum International Corporation of Oakland, California. This Proposed Remedial Order alleges violations in the pricing of crude oil of 10 CFR 212.186, 210.62(c), and 205.202. The total violation alleged during May 1978 through December 1980 is $2,399,552.61.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from: U.S. Department of Energy, Economic Regulatory Administration, Attn: John W. Sturges, Director, 440 S. Houston, Room 306, Tulsa, Oklahoma 74127.

Within 15 days of publication of this Notice any aggrieved person may file a Notice of Objection with the Office of Hearing and Appeals, U.S. Department of Energy, 12th & Pennsylvania Avenue, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Tulsa, Oklahoma on the 5th day of July 1983.

**John W. Sturges,**

*Director, Tulsa Office, Economic Regulatory Administration.*

[FR Doc. 83-20076 Filed 7-25-83; 8:45 am]

BILLING CODE 6450-01-M

### Federal Energy Regulatory Commission

[Docket No. ST80-78-003]

### Delhi Gas Pipeline Corp.; Extension Reports

July 18, 1983.

The companies listed below have filed extension reports pursuant to Section 311 of the Natural Gas Policy Act of 1978 (NGPA) and Part 284 of the Commission's regulations giving notice of their intention to continue transportation and sales of natural gas for an additional term of up to 2 years. These transactions commenced on a self-implementing basis without case-by-case Commission authorization. The sales may continue for an additional term if the Commission does not act to disapprove or modify the proposed extension during the 90 days preceding the effective date of the requested extension.

The table below lists the name and addresses of each company selling or transporting pursuant to Part 284; the party receiving the gas; the date that the extension report was filed; and the effective date of the extension. A letter "B" in the Part 284 column indicates a transportation by an interstate pipeline which is extended under § 284.105. A letter "C" indicates transportation by an intrastate pipeline extended under § 284.125. A "D" indicates a sale by an intrastate pipeline extended under § 284.146. A "G" indicates a transportation by an interstate pipeline pursuant to § 284.221 which is extended under § 284.105. A "G(HS)" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.222 of the Commission's Regulations.

Any person desiring to be heard or to protest with reference to said extension report should on or before August 30, 1983 file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214).

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 party to a proceeding.

Any person wishing to become a party

to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**
*Secretary.*

| Docket No. | Transporter/seller | Recipient | Date filed | Part 284 subpart | Effective date |
|---|---|---|---|---|---|
| ST80-78-003 | Delhi Gas Pipeline Corp., Fidelity Union Tower, Dallas, TX 75201 | Transwestern Pipeline Co | 6/30/83 | D | 9/30/83 |
| ST81-458-001 | Tennessee Gas Pipeline Co., P.O. Box 2511, Houston, TX 77001 | Columbia Gas Transmission Corp | 6/20/83 | G | 9/17/83 |
| ST82-10-001 | do | Bay State Gas Co | 6/21/83 | B | 10/01/83 |
| ST82-20-001 | Natural Gas Pipeline Co. of America, 122 South Michigan Ave., Chicago, IL 60603. | United Gas Pipe Line Co | 6/28/83 | G | 9/29/83 |
| ST82-41-001 | Houston Pipe Line Co., P.O. Box 1188, Houston, TX 77001 | El Paso Natural Gas Co | 6/27/83 | C | 10/06/83 |
| ST82-42-001 | Oasis Pipe Line Co., P.O. Box 1188, Houston, TX 77001 | El Paso Natural Gas Co | 6/27/83 | C | 10/06/83 |
| ST82-44-001 | Dow Pipeline Co., P.O. Box 4286, Houston, TX 77210 | Public Service Electric and Gas Co | 6/30/83 | C | 11/01/83 |
| ST82-48-001 | United Gas Pipe Line Co., P.O. Box 1478, Houston, TX 77001 | Louisiana Gas Intrastate, Inc | 6/27/83 | B | 10/19/83 |
| ST82-298-001 | Pacific Gas Transmission Co., 245 Market St., San Francisco, CA | Pacific Interstate Transmission Co | 6/20/83 | G | 10/01/83 |

NOTE.—The noticing of these filings does not constitute a determination of whether the filings comply with the Commission's regulations.

[FR Doc. 83-20101 Filed 7-25-83; 8:45 am]
BILLING CODE 6717-01-M

**[Docket No. GP83-37-000]**

## Railroad Commission of Texas, NGPA Section 108 Determination, El Paso Natural Gas Company, Aycock #1 Well, FERC JD No. 82-20075; Petition To Reopen Final Well Category Determination and Request for Withdrawal

Issued July 18, 1983.

On July 7, 1983, El Palso Natural Gas Company (El Paso) filed with the Federal Energy Regulatory Commission (Commission) a petition to reopen, and a request to withdraw, the determination by the Railroad Commission of Texas (Texas) that natural gas from El Paso's Aycock #1 Well qualifies as stripper well natural gas pursuant to § 271.807(c) of the Commission's regulations, 18 CFR 271.807(c) (1982), and section 108 of the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (Supp. V 1982). The subject determination became final on March 28, 1983, in conformance with NGPA section 503(d) and 18 CFR 275.202(a).

Under NGPA section 108, two conditions must be met for stripper well natural gas qualification. First, the well in question must have produced nonassociated natural gas during the preceding 90-day production period at a rate not exceeding an average of 60 Mcf per production day. Second, the well in question must have produced, during the preceding 90-day production period, at its maximum efficient rate of flow. Under § 271.807(c), the Commission established a deferred determination procedure by which jurisdictional agencies must defer determination if either prior production data are unavailable or production data for the 12-month period ending concurrently with the 90-day production period established an average daily producing rate not exceeding 70 Mcf. Section 271.807(c) requires the jurisdictional agency deferring determination to designate a 12-month period during which the applicant can obtain evidence that average daily producing rates did not exceed 60 Mcf.

El Paso requests that the subject determination be reopened, and, contingent upon such reopening, that it be allowed to withdraw the instant application, based upon a reporting error discovered on or about January of 1983 which resulted in the use of an inaccurate number of production days for the calculation of the 90-day and 12-month average daily producing rates. El Paso states that the corrected 90-day and 12-month average daily producing rates for the period ending on or about July of 1982 are 59 Mcf and 78 Mcf, respectively. El Paso therefore asserts that the subject well did not qualify for a section 108 application under the deferred determination procedure. Further, El Paso claims it has determined, based upon recalculation of the 12-month average daily producing rate for the period ending on or about October of 1982, that the subject well did not qualify under the deferred determination procedure for section 108 pricing as was indicated to Texas by letter dated December 17, 1982. Finally, El Paso asseverates that the subject well did not fully qualify during the time period designated by Texas for supplementation of the application.

Notice is hereby given that, in the event the subject determination is reopened, the question of whether the Commission will require refunds, plus interest computed under § 154.102(c) of the regulations, is a matter subject to the review and final decision of the Commission.

Any person desiring to be heard or to make any protest to the requested reopening and withdrawal should file, within 30 days after this notice is published in the **Federal Register**, with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of Rules 214 or 211 of the Rules of Practice and Procedure. All protests filed will be considered but will not make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's rules.

**Kenneth F. Plumb,**
*Secretary.*

[FR Doc. 83-20102 Filed 7-25-83; 8:45 am]
BILLING CODE 6717-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**[MM Docket Nos. 83-680 and 83-681; File Nos. BP-821021BG and BP-820830AQ]**

## Salem Media of Ohio., Inc. and Boone Broadcasting Co.; Hearing Designation Order

In re Applications of Salem Media of Ohio, Inc., Columbus-Worthington, Ohio (WRFD), Has: 880 kHz, 5 kW, D, Req: 880 kHz, 50 kW, (5 k W-CH), DA-D MM Docket No. 83-680, File No. BP-821021BG; and Boone Broadcasting Co., Florence, Kentucky, Req: 870 kHz, 0.25 kW, D, MM Docket No. 83-681, File No. BP-820830AQ, For Construction Permit.

Adopted: June 24, 1983.
Released: July 12, 1983.
By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the application of Salem Media of Ohio Inc., licensee of WRFD (AM), Columbus-Worthington, Ohio (Salem) for a major modification of its facilities, and an application for a new AM Station in Florence, Kentucky, filed

by Boone Broadcasting Company. The Commission also received two information objections to the grant of the Salem application filed by National Public Radio and Ohio State University, licensee of noncommercial educational station WOSU (AM), Columbus, Ohio, which were denied by letter, pursuant to delegated authority.

2. *Salem.* Since the proposal of Salem constitutes a major environmental action as defined by § 1.1305(a) of the Commission's Rules, it is required to submit the environmental impact information described in Section 1.1311. Salem's application refers to an enclosed statement that was not found within the file. Consequently, Salem will be required to file within 30 days of the release of this Order its environmental narrative statement with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of § 1.1313(b). Accordingly, § 1.1317 of the Rules is waived to the extent that the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980).

3. In addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will also be specified.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

2. If a final environmental impact statement is issued with respect to Salem which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301–1319 of the Commission's Rules; and

(b) Whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualifed to construct and operate as proposed.

3. To determine, in the light of Section 307(b) of the Communication Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

4. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, That § 1.1317 of the Commission's Rules IS WAIVED to the extent indicated herein. Within 30 days of the release of this Order, Salem shall submit the environmental narrative required by Section 1.1311 of the Rules to the presiding Administrative Law Judge, with a copy to the Chief, Audio Services Division.

7. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Larry D. Eads,**

*Chief, Audio Services Division, Mass Media Bureau.*

**Appendix**

9. The Commission has not yet received Federal Aviation Administration clearance for the antenna towers proposed by the below listed applicant. Accordingly, It is further ordered, That the following issue is specified:

1. To determine whether there is a reasonable possibility that a hazard to air navigation would occur as a result of the tower height and location proposed by Salem.

10. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

[FR Doc. 83-20146 Filed 7-25-83; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

**[Independent Ocean Freight Forwarder License No. 2311]**

### Kanical Aero-Marine Services, Inc.; Order of Revocation

On July 13, 1983, Kanical Aero-Marine Services, Inc., P.O. Box 952, Fremont, CA 94537 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2311.

Therefore, by virture of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), section 10.01(e) dated November 12, 1981;

It is ordered, that Independent Ocean Freight Forwarder License No. 2311 issued to Kanical Aero-Marine Services, Inc., be revoked effective July 12, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Kanical Aero-Marine Services, Inc.

**Robert M. Skall,**

*Deputy Director, Bureau of Certification and Licensing.*

[FR Doc. 83-20070 Filed 7-25-83; 8:45 am]
BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Bank Holding Companies; Proposed de Novo Nonbank Activities; The Chase Manhattan Corp., et al.

The organizations identified in this notice have 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 indicates, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, 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 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 that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing 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 New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Chase Manhattan Corporation*, New York, New York (financing and insurance activities; California): To engage, through its subsidiary, Chase Manhattan Financial Service, Inc., in making or acquiring for its own account and for the account of others, loans and other extensions of credit, both secured and unsecured, including, but not limited to, consumer and business lines of credit, installment loans for personal, household and business purposes and mortgage loans secured by real property; Applicant has also applied to service loans and other extensions of credit and to act as insurance agent for credit life insurance and credit accident and health insurance directly related to such lending and servicing activities. These activities will be conducted from a *de novo* office in Walnut Creek, California, serving the State of California. Comments on this application must be received not later than August 19, 1983.

B. **Federal Reserve Bank of St. Louis** (Delmar P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Arkansas Bancshares, Inc.*, Jacksonville, Arkansas (insurance activities; Arkansas): To engage, through its subsidiary, First Jacksonville Corporation, in acting as agent for the sale of credit life insurance and credit accident and health insurance directly related to extensions of credit by First Jacksonville Bank, a subsidiary of Applicant. These activities are permissible under section 601(A) of the Garn-St Germain Depository Institutions Act of 1982. These activities would be conducted from an office in Jacksonville, Arkansas, serving the Jacksonville city limits and surrounding areas, north Pulaski County, northwestern Lonoke County and southern White and southern Faulkner Counties, all in Arkansas. Comments on this application must be received not later than August 9, 1983.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Bankers Southwest Corporation*, Dallas, Texas (commercial, mortgage banking, finance, data processing and investment advisory activities; Texas): To engage in making or acquiring and servicing loans and other extensions of credit such as would be made by a mortgage company, finance, credit card, or factoring company; acting as an investment and financial advisor to the extent of furnishing general economic information and advice, general economic statistical forecasting services and industry studies as well as providing portfolio investment advice to any other person and serving as an advisory company for a mortgage or real estate investment trust; providing bookkeeping on data processing for the internal operations of Bankers Southwest Corporation and its subsidiaries pursuant to 225.4 8(ii); providing courier services for internal operations of the Bankers Southwest Corporation and its subsidiaries, and for others pursuant to 225.4 11(ii and iii). Bankers Southwest Corporation will engage in these activities from its main office in Dallas, Texas and from a branch office located in Waxahachie, Texas. The service area to be served by these offices of Bankers Southwest Corporation shall be the State of Texas, for all activities. Comments on this application must be received not later than August 19, 1983.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *BankAmerica Corporation*, San Francisco, California (financing, servicing, and insurance activities; Nebraska and Iowa): To continue to engage, through its indirect subsidiary, FinanceAmerica Corporation of Nebraska, a Nebraska corporation, in the activities of making or acquiring for its own account loans and other extensions of credit such as would be made or acquired by a finance company; servicing loans and other extensions of credit; and offering credit-related life insurance and credit-related accident and health insurance. The aforementioned types of credit-related insurance are permissible under Section 4(c)(8)(A) of the Bank Holding Company Act of 1956, as amended by the Garn-St Germain Depository Institutions Act of 1982. Activities will include, but not be limited to, making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to businesses, making loans and other extensions of credit secured by real and personal property, and offering credit-related life and credit-related accident and health insurance directly related to extensions of credit made or acquired by FinanceAmerica Corporation of Nebraska. Credit-related life and credit-related accident and health insurance may be reinsured by BA Insurance Company, Inc., an affiliate of FinanceAmerica Corporation of Nebraska. These activities will be conducted from an existing office located in Omaha, Nebraska, serving the States of Nebraska and Iowa. Comments on this application must be received not later than August 19, 1983.

Board of Governors of the Federal Reserve System, July 20, 1983.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 83-20001 Filed 7-25-83; 8:45 am]

BILLING CODE 6210-01-M

## Federal Open Market Committee; Domestic Policy Directive of May 24, 1983

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on May 24, 1983.[1]

The information reviewed at this meeting suggests that growth in real GNP has accelerated in the current quarter following a moderate increase in the first quarter. Industrial production increased sharply in April after rising at a moderate pace in previous months; nonfarm payroll employment and retail sales rose considerably in March and April. Housing starts declined somewhat in both months but were still well above depressed 1982 levels. Data on new orders and shipments suggest that the demand for business equipment is reviving. The civilian unemployment rate edged down to 10.2 percent in April. Average prices have changed little and the index of average hourly earnings has

[1] The Record of Policy Actions of the Committee for the meeting of May 24, 1983, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

risen at a much reduced pace in the early months of 1983.

The weighted average value of the dollar against major foreign currencies has remained in a narrow range near its recent high level since last March. The U.S. foreign trade deficit fell substantially in the first quarter, reflecting a sharp drop in the value of oil imports.

Growth in M2 and M3 decelerated further in April to relatively low rates but appears to have picked up recently. M1 declined in April but has strengthened markedly in early May. Growth in debt of domestic nonfinancial sectors appears to have been moderate over the first four months of the year. Interest rates have changed little on balance since late March.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote a resumption of growth in output on a sustainable basis, and contribute to a sustainable pattern of international transactions. At its meeting in February the Committee established growth ranges for monetary and credit aggregates for 1983 in furtherance of these objectives. The Committee recognized that the relationships between such ranges and ultimate economic goals have been less predictable over the past year; that the impact of new deposit accounts on growth ranges of monetary aggregates cannot be determined with a high degree of confidence; and that the availability of interest on large portions of transaction accounts, declining inflation, and lower market rates of interest may be reflected in some changes in the historical trends in velocity. A substantial shift of funds into M2 from market instruments, including large certificates of deposit not included in M2, in association with the extraordinarily rapid buildup of money market deposit accounts, distorted growth in that aggregate during the first quarter.

In establishing growth ranges for the aggregates for 1983 against this background, the Committee felt that growth in M2 might be more appropriately measured after the period of highly aggressive marketing of money market deposit accounts had subsided. The Committee also felt that a somewhat wider range was appropriate for monitoring M1. Those growth ranges were to be reviewed in the spring and altered, if appropriate, in the light of evidence at that time. The Committee reviewed the ranges at this meeting and decided not to change them at this time, pending further review at the July meeting. With these understandings, the Committee established the following growth ranges: for the period from February–March of 1983 to the fourth quarter of 1983, 7 to 10 percent at an annual rate for M2, taking into account the probability of some residual shifting into that aggregate from non-M2 sources; and for the period from the fourth quarter of 1982 to the fourth quarter of 1983, 6½ to 9½ percent for M3, which appeared to be less distorted by the new accounts. For the same period a tentative range of 4 to 8 percent was established for M1, assuming that Super NOW accounts would draw only modest amounts of funds from sources outside M1 and assuming that the authority to pay interest on transaction balances was not extended beyond presently eligible accounts. An associated range of growth for total domestic nonfinancial debt was established at 8½ to 11½ percent.

In implementing monetary policy, the Committee agreed that substantial weight would continue to be placed on behavior of the broader monetary aggregate expecting that distortions in M2 from the initial adjustment to the new deposit accounts will abate. The behavior of M1 will continue to be monitored, with the degree of weight placed on that aggregate over time dependent on evidence that velocity characteristics are resuming more predictable patterns. Debt expansion, while not directly targeted, will be evaluated in judging responses to the monetary aggregates. The Committee understood that policy implementation would involve continuing appraisal of the relationships between the various measures of money and credit and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

The Committee seeks in the short run to increase only slightly the degree of reserve restraint. The action was taken against the background of M2 and M3 remaining slightly below the rates of growth of 9 and 8 percent, respectively, established earlier for the quarter and within their long-term ranges, M1 growing well above anticipated levels for some time, and evidence of some acceleration in the rate of business recovery. Lesser restraint would be appropriate in the context of more pronounced slowing of growth in the broader monetary aggregates relative to the paths implied by the long-term ranges and deceleration of M1, or indications of a weakening in the pace of economic recovery. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, July 19, 1983.

**Normand R. V. Bernard,**

*Assistant Secretary.*

[FR Doc. 83-20089 Filed 7-25-83; 8:45 am]

BILLING CODE 6210-01-M

## Formation of Bank Holding Companies; Comm. Bancorp, Inc. and North Pacific Bancorporation

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 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 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 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. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Comm. Bancorp, Inc.*, Forest City, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Community National Bank, Forest City, Pennsylvania. Comments on this application must be received not later than August 19, 1983.

B. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 400 Sansome Street, San Francisco, California 94120:

1. *North Pacific Bancorporation*, Tacoma, Washington; to become a bank holding company by acquiring 93 percent of the voting shares of North Pacific Bank, Tacoma, Washington. Comments on this application must be received not later than August 17, 1983.

Board of Governors of the Federal Reserve System, July 20, 1983.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 83-20090 Filed 7-25-83; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 83D-0176]**

### Regulatory Action Criteria for Aflatoxin in Reconditioned Brazil Nuts; Availability of Guide

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces the availability of FDA's revised Compliance Policy Guide 7112.07 containing new criteria for testing and releasing reconditioned lots of Brazil nuts. Compliance Policy Guide 7112.07 will now permit the test sample to consist of a composite of all edible nut kernels and will permit FDA field offices to release the lot when no detectable levels of aflatoxins are found in the test sample using the methodology specified in the Guide for the determination of the aflatoxin content.

**DATE:** Comments, data, and information may be submitted until September 26, 1983.

**ADDRESS:** Written comments, data, and information on these new criteria for regulatory action and requests for single copies of FDA's Compliance Policy Guide 7112.07 may be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Raymond W. Gill, Bureau of Foods (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-245-3092.

**SUPPLEMENTARY INFORMATION:** The new criteria in revised Compliance Policy Guide 7112.07 now permit all edible nut kernels from the 1,000 nut sample drawn from the reconditioned lot to be composited and analyzed for aflatoxins. These criteria differ from the old criteria in that testing procedures for reconditioned lots in the latter required the edible nuts to be divided into two groups—one group consisting of "moldy, but edible nuts" and the other consisting of "non-moldy nuts" and required each group to be analyzed separately. The lot was released if the aflatoxin level did not exceed 20 parts per billion for either group.

Industry has raised questions about the reconditioning test. First, they argued that the judgment factor for determining what constitutes a "moldy, but edible nut" is highly subjective. Second, they argued that when analyzed separately, the aflatoxin content, if any, of the several moldy nuts would not give a true picture of the aflatoxin content of the reconditioned lot being sampled.

FDA believes that these arguments have merit. Therefore, FDA has revised the testing procedures for reconditioned Brazil nuts so that only nuts having an obviously inedible appearance are discarded and the remaining nuts are analyzed together for aflatoxin. This part of the testing procedure is identical to the testing procedures carried out under the FDA-U.S. Department of Agriculture-industry program prescribed in the Guide for testing imported Brazil nuts at the time of entry.

The new criteria for releasing reconditioned lots of Brazil nuts in Compliance Policy Guide 7112.07 permit no detectable levels of aflatoxins in the reconditioned lot. A detectable level is the level at which the presence of aflatoxins can be confirmed in the sample using analytical methodology specified in the Guide. Currently the level of detectability is any amount greater than 5 parts per billion.

Background data and information concerning the revision of this Guide are on file with the Dockets Management Branch (address above), along with a copy of FDA's Compliance Policy Guide 7112.07, and are available in that office for public examination between 9 a.m. and 4 p.m., Monday through Friday. Requests for single copies of Compliance Policy guide 7112.07 should refer to the docket number found in brackets in the heading of this document and should be submitted to the Dockets Management Branch (address above).

Interested persons may until September 26, 1983 submit to the Dockets Management Branch (address above) written comments, data, and information regarding these regulatory action criteria. 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.

Dated: July 19, 1983.

**Joseph P. Hile,**

*Associate Commissioner for Regulatory Affairs.*

[FR Doc. 83-20085 Filed 7-25-83; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

### Richfield District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463, that a meeting of the Richfield District Grazing Advisory Board will be held on August 9, 1983.

The meeting will begin at 9 a.m. in the Conference Room of the Bureau of Land Management Office at 150 East 900 North, Richfield, Utah.

The agenda for the meeting includes discussion of the following items:

1. Briefing on program accomplishments since last meeting.
2. Project maintenance costs.
3. Maintenance responsibility on projects.
4. Standardized billing.
5. Ranking of allotments and projects.
6. Wilderness program update.
7. Indemnity selection update.
8. Planning and EIS update.
9. Trout Creek Allotment changes.
10. Arrange future meeting.

The meeting is open to the public. Interested persons may make oral statements to the board between 1 p.m. and 2 p.m. on August 9, 1983, or file written statements for the board's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701 by August 5, 1983. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the board meeting will be maintained in the District Office and be available for public inspection and reproductions during regular business hours within 30 days following the meeting.

July 18, 1983.

**Donald L. Pendleton,**

*District Manager.*

[FR Doc. 83-20138 Filed 7-25-83; 8:45 am]

BILLING CODE 4310-84-M

**Initiation of Management Framework Plan Amendment for the Big Butte and Pocatello Resource Areas and Planning Analysis for the Medicine Lodge Resource Area; Idaho Falls District**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

*Description of Proposed Planning Action*

**SUMMARY:** In accordance with 43 CFR 1610.5–5, notice is hereby given that the Idaho Falls District is initiating amendments to the existing Big Desert, Little Lost-Birch Creek, Caribou-Bear Lake, and Pocatello management framework plans (MFPs). A resource management plan (RMP) has been initiated for the Medicine Lodge Resource Area, and a planning analysis is being initiated. These planning actions are proposed in order to provide for disposal of certain isolated tracts of public land under the Asset Management initiative. Certain isolated tracts within the Idaho Falls District need to be examined more closely to determine if: (1) They should be retained in federal ownership and managed for multiple uses, or (2) disposal of the tracts would serve the national interest. The tracts included in the proposed planning action vary from 1.25 acres to 160 acres in size and make up a small portion of the public lands in the Idaho Falls District. The planning action is scheduled for completion by December 31, 1983.

*Identification of the Geographic Area*

The general planning area includes most of the Idaho Falls District. The Little Lost-Birch Creek area includes about 333,000 acres of public land in the Birch Creek and Little Lost valleys north of Howe, Idaho. The Big Desert area southwest of Idaho Falls Includes about 1,163,000 acres of public land. The Caribou-Bear Lake and Pocatello areas in southeastern Idaho include about 237,000 acres of public land. The Medicine Lodge RMP area north of Idaho Falls includes about 655,000 acres of public land. The general planning area includes all or portions of the following counties: Clark, Fremont, Jefferson, Madison, Teton, Bonneville, Bingham, Bannock, Caribou, Bear Lake, Franklin, Oneida, Lemhi, Custer, Butte, Blaine, and Power counties.

*General Typs of Issues Anticipated*

The anticipated issues relate to: (1) Whether the tracts have value for livestock grazing, wildlife habitat, recreation, or other public values which should be retained in federal ownership and managed for their public values, or (2) whether the tracts are not needed for multiple use management and are best suited for private ownership and use.

*Disciplines to be Represented*

The planning teams will be made up of individuals from several disciplines including specialists in range management, wildlife habitat management, soils, recreation, forestry, realty, and planning.

*Kind and Extent of Public Participation Activities to be Provided*

A variety of public participation activities have already been provided by the Idaho Falls District including formal notices; radio, television and newspaper stories; letters; all followed by several open houses. The purpose of these recent activities was to receive public comments on tracts that have potential for disposal from federal ownership. Comments will continue to be received during the planning process.

*Times, Dates, and Locations of Public Meetings*

No additional public meetings are planned.

*Location and Availability of Documents*

Documents comprising the Little Lost-Birch Creek, Big Desert, Caribou-Bear Lake and Pocatello MFPs are available for inspection in the Idaho Falls District Office along with data concerning the Medicine Lodge RMP. A list of tracts being considered for disposal and maps showing the tracts are also available for inspection at the Idaho Falls District Office.

For Further Information Contact: O'del A. Frandsen, District Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, ID 83401. Telephone: Commercial (208) 529–1020.

**O'dell A. Frandsen,**

*Idaho Falls District Manager.*

[FR Doc. 83–20217 Filed 7–25–83; 8:45 am]

BILLING CODE 4310–84–M

## National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 15, 1983. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by August 10, 1983.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**CALIFORNIA**

*Alameda County*

Oakland, *Oakland Public Library*, 659 14th St.

*Los Angeles County*

Los Angeles, *Oviatt, James, Building*, 617 S. Olive St.

*Orange County*

Seal Beach, *Seal Beach City Hall (Old)*, 201 8th St.

*San Francisco County*

San Francisco, *Belden, C.A., House*, 2004—2010 Gough St.

San Francisco, *Park View Hotel*, 750 Stanyan St.

*San Mateo County*

Redwood City, *Union Cemetery*, 316 Woodside Rd.

*Santa Cruz County*

Watsonville, *Watsonville City Plaza*, Bounded by Main, Peck, Union and E. Beach Sts.

*Sonoma County*

Santa Rosa, *Lumsden, W.H., House*, 727 Mendocino Ave.

**CONNECTICUT**

*Fairfield County*

Stamford, *Linden Apartments*, 10—12 Linden Pl.

**ILLINOIS**

*Carroll County*

Mt. Carroll, *Mark, Caroline, House*, 222 E. Lincoln St.

*Putnam County*

Putnam, *Condit, Cortland, House*, Off IL 29

**INDIANA**

*Jackson County*

Seymour, *Farmers Club*, 105 S. Chestnut St.

*Tippecanoe County*

Wayne Lafayette, *Andrew, Jesse, House*, 123 Andrew Pl.

*Wayne County*

Richmond, *Gennett, Henry and Alice, House*, 1829 E. Main St.

**KANSAS**

*Atchison County*

Atchison, *Glancy-Pennell House*, 519 N. 5th St.

Atchison, *Pease, Robert L., House*, 203 N. 2nd St.

*Cowley County*

Arkansas City, *Gladstone Hotel*, 201 N. Summit St.

Winfield, *Cowley County National Bank Building*, 820–822 Main St.

*Douglas County*

Lawrence, *Bell, George and Annie, House*, 1008 Ohio St.

*Lyon County*

Emporia, *Kress Building*, 702 Commercial St.

*Riley County*

Manhattan, *KSAC Radio Towers*, Kansas State University campus

*Sedgwick County*

Wichita, *Wall, Judge T.B., House*, 622 N. St. Francis Ave.
Wichita, *Wichita Wholesale Grocery Company*, 619 E. William St.

**KENTUCKY**

*Jefferson County*

Harrods Creeks, *Shady Brook Farm (Jefferson County M R A)*, *Avish Lane*
Louisville, *Atherton Carriage (Jefferson County M R A)*, 3204 Woodside Rd.
Louisville, *Edgewood (Jefferson County M R A)*, 3605 Glenview Ave.
Louisville, *Glenview Historic District (Jefferson County M R A)*, Glenview Ave.
Louisville, *Hewett House (Jefferson County M R A)*, 3605 Woodside Rd.
Louisville, *Horner House (Jefferson County M R A)*, 3509 Woodside Rd.
Louisville, *Ladless Hill (Jefferson County M R A)*, 6501 Longview Lane
Louisville, *Lincliff (Jefferson County M R A)*, 6100 Longview Lane
Louisville, *Midlands (Jefferson County M R A)*, 25 Poplar Hill Rd.
Louisville, *Pirtle House (Jefferson County M R A)*, 5803 Orion Rd.
Louisville, *Rockledge (Jefferson County M R A)*, 4810 Upper River Rd.
Louisville, *Shwab House (Jefferson County M R A)*, 4812 Upper River Rd.
Louisville, *Winkworth (Jefferson County M R A)*, 3200 Boxhill Lane
Louisville, *Woodside/John T. Bate House (Jefferson County M R A)*, 3100 Woodside Rd.

*Kenton County*

Covington, *Wallace Woods Area Residential Historic District*, Roughly bounded by 24th St., Glenway, Wallace, and Madison Aves.

*Mercer County*

Harrodsburg vicinity, *Burton, Ambrose, House*, Unity Rd.
Harrodsburg, *Honeysuckle Hill*, 712 Beaumont Ave.

**LOUISIANA**

*West Feliciana Parish*

St. Francisville vicinity, *Highland*, NW of St. Francisville, off Highland Rd.

**MAINE**

*Lincoln County*

Alna, *Smith, Asa, Homestead*,

**MARYLAND**

*Anne Arundel County*

Linthicum Heights, *Sunnyfields*, 825 Hammonds Lane

*Baltimore (Independent City)*
*Baltimore City College*, 530 N. Howard St.

**MICHIGAN**

*Oakland County*

Pontiac, *Franklin Boulevard Historic District*, Roughly bounded by Grand Truck Western R R, Orchard Lake Ave., Miller and W. Huron Sts.

*2Wayne County*

Detroit, *Palmer Woods Historic District*, Roughly bounded by Seven Mile Rd., Woodward Ave., and Strathcona Dr.

**MISSISSIPPI**

*Hinds County*

Jackson, *Morris, Joseph Henry, House*, 505 N. State St.

**MISSOURI**

*Buchanan County*

St. Joseph, *Robidoux School*, 201 S. 10th St.
*St. Louis (Independent City)*
*C. Hager and Sons Hinge Co.*, 139 Victor St.
*Leonard*, 4166 Lindell Blvd.
*Soulard-Page District*, Roughly bounded by Soulard, 8th, 12th, and LaSalle Sts.
*Speck District*, 11th and Rutger Sts.

**NEW JERSEY**

*Essex County*

East Orange, *Central Avenue Commerical Historic District*, 560–654 Central Ave.

**NEW YORK**

*Kings/New York County*

New York, *Manhattan Bridge*, Spans East River, between Front and Canal Sts.

*New York County*

New York, *Brown, James, House*, 326 Spring St.
New York, *Grand Central Terminal (Boundary Increase: Park Avenue Viaduct)*, 71–105 E. 42nd St., Park Ave. between E. 40th and E. 42nd Sts.

*Queens County*

Flushing, *Weeping Beech Tree*, 37th Ave. between Parsons Blvd. and Bowne St.

*Suffolk County*

Smithtown, *Blydenburgh Park Historic Distict*, Blydenburgh County Park

*Westchester County*

Yonkers, *Smith, Alexander, Carpet Mills Historic Distict*, Roughly bounded by Saw Mill River Rd., Orchard St., Lake and Ashburton Aves.

**OREGON**

*Benton County*

Corvallis, *Woodward, Elias, House*, 442 NW 4th St.

*Coos County*

Coquille, *Paulson, John E. and Christina, House*, 86 N. Dean St.

*Douglas County*

Myrtle Creek, *Rice Brothers and Adams Building*, 135 Main St.

*Lake County*

Lakeview, *Neveda-California-Oregon Railway Passenger Station*, 1400 Center St.

*Multnomah County*

Portland, *Benson, Simon, House*, 1504 SW 11th Ave.
Portland, *Hochapfel, Edward C., House*, 1520 SW 11th Ave.
Portland, *Whitney and Gray Building and Jake's Famous Crawfish Restaurant*, 401–409 SW 12th Ave.

*Union County*

La Grande, *Slater Building*, 216–224 Fir St.

**TENNESSEE**

*Giles County*

Pulaski, *Pulaski Courthouse Square Historic Distict*, First, Jefferson, Madison, and Second Sts.

*Greene County*

Greenville vicinity, *Rankin, David, House*, Snapp's Ferry Rd.

*Knox County*

Knoxville vicinity, *New Salem United Methodist Church*, 2417 Tipton Station Rd.

*Warren County*

McMinnville vicinity, *Oakham*, US 70 Bypass

**TEXAS**

*Hays County*

San Marcos, *Barber House (San Marcos MRA)*, 1000 Burleson St.
San Marcos, *Belger-Cahill Lime Kiln (San Marcos MRA)*, Lime Kiln Rd.
San Marcos, *Belvin Street Historic District (San Marcos MRA)*, 700, 800, 900 blocks of Belvin St., and 227 Mitchell St.
San Marcos, *Caldwell House (San Marcos MRA)*, 619 Maury St.
San Marcos, *Cape House (San Marcos MRA)*, 316 E. Hopkins St.
San Marcos, *Cemetery Chapel, San Marcos Cemetery (San Marcos MRA)*, TX 12.
San Marcos, *Episcopalian Rectory (San Marcos MRA)*, 225 W. Hopkins St.
San Marcos, *Farmers Union Gin Company (San Marcos MRA)*, 120 Grove St.
San Marcos, *Fire Station and City Hall (San Marcos MRA)*, 224 N. Guadalupe St.
San Marcos, *Fisher Hall (San Marcos MRA)*, 1132 Belvin St.
San Marcos, *Fort Street Presbyterian Church (San Marcos MRA)*, 516 W. Hopkins St.
San Marcos, *Goforth-Harris House (San Marcos MRA)*, 401 Comanche St.
San Marcos, *Green and Faris Buildings (San Marcos MRA)*, 136–144 E. San Antonio St.
San Marcos, *Hardy-Williams Building (San Marcos MRA)*, 127 E. Hopkins St.
San Marcos, *Hays County Jail (San Marcos MRA)*, 170 Fredericksburg St.
San Marcos, *Heard House (San Marcos MRA)*, 620 W. San Antonio St.
San Marcos, *Hofheinz, Augusta, House (San Marcos MRA)*, 1104 W. Hopkins St.
San Marcos, *Hofeinz, Walter, House (San Marcos MRA)*, 819 E. Hopkins St.
San Marcos, *Hutchison House (San Marcos MRA)*, LBJ Dr. and University St.

San Marcos, *Johnson House (San Marcos MRA)*, 1030 Belvin St.
San Marcos, *Kone-Cliett House (San Marcos MRA)*, 724 Burleson St.
San Marcos, *Main Building, Southwest Texas Normal School (San Marcos MRA)*, Old Main St., Southwest Texas State University campus
San Marcos, *McKie-Bass Building (San Marcos MRA)*, 111 N. Guadalupe St.
San Marcos, *Moore Grocery Company (San Marcos MRA)*, 101 S. Edward Gary St.
San Marcos, *Negro School (Dunbar School) (San Marcos MRA)*, Comaland and Endicott Sts.
San Marcos, *Ragsdale-Jackman-Yarbough House (San Marcos MRA)*, 621 W. San Antonio St.
San Marcos, *Rylander-Kyle House (San Marcos MRA)*, 711 W. San Antonio St.
San Marcos, *San Marcos Milling Company (San Marcos MRA)*, Nicols Alley
San Marcos, *San Marcos Telephone Company (San Marcos MRA)*, 138 W. San Antonio St.
San Marcos, *Simon Building (San Marcos MRA)*, 124–126 W. Hopkins St.
San Marcos, *Smith House (San Marcos MRA)*, 322 Scott St.
San Marcos, *William-Tarbutton House (San Marcos MRA)*, 626 Lindsey St.

**VERMONT**

*Washington County*

Waitsfield vicinity, *Waitsfield Village Historic District*, VT 100 and Bridge St.

*Windor County*

Springfield, *Springfield Downtown Historic District*, Roughly bounded by Black River, Mineral, Pearl, Main, and Valley Sts.

**VIRGINIA**

*Fredericksburg (Independent City)*

*Farmers Bank of Fredericksburg*, 900 Princess Anne St.

*Lancaster County*

Lancaster, *Lancaster Court House Historic District*, VA 3

*Richmond (Independent City)*

*Hasker and Marcuse Factory*, 2401–2413 Venable St.

**WYOMING**

*Park County*

Cody, *Downtown Cody Historic District*, 1155 to 1313 and 1192 to 1286 Sheridan Ave.

**MICHIGAN**

*Kalamazoo County*

Kalamazoo, *Old Central High School (Kalamazoo MRA)*, 714 S. Westnedge Ave.

FR Doc. 83-20123 Filed 7-25-83; 8:45 am]
BILLING CODE 4310-70-M

## INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

### Agency for International Development

**[Revised Delegation of Authority No. 121]**

### Personal Foreign Excess Property in Turkey; Delegation of Authority

Delegation of Authority No. 121, dated April 27, 1977 (42 FR 23672), is revoked and the following substituted for it:

Pursuant to the authority vested in me by IDCA Delegation of Authority No. 1, as amended, (October 1, 1979, 44 FR 57521, as amended October 31, 1980, 45 FR 74090) I hereby delegate to the principal diplomatice Officer of the United States in Turkey the following authority:

a. Upon the determination that it will be consistent with an in furtherance of the purpose of part I and within the limitations of the Foreign Assistance Act of 1961, as amended (the Act), to permit the furnishing of U.S. Government-owned excess property and related services in accordance with section 607(a) of the Act. Such authority shall be exercised only with respect to personal foreign excess property located in Turkey.

b. To make the determinations prescribed under section 607(c) of the Act:

(1) That, with respect to any U.S. Government-owned excess property which is to be made available in accordance with this Delegation of Authority, there is a need for such property in the quantity requested and such property is suitable for the purpose requested;

(2) The status and responsibility of the end-user justifies the requested transfer and the end-user has the ability effectively to recondition when necessary, use, and maintain such property; and

(3) The residual value, serviceability, and appearance of the property to be transferred will not reflect unfavorably on the image of the United States and will justify the accessorial costs, and the residual value at least equals the total of these costs.

Such determinations shall be made in writing prior to the transfer of such property. The authority delegated under ths subparagraph b may be redelegated to subordinate officers.

This Delegation of Authority revokes Delegation of Authority No. 28, dated May 2, 1963 (28 FR 4726), as amended, only insofar as Delegation of Authority No. 28 concerns Turkey.

This Delegation of Authority shall be effective July 13, 1983.

Dated: July 13, 1983.

**Frank B. Kimball,**

*Counselor.*

FR Doc 83-20060 Filed 7-25-83; 8:45 am]
BILLING CODE 6116-01-M

## INTERSTATE COMMERCE COMMISSION

### 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.
**Agatha L. Mergenovich,**
*Secretary.*

**Please direct status inquiries about the following to Team 1, (202) 275–7992.**

*Volume No. OP1–FC–292*

MC 81550. By decision of July 13, 1983, issued under 49 U.S.C. 10924, 10926, and the transfer rules at 49 CFR 1181, the Review Board, Members Fortier, Krock, and Williams approved the transfer to SMB TRANSPORT CO., Imlay City, MI, of License No. MC–156820, issued January 11, 1982, and Certificates Nos. MC–156820 (Sub-No. 1) issued February 16, 1982, MC–156820 (Sub-No. 2), issued November 12, 1982, and MC–156820 (Sub-No. 3) issued April 5, 1983, to SOUTHEASTERN MICHIGAN BROKERAGE COMPANY, Imlay City, MI, (A) to engage in operations, as a broker, in arranging for the transportation of general commodities (except household goods), between points in the U.S., and (B) authorizing the transportation over irregular routes, (1) for or on behalf of the U.S. government, of general commodities (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), between points in the U.S., (2) of juices, between points in CA, DE, FL, IL, LA, ME, MI, NY, RI, SC, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (3) of bananas, (a) from New Orleans, LA, Mobile, AL, and Tampa, FL, to Louisville, KY, (b) from New Orleans, LA, to Canton, OH, (4) of bananas, and (5) agricultural commodities, the transportation of which is otherwise exempt from economic regulation under 49 U.S.C. § 10526(a)(6) formerly Section 203(b) of the Interstate Commerce Act), in mixed loads with the commodities in (3) above, from Gulfport, MS, to Louisville, KY. Representative: James T. Darby, 1021 Irving Ave., Colonial Beach, VA 22443.

MC 81591. By decision of July 14, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Williams, Carleton and Dowell approved the transfer to CUFFE'S CHARTER SERVICE, INC., Virginia, MN, of Certificate No. MC–163290, issued April 22, 1983, to PEARSALL'S VOYAGEUR TRAVEL, INC., Virginia, MN, authorizing over irregular routes, transporting passengers and their baggage, in the same vehicle with passengers, in special and charter operations, beginning and ending at points in Carlton, Cook, Itasca, Koochiching, Lake, and St. Louis Counties, MN and extending to points in the U.S. (except AK and HI). An application for temporary authority has been filed. Representative: Robert S. Lee, 1600 TCF Tower, 121 South 8th St., Minneapolis, MN 55402.

**Please direct status inquiries about the following to Team 2 at (202) 275–7030.**

*Volume No. OP2–FC–328*

MC–FC–81568. By decision of July 19, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Joyce, Williams, and Dowell, approved the transfer to HERB JONES TRUCKING, INC., of Red Key, IN, of Permits No. MC–141823 Sub Nos. 1, 4, and 6 (in part), issued July 28, 1978, January 11, 1979, and July 23, 1980, respectively, to GLASS CONTAINER TRANSPORT, INC., of Ridgeway, SC, authorizing, as a contract carrier, over irregular routes, the transportation of (1) glass bottles and jars, and closures, from the facilities of Kerr Glass Manufacturing Corporation at or near Dunkirk (Jay County), IN, to points in NC and SC; (2)(a) glass containers, between the facilities of Kerr Glass Manufacturing Corporation at Dunkirk, IN, on the one hand, and, on the other, points in AL, AR, FL, GA, IA, KS, KY (except points in Boone, Campbell, Daviess, Fayette, Henderson, Jefferson, and Kenton Counties), LA, MD, MI, MN, MS, MO, NE, ND, OK, those points in that part of OH on and east of a line beginning at the junction of OH–KY State line and U.S. Hwy 23 and extending along U.S. Hwy 23 to Columbus, OH, then along Interstate Hwy 71 to Cleveland, OH, PA, SC, SD, TN, TX, VA, and WV; and (b) materials, equipment, and supplies used in the manufacture and distribution of glass containers and container accessories (except commodities in bulk), in the reverse direction of (2)(a) above; and (3)(a) containers and container closures, (b) such commodities as are dealt in by manufacturers and distributors of containers (except containers and container closures), when transported in mixed loads with containers, and (c) materials, equipment, and supplies used in the manufacture and distribution of the commodities in (3)(a) above (except commodities in bulk, in tank vehicles), between Dunkirk (Jay County), IN, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, OK, and TX; under continuing contract(s) in (1), (2), and (3) above with Kerr Glass Manufacturing Corporation of Sand Springs, OK. Representative: Archie B. Culbreth, 2200 Century Parkway, Suite 570, Atlanta, GA 30345, (404) 321–1765.

*Volume No. OP2–FC–329*

MC–FC–81598. By the decision of July 13, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Carleton, Parker, and Joyce approved the transfer to TRANSPORT COMPANY, INC., El Dorado, AR, of Certificates MC–24583 Subs 42F, 47(X)(A) and 35 (which was superseded by 47X(A)), and Permits MC–24583 Subs 40 and 50, issued June 30, 1981, January 22, 1982, April 23, 1981, June 18, 1981, and July 13, 1982, respectively, to FRED STEWART COMPANY, Magnolia, AR, authorizing under the certificate authority asphalt and asphalt products, between points in Pulaski and Union Counties, AR, and points in LA, TX, OH, MS, TN, MO, KY, IA, AL, KS, NC, PA, OH, and CA; petroleum and related products, between points in Union County, AR, on the one hand, and, on the other, points in AL, AZ, FL, KS, KY, LA, MS, MO, NC, OK, TN, and TX; and sodium hydrosulfide and waste petroleum refinery sulfide, from points in Union County, AR, to points in AL, LA, MS, TN, TX, OK, MO, KS, NC, FL, KY, and AZ; and under the permit authority transporting chemicals and related products, (a) between points in the U.S. under continuing contract(s) with Great Lakes Chemical Corporation, of El Dorado, AR, and (b) between points in the U.S. (except AK and HI), under continuing contract(s) with T & T Chemical Company, of El Dorado, AR, respectively. An application for temporary authority has been filed. Transferor will retain authority. This application has been renumbered from MC–F–15338. Representative: James M. Duckett, Suite 411, 221 W. 2nd St., Little Rock, AR 72201.

**Please direct status inquiries about the following to Team 3 at (202) 275–5223.**

*Volume No. OP3–FC–341*

MC–FC 81542. By decision of July 18, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Carleton, Parker, and Joyce, approved the transfer to MICHIANA TRANSPORTATION SERVICE, INC., Niles, MI, of Certificate Nos. MC–157755, and MC–157755 Sub 1, issued May 27, 1982, and May 6, 1982, to MICHIANA NEWS SERVICE, INC., Niles, MI, authorizing the irregular routes transportation of (1) general commodities (with exceptions), between the facilities of U.S. Aviex Company and Simplicity Pattern Co., Inc., at Niles, MI, on the one hand, and, on the other, points in the U.S. (except AK and HI), and (2) general commodities (with

exceptions) between Cincinnati, OH, on the one hand, and, on the other, points in IN. Applicant's representative: Edward Malinzak, 900 Old Kent Bldg., Grand Rapids, MI 49503. (616) 459-6121.

MC-FC 81572. By decision of July 15, 1983, issued under 49 U.S.C. 10931 or 10932, and the transfer rules at 49 CFR 1181, the Review Board, Members Parker, Krock, and Williams, approved the transfer to AIRPORT DELIVERY SERVICE, INC., Revere, MA, of Certificate of Registration No. MC-99754 (Sub-No. 1), issued April 1, 1964 to JET TRANSPORTATION, INC., Watertown, MA, evidencing a right to engage in transportation interstate commerce corresponding in scope to Certificate No. 2317, dated January 1, 1956, issued by the Massachusetts Department of Public Utilities authorizing transportation of (a) furniture, road, building, grading and waste materials, anywhere within the Commonwealth, and (b) property in bundles and containers and paper mills products within 25 miles radius of the State House, Boston. Applicant's representative: Richard L. Reynolds, 47 Jackson Street, Saugus, MA 01906. (617) 233-8200.

*Volume No. OP3-FC-342*

MC-FC-81570. By decision of July 15, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Joyce, Krock and Williams approved the transfer to A.T.I. ENTERPRISES, LTD., d.b.a. ASCHE TRANSFER, of Shannon, IL, of Certificate No. MC-105774 (Sub-No. 17)X, issued July 6, 1982, and the underlying authority in Certificate No. MC-105774 (Sub-10), issued December 10, 1981, to JOHNSON TRUCK LINE, INC., of Osborne, KS, authorizing the transportation of (1) *metal products*, between points in Whiteside County, IL, on the one hand, and, on the other, points in KS, MO, NE, IA, OK, AR, and TX, (2) *ores and minerals, clay, concrete, glass or stone products, and coal and coal products*, (a) between points in Phillips County, MT, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IA, KS, LA, MI, MN, MO, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, WI, and WY and (b) between points in Big Horn and Crook County, WY, on the one hand, and, on the other, points in AZ, AR, CA, CO, ID, IL, IA, KS, LA, MI, MN, MO, MT, NE, NV, NM, ND, OK, OR, SD, TX, UT, WA, and WY (except from the facilities of American Colloid Company in Big Horn County, WY, to points in WA), (3) *coal and coal products*, between points in Bowman County, ND, on the one hand, and, on the other, points in AZ, CA, LA, NM, OK, and TX, and (4) *metal products*, between Chicago, IL, on the one hand, and, on the other, points in IA, NE, KS, OK, and TX. Representative: Michael J. Ogborn, P.O. Box 82028, Lincoln, NE 68501, (402) 475-6761.

**Please direct status inquiries about the following to Team 4 at (202) 275-7669.**

*Volume No. OP4-FC-465*

MC-FC-81577. By decision of July 15, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Fortier, Williams, and Dowell approved the transfer to ED'S BOOM TRANSPORT LTD., of Stoney Creek, Ontario, Canada, of Certificate No. MC-145736 (Sub-No. 2)X, issued October 7, 1982, and the underlying superseded authority in MC-145736 (Sub-No. 1), issued September 15, 1981, to EDMOND JOSEPH RAINVILLE, of Stoney Creek, Ontario, Canada, authorizing the transportation of *machinery*, between points in the U.S. (except AK and HI). Representative: Edmond Rainville, 135 Homeside Ave., Stoney Creek, Ontario, Canada L8G 3G9, (416) 664-4001.

**Please direct status inquiries about the following to Team 5 at (202) 275-7289**

*Volume No. OP5-FC-355*

MC-FC-81558. By decision of July 14, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR 1181, the Review Board, Members Carleton, Parker, and Fortier, approved the transfer to BIG HORN TRANSPORTATION COMPANY, Bridger, MT, of Certificates Nos. MC-19778 Subs 39, 55, 70, 107F, 113F, and 120, issued October 31, 1962, February 17, 1965, October 7, 1965, July 31, 1980, June 3, 1981, and August 13, 1981, respectively, to THE MILWAUKEE MOTOR TRANSPORTATION COMPANY, Chicago, IL, authorizing the transportation of iron and steel articles, cement, contractors' equipment, tools and supplies, electrical equipment, and size and weight commodities, from and to named points in MT; lime and limestone dust, from Elliston, MT, to points in WY and ID; cement, from Trident, MT, to points in WY and ID; lumber, between specified points in MT, on the one hand, and, on the other, points in CO, WY, ND, SD, MN, and IA; and fly ash, between points in Yellowstone County, MT, on the one hand, and, on the other, points in ND. Representative for transferee: Donald W. Quander, 175 North 27th Street, Suite 1400, Billings, MT 59101.

[FR Doc. 83-20096 Filed 7-25-83; 8:45 am]
BILLING CODE 7035-01-M

## Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Lee Campbell (202) 275-7238. Comments regarding this information collection should be addressed to Lee Campbell, Interstate Commerce Commission, Room 1325, 12th and Constitution Ave. NW., Washington, D.C. 20423 and to Gary Waxman, Office of Management and Budget, Room 3001 NEOB, Washington, D.C. 20503, (202) 395-7313.

Type of Clearance: New
Bureau/Office: Office of Transportation Analysis
Title of Form: Rail TOFC/COFC monitoring Study-Shipper
OMB Form No.: None
Agency Form No.: Rail TOFC/COFC monitoring Study/Shipper
Frequency: Nonrecurring
Respondents: Shippers using "piggyback" service
No. of Respondents: 600
Total Burden Hrs.: 360.

**Agatha L. Mergenovich,**
*Secretary.*

[FR Doc. 83-20093 Filed 7-25-83; 8:45 am]
BILLING CODE 7035-01-M

**[Permanent Authority Volume No. OP2-325]**

## Republications of Grants of Operating Rights Authority Prior to Certification

The following grant of operating right authority is republished by order of the Commission to indicate a broadened grant of authority over that previous notice in the **Federal Register**.

An original and one copy of an appropriate petition for leave to intervene, setting forth in detail the precise manner in which petitioner has been prejudiced, must be filed with the Commission within 30 days after the date of this **Federal Register** notice.

By the Commission.

**Agatha L. Mergenovich,**
*Secretary.*

MC 162142 (republication), filed May 21, 1982, published in the **Federal**

**Register** issue of June 15, 1982, and republished this issue. Applicant: VERL CARNE, d.b.a. CARNEY TRUCKING, P.O. Box 627, Melvin, AL 36913. Representative: John A. Crawford, 17th Floor Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. A decision of the Commission, *Review Board 1*, decided February 2, 1983, and served February 14, 1983, finds that the present and future public convenience and necessity require operations by applicant in interstate or foreign commerce, over irregular routes as a *contract carrier*, by motor vehicle, transporting (1) *lumber and wood products*, and (2) *forest products*, between points in Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Missouri, Mississippi, Ohio, Oklahoma, Tennessee, and Texas, under continuing contract(s) with Masonite Corporation of Chicago, IL, and Timber Realization Company of Jackson, MS; that applicant is fit willing, and able properly to perform the granted service and to conform to statutory and administrative requirements. The purpose of this republication reflect the full scope of authority sought by the addition of Timber Realization Company of Jackson, MS, as a contracting shipper.

[FR Doc. 83-20094 Filed 7-25-83; 8:45 am]
BILLING CODE 7035-01-M

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**[Permanent Authority Decisions Volume No. 357]**

## Motor Carriers; Restriction Removals Decision-Notice

Decided: July 13, 1983.

The following restriction removal applications are governed by 49 CFR 1165. Part 1165 was published in the **Federal Register** of December 31, 1980, at 45 FR 86747 and redesignated at 47 FR 49590, November 1, 1982.

Persons wishing to file a comment to an application must follow the rules under 49 CFR 1165.12. A copy of any application can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the restriction removal applications are not allowed.

Some of the applications may have been modified prior to publication to conform to the special provisions applicable to restriction removal.

### Findings

We find, preliminarily, that each applicant has demonstrated that its requested removal of restrictions or broadening of unduly narrow authority is consistent with the criteria set forth in 49 U.S.C. 10922(h).

In the absence of comments filed within 25 days of publication of this decision-notice, appropriate reformed authority will be issued to each applicant. Prior to beginning operations under the newly issued authority, compliance must be made with the normal statutory and regulatory requirements for common and contract carriers.

By the Commission, Review Board Members Dowell, Carleton, and Parker.

**Agatha L. Mergenovich,**
*Secretary.*

**Please direct status inquiries to Team 5, at (202) 275-7289.**

MC 134779 (Sub-13X), filed June 30, 1983. Applicant: JANESVILLE AUTO TRANSPORT COMPANY, 1800 South Jackson St., P.O. Box 959, Janesville, WI 53545. Representative: Eugene C. Ewald, 100 West Long Lake Rd., Suite 102, Bloomfield Hills, MI 48013, (313) 645-9600. MC-119642 Sub 11 Permit: Broaden the commodity description from motor vehicles to "transportation equipment".

[FR Doc. 83-20092 Filed 7-25-83; 8:45 am]
BILLING CODE 7035-01-M

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## Office of Proceedings

## 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 inquiries to Team 1, (202) 275–7030.**

*Volume No. OP–1–290(F)*

Decided: July 18, 1983.

By the Commission, Review Board Members Parker, Carleton, and Krock.

MC 169111, filed July 8, 1983. Applicant: HENRY J. BRINKER, 222 New Hill Road, Bridgewater, NJ 08807. Representative: Robert B. Pepper, 168 Woodbridge Ave., Highland Park, NJ 08904, (201) 572–5551. As a *broker* of *general commodities* (except household goods), between points in the U.S.

MC 169140, filed July 11, 1983. Applicant: CRUSADER COACH LINES LTD., 1062 Fell Ave., Burnaby, B.C., Canada V5B 3Y6. Representative: George LaBissoniere, 15 S. Grady Way, Suite 239, Renton, WA 98055, (206) 228–3807. Transporting *passengers,* in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169160, filed July 11, 1983. Applicant: J&J TRANSPORTATION, 512A East 8th St., Richmond, VA 23224. Representative: Roy Milton Johnson, Jr. (same address as applicant), (804) 232–3120. As a *broker* of *general commodities* (except household goods), between points in the U.S.

*Volume No. OP–1–294 (F)*

Decided: July 19, 1983.

By the Commission, Review Board Members Joyce, Williams, and Dowell.

MC 164631, filed June 17, 1983. Applicant: JERRY DOUGLAS DILLS AND GERALD DEAN CARPENTER, d.b.a. DILLS AND CARPENTER TRANSIT, Route 1, Box 146, Vale, NC 28168. Representative: Gerald Dean Carpenter (same address as applicant), (704) 276–1948. Transporting *passengers,* in charter and special operations, between points in the U.S.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169040, filed July 5, 1983. Applicant: A&Z TRANSPORTATION, INC., 2297 Hyland Blvd., Staten Island, NY 10306. Representative: Kujtim Velija (same address as applicant), (212) 979–1327. Transporting *passengers,* in charter and special operations, between points in NY, NJ, PA, and CT.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

**Please direct status inquiries to Team 2, (202) 275–7030.**

*Volume No. OP–2–327*

Decided: July 19, 1983.

By the Commission, Review Board Members Parker, Krock, and Williams.

MC 169122, filed July 11, 1983. Applicant: P&P TRUCK STOPS, INC., P.O. Box 398, 3019 County St., Somerset, MA 02726. Representative: Francis E. Barrett, Jr., 9 Riverview Rd., Hingham, MA 02043, (617) 749–6500. As a *broker of general commodities* (except household goods), between points in the U.S.

MC 169123, filed July 8, 1983. Applicant: STYLE BUS CORP., 131 Foster Blvd., Babylon, NY 11702. Representative: Sidney J. Leshin, 3 E. 54th St., New York, NY 10022, (212) 759–3700. Transporting *passengers,* in special and charter operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded special and charter transportation.

MC 169132, filed July 11, 1983. Applicant: RAINBOW TRANSPORT BROKERS, INC., 7925 Nevada Ave., Suite D, Hammond, IN 46323. Representative: Carl L. Steiner, 135 S. LaSalle St., Chicago, IL 60603, (312) 236–9375. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169133, filed July 11, 1983. Applicant: J. C. UNDERWOOD, JR., 5310 E Main St., Columbus, OH 43213. Representative: James Duvall, 2515 W Granville Rd., Worthington, OH 43085, (614) 389–2531. As a *broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

**Please direct status inquiries about the following to Team Four at (202) 275–7669.**

*Volume NO. OP4–458*

Decided: July 15, 1983.

By the Commission, Review Board, Members: Fortier, Parker and Joyce.

MC 166427 (Sub-1), filed July 11, 1983. Applicant: GREER TOURS, INC., 1403 Chestnut Ridge, Kirkwood, TX 77339. Representative: Mark Estes (same address as applicant), (713) 358–8854. Transporting *passengers,* in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 167166, filed July 11, 1983. Applicant: WINDSOR TOURS & CHARTERS, INC., 4301 E. Main, Farmington, NM 87401. Representative: Robert G. Windsor (same address as applicant), (505) 325–9801. 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 169197, filed July 13, 1983. Applicant: TIP KENNETH CLAUD, d.b.a. T. K. CLAUD TRUCKING, 38 W. 470 Toms Trail, St. Charles, IL 60174. Representative: Charles H. Wickman, 901 Burlington Ave., P.O. Box 128, Western Springs, IL 60558, (312) 246–9090. 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.

*Volume No. OP4–461*

Decided: July 18, 1983.

By the Commission, Review Board, Members: Krock, Carleton and Parker.

MC 146637 (Sub-9), filed June 17, 1983. Applicant: YANKEE REFRIGERATED XXPRESS, INC., 1912 E. Wensley, Philadelphia, PA 19134. Representative: E. D. Anderson, 1001 Connecticut Ave, NW., Suite 838, Washington, DC 20036, (202) 296–2500. Transporting (A) *general commodities* (except classes A and B explosives and household goods), between points in the U.S., (B) *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., and (C) *used household goods* for the account of the United States Government incidental to the performance of a pack-and-crate service on behalf of the Department of Defense, between points in the U.S.

Note.—Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register** issue. Part A will be published in Vol #460. Parts B and C will published in Vol #461.

MC 154346 (Sub-3), filed July 11, 1983. Applicant: ERNEST RYLIE, 3105 N. Hwy 75, Corsicana, TX 75110. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 57062, (214) 255–6279. As a

*broker of general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169107, filed July 5, 1983. Applicant: CORBITT BURROUGH, 4626 Bay Lane, Memphis, TN 38118. Representative: Corbitt Burrough (same address as applicant), (901) 794–0591. 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).

*Volume No. OP4–463*

Decided: June 9, 1983.

By the Commission, Review Board, Members: Dowell, Fortier, and Krock.

MC 168066, filed May 16, 1983, previously noticed in the **Federal Register** issue of June 17, 1983, and republished this issue. Applicant: NEW ENGLAND AND WESTERN TRANSPORTATION COMPANY, Box 355, Wyoming, RI 02898. Representative: Merle K. Peirce. (Same address as applicant), (401) 295–0641. (A) transporting *passengers* in charter and special operations, between points in the U.S.; and (B) over regular routes, in interstate, foreign, and intrastate commerce, transporting *passengers*, between South Kingstown, RI and New London, CT, from South Kingstown over local roads to junction RI Hwy 138, then over RI Hwy 138 to junction RI Hwy 2, then over RI Hwy 2 to junction RI Hwy 112, then over RI Hwy 112 to junction RI Hwy 91, then over RI Hwy 91 to junction RI Hwy 3, then over RI Hwy 3 to junction U.S. Hwy 1, then over U.S. Hwy 1 to junction CT Hwy 2, then over CT Hwy 2 to junction Interstate Hwy 95, then over Interstate Hwy 95 to junction Alternate U.S. Hwy 1, then over Alternate U.S. Hwy 1 to New London, CT, serving all intermediate points, and the off-route points of Shannock, RI.

**Notes.**—(1) Applicant seeks in (A) above to provide privately funded charter and special transportation. (2) Applicant seeks in (B) above to provide regular-route service in interstate, foreign and intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route. (3) Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of the **Federal Register** issue. Part A will be published in VOL #462. Part B will be published in VOL #463, and (4) the purpose of this republication is to correct the territorial description.

*Volume No. OP4–467*

Decided: July 19, 1983.

By the Commission, Review Board, Members: Krock, Parker and Joyce.

MC 169126, filed July 8, 1983. Applicant: CALIFORNIA TRAILS, INC., 846 Arden Ave., Glendale, CA 91202. Representative: Delano H. Wright (same address as applicant), (213) 245–0902. 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 169136, filed July 7, 1983. Applicant: JAMES P. DOYLE, d.b.a. WFL, LTD. P.O. Box 76, Wisconsin Dells, WI 53965. Representative: Stanley C. Olsen, Jr., 5200 Willson Rd., Suite 307, Edina, MN 55424 (612) 927–8855. As a *broker of general commodities* (except, household goods), between points in the U.S. (except HI).

MC 169146, filed July 11, 1983. Applicant: TRANSPORT MANAGERS, INC., 89 Oak St., Hartford, CT 06103. Representative: Charles T. Alfano (same address as applicant), (203) 527–3225. As a *broker of general commodities* (except household goods) between points in the U.S.

MC 169156 filed July 11, 1983. Applicant: TRAVEL TIMES SERVICES, 3640 Nansemond Parkway, Suffolk, VA 23435. Representative: Mary C. Williams (same address as applicant), (804) 397–7520. Transporting *passengers*, in charter and special operations, beginning and ending at points in VA and NC, and extending to points in the U.S.

**Note.**—Applicant seeks to provide privately funded charter and special transportation.

**For the following, please direct status calls to Team 5 at 202–275–7289.**

*Volume No. OP5–358*

Decided: July 14, 1983.

By the Commission, Review Board Members Fortier, Dowell, and Carleton.

MC 163099 (Sub-1), filed July 5, 1983. Applicant: COTE DISTRIBUTION SYSTEMS, 310 Tradewinds Dr., Suite 8, San Jose, CA 95123. Representative: Christopher M. Cote, 1515 Welburn Ave., Gilroy, CA 95020, (408) 642–7566. Transporting *passengers*, in special and charter operations, between points in the U.S. (except HI).

**Note.**—Applicant seeks to provide privately funded charter and special transportation.

MC 165688, filed July 1, 1983. Applicant: GENERAL AMBASSADOR LIMOUSINE, INC., d.b.a. AMBASSADOR LIMOUSINE, 820 North New York Ave., Atlantic City, NJ 08401. Representative: Victor L. Schwartz, Suite 1601 Architects Bldg., 117 South 17th St., Philadelphia, PA 19103, (215) 569–8719. Transporting *Passengers*, in special and charter operations, between points in the U.S. (except HI).

**Note.**—Applicant seeks to provide privately funded charter and special transportation.

MC 169038, filed July 5, 1983. Applicant: DONALD F. MASEMER, P.O. Box M87, York, PA 17405. Representative: Donald F. Masemer (same address as applicant), 717–843–6433. As a broker of *general commodities* (except household goods), between points in the U.S. (except AK and HI).

MC 169049, filed July 1, 1983. Applicant: CHARLES W. WILSON AND DEA R. WILSON TRANSPORT SERVICE, RD #115, Box 481, Nisswa, MN 56468. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309, 515–244–2329. 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).

*Volume No. OP5–359*

Decided: July 14, 1983.

By the Commission, Review Board Members Parker, Fortier, and Krock.

MC 169009, filed June 30, 1983. Applicant: INTERNATIONAL SHIPPER-CARRIER ALLIANCE, LTD, 8989 Southeast McLoughlin, Milwaukie, OR 97222. Representative: Wilmer B. Hill, Suite 366, 1030 Fifteenth St., N.W., Washington, DC 20005, 202–296–5188. As a broker of *general commodities* (except household goods), between points in the U.S.

[FR Doc. 83–20097 Filed 7–25–83; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Proposed Revised 1983 Aggregate Production Quotas

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of Proposed Revised 1983 Aggregate Production Quotas.

**SUMMARY:** This notice proposes revised 1983 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act. Since the establishment of the 1983 aggregate production quotas on April 4,

1983 (48 FR 14453), DEA has reviewed data submitted by registered manufacturers concerning actual 1982 dispositions and year-end inventories and has determined that revisions of some of the previously established quotas are necessary.

**DATE:** Comments or objections should be received on or before August 25, 1983.

**ADDRESS:** Send comments or objections in quintuplicate to: Acting Administrator, Drug Enforcement Administration, 1405 I Street, NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative.

**FOR FURTHER INFORMATION CONTACT:** Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Telephone (202) 633–1366.

**SUPPLEMENTARY INFORMATION:** Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for all controlled substances in Schedules I and II each year. This responsibility has been delegated to the Acting Administrator of the Drug Enforcement Administration pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On April 4, 1983, a notice of the 1983 aggregate production quotas was published in the **Federal Register** (48 FR 14453). Also indicated in that notice was that pursuant to Title 21 of the Code of Federal Regulations, § 1303.23(c), the Acting Administrator of the Drug Enforcement Administration would adjust these quotas in early 1983 based upon a review of 1982 year-end inventory, 1982 disposition data submitted by quota applicants and other information available to DEA.

The aggregate production quotas represent those amounts of controlled substances that may be produced in the United States in 1983 and does not include amounts which may be imported for use in industrial processes.

When determining the below listed proposed revised 1983 aggregate production quotas, the following factors influenced DEA's determination to propose either raising or lowering the previously established quotas for 1983:

(a) The decreases proposed for amobarbital, fentanyl, phenmetrazine and secobarbital reflect a decline in sales which therefore resulted in inventories at year-end 1982 greater than that predicted.

(b) The increases proposed for codeine, dextropropoxyphene, dihydrocodeine, hydrocodone, meperidine, methadone, opium, and oxycodone reflect sales which were greater than previously estimated due to an increase in demand for narcotic drugs for treatment of pain and as antitussive and antidiarrheal agents.

(c) The increases proposed for morphine (for conversion), thebaine (for sale) and thebaine (for conversion) reflect the increases in the quotas of the Schedule II substances which are derived from them. Further, the increases proposed for thebaine (for conversion), thebaine (for sale) and oxycodone (for conversion) take into account the anticipated increases in the production of certain noncontrolled substances derived from thebaine.

(d) The increases proposed for amphetamine and desoxyephedrine reflect sales which were greater than previously estimated and which therefore resulted in inventories at year-end 1982 lower than those predicted. The increase for methylphenidate reflects the introduction of a new dosage form.

(e) The increase proposed for 2,5 dimethoxyamphetamine reflects a manufacturing process change.

Based upon the above considerations, as well as estimates of the medical needs of the United States submitted to the Drug Enforcement Administration by the Food and Drug Administration, the Acting Administrator of the Drug Enforcement Administration, under the authority vested in the Attorney General by Section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Acting Administrator by § 0.100 of title 28 of the Code of Federal Regulations, hereby proposes the following changes in the aggregate production quotas for 1983 for the below listed controlled substances, expressed in grams of anhydrous acid or base:

| Basic class | Previously established 1983 aggregate production quota | Proposed revised 1983 aggregate production quota |
|---|---|---|
| Schedule I: 2, 5-Dimethoxyamphetamine | 9,000,000 | 10,300,000 |
| Schedule II: | | |
| Amobarbital | 2,728,000 | 1,646,000 |
| Amphetamine | 510,000 | 610,000 |
| Codeine (for sale) | 56,452,000 | 61,016,000 |
| Desoxyephedrine | 1,491,000 | [1] 1,553,000 |
| Dextropropoxyphene | 53,345,000 | 59,947,000 |
| Dihydrocodeine | 1,425,000 | 1,489,000 |
| Fentanyl | 5,014 | 1,100 |
| Hydrocodone | 1,058,000 | 1,339,000 |
| Hydromorphone | 131,000 | 162,000 |
| Meperidine | 9,382,000 | 11,245,000 |
| Methadone | 1,400,000 | 1,675,000 |
| Methadone Intermediate | 1,750,000 | 2,094,000 |
| Methylphenidate | 1,062,000 | 1,221,000 |
| Morphine (for sale) | 985,000 | 1,062,000 |
| Morphine (for conversion) | 61,686,000 | 69,183,000 |
| Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium) | 1,919,000 | 2,173,000 |
| Oxycodone (for sale) | 1,800,000 | 1,837,000 |
| Oxycodone (for conversion) | 8,500 | 1,012,000 |
| Oxymorphone | 4,000 | 6,000 |
| Phenmetrazine | 1,838,000 | 0 |
| Phenylacetone | | 231,000 |
| Secobarbital | 5,435,000 | 3,292,000 |
| Thebaine (for sale) | 2,275,000 | 2,911,000 |
| Thebaine (for conversion) | 1,580,000 | 2,050,000 |

[1] 1,353,000 grams for the production of levodesoxyephedrine for use in a noncontrolled, nonprescription product and 200,000 grams for the production of methamphetamine.

All interested persons are invited to submit their comments and objections in writing regarding this proposal. A person may object to or comment on the proposal relating to any of the above-mentioned substances without filing comments or objections regarding the others. If a person believes that one or more issues raised by him warrant a hearing, he should so state and summarize the reasons for his belief.

In the event that comments or objections to this proposal raise one or more issues which the Acting Administrator finds, in his sole discretion, warrant a hearing, the Acting Administrator shall order a public hearing by a notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

Pursuant to Sections 3(c)(3) and 3(e)(2)(B) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Acting Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The establishment of annual aggregate production quotas for Schedule I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Dated: July 1, 1983

**Francis M. Mullen, Jr.,**

*Acting Administrator, Drug Enforcement Administration.*

[FR Doc. 83-20125 Filed 7-25-83; 8:45 am]

BILLING CODE 4410-09-M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Agency Forms Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibility under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the proposed forms and recordkeeping requirements that will affect the public.

List of Forms Under Review: On each Tuesday and/or Friday, as necessary, the Department of Labor will publish a list of the Agency forms under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new forms, revisions, extensions (burden change), extensions (no change), or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of any particular revision they are interested in.

Each entry will contain the following information:

The Agency of the Department issuing this form.

The title of the form.

The Agency form number, if applicable.

How often the form must be filled out.

Who will be required to or asked to report.

Whether small business or organizations are affected.

The standard industrial classsification (SIC) codes, referring to specific respondent groups that are affected.

An estimate of the number of responses.

An estimate of the total number of hours needed to fill out the form.

The number of forms in the request for approval.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the proposed forms and supporting documents may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, Telephone 202–523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–5526, Washington, D.C. 20210. Comments should also be sent to the OMB reviewer, Arnold Strasser, Telephone 202–395–6880, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, NEOB, Washington, D.C. 20503.

Any member of the public who wants to comment on a form which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Employment and Training Administration
Procedures for Classifying Labor Surplus Areas
ETA RC 58
On Occasion
State or local governments
208 responses; 208 hours.

DOL issues an annual list of labor surplus areas (LSAs) so that Federal agencies can direct procurement contracts to employers in high unemployment areas. The annual LSA list is updated during the year based upon petitions submitted to DOL by State employment security agencies requesting additional areas for LSA classification.

**Extension (No Change)**

Bureau of Labor Statistics
Standard Form 424; BLS/OSHS Federal/State Statistical Grant Application
Annually
State or Local Governments
SIC: 944
48 responses; 384 hours; 1 form.

Cost information and program objectives are needed to evaluate benefits to the government and the extent of cost effectiveness. Data will become part of a management information system to generate summaries for authorized users. The respondents are State agencies designated by Governors as participants.

**Extension (Burden Change)**

Employment Standards Administration
Request for Earnings Information
On occasion
Individuals or households
2,000 responses; 500 hours; one form.

Report gathers information regarding an employee's average weekly wage. This information is required for determination of compensation amounts in accordance with Section 10 of the Longshoremen's and Harbor Workers' Compensation Act.

Signed at Washington, D.C. this 21st day of July, 1983.

**Paul E. Larson,**

*Departmental Clearance Officer.*

[FR Doc. 83-20151 Filed 7-25-83; 8:45 am]
BILLING CODE 4510-23-M

### Employment and Training Administration

### Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the location listed. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market with particular emphasis upon its potential impact upon competitive enterprises in the same areas.

4. The competitive effect upon other facilities in the same industry located in

other areas (where such competition is a factor).

5. In the case of application involving the establishment of branch plants or facilities, the potential effect on such new facilities in other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Richard C. Gilliland, Director, U.S. Employment Service, Employment and Training Administration, 601 D Street, NW., Room 8000—Patrick Henry Building, Washington, D.C. 20213.

Signed at Washington, D.C., this 21st day of July 1983.

**Robert S. Kenyon,**

*Director, Office of Program Operations.*

Applications received during the week ending July 23, 1983.

*Name of applicant and location of enterprise and principal product or activity:*

Conolog Corporation, Somerville, New Jersey; Manufacture of Electromagnetic wave filters, transformers, modulators, transmitters, receivers, scanners and other supervisory and control equipment.

[FR Doc. 83-20120 Filed 7-25-83; 8:45 am]

BILLING CODE 4510-30-M

## Mine Safety and Health Administration

**[Docket No. M-83-71-C]**

### Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Control Plaza, Pittsburgh, PA 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Bishop No. 34 Mine (I.D. No. 46-01400) located in McDowell County, West Virginia. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be examined in their entirety on a weekly basis.

2. The entries in 6-Right section were driven many years ago and have deteriorated, resulting in adverse roof conditions and major roof falls, making these aircourses extremely hazardous to travel and examine. Rehabilitation of these aircourses would expose miners to extremely hazardous conditions.

3. As an alternate method, petitioner proposes to establish a checkpoint in the 6-Right section where the right return enters the left return. Results of the air measurements will be recorded as required by the standard.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

### Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 25, 1983. Copies of the petition are available for inspection at that address.

**Patricia W. Silvey,**

*Acting Director, Office of Standards, Regulations and Variances.*

Dated: July 14, 1983.

[FR Doc. 83-20149 Filed 7-25-83; 8:45 am]

BILLING CODE 4510-43-M

## Occupational Safety and Health Administration

### Tennessee Standards; Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator) under a delegation of authority from the assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the **Federal Register** (38 FR 17838) of the approval of the Tennessee plan and the adoption of Subpart P to Part 1952 containing the decision. The Tennessee plan provides for the adoption of Federal Standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to Federal standard changes, the State has submitted by letter dated March 30, 1982 from J.B. Richesin, Jr., Commissioner of Labor, Tennessee Department of Labor, to William W. Gordon, Regional Administrator, and incorporated as a part of the plan, amended State standards comparable to amendment to Federal standards: 29 CFR 1910.177 Servicing of Multipiece Rim Wheels, with Appendix A and B, dated January 29, 1980; 29 CFR 1910.217 Mechanical Power Presses, corrections, dated February 8, 1980; 29 1910.1043 Cotton Dust, dated February 26, 1980; 29 CFR 1910.20 Access to Employee Exposure and Medical Records, dated May 23, 1980; 29 CFR 1910.440 Commercial Diving, amended, May 23, 1980; 29 CFR 1910.1001 Asbestos, amended, dated May 23, 1980; 29 CFR 1910.1003 4/ Nitrobiphenyl, amended, May 23, 1980; 29 CFR 1910.1004 alpha-Naphthylamine, amended, dated May 23, 1980; 29 CFR 1910.1006, Methyl chloromethyl ether, amended, May 23, 1980; 29 CFR 1910.1007 3,3'-Dichlorobenzidine (and its salts), amended, dated May 23, 1980; 29 CFR 1910.1008, bis-Chloromethyl ether, amended, dated May 23, 1980; 29 CFR 1910.1009 beta-Naphthylamine, amended, May 23, 1980; 29 CFR 1910.1010 Benzidene, amended, May 23, 1980; 29 CFR 1910.1011 4-Aminodiphenyl, amended, May 23, 1980; 29 CFR 1910.1012 Ethyleneimine, amended, dated May 23, 1980; 29 CFR 1910.1013 beta-Propiolactone, amended, dated May 23, 1980; 29 CFR 1910.1014 2-Acetylaminofluorene, amended dated May 23, 1980; 29 CFR 1910.1015, 4-Dimethylaminoazobenzene, amended, dated May 23, 1980; 29 CFR 1910.1016, N-Nitrosodimethylamine, amended, dated May 23, 1980; 29 CFR 1910.1017 Vinyl chloride, amended, dated May 23, 1980; 29 CFR 1910.1018 Inorganic arsenic, amended, dated May 23, 1980; 29 CFR 1910.1025, Lead, amended, dated May 23, 1980; 29 CFR 1910.1028 Benzene, amended, dated May 23, 1980; 29 CFR 1910.1029 Coke oven emissions, amended, dated May 23, 1980; 29 CFR 1910.1043, Cotton dust, amended dated May 23, 1980; 29 CFR 1910.1044 1,2-dibromo-3-chloropropane, amended, dated May 23 1980; CFR 1910.1045, Acrylonitrile, amended, dated May 23, 1980; 29 CFR 1910.1046 Exposure to Cotton Dust in cotton gins, amended, dated May 23, 1980; 29 CFR 1910.423, Commercial diving, corrected, dated June 29, 1980; Correction of typographical errors in Federal Register dated May 23, 1980, Items 50 through 70, dated August 15, 1980; 29 CFR 1910.35

Definitions, amended, dated September 12, 1980; 29 CFR 1910.37 Means of Egress, amended, dated September 12, 1980; 29 CFR 1910.38 Employee Emergency Plans and Fire prevention plans, revised, dated September 12, 1980; Appendix to Subpart E, Means of Egress, added, dated September 12, 1980; 29 CFR 1910.107, Spray finishing using flammable and combustible materials, amended, dated September 12, 1980; 29 CFR 1910.108, Dip tanks containing flammable or combustible liquids, amended, dated September 12, 1980; 29 CFR 1910.109 Explosives and Blasting, revised, dated September 12, 1980; 29 CFR 1910.156 renumbered 29 CFR 1910.155 and revised, dated September 12, 1980; 29 CFR 1910.164, Fire Brigades renumbered 29 CFR 1910.156 Fire Brigades, revised, dated September 12, 1980; 29 CFR 1910.157 Portable Fire Extinguishers, revised, dated September 12, 1980; 29 CFR 1910.158 Standpipes and Hose systems, revised, dated September 12, 1980; 29 CFR 1910.159 Automatic sprinkler systems, revised, dated September 12, 1980; 29 CFR 1910.160, Fixed Extinguisher Systems, General, revised, dated September 12, 1980; 29 CFR 1910.161, Fixed Extinguishing Systems Dry Chemical, revised, dated September 12, 1980; 29 CFR 1910.162, Fixed Extinguishing Systems Gaseous agent, dated September 12, 1980; 29 CFR 1910.163, Fixed Extinguishing Systems Water Spray and Foam, revised, dated September 12, 1980; 29 CFR 1910.164 Fire Detection Systems, dated September 12, 1980; 29 CFR 1910.165 Employee Alarm Systems revised, dated September 12, 1980; 29 CFR 1910.165(a) and 29 CFR 1910.165(b) revoked, dated September 12, 1980; Appendices A-Fire Protection, B-National Consensus Standards, C-Fire Protection, D-Publications, E-Test Methods for protective clothing, added to Subpart L, dated September 12, 1980; 29 CFR 1910.1043 Cotton Dust, Sampling Equipment, dated October 10, 1980; 29 CFR 1926.500 Guardrails, handrail and covers, added, dated November 14, 1980; 29 CFR 1926.502 Definitions, added, November 14, 1980; Appendix "A" to Subpart M, added, dated November 14, 1980. These standards were promulgated by filing with the Tennessee Secretary of State on March 18, 1980, July 29, 1981, respectively, pursuant to the Tennessee Ocupational Safety and Health Act of 1972 (Title 50, Chapter 5, Tennessee Code annotated as amended July 1, 1977).

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the updated standards are identical to Federal Standards. The standards are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standard supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, 501 Union Building, Nashville, Tennessee 37219; Office of the Regional Administrator, Suite 587, 1375 Peachtree Street, N.W., Atlanta, Georgia 30367; Office of the Director of Federal Compliance and State Programs, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the Tennessee State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with procedural requirements of State law and further public participation would be unnecessary.

This decision is effective July 26, 1983. (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Atlanta, Georgia, this 15th day of June, 1982.

**William W. Gordon,**

*Regional Administrator.*

[FR Doc. 83-20150 Filed 7-25-83; 8:45 am]

BILLING CODE 4510-26-M

## MERIT SYSTEMS PROTECTION BOARD

**[Docket No. HQ75218210015]**

### Oral Argument in the case of Social Security Administration, Department of Health and Human Services v. Robert W. Goodman, Administrative Law Judge, MSPB

**AGENCY:** Merit Systems Protection Board.

**ACTION:** Notice of hearing and opportunity to participate in oral argument in the case of *Social Security Administration, Department of Health and Human Services* v. *Robert W. Goodman, Administrative Law Judge,* MSPB Docket No. HQ75218210015.

**SUMMARY:** In September, the Board will hear oral argument in the case of *Social Security Administration, Department of Health and Human Services* v. *Robert W. Goodman, Administrative Law Judge,* MSPB Docket No. HQ75218210015. *Social Security Administration* v. *Robert W. Goodman* is the first case under 5 U.S.C. 7521 which seeks to remove or otherwise penalize an administrative law judge for reasons which are purely performance related. At issue in this case is whether an administrative law judge may be removed under 5 U.S.C. 7521 for being insufficiently productive or whether the "good cause" standard of 5 U.S.C. 7521 can not be interpreted to encompass low productivity.

In addition to the parties to the *Goodman* case, the Board invites participation by interested persons, agencies and organizations. Requests to participtae in the argument must be made in writing. They should be accompanied by a brief or other legal argument (original and one copy) indicating the position the requestor is expected to take at the hearing and the legal reasons therefor. Interested parties who wish to participate but who do not wish to participate in the oral argument may file amicus briefs. In order to eliminate duplicative argument, the Board may limit participationin the oral argument. All written materials received by the deadline will, however, be considered by the Board.

Oral argument in this case will not be limited to any specific issues identified below. However, briefs submitted in response to this notice should be limited to the following issues:

1. Does the Board have the authority to determine the appropriate penalty when "good cause" has been found under 5 U.S.C. 7521, or is the Board limited to accepting, mitigating or rejecting the agency's proposed penalty?

2. If the Board does have the authority to impose a sanction other than the one proposed by the agency, does the Board have the authority to order the demotion of an administrative law judge to a position other than that of an administrative law judge?

3. What is the relationship, if any, of the "good cause" standard of 5 U.S.C. 7521(a) to the "efficiency of the service standard" of 5 U.S.C. 7513 and/or to the "good behavior" standard of Article III of the U.S. Constitution?

4. If low productivity may constitute good cause for removal of an administrative law judge, what evidence must the employing agency introduce in order to meet its burden of proof?

**DATES:** Submission of requests to participate in oral argument and/or submission of briefs: August 19, 1983. Oral argument will be on September 22, 1983, at 10:00 a.m.

**ADDRESSES:** Requests to participate in oral argument and/or submission of briefs: Office of the Secretary, Attention: Delores Satterfield, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419. Oral argument will be heard in Room 801, 1120 Vermont Avenue, NW., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Joseph J. Ellis, Merit Systems Protection Board, Office of General Counsel, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

**SUPPLEMENTARY INFORMATION:** Copies of the recommended decision of the administrative law judge in the *Goodman* case may be obtained from the Office of the Secretary, Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, D.C. 20419.

For the Board:
Dated: July 21, 1983.

**Herbert E. Ellingwood,**

*Chairman.*

[FR Doc. 83-20156 Filed 7-25-83; 8:45 am]

BILLING CODE 7400-01-M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-66]

### Agency Report Forms Under OMB Review

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of Agency Report Forms Under OMB Review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission. In addition, agencies are required to publish notice of those regulations which include information requirements on the public before December 31, 1983. The NASA Procurement Regulation and the NASA Patent Regulation require information from the public. The information required by the NASA Procurement Regulation is submitted for OMB clearance for the first time. The information requirements for the NASA Patent Regulation (Title 14 Section 1245.207) have already been cleared by OMB (2700-0039) and are mentioned here as a collection of information contained in an existing regulation.

Copies of the proposed forms, the request for clearance (S.F. 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

**DATE:** Comments must be received in writing by August 5, 1983. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

**ADDRESS:**

Christine Cabell, NASA Agency Clearance Officer, Code NSM-23, NASA Headquarters, Washington, D.C. 20546

Suzann Evinger, Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Christine Cabell, NASA Agency Clearance Officer, (202) 755-8390

**Reports**

Title: NASA Procurement Regulation
Type of Request: Existing Collection in Use Without an OMB Control Number
Frequency of Report: As Required
Type of Respondent: Individuals Small and Large Businesses, State and Local Governments and Non-Profit Institutions
Annual Responses: 398,452
Annual Reporting Hours: 9,562,848
Number Recordkeepers: 56,120
Total Recordkeeping Hours: 112,240
Total Annual Burden: 9,675,088

Abstract-Needs/Uses: The contract forms and record keeping requirements used in collecting information from the public provide management data to NASA, allow contract monitoring and meet other Executive and Legislative Branch information levies.

Title: Information Collection from Public in Support of NASA Acquisition Process
Type of Request: Existing Collection in Use Without an OMB Control Number
Frequency of Report: One Time Response and as Required by Contract
Type of Respondent: Individuals, Small and Large Business, State and Local Governments and Non-Profit Institutions
Annual Responses: 514,487
Annual Reporting Hours: 17,492,388.

Abstract-Needs/Uses: Information collection is required to evaluate bids, proposals and other responses from potential contractors as the basis for making awards for mission required goods and services and supplies, in conformance with the Space Act, 42 U.S.C. 2451 et seq.

**Ann P. Bradley,**

*Acting Associate Adminstrator for Management.*

July 18, 1983.

[FR Doc. 83-19783 Filed 7-25-83; 8:45 am]

BILLING CODE 7510-01-M

## NUCLEAR REGULATORY COMMISSION

### Applications for Licenses To Export Nuclear Facilities or Materials

Pursuant to 10 CFR 110.70(b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the Nuclear Regulatory Commission's Public Document Room located at 1717 H Street, N.W., Washington, D.C.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, the Secretary, U.S. Nuclear Regulatory Commission and the Executive Secretary, Department of State, Washington, D.C. 20520.

In its review of applications for licenses to export production or utilization facilities, special nuclear materials or source material, noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the facility or material to be exported. The table below lists all new major applications.

Dated this 19th day of July 1983 At Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Marin R. Peterson,**

*Acting Assistant Director Export/Import and International Safeguards Office of International Programs.*

FEDERAL REGISTER (EXPORTS)

| Name of applicant, date of application, date received, application No. | Material type | Material in kilograms | | End-use | Country of destination |
|---|---|---|---|---|---|
| | | Total elements | Total isotope | | |
| Exxon Nuclear Co., Inc., June 17, 1983, June 20, 1983 XSNMO2053. | 5 pct Enriched uranium | 3,600 | 180 | "Heels" contained in cylinders being returned | France. |
| Mitsui & Co. (USA), June 21, 1983, June 23, 1983, XSNMO2054. | 3.85 pct Enriched uranium | 3,632 | 96 | Reload fuel for Tsuruga | Japan. |
| Mitsui & Co. (USA), July 1, 1983, July 6, 1983, XSNMO2055. | 4 pct Enriched uranium | 11,231 | 348 | Reload fuel for Fukushima I-1 | Japan. |
| General Electric Co., June 30, 1983, July 5, 1983, XSNMO2057. | 3.8 pct Enriched uranium | 11,345 | 309 | Reload fuel for Tsuruga | Japan. |
| General Electric Co., June 30, 1983, July 5, 1983, XSNMO2058. | 3.95 pct Enriched uranium | 32,445 | 937 | Reload fuel for Tokai II | Japan. |
| G.A. Technologies, Inc., July, 1983, July 11, 1983, XR-143. | Triga Mark I, 250 KW research reactor. | | | | Algeria. |

[FR Doc. 83-20156 Filed 7-25-83; 8:45 am]
BILLING CODE 7590-01-M

## Documents Containing Reporting or Record Keeping Requirements: Office of Management and Budget Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of the Office of Management and Budget review of information collection.

**SUMMARY:** The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (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).

1. Type of submission, new, revision or extension: New.

2. The title of the information collection: Reactor Operator and Senior Operator Licensing and Requalification Examinations.

3. The form number, if applicable: Not applicable.

4. How often the collection is required: 3 per year.

5. Who will be required to ask to report: Nuclear Licensee/Applicant Training Organizations.

6. An estimate of the number of responses: 183 per year.

7. An estimate of the total number of hours needed to complete the requirement or request: 1,200 hours.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: Training information on the operator training and requalification programs is required to enable the NRC staff to develop licensing and requalification examinations. The information consists of lesson plans, procedures, and operator training and requalification programs.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 20th day of July 1983.

For the Nuclear Regulatory Commission.

**Patricia G. Norry,**

*Director, Office of Administration.*

[FR Doc. 83-20161 Filed 7-25-83; 8:45 am]
BILLING CODE 7590-01-M

**[Docket Nos. 50-237 and 50-249]**

## Commonwealth Edison Co.; Consideration of Issuance of Amendments to Provisional and Facility Operating Licenses and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No DPR-19 and to Facility Operating License No DPR-25, issued to Commonwealth Edison Company (the licensee), for operation of the Dresden Nuclear Power Station, Unit 2 and Unit 3, respectively, located in Grundy County, Illinois.

The amendments would modify the Technical Specifications for Dresden Units 2 and 3 to temporarily reduce the number of operable snubbers on the ECCS ring header and, for Dresden Unit 3 only, to update Tables 3.6.1.a and 3.6.1.b to reflect changes in the type of snubber (mechanical or hydraulic) already installed in accordance with the licensee's application for amendment dated June 13,1983.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would allow the licensee to complete the construction work for the Mark I containment modifications for both Dresden Units 2 and 3 and would correct the Technical Specifications to reflect current system configuration for Dresden 3. A similar request to allow the ECCS ring header snubbers to be temporarily inoperable in groups of up to three pairs was made in 1980 and supported by an analysis demonstrating the effect of removal of the snubbers on the response of the ring header for seismic events. The staff's Safety Evaluation supporting the issuance of License Amendment No. 47 for Dresden Unit 2 and License Amendment No. 41 for Dresden Unit 3 on February 1, 1980 indicates that "* * * the new analysis demonstrates that, for normal operation plus operating basis earthquake loading, stresses remain below code allowable stresses even with all six pairs of snubbers inoperable. Therefore, the requirement that at least three pairs of snubbers be operable at all times is conservative with respect to the more severe analyzed condition of all snubbers inoperable. Removing the snubbers from operability in the manner described does not encroach upon

margin provided by the code. The proposed temporary reduction in the required number of operable snubbers for the purpose of performing necessary plant improvements is acceptable." The analysis and evaluation presented at that time is also applicable in this instance. The change to reflect current system configuration would be purely administrative in that it is being made to correct the Technical Specifications. The proposed action merely indicates a change of type of snubber. Since these snubbers were not deleted or moved, these changes will have no effect on the affected piping systems. Thus, the staff proposes to determine that the requested action involves no significant hazards consideration. This proposed determination is also supported by the fact that part of the requested action corresponds with example (i) of the Sholly Rule published in the **Federal Register** on April 6, 1983, in that the changes will achieve consistency and correct an error.

The Commission is seeking public comments on this proposed determination Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By August 25,1983, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results on the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments involve a significant hazards consideration, any hearing held would take place before the issuance of the amendments.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facilities, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for oppportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, N.W. Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Dennis M. Crutchfield: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of the **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Lincoln & Beale, Three First National Plaza, Suite 5200, Chicago, Illinois 60602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments which is available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., and at the Morris Public Library, 604 Liberty Street, Morris, Illinois 60451.

Dated at Bethesda, Maryland, this 20 day of July 1983.

For the Nuclear Regulatory Commission.

**Thomas V. Wambach,**

*Acting Chief, Operating Reactors Branch No. 5, Division of Licensing.*

[FR Doc. 83-20159 Filed 7-25-83; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-321 and 50-366]**

## Georgia Power Co., et al. (Edwin I. Hatch Nuclear Plant, Units 1 and 2); Modification of Order Confirming Licensee Commitments on Post-TMI Related Issues

I

The Georgia Power Company (GPC or the licensee) and three other co-owners are the holders of Facility Operating Licenses Nos. DPR-57 and NPF-5 which authorize operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2 (Hatch or the facilities) at steady state reactor power levels not in excess of 2436 megawatts thermal for each unit. The facilities are boiling water reactors located at the licensee's site in Appling County, Georgia.

II

Following the accident at Three Mile Island Unit No. 2 (TMI-2) on March 28, 1979, the Nuclear Regulatory Commission (NRC) staff developed a number of proposed requirements to be implemented on operating reactors and on plants under construction. These requirements include Operational Safety, Siting and Design, and Emergency Preparedness and are intended to provide substantial additional protection in the operation of nuclear facilities based on the experience from the accident at TMI-2 and the official studies and investigations of the accident. The staff's proposed requirements and schedule for implementation are set forth in NUREG-0737, "Clarification of TMI Action Plan Requirements." Among these requirements are a number of items, consisting of hardware modifications, administrative procedure implementation and specific information to be submitted by the licensee, scheduled to be completed on or after July 1, 1981. On March 17, 1982, a letter (Generic Letter 82-05) was sent to all licensees of operating power reactors for those items that were scheduled to be implemented from July 1, 1981 through March 1, 1982. Subsequently, on May 5, 1982, a letter (Generic Letter 82-10) was also sent to all licensees of operating power reactors for those items that were scheduled for implementation after March 1, 1982. These letters are hereby incorporated by reference. In these letters each licensee was requested to furnish within 30 days pursuant to 10 CFR 50.54(f) the following information for items which the staff had proposed for completion on or after July 1, 1981:

(1) For applicable items that have been completed, confirmation of completion and the date of completion, (2) for items that have not been completed, a specific schedule for implementation, which the licensee committed to meet, and (3) justification for delay, demonstration of need for the proposed schedule, and a description of the interim compensatory measures being taken.

III

Georgia Power Company responded to Generic Letter 82-05 by letters dated April 20, June 7 and 11, 1982, December 20, 1982, February 11, 1983 and March 11, 1983. The licensee responded to Generic Letter 82-10 by letter dated June 4, 1982. The licensee had previously informed the staff, in a letter dated October 1, 1981, that it had completed the requirement of Item II.D.1.2 concerning submittal of safety relief valve test reports. In the submittals responding to Generic Letters 82-05 and 82-10, the licensee confirmed which of the other items identified in the Generic Letters had been completed and made firm commitments to complete the remainder.

On March 14, 1983, as revised March 30, 1983, the Commission issued an Order confirming the licensee's commitments to implement certain post-TMI related items set forth in NUREG-0737. By letter dated June 28, 1983, the Georgia Power Company informed the staff of technical difficulties and requested revision of the completion date for Item II.B.3. The staff's evaluation of the licensee's proposed delay of this item is provided herein:

II.B.3, Post Accident Sampling

The Post-Accident Sample System (PASS) is installed and is undergoing functional tests. Unexpected plant interface problems and a recent component failure during installation testing of the PASS have delayed completion of this item. The design of the failed component is being reevaluated and a modification to its design is likely. This modification and completion of the installation and testing is expected by September 1, 1983. In the interim, two existing systems that have provided a post-accident sampling capability for both reactor coolant and drywell atmosphere up until now will continue to provide the necessary sampling capability.

We find, based on the above evaluation, that: (1) The licensee has taken corrective actions regarding the delays and has made a responsible effort to implement the NUREG-0737 requirements noted; (2) there is good cause for the several delays (unexpected design complexity, interface problems, and equipment delays); and (3) as noted above, interim compensatory measures have been provided.

IV

Accordingly, pursuant to Sections 103, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered that:

The July 1, 1983 completion date specified in the March 30, 1983 Order for Item II.B.3 is extended to September 1, 1983 as indicated in the Attachment to this Order. The March 30, 1983 Order, except as modified herein, remains in effect in accordance with its terms.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 1st day of July 1983.

**Darrell G. Eisenhut,**

*Director, Division of Licensing, Office of Nuclear Reactor Regulation.*

ATTACHMENT.—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05

| Item | Title | NUREG-0737 Schedule | Requirement | Licensee's completion schedule (or status) | |
|---|---|---|---|---|---|
| | | | | Unit 1 | Unit 2 |
| I.A.3.1 | Simulator exams | Oct. 1, 1981 | Include simulator exams in licensing examinations | Complete | Complete |
| II.B.2 | Plant shielding | Jan. 1, 1982 | Modify facility to provide access to vital areas under accident conditions. | do | Do. |

ATTACHMENT.—LICENSEE'S COMMITMENTS ON APPLICABLE NUREG-0737 ITEMS FROM GENERIC LETTER 82-05—Continued

| Item | Title | NUREG-0737 Schedule | Requirement | Licensee's completion schedule (or status) | |
|---|---|---|---|---|---|
| | | | | Unit 1 | Unit 2 |
| II.B.3 | Post-accident sampling | do | Install upgrade post-accident sampling capability | Sept. 1, 1983 | Sept. 1, 1983 |
| II.B.4 | Training for mitigating core damage. | Oct. 1, 1981 | Complete training program | Complete | Complete |
| II.E.4.2 | Containment isolation dependability | July 1, 1981 | Part 5-lower containment pressure setpoint to level compatible w/normal operation. | do | Do. |
| | | do | Part 7—isolate purge & vent valves on radiation signal.[1] | Technical exception. | Technical exception. |

[1] Not part of confirmatory order.

[FR Doc. 83-20102 Filed 7-25-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-333]

## Power Authority of the State of New York; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating Licensee No. PDR-59, issued to the Power Authority of the State of New York (the licensee), for operation of the James A. Fitzpatrick Nuclear Power Plant, located in Oswego County, New York.

The licensee has proposed by letter dated July 7, 1983, to modify the Technical Specifications pertaining to the Scram Discharge Volume (SDV) system to support modifications made to the system during the current refueling outage. The modifications currently underway will replace the single scram discharge instrument volume with redundant instrument volumes, improve hydraulic coupling, include redundant vent and drain valves and level instruments for each instrument volume, add diverse, automatic scram instrumentation, and add early high water level detection instrumentation. In support of these modifications and consistent with guidance provided by the staff in a generic safety evaluation on long-term SDV modifications, the licensee has proposed certain changes to the Technical Specifications for the SDV system to add limiting conditions for operation and surveillance requirements for the newly installed components and instrumentation.

As a result of a number of events involving SDV systems at operating facilities, the NRC had conducted a review of SDV system operations, identified areas for improvement, and requested licensees to implement both short- and long-term modifications to their SDV systems. Implementation of the short-term modifications was adequate to justify continued operation while the long-term modifications addressed the SDV system design deficiencies and were intended to restore the safety margins for the SDV system originally believed to be in the licensing bases for the facility.

In July 1980, the NRC identified certain short-term SDV system modifications and associated technical specifications which the licensee subsequently implemented (see Amendment No. 62 to Facility Operating License No. DPR-59). In addition, two operating restrictions to the short-term modified SDV system were imposed by Orders to required continuous SDV water level monitoring instrumentation and an automatic scram on low pressure in the SDV system control air header (see Confirmatory Order to Facility Operating License No. DPR-59, dated October 2, 1980; and Order for Modification to Facility License No. DPR-59, dated January 9, 1981). These interim modifications and operating restrictions were to be superseded upon completion of the long-term SDV modifications.

In December 1980, the NRC issued a generic safety evaluation of the long-term SDV system modifications (see NRC Generic Safety Evaluation Report: BWE Scram Discharge System, dated December 1, 1980) that described the long-term modifications, specified actions to be taken by the licensee and the staff's acceptance criteria, and included guidance for appropriate Technical Specifications to be proposed for the newly installed components and instrumention. The licensee subsequently committed to implement the long-term SDV modifications in accordance with the staff's generic safety evaluation and scheduled installation of the modifications for the current refueling outage. This commitment and schedule was later confirmed by Order (see Confirmatory Order to Facility Operating License No. DPR-59, dated June 24, 1983).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability of consequences of an accident previously evaluated; or (2) create the possiblity of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples (48 FR 14780). The example most similar to the amendment proposed by the licensee is one of the examples of amendments involving a significant hazards consideration: "* * * (vii) A change in plant operation designed to improve safety but which, due to other factors, in fact allows plant operation with safety margins significantly reduced from those believed to have been present when the license was issued." In the example, although the change is intended to improve plant safety, the existence of other factors results in a determination that a significant hazards consideration exists.

In its application for amendment, the licensee states that it is currently installing the long-term SDV system modifications in accordance with the guidance in the staff's generic safety evaluation and will demonstrate acceptable operation of the modified system using the staff's acceptance criteria. In addition, the licensee has proposed to add certain limiting conditions for operation and surveillance requirements in the technical specifications for the newly installed components and instruments.

The change proposed by the licensee is similar to the example cited above in that the SDV long-term modifications will improve plant safety by improving the functional capabilities of the SDV system through improved hydraulic coupling, redundancy of components, and diversity of instrumentation. However, the proposed change differs significantly from the example in that none of the modifications will reduce a margin of safety. Rather, the long-term SDV system modifications will increase the safety margins by restoring them back to the original safety margins believed to have been present when the license was issued. Thus the proposed change does not involve the other factors cited in the example which would result in a determination that a significant hazards consideration exists.

Therefore, for all of the reasons discussed above the staff has made the proposed determination that the application for amendment involves no significant hazards determination.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Comments should be addressed to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attn: Docketing and Service Branch.

By August 25, 1983, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Domenic B. Vassallo: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors

specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Penfield Library, State University College of Oswego, Oswego, New York.

Dated at Bethesda, Maryland, this 20th day of July 1983.

For the Nuclear Regulatory Commission.

**Domenic B. Vassallo,**

*Chief, Operating Reactors Branch No. 2, Division of Licensing.*

[FR Doc. 83-20100 Filed 7-25-83; 8:45 am]

BILLING CODE 7590-01-M

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A, B, and C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** William Bohling, 202–632–6000.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR Part 213 on June 28, 1983 (48 FR 29765). Individual authorities established or revoked under Schedules A, B, or C between June 1, 1983 and June 30, 1983 appear in a listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities will be published as of June 30 of each year.

**Schedule A**

The following exception is revoked:

*Office of Personnel Management*

One position of Chairman, Federal Prevailing Rate Advisory Committee. Effective June 10, 1983.

**Schedule C**

The following exceptions are established:

*Department of Agriculture*

One Office Assistant to the Executive Assistant to the Secretary, Office of the Secretary. Effective June 1, 1983.

One Staff Assistant to the Special Assistant to the Secretary, Office of the Secretary. Effective June 1, 1983.

One Confidential Assistant to the Secretary, Office of the Secretary. Effective June 2, 1983.

One Staff Assistant to the Secretary, Office of the Secretary. Effective June 2, 1983.

One Confidential Assistant to the Assistant Secretary for Governmental and Public Affairs. Effective June 3, 1983.

One Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective June 9, 1983.

One Confidential Assistant to the Administrator, Food Safety and Inspection Service. Effective June 16, 1983.

One Confidential Assistant to the Administrator, Food and Nutrition Service. Effective June 21, 1983.

One Confidential Assistant to the Executive Assistant to the Secretary, Office of the Secretary. Effective June 24, 1983.

One Staff Assistant to the Administrator, Federal Grain Inspection Service. Effective June 24, 1983.

One Confidential Assistant to the Assistant Secretary for Natural Resources and Environment. Effective June 27, 1983.

*Department of Commerce*

One Congressional Liaison Officer, Office of the Secretary. Effective June 1, 1983.

One Confidential Assistant to the Assistant Secretary for International Economic Policy. Effective June 2, 1983.

One Secretary (Typing) to the Deputy Assistant Secretary for Communications and Information, Office of the Secretary. Effective June 7, 1983.

One Confidential Assistant to the Director, Minority Business Development Agency. Effective June 16, 1983.

One Director, Office of Public Affairs, International Trade Administration. Effective June 27, 1983.

*Department of Defense*

One Staff Assistant to the Special Assistant to the President, Office of Public Liaison. Effective June 27, 1983.

*Department of Education*

One Personal Assistant to the Secretary, Office of the Secretary. Effective June 24, 1983.

*Department of Energy*

One Staff Assistant to the Assistant Secretary for Congressional, Intergovernmental, and Public Affairs. Effective June 2, 1983.

One Staff Assistant to the General Counsel, Office of the General Counsel. Effective June 9, 1983.

One Secretary (Confidential Assistant) to the General Counsel, Office of the General Counsel. Effective June 9, 1983.

One Special Assistant to the Administrator, Economic Regulatory Administration. Effective June 20, 1983.

*Department of Health and Human Services*

One Confidential Assistant to the Associate Administrator for Operation. Effective June 24, 1983.

*Department of Housing and Urban Development*

One Confidential Assistant to the Assistant Secretary for Public Affairs. Effective June 2, 1983.

One Assistant Intergovernmental Relations Officer, Office of the Deputy Under Secretary for Intergovernmental Relations. Effective June 2, 1983.

One Executive Assistant to the General Deputy Assistant Secretary for Housing/Deputy Federal Housing Commissioner. Effective June 3, 1983.

One Special Assistant to the Assistant Secretary for Public Affairs. Effective June 7, 1983.

One Executive Assistant to the Deputy Under Secretary for Field Coordination. Effective June 7, 1983.

One Special Assistant (Legislative Aide) to the Assistant Secretary for Legislation and Congressional Relations. Effective June 8, 1983.

One Associate Deputy Assistant Secretary for Multifamily Housing Programs. Effective June 10, 1983.

One Staff Assistant (Typing) to the Assistant to the Secretary for Labor Relations. Effective June 13, 1983.

One Executive Assistant to the Associate General Deputy Assistant Secretary for Field Operations. Effective June 16, 1983.

One Special Assistant to the Regional Administrator in Seattle, Washington. Effective June 24, 1983.

One Executive Assistant to the Deputy Assistant Secretary for Single Family Housing and Mortgage Activities. Effective June 29, 1983.

*Department of the Interior*

One Confidential Assistant to the Under Secretary, Office of the Secretary. Effective June 2, 1983.

One Special Assistant to the Assistant Secretary—Land and Water Resources. Effective June 7, 1983.

One Special Assistant to the Assistant to the Secretary and Director, Office of Public Affairs. Effective June 9, 1983.

One Special Assistant to the Assistant Secretary—Land and Water Resources. Effective June 9, 1983.

One Special Assistant to the Special Assistant (Field Representative) to the Secretary in San Francisco, California, Office of the Secretary. Effective June 9, 1983.

One Public Affairs Specialist to the Director, Minerals Management Service. Effective June 24, 1983.

*Department of Justice*

One Special Assistant to the Associate Attorney General, Office of the Associate Attorney General. Effective June 16, 1983.

One Secretary (Typing) to the Deputy Attorney General, Office of the Deputy Attorney General. Effective June 16, 1983.

One Special Assistant to the Director, Federal Prison System. Effective June 20, 1983.

One Special Assistant to the Deputy Assistant Attorney General, Civil Rights Division. Effective June 27, 1983.

*Department of Labor*

One Special Assistant to the Deputy Under Secretary for Employment Standards. Effective June 1, 1983.

One Special Assistant to the Director, Office of Information and Public Affairs. Effective June 13, 1983.

One Special Assistant to the Assistant Secretary for Employment and Training. Effective June 16, 1983.

One Special Assistant to the Deputy Under Secretary for Intergovernmental Affairs. Effective June 16, 1983.

One Secretary to the Secretary of Labor, Office of the Secretary. Effective June 24, 1983.

One Secretary to the Secretary of Labor. Effective June 24, 1983.

*Department of State*

One Protocol Officer (Visits), Office of the Chief of Protocol. Effective June 14, 1983.

One Staff Assistant to the Principal Deputy Assistant Secretary for Congressional Relations. Effective June 15, 1983.

One Protocol Officer, Office of the Chief of Protocol. Effective June 16, 1983.

One Special Assistant to the Assistant Secretary for Ocean and International Environmental and Scientific Affairs. Effective June 22, 1983.

One Supervisory Protocol Officer (Visits), Office of the Chief of Protocol. Effective June 22, 1983.

*Department of Transportation*

One Deputy Director of the Executive Secretariat, Office of the Secretary. Effective June 14, 1983.

One Confidential Assistant to the Secretary, Office of the Secretary. Effective June 14, 1983.

One Special Assistant to the Director, Office of Public Affairs. Effective June 15, 1983.

One Assistant Director for Management, Office of the Secretary. Effective June 24, 1983.

One Receptionist to the Secretary, Office of the Secretary. Effective June 24, 1983.

*ACTION*

One Special Assistant to the Director, Vietnam Veterans Leadership Programs. Effective June 3, 1983.

One Special Assistant to the Director. Effective June 29, 1983.

*Consumer Product Safety Commission*

One Supervisory Public Affairs Specialist. Effective June 10, 1983.

One Secretary (Typing) to the Director, Office of Public Affairs. Effective June 16, 1983.

*Executive Office of the President*

One Confidential Assistant to the Deputy U.S. Trade Representative. Effective June 1, 1983.

One Secretary to the Associate Director for Economics and Government, Office of Management and Budget. Effective June 1, 1983.

One Secretary to the Chairman, Council of Economic Advisers. Effective June 8, 1983.

One Administrative Assistant to the Assistant Director for Legislative Affairs, Office of Management and Budget. Effective June 22, 1983.

*Federal Communications Commission*

One Special Assistant to the Director, Office of Public Affairs. Effective June 27, 1983.

*Federal Home Loan Bank Board*

One Executive Assistant to the Executive Staff Director, Office of the Chairman. Effective June 24, 1983.

*Federal Mediation and Conciliation Service*

One Secretary to the Director. Effective June 24, 1983.

*General Services Administration*

One Confidential Assistant to the Regional Administrator in San Francisco, California. Effective June 9, 1983.

*Interstate Commerce Commission*

One Staff Advisor (Economics) to the Commissioner, Office of the Commissioners. Effective June 29, 1983.

*U.S. International Trade Commission*

One Staff Assistant (Economics) to the Commissioner. Effective June 16, 1983.

*National Endowment for the Arts*

One Special Assistant to the Public Affairs Officer. Effective June 16, 1983.

*Office of Personnel Management*

One Special Assistant to the General Counsel, Office of the General Counsel. Effective June 7, 1983.

One Supervisory Public Affairs Specialist, Office of Public Affairs. Effective June 9, 1983.

*President's Commission on Executive Exchange*

One Confidential Assistant to the Executive Director for International Affairs. Effective June 20, 1983.

*Small Business Administration*

One Special Assistant to the Director, Office of Congressional and Legislative Affairs. Effective June 2, 1983.

*U.S. Information Agency*

One Special Projects Officer, Bureau of Broadcasting. Effective June 6, 1983.

*Veterans Administration*

One Confidential Assistant to the Special Assistant to the Administrator, Office of the Administrator. Effective June 6, 1983.

One Executive Assistant to the Associate Deputy Administrator for Congressional and Public Affairs, Office of the Administrator. Effective June 21, 1983.

(5 U.S.C. 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218)

Office of Personnel Management.

**Donald J. Devine,**

*Director.*

[FR Doc. 83-20106 Filed 7-25-83; 8:45 am]

BILLING CODE 6325-01-M

## PENSION BENEFIT GUARANTY CORPORATION

### Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Dayton Malleable Inc. et al.

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of exemption.

**SUMMARY:** The Pension Benefit Guaranty Corporation has, on the basis of a joint request from Dayton Malleable Inc. and Chromalloy American Corporation, granted an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended. A notice of the request for exemption from this requirement was published on April 26, 1983 (48 FR 18959). The effect of this notice is to advise the public of the decision on the exemption request.

**ADDRESS:** The request for an exemption, the comment received and the PBGC response to the request are available for public inspection at the PBGC Public Affairs Office, Suite 7100, 2020 K Street, NW., Washington, D.C. 20006, between the hours of 9:00 a.m. and 4:00 p.m. A copy of these documents may be obtained by mail from the PBGC Disclosure Officer (160) at the above address.

**FOR FURTHER INFORMATION CONTACT:** James M. Graham, Office of the Executive Director, Policy and Planning (140), 2020 K Street, NW., Washington, D.C. 20006; (202) 254–4862.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 4204(a)(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. 1384, provides that the sale of assets of an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for five plan years after the sale.

ERISA section 4204(c) authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B). Under § 2643.3(a) of the PBGC's regulation on procedures for variances for sales of assets (29 CFR Part 2643), the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial losss to the plan.

The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions.

ERISA section 4204(c) and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or an exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption

#### Decision

On April 26, 1983 (48 FR 18959), the PBGC published a notice of the pendency of a joint request from the purchaser, Dayton Malleable Inc. ("Dayton"), and the seller, Chromalloy American Corporation ("Chromalloy"), (collectively referred to as the "Parties") for an exemption from the requirement of ERISA section 4204(a)(1)(B). Effective December 10, 1982, Chromalloy sold certain assets relating to its Newnam Foundry Division to Dayton.

In connection with this sale, Dayton has assumed, or will assume, the responsibilities of Chromalloy under collective bargaining agreements with the International Molders and Allied Workers Union AFL–CIO–CLC, Local Union No. 262 and Chauffers Teamsters Workers Local Union No. 364. The following chart lists the two multiemplyer plans for which an exemption is requested, the estimated amount of Chromalloy's withdrawal liability and the estimated amount of the bond/escrow that would be required under ERISA section 4204(a)(1)(B) with respect to each such plan:

| Plan | Estimate of seller's liability | Amount of bond/escrow |
|---|---|---|
| Indiana State Conference Board Pension Plan | $314,000 | [1] $166,822 |
| Central States, Southeast and Southwest Areas Pension Fund (the "Central States Plan") | 65,644 | [1] 13,731 |
| Total | 379,644 | 200,553 |

[1] The amount represents the annual contribution required to be made by Chromalloy for plan year 1981.

According to its audited consolidated financial statements, Dayton and its subsidiaries had total net assets for its fiscal year ended August 31, 1982 of approximately $38 million. Dayton suffered a net loss after taxes for its fiscal years 1980 and 1982 ($5.5 and $8.7 million, respectively) and has net income after taxes of $1.8 million for its fiscal year 1981.

In response to the notice of pendency, PBGC received one comment which was submitted by the Central States Plan. The Central States Plan indicated that it "neither consents to nor opposes" the Parties' request for an exemption.

Based on the facts of this case and the representations and statements made in connection with the request for exemption, PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of Title IV of ERISA and would not significantly increase the risk of financial loss to the effected plans.

Therefore, PBGC hereby grants the Parties' request for an exemption from the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by PBGC that the transaction satisifes the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the plan sponsor.

Issued at Washington, D.C., on this 18th day of July, 1983.

**Edwin M. Jones,**

*Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 83-20082 Filed 7-25-83; 8:45 am]

BILLING CODE 7708-01-M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 19957; SR-Amex-83-4]**

### American Stock Exchange, Inc.; Order Approving Proposed Rule Change

The American Stock Exchange, Inc. (Amex) 86 Trinity Place, New York, NY, 10005, submitted on March 4, 1983, copies of a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to amend Article VII, Section 1 of the Exchange Constitution to eliminate payment of an initiation fee for certain intra-firm transfers where a membership has been temporarily transferred from an active floor member to another person who is not active on the floor and then retransferred to an active floor member.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission Release

(Securities Exchange Act Release No. 19854, June 8, 1983) and by publication in the **Federal Register** (48 FR 27870, June 17, 1983). All written statements filed with the Commission and all written communications between the Commission and any person relating to the proposed rule change were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market regulation pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 83-20172 Filed 7-25-83; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 19956; File No. SR-OCC-82-25]**

## Order Approving Proposed Rule Change of the Options Clearing Corporation ("OCC")

On November 9, 1982, OCC submitted a proposed rule change (SR-OCC-82-25) to the Commission pursuant to Section 19(b)(2) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(2), and Rule 19b-4 thereunder. OCC filed two amendments to this proposed rule change, on February 28, 1983 and May 18, 1983, respectively. The proposed rule change, as amended, would implement the "Options Pledge Program," as authorized by OCC's By-laws, for certain designated OCC clearing members.

Notice of the proposed rule change was published in the **Federal Register** on December 20, 1982.[1] Notice of the February 28, 1983 Amendment was published in the **Federal Register** on March 21, 1983.[2] The Commission solicited but did not receive comments on the original filing and the February 28, 1982 amendment. OCC did not solicit or receive comments on the original filings or either amendment.

### II. Description

#### *A. Overview*

Currently, although Article VI, Section 3 of OCC's By-Laws provides for the establishment of an Options Pledge Program, OCC's rules do not permit clearing members to pledge long options positions. The proposed rule change facilitates clearing member financing by permitting clearing members to pledge unexercised excess long market-maker or specialist equity option positions as collateral for loans from other clearing members or from banks. Implementation of the Options Pledge Program should enable market-makers and specialists to secure a greater number of collateralized loans and more favorable financing terms.

An OCC clearing member may only pledge these market-maker or specialist option positions through this Program.[4] Although OCC must approve the form of the three-party agreement concerning use of the Pledge Program, arrangements between the pledgor-clearing member and the pledgee bank or clearing member concerning the loan transaction itself must be created and administered independent of OCC's obligations and responsibilities. Essentially, OCC oversees only the mechanics of the pledge transactions effected pursuant to the Program.

#### *B. Proposed Rule 614: A Procedural Framework*

OCC's proposed Rule 614 sets forth the operational and procedural framework of OCC's Options Pledge Program. Among other things, the rule discusses the rights and obligations of the parties to loan transactions effected pursuant to OCC's Options Pledge Program. To participate in the Program, the pledgor-clearing member and the pledgee bank or clearing member must execute and submit to OCC a "Pledge Account Agreement"[5] establishing a "pledge account"[6] and stating the terms of the loan arrangement. The pledgee also must designate an account with a clearing bank as a "deposit account"[7] for the purpose of accepting any cash deposits required by OCC Rule 614. If the pledgee is not an OCC clearing member, it must submit to OCC incumbency certificates identifying by name and title, and authenticating the signature of, its officers or partners authorized to execute the documents required under OCC Rule 614.

In addition, Rule 614 requires the pledgor to file with OCC, "Instructions to Pledge Options," a form authorizing OCC to transfer any designated long option positions from the member's Primary Account to its Pledge Account for the benefit of the pledgee.[8] Rule 614 further establishes the cut-off times by which Instructions to Pledge must be submitted to OCC. If OCC receives this form on any business day in advance of the appropriate cut-off time designated by OCC, that business day is deemed the "Receipt Day".[9] If OCC receives the form after such cut-off time, the next business day is the "Receipt Day". On the day following OCC's receipt of Instructions to Pledge Options ("Transfer Day"), OCC will transfer the designated long options positions from the clearing member's Primary Account to its Pledge Account.[10] The pledge is effective as of 10:00 A.M. Eastern Time on the Transfer Day.

As soon as possible after the transfer, OCC will deliver to the pledgee and the clearing member an executed confirmation of the transfer.[11] The

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[1] *See* Securities Exchange Act Release No. 19323 (December 10, 1982), 47 FR 56760 (December 20, 1982).

[2] *See* Securities Exchange Act Release No. 19600 (March 14, 1983), 48 FR 11799 (March 21, 1983). The technical amendment, dated May 16, 1983, was not published in the **Federal Register** because it does not significantly affect participant rights and obligations and does not adversely affect the safeguarding of funds or securities in OCC's custody or control.

[4] *See* OCC Rule 614(k).

[5] The form of the Pledge Account Agreement must be prescribed or approved by OCC. The Agreement must state, among other things, that both parties agree to be bound by OCC Rule 614.

[6] The clearing member must establish and maintain a Pledge Account with OCC for the purpose of pledging long option positions. Each Pledge Account must be associated with another specific account ("Primary Account") of the clearing member, which must be either: (i) A combined market-makers' or specialists' account or (ii) a separate market-makers' or specialists' account that is confined to the clearing member's exchange transactions as a market-maker or specialist (including exchange transactions of a specialist unit in which the clearing member is a participant).

[7] OCC Rule 614 requires all pledgees to maintain a "Deposit Account" with the pledgee bank for receipt of a designated cash payment by a clearing member to OCC if and when the clearing member sells or exercises a pledged option. The terms and amount of the cash payment are discussed in greater detail, *infra*.

[8] For each business day in which the Pledge Account is maintained, OCC shall furnish to the clearing member and the pledgee reports indicating the clearing member's pledge activity in the Pledge Account. A clearing member or pledgee must notify OCC on the day this report is received if there is an error in the report. *See* OCC Rule 614(j).

[9] Prior to the designated cut-off time on the Receipt Day, OCC will permit Instructions to Pledge Options or Instructions to Release Pledged Options to be revoked by a person authorized to execute such form. *See, Infra*, note 12 regarding "Instructions to Release Pledged Options."

[10] Under Rule 614, OCC is obligated to effect the transfer as authorized, except under certain limited circumstances. *See* OCC Rule 614(c)(1)-(7) and discussion, *infra*.

[11] As indicated in Amendment No. 2, OCC's delivery of the form, "Confirmation of Transfer."

designated long option position remains pledged until the pledgor-clearing member instructs OCC to transfer the long option position bank to the Primary Account,[12] until the pledgor-clearing member exercises or sells the pledged options,[13] or until expiration.[14]

With regard to termination of the Pledge Account, the pledgor-clearing member, pledgee or OCC may submit a written notice to the other parties to the pledge arrangement stating that as of a specified date the Pledge Account shall be terminated.[15] In addition, in the event that OCC suspends the pledgor-clearing member,[16] suspension automatically terminates the Pledge Account.[17] If termination occurs by written notice, the pledgor-clearing member and the pledgee must determine how to dispose of the pledged options in the Pledge Account. If they cannot agree on a method of disposition, the pledgee must designate another OCC clearing member to receive and dispose of the pledged options. If termination occurs as a result of suspension, OCC must liquidate all pledged options in accordance with its By-Laws and Rules.[18] The proceeds of any liquidation of pledged options are to be distributed in the following order: first, to the party bearing the costs of liquidating sales; second, to the pledgee in satisfaction of its claim against the clearing member; third, to OCC in satisfaction of its claim against the clearing member; and fourth, to the clearing member or its representative.

*C. Safeguards Against Financial Risk*

Rule 614 protects OCC and the pledgee against the various risks of exposure which may occur as a result of, or which may be exacerbated by, pledging options. Under Rule 614, the pledgee is afforded a security interest in the pledged options, with priority over any liens or security interests that OCC may have.[19] (The pledgee, of course, must perfect its own security interest.)

Under Rule 614, the pledgee, without the prior consent of the pledgor, can declare the pledgor-clearing member in default under the loan agreement by delivering a written "Liquidation Notice" to OCC by 2:00 P.M. Eastern Time on any business day ("Notice Day"). In the Liquidation Notice, the pledgee must specify the positions to be transferred and must designate an account of a Liquidating Clearing Member to which the positions are to be transferred for purposes of liquidating sales by that Member.[20] As of Notice Day, OCC essentially freezes the options positions in the defaulting clearing member's Pledge Account, which precludes the defaulting pledgor from excercising options that are to be liquidated pursuant to the pledgee's instruction.[21]

In addition, even absent a liquidation notice, Rule 614(i) enables OCC to protect the pledgee and OCC against potential non-payment resulting from the pledgor-clearing member's sale or exercise of a pledged option.[22] The rule requires that, by 10:00 A.M. Eastern Time on the business day following the exercise or sale of a pledged option,[23] the pledgor-clearing member must pay OCC for each pledged option exercised or sold. Under the Rule, the pledgor must pay OCC the "Overpledged Value Amount"—an amount equal to the product of (a) the unit of trading for the series of options of the pledged option (b) multiplied by the current highest asked per unit premium quotation for options of that series on the options exchanges at or about the close of trading on the preceding business day; provided, however, that OCC may fix a different Overpledged Value Amount consistent with its determination to fix a different daily options marking price.[24]

When OCC receives the Overpledged Value Amount on Report Day,[25] OCC will deposit it in the Pledgee's Deposit Account as soon as practicable. Once OCC deposits this amount, the Pledgee has no further right to the pledged options that were exercised or sold, or to their proceeds. If OCC, on the other hand, does not receive the Overpledged Value Amount, OCC must suspend the pledgor-clearing member in accordance with Chapter XI of OCC's Rules. As promptly as practicable thereafter, OCC will deposit into the Pledgee's Deposit Account the proceeds of each pledged option that the defaulting pledgor-clearing member sold on the business day immediately preceding the Report Day. (The Pledgee, however, must return to OCC all proceeds in excess of the agreed upon loan value of the pledged position.) Also, pledged options that are exercised on the business day immediately preceding the Report Day

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constitutes irrebuttable evidence that the designated options were pledged by 10:00 A.M. Eastern Time on Transfer Day.

OCC will assign each pledgee a locked box, at OCC's office, designated for the distribution of reports, notices and other items, such as the "Confirmation of Transfer." An item deposited into a pledgee's locked box is deemed to be delivered to and received by the pledgee when deposited.

[12] The pledgor-clearing member may revoke its pledge by filing with OCC a form, "Instructions to Release Pledged Options," duly executed by both the clearing member and the pledgee. This form instructs OCC to transfer the designated long options positions back to the clearing member's Primary Account. The pledged options shall be deemed to be transferred out of the Pledge Account as of 10:00 A.M. Eastern Time on the Transfer Day. Upon transfer, the option ceases to be a pledged option and the rights of the pledgee with respect to such option terminate.

[13] A pledgor-clearing member, within its sole discretion, may sell or exercise a pledged option. The clearing member that sells or exercises a pledge option, however, remains obligated to deposit a designated amount of cash with OCC, which in turn is allocated to the pledgee, to replace the sold or exercised collateral. *See* Discussion Section, *infra*.

[14] A pledgee may not pledge an option that is due to expire on the day immediately following Transfer Day. *See* OCC Rule 614(c)(3).

[15] *See* OCC Rule 614(1)(i).

[16] *See* OCC Rule 614(1)(ii). As discussed in greater detail, *infra*, this section permits OCC to suspend a clearing member for failure to pay OCC any Overpledged Value Amount due on the morning after the clearing member sells or exercises a pledged option.

[17] *See* OCC Rule 614(1).

[18] *See, generally*, OCC Rules, Chapter XI.

[19] *See* OCC Rule 614(h), which states that "Any liens or security interests that [OCC] may at anytime have on or with respect to any of the Pledged Options shall at all times be fully subordinated to the security interest of Pledgee in the Pledged Option." OCC Article IV, Section 3(b) provides that OCC "shall have a lien on all long positions, securities, margin and other funds in such market maker's account or specialist's account with the Clearing Member as security for the Clearing Member's obligations to the Corporation in respect of all Exchange transactions effected through such account . . . and exercise notices assigned to such account . . ."

[20] In addition to retaining an independent responsibility to instruct the liquidating clearing member to execute the sale transactions, the pledgee is solely responsible for paying for such sale transactions and performing any duties that the pledgee may have as a secured party under applicable laws.

[21] As a result, although that pledgor may sell, on Notice Day, a pledged long option position, the sale will not close-out the long position. Rather, it will create a separate short position in the member's Primary Account. This accounting procedure maintains the pledgor's affirmative obligation to pay OCC in respect of the Options Pledge Program and prevents any netting of obligations under the Program with other obligations of the pledgor-clearing member.

[22] Subsection (f) of OCC Rule 614 provides for the allocation of sales or exercises between the pledgor-clearing member's Primary Account and the Pledge Account when long positions in the same options series are carried in both accounts. Exercises are allocated first to the Primary Account to the extent of the pledgor's long position in that options series and then to the Pledge Account; sales are allocated first to the pledgor's Primary Account and then to the Pledge Account, but only to the extent that such accounts have long positions remaining in that options series after giving effect to exercise instructions. If any short positions remain after the long positions in both the Primary Account and the Pledge Account have been closed out, OCC will establish those positions in the Primary Account.

[23] The business day following the exercise or sale of a pledged option is the "Report Day." On the morning of the Report Day, OCC must deliver a written report to the pledgee and clearing member indicating which pledged options have been exercised or sold.

[24] *See* OCC Rules 601 and 602.

[25] OCC is authorized to withdraw the Overpledged Value Amount from the clearing member's bank account established in respect of its Primary Account.

will not be processed with other exercised contracts, through the correspondent clearing corporations. Instead, OCC will direct the clearing member assigned the exercise notice to close-out the exercised contract in accordance with OCC's existing buy-in or sell-out procedures. [26] Following close-out, the assigned clearing member must pay OCC, and OCC must deposit in the Pledgee's Deposit Account, the amount by which the exercise settlement amount exceeds the price paid for the securities bought in (for a put) or the amount by which the price received for the securities sold out exceeds the exercise settlement amount (for a call). If a deficiency, instead of a surplus, results in either instance, the assigned clearing member may seek to recover this amount. In accordance with Chapter XI of OCC's Rules, however, the assigned clearing member must recover any deficiency first from funds obtained on liquidation of assets in the suspended clearing member's Primary Account, to the extent possible, and then it may seek to recover any deficit from the Liquidating Settlement Account. [27] Although the pledgee may recover any surplus resulting from the buy-in or sell-out effected by the assigned clearing member, the pledgee is not entitled to be reimbursed by OCC or the assigned clearing member for any deficiency resulting from sales or exercises of pledged positions.

Under exceptional circumstances, the pledgee may waive the requirement that the Pledgor-clearing member pay all of the Overpledged Value Amount. Although OCC is required to consider the pledgee's waiver, OCC in its discretion can suspend the pledgor-clearing member. [28] If OCC suspends the pledgor-clearing member, the liquidation procedures discussed above will apply. If OCC does not suspend the pledgor-clearing member, OCC retains no obligation to the pledgee regarding that portion of the Overpledged Value Amount for which the pledgee waived receipt.

*D. OCC's Role in the Options Pledge Program*

The Options Pledge Program enables OCC to act as agent for both the pledgor-clearing member and the pledgee-bank or clearing member. Under Rule 614, however, OCC will not guarantee payments of any amounts respecting the pledge that are owed between the clearing member and the pledgee. Accordingly, a clearing member that establishes a Pledge Account agrees to indemnify and hold OCC harmless from any claim, liability or expenses, including attorneys' fees, which may arise or be asserted as a result of any action taken by OCC, or any failure to act by OCC relating to such Pledge Account. In addition, OCC does not provide any warranty as to the value of the options being pledged. [29]

**III. OCC's Rationale for the Proposed Rule Change**

OCC believes the proposed rule change is consistent with the Securities Exchange Act of 1934, and Sections 17A(b)(3)(A) the 17A(b)(3)(F), in particular, because it promotes the safeguarding of funds and securities within OCC's custody or control and because it promotes prompt and accurate clearance and settlement of transactions, respectively. Any risk of financial loss to OCC and its clearing members is reduced significantly by OCC's existing financial responsibility mechanisms and the safeguards OCC and pledgees are authorized to invoke to ensure that clearing member pledges are effected safely and efficiently. Moreover, OCC believes that the benefits of the proposed rule change outweigh any potential financial exposure to OCC and its clearing members.

In its filing, OCC stated that, by permitting clearing members to pledge their excess long market-maker and specialist option positions as collateral to support loans from banks or other clearing members, OCC will be facilitating the ability of its members to finance their positions. OCC believes that this would promote the safeguarding of funds, in part, by reducing the borrowing costs to market-makers and specialists, who, because of the Options Pledge Program, should be able to secure a greater number of collateralized loans on more favorable lending terms.

OCC further believes that the Options Pledge Program, by permitting the sale or exercise of pledged options, would permit continuity in the options market place even during the period of the pledge. Moreover, because of the safeguards that OCC and the pledgee may invoke to curtail financial exposure, the Options Pledge Program would permit market continuity and lending liquidity without undermining OCC's margin rules or other financial safeguards.

**IV. Discussion**

The potential for a pledgor-clearing member to "over-extend" itself financially or operationally by pledging options creates potential risk to OCC, its clearing members and pledgees. The Commission believes, however, that by adequately safeguarding funds and securities in OCC's custody or control and enhancing the prompt and accurate clearance and settlement of securities transactions, the Options Pledge Program limits these risks to a significant extent. The Commission further believes that the Program provides significant benefits to OCC, certain OCC clearing members, and pledgees, and that these benefits greatly outweigh the limited risks inherent in the Program, as discussed in detail below.

In general, the Options Pledge Program appears likely to provide a safe and efficient vehicle through which pledgor-clearing members may pledge certain options positions as collateral for loans. The program, in fact, may enable pledgors to secure loans they otherwise might not obtain. [30] The cost savings and added income that the Program should generate for cleaing members and pledgees should increase the funds available for options trading and should enhance options trading, overall.

More specifically, by permitting certain options positions to be used as collateral, the Options Pledge Program should facilitate the ability of market-makers and specialists to obtain collateralized loans and better financing terms. This should result in cost savings to those clearing members that carry specialist and market-maker accounts and should enable more efficient use of funds by pleggor-clearing members, market-makers and specialists. Furthermore, by providing pledgor-clearing members with the ability to "overpledge" their pledged options positions (*i.e.*, to sell or exercise pledged options), the Program permits eligible pledgor participants to respond efficiently to market conditions during the pledge period. Finall, pledgees benefit to the extent they receive income from program-generated financing

[26] *See* OCC Rules 910 (failure to deliver) and 911 (failure-to-receive).

[27] *See* OCC Rule 1107(c).

[28] *See* OCC Rule 617(i)(2). If the pledgor-clearing member's nonpayment is attributable to precarious financial or operational conditions, OCC may determine to suspent the pledgor.

[29] Both the pledgor and the pledgee, in signing the OCC Pledge Account Agreement, agree with each other and with OCC to be bound by these terms.

[30] OCC's established relationship with pledgors should provide some comfort to pledgees. Indeed, OCC's currently extensive financial monitoring and report system should lend safety to its efforts to monitor the pledgor's account activity and financial condition.

activity, together with pledge processing safety.

Four situations would appear to pose a risk of financial exposure to OCC, certain OCC clearing members and the pledgees, under the Program: (1) an inadequately margined Primary Account; [31] (2) unpaid net premiums; [32] (3) clearing member default; [33] and (4) the sale or exercise of a pledged option.[34] To reduce these risks, OCC Rule 614 provides that OCC and the pledgee, under certain circumstances, may invoke certain safeguards to either limit a pledgor's participation in the Options Pledge Program, require additional collateral, or, if the situation appears serious enough, terminate the Pledge Account.

The first risk—an inadequately margined Primary Account—arises in connection with the pairing of long and short option positions to reduce the clearing member's required OCC margin deposit, which is typically based upon the value of unpaired short option positions in the Primary Account.[35] OCC effectively guards against unnecessary exposure to OCC as a result of inadequate margin by removing pledged long option positions from the margin calculation.[36]

The second risk is attributable to a clearing member's failure to pay net premiums for transactions occurring on or before Receipt Day and owing to OCC at or before settlement time on Transfer Day.[37] Because non-payment of net premiums may well reflect clearing member financial instability, OCC Rule 614(c)(4) authorizes OCC to prevent such a pledgor-clearing member from expanding its financial and operational obligations through participation in the Options Pledge Program,[38] and, in the event of default, to suspend such a clearing member and proceed to close-out its accounts.

OCC may be subjected to a third financial risk by a pledgor-clearing member's default under the loan agreement with the pledgee. OCC's subordinated lien status would assure that the pledgee, rather than OCC, has lien priority regarding the clearing member's assets on deposit with OCC (at least to the extent of the pledgee's claim against the clearing member, plus costs of liquidation and attorneys fees). OCC, however, may incur costs in connection with the liquidation (*i.e.*, transaction fees for the sale of pleged options and court costs), and OCC may incur costs as a result of the termination of a Pledge Account. OCC is protected, however, to the extent that it can recover against the proceeds of the liquidation sales. Moreover, OCC has substantial margin deposts and clearing fund contributions to protect it generally against member default.[39]

The fourth risk of financial exposure to OCC may result from a pledgor-clearing member's sale or exercise of a pledged option.[40] As indicated previously, whenever a clearing member exercises or sells a pledged option, an Overpledged Position is created, requiring that clearing member to OCC "the Overpledged Value Amount." If OCC fails to receive the Overpledged Value Amount from the clearing member on the Report Day,[41] OCC Rule 614 (i) requires OCC to suspend the clearing member pursuant to Chapter XI of OCC's Rules and, as promptly as practicable, to deposit into the Pledgee's Deposit Account the proceeds of each pledged option that was sold on the business day immediately preceding the report day.[42]

The Commission believes that the authority to suspend a clearing member who fails to pay any Overpledged Value Amount is important to the safeguarding of funds and securities in OCC's possession or over which OCC has control. By implementing OCC's proposed rules and procedures, OCC will help ensure pledgees that prompt and orderly steps will be taken, if any event occurs to jeopardize the existence of the collateral (*i.e.*, the sale or exercise of the pledged option(s)). For instance, OCC may cause the pledgor-clearing member to replace the exercised or sold pledged options with cash or collateral of equivalent value (*i.e.*, the Overpledged Value Amount). Moreover, a pledgee that becomes concerned about a pledgor's potential default may submit to OCC a liquidation notice that will preclude the sale or subsequent exercise of pledged options.

As indicated, the proposed rule change will also further the goals of Section 17A(b)(3)(A) of the Act by promoting prompt and accurate clearance and settlement of securities transactions. OCC, as custodian of the pledgor's options, currently has efficient and accurate book-entry systems. In the context of the Options Pledge Program, therefore, OCC should be able to facilitate safe and expeditious transfer of options positions from the appropriate clearing members' Primary Accounts into the appropriate Pledge Accounts pursuant to clearing members' Instructions to Pledge Options. In addition, because the Program obviates the need for physical deposits the Options Pledge Program should expedite the processing of loan transactions, enhance the pledgor's ability to take advantage of any favorable market conditions and provide reasonable assurance to the pledgee that the pledgor is financially able to maintain adequate collateral.

### Conclusion

For the reasons stated above, the Commission finds that the proposed rule change is consistent with the Act and the rules thereunder applicable to registered clearing agencies, and in particular the requirements of Section 17A of the Act. In addition, the proposed rule change should facilitate the financing of certain options market-makers and specialist by permitting OCC clearing members to pledge their excess long market-maker or specialist positions, while adequately safe-guarding the funds and securities in OCC's custody or control and preserving the liquidity of the options market.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and it hereby is approved.

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[31] *See OCC Rule 601(b) regarding the margin requirements on the short positions maintained in a market-maker's account, a specialist's account or a combined market-maker's or specialists' account.*

[32] *See, generally, OCC Rule 614(c)(4).*

[33] *See, generally, OCC Rule 614(h).*

[34] *See, generally, OCC Rule 614(g) and (c)(3).*

[35] *See* OCC Rule 601(b)(3).

[36] Accordingly, a clearing member may use a long option position either to reduce its margin obligation to OCC or to collateralize a loan pursuant to the Pledge Program.

[37] *See* OCC Rule 502 regarding Daily Premium Settlement.

[38] OCC, in its sole discretion, however, may permit a requested transfer if the clearing member pays such net premiums between settlement time (10:00 A.M. Eastern Time) and 1:00 P.M. Eastern Time on the Transfer Day. *See* OCC Rule 614(c)(4).

[39] *See* Discussion, *supra* concerning OCC's margin calculations in respect of pledged long option positions.

[40] OCC has amended OCC Rule 1107 to subject the disposal of exercised pledged option contracts to which a suspended clearing member is a party to new Rule 614, when the exercising clearing member does not pay the Overpledged Value Amount.

[41] Although the Overpledged Value Amount is due at 10:00 am Eastern Time, OCC will not institute suspension proceedings until after 1:00 P.M. Eastern time, thereby giving the pledgor-clearing member additional time to satisfy its obligation to OCC.

[42] If OCC suspends an insolvent pledgor-clearing member for failure to pay an Overpledged Value Amount due as a result of exercising a pledged option contract, there may be insufficient funds with which to credit the Pledgee's Deposit Account. In this instance, although the assigned clearing member is likely to be made whole, under OCC's rules the pledgee may not be paid. Since OCC expressly does not guarantee payment of any amounts owing by a clearing member to the pledgee, the pledgee must claim against the pledgor for the deficiency, independent of the Pledge Program.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 83-20173 Filed 7-25-83; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 19983; File No. SR-PSE-83-11]**

## Filing of Proposed Rule Change by Pacific Stock Exchange, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1) notice is hereby given that on July 1, 1983, the Pacific Stock Exchange, Inc. ("PSE") filed with the Securities and Exchange Commission the proposed rule change as described herein. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The PSE proposes to modify its listing fee schedule for the listing of additional shares or warrants by: (i) Reducing its fee schedule from ½ ¢ per share to ¼ ¢ per share; (ii) increasing the maximum fee per application from $5,000 to $7,500 and (iii) adding an annual maximum fee of $15,000 per issue. The PSE states in its filing that the proposed change is intended to make these fees more competitive with fees charged by other exchanges. According to the PSE, the proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

In order to assist the Commission in determining whether to approve the proposed rule change or institute proceedings to determine whether the proposed rule change should be disapproved, interested persons are invited to submit written data, views and arguments concerning the submission within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to file No. SR-PSE-83-11.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 5th Street, NW., Washington, D.C. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office to the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 83-20171 Filed 7-25-83; 8:45 am]

BILLING CODE 8010-01-M

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## SMALL BUSINESS ADMINISTRATION

**[License No. 06/06-5264]**

## Evergreen Capital Co., Inc.; Issuance of a License To Operate as a Small Business Investment Company

On May 18, 1983, a notice was published in the **Federal Register** (48 CFR 22404), stating that Evergreen Capital Corporation, Inc., located at 8502 Tybor Drive, Suite 201, Houston, Texas 77024, had filed an application with the Small Business Administration pursuant to 13 CFR 107. 201(1983), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

The period for comment expired on June 2, 1983, and no comments were received.

Notice is hereby given that considering the application and other pertinent information, SBA has issued License No. 06/06-5264 to Evergreen Capital Company, Inc.

(Catalog of Federal Domestic Assistance, Program Number 59.011, Small Business Investment Companies)

Dated: July 18, 1983.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 83-20170 Filed 7-25-83; 8:45 am]

BILLING CODE 8025-01-M

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## DEPARTMENT OF STATE

**[Public Notice 871]**

## Curator, Diplomatic Reception Rooms; Delegation of Authority No. 152

By virtue of the authority vested in the Secretary of State by section 4 of the Act of May 26, 1949 (22 U.S.C. 2658) and section 25 of the State Department Basic Authorities Act of 1956 (22 U.S.C. 2697), and in the exercise of my authority under the provisions of section 150 of the Organization Manual of the Department of State, I hereby delegate to the Curator, Diplomatic Reception Rooms, Department of State, authority to accept gifts and loans for the furnishing, decoration, and maintenance of the Diplomatic Reception Rooms and to take all measures necessary to give effect to such gifts and loans, including authority to enter into contracts and agreements with donors and contributors on behalf of the Department of State.

Dated: July 12, 1983.

**Jerome M. Van Gorkom,**

*Under Secretary for Management.*

[FR Doc. 83-20132 Filed 7-25-83; 8:45 am]

BILLING CODE 4710-08-M

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**[Public Notice CM-8/643]**

## Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that the Modem Working Party of Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet at 9:00 a.m., August 12, 1983 in Room 3012, Department of Commerce Building, 325 South Broadway, Boulder, Colorado. This Working Party deals with matters in telecommunications relating to the development of international digital data transmission.

The agenda for the August 12 meeting will include discussion of coding for the 9600 duplex modem 14.4 kilobits-per-second modem proposals, joint testing, and minor adjustments to CCITT Recommendation V.22 bis.

Members of the general public may attend the meeting and join in the discussion subject to the instructions of the Chairman. Requests for further information may be directed to Mr. Earl Barbely, State Department, telephone 202 632-3405 or Mr. T. de Haas, Chairman of U.S. Study Group D, Department of Commerce, Boulder, Colorado, telephone 303 497-3728.

Dated: July 14, 1983.

**Earl S. Barbely,**

*Director, Office of International Communications Policy.*

[FR Doc. 83-20129 Filed 7-25-83; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/642]

### Study group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group CMTT of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet August 23, 1983, in Conference Room G, 10th Floor, American Telephone and Telegraph Company, 1120 20th Street, NW., Washington, D.C. The meeting will begin at 9:30 a.m.

Study Group CMTT deals with the specifications to be satisfied by telcommunication systems for transmission of radio and television programs over long distances. The purpose of the meeting is as follows:

1. Review all CMTT international contributions submitted for the 1983 interim meeting (August 29–September 13, 1983, Geneva);
2. Develop U.S. technical positions for the interim meeting;
3. Review Delegation work assignments.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information may be directed to Mr. Earl S. Barbely, State Department, Washington, D.C. 20520, telephone (202) 632–3405.

Dated: July 13, 1983.

**Earl S. Barbely,**

*Director, Office of International Communications Policy.*

[FR Doc. 83-20128 Filed 7-25-83; 8:45 am]

BILLING CODE 4710-07-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### Treasury Current Value of Funds Rate

**AGENCY:** Bureau of Government Financial Operations, Fiscal Service, Treasury.

**ACTION:** Notice of rate for use in Federal debt collection and discount evaluation.

**SUMMARY:** Pursuant to Section 11 of the Debt Collection Act of 1982 (31 U.S.C. 3777), the Secretary of the Treasury is responsible for computing and publishing the percentage rate to be used in assessing interest charges for outstanding debts on claims owed the Government. Treasury's Cash Management Regulations (I TFM 6–8000) also prescribe use of this rate by agencies as a comparison point in evaluating the cost-effectiveness of a cash discount. Notice is hereby given that the applicable rate will change from 11% to 9% for the first quarter of FY 1984.

**DATES:** The rate will be in effect for the period beginning on October 1, 1983 and ending on December 31, 1983.

**FOR FURTHER INFORMATION CONTACT:** Inquiries should be directed to the Cash Management Program Staff, Bureau of Government Financial Operations, Department of the Treasury, Treasury Annex No. 1, PB–711, Washington, D.C. 20226 (Telephone: 202/634–5131).

**SUPPLEMENTARY INFORMATION:** The rate reflects the current value of funds to the Treasury for use in connection with Federal cash management systems, and is based on investment rates set for purposes of Pub. L. 95–147, 91 Stat. 1227. Computed each year by averaging investment rates for the twelve-month period ending every September 30 for applicability effective January 1, the rate is subject to quarterly revisions if the annual average, on a moving basis, changes by 2 per centum. The rate in effect for the first quarter of FY 84 reflects the average investment rates for the twelve-month period ended June 30, 1983. The applicable rate will be published on or around the end of the first month of a given quarter for use during the succeeding calendar quarter.

Dated: July 20, 1983.

**Russell D. Morris,**

*Assistant Commissioner.*

[FR Doc. 83-20126 Filed 7-25-83; 8:45 am]

BILLING CODE 4810-35-M

### Customs Service

### Receipt of Domestic Interested Party Petition Concerning Tariff Classification of Polypropylene Ropes; Extension of Time for Comments

**AGENCY:** Customs Service, Treasury.

**ACTION:** Notice of extension of time for comments.

**SUMMARY:** This notice extends the period of time within which interested members of the public may submit comments with respect to a domestic interested party petition concerning the tariff classification of polypropylene ropes. A notice inviting the public to comment on the receipt of this petition was published in the **Federal Register** on April 29, 1983 (48 FR 19510) and a subsequent document correcting certain omissions in the April 29, 1983, notice was published on May 25, 1983 (48 FR 23513). Comments were to have been received on or before July 27, 1983, the comment period deadline in the correction document. A request has been received to extend the period of time for the submission of comments for an additional 30 days. Customs believes that because of the complexity of the issues involved, an extension of the comment period is warranted. Accordingly, this notice extends the period of time for comments until August 26, 1983.

**DATE:** Comments must be received on or before August 26, 1983.

**ADDRESS:** Written comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

**FOR FURTHER INFORMATION CONTACT:** Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–8181).

Dated: July 21, 1983.

*Harvey B. Fox,*

*Acting Director, Office of Regulations and Rulings.*

[FR Doc. 83-20133 Filed 7-25-83; 8:45 am]

BILLING CODE 4820-02-M

# Sunshine Act Meetings

Federal Register
Vol. 48, No. 144
Tuesday, July 26, 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).

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**FEDERAL ENERGY REGULATORY COMMISSION**

Notice of Meeting

July 20, 1983.

**TIME AND DATE:** 10 a.m., July 27, 1983.

**PLACE:** 825 North Capitol Street NE., Washington, D.C. 20426.

**STATUS:** Open.

**MATTERS TO BE DISCUSSED:** Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** Kenneth F. Plumb, Secretary, telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Division of Public Information.

**Consent Power Agenda—775th Meeting—July 27, 1983, Regular Meeting (10 a.m.)**

CAP-1. Project No. 6276-002, MacGregor Down, Inc.
CAP-2. Project Nos. 6824-000 and 6825-000, Colenergy Inc.
CAP-3. Project No. 7118-001, Cumberland Power Corp.
CAP-4. Project No. 5448-001, Western Power, Inc.; Project No. 6071-000, Public Utility District No. 1, Lewis County, Washington; Project No. 6387-002, Western Hydro Electric
CAP-5. Project No. 7226-001, Onondaga County Water Authority
CAP-6. Project No. 2774-001, Modesto and Turlock Irrigation Districts and City and County of San Francisco; Project No. 5642-001, Tuolumne County, California
CAP-7. Project No. 289-005, Louisville Gas & Electric Co.
CAP-8. Project No. 4356-001, Long Lake Energy Corp.; Project No. 5236-000, Essex County Industrial Development Agency; Project No. 5752-000, New York State Department of Environmental Conservation; Project Nos. 5760-000 and 5762-000, International Paper Co.
CAP-9. Project No. 3612-002, Brasfield Development, Ltd.; Project No. 4179-000, Appomattox River Water Authority
CAP-10. Omitted
CAP-11. Project No. 2372-002, Pennsylvania Electric Co.
CAP-12. Project No. 3515-000, Fluid Energy Systems, Inc.; Project No. 4122-000, Kern County Water Agency; Project No. 4129-001, Olcese Water District
CAP-13. Project No. 2157-014, Public Utility District No. 1 of Snohomish County and City of Everett, Washington
CAP-14. Docket Nos. EF80-2011-002 and 003, U.S. Secretary of Energy—Bonneville Power Administration
CAP-15. Docket No. ER78-417-003, Kentucky Utilities Co.
CAP-16. Docket No. ER83-425-001, Ohio Edison Co.
CAP-17. Docket No. ER83-433-001, Rochester Gas & Electric Corp.
CAP-18. Docket No. ER83-540-000, Portland General Electric Co.
CAP-19. Docket No. ER83-532-000, Southern California Edison Co.
CAP-20. Docket No. ER3-548-000, Kansas City Power & Light Co.
CAP-21. Docket No. ER83-561-000, Florida Power & Light Co.
CAP-22. Omitted
CAP-23. (a) Docket No. ER82-616-002, Middle South Energy, Inc.; (b) Docket Nos. RM83-21-000, 001 and 002, Interpretation of authority to suspend initial rate schedules
CAP-24. Docket No. QF82-208-001, American Lignite Products Co.
CAP-25. Omitted
CAP-26. Docket No. ER83-90-000, Northern States Power Co.
CAP-27. Docket Nos. ER82-412-001, ER83-348-000, ER83-349-000 and ER83-350-000, Kansas Gas & Electric Co.
CAP-28. Docket No. ER82-625-000, Boston Edison Co.
CAP-29. Docket No. ER82-799-000, Niagara Mohawk Power Corp.
CAP-30. Docket Nos. EL83-24-000 and 001, Seminole Electric Cooperative, Inc.
CAP-31. Docket No. EL83-20-000, the Town of Highlands, North Carolina; Haywood Electric Membership Corporation; and North Carolina Electric Membership Corp. v. Nantahala Power & Light Co.
CAP-32. Project No. 2912-001, Alabama Electric Cooperative, Inc.
CAP-33. Project No. 7172-000, Douglas Water Power Co.
CAP-34. Docket No. ER83-138-002 (phase I), the Cleveland Electric Illuminating Co.
CAP-35. Docket No. EL82-21-001, Sacramento Municipal Utility District v. Pacific Gas & Electric Co., Southern California Edison Co. and San Diego Gas & Electric Co.

**Consent Miscellaneous Agenda**

CAM-1. Docket No. GP83-38-000, State of Oklahoma, Section 103 NGPA Determinations, Robert A. Mason, McGuire 1 Well, JD83-05766, Jimmy W. Gray, Maness #1-19 Well, JD No. 83-13758; Landers & Musgrove, Andrews #1 Well, JD No. 83-13768; Woods Petroleum, McDaniel #15-2 Well, JD No. 83-14791; Roy Edwards and Co., Edwards A #5 Well, JD No. 83-14820; Western States Oil & Gas, Cermak #1 Well, JD No. 83-21823; Tuthill and Barbee, Simpson Walker #1-31 Well, JD No. 83-21793
CAM-2. Docket No. GP83-39-000, Kansas Corporation Commission, Section 108 NGPA Determinations, Pan Eastern Exploration Co., Weese 1-1 Well, et al., JD Nos. 83-17367, et al., State Docket Nos. K-82-0249, et al.
CAM-3. Docket No. GP83-26-000, State of Kansas, Section 103 NGPA Determination, Associated Petroleum Consultants, Inc., Klingberg #1 Well, JD No. 83-22494
CAM-4. (a) Docket No. GP81-34-000, State of Ohio, Section 103 NGPA Determination, Charles O. Lighthizer, A. R. Crawford No. 1 Well, FERC No. JD79-6124, State Docket No. 2595, Marshall No. 1 Well, FERC No. JD79-12527, State Docket No. 3903; (b) Docket No. GP82-48-000, State of New Mexico, Section 103 NGPA Determination, Warren Petroleum Co. (a Division of Gulf Oil Corp.), Mark Well No. 8, FERC Docket No. JD79-16337; (c) Omitted
CAM-5. Docket Nos. RM79-76-183 (Texas—11 addition IV) and RM79-76-184 (Texas—11 addition V), high-cost gas produced from tight formations
CAM-6. Docket No. RM79-76-176 (Texas—3 addition VI), high-cost gas produced from tight formations
CAM-7. Docket No. RO83-2-000, Tom O'Neal d.b.a. O'Neal Service Center
CAM-8. Docket No. RO80-4-000, Polaris Production Corp.

**Consent Gas Agenda**

CAG-1. Docket No. RP83-82-002, Valley Gas Transmission, Inc.
CAG-2. Docket No. RP78-68-017, United Gas Pipe Line Co.
CAG-3. Docket No. TA83-2-28-004, Panhandle Eastern Pipe Line Co.
CAG-4. Docket No. TA83-2-9-002, Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.
CAG-5. Docket No. RP83-81-002, Montana-Dakota Utilities Co.
CAG-6. Docket No. RP83-104-000, Florida Gas Transmission Co.
CAG-7. Docket No. RP83-105-000, National Fuel Gas Supply Corp.
CAG-8. Docket No. TA83-2-11-000 (PGA83-3), United Gas Pipe Line Co.

CAG–9. Docket No. TA83–2–11–000 (PGA83–2a), United Gas Pipe Line Co.
CAG–10. Docket No. TA83–2–15–000 (PGA83–2), Mid-Louisiana Gas Co.
CAG–11. Docket No. TA83–2–16–000 (PGA83–2), National Fuel Gas Supply Corp.
CAG–12. Docket No. TA83–2–17–000 (PGA83–2), Texas Eastern Transmission Corp.
CAG–13. Docket No. TA83–2–18–000 (PGA83–2), Texas Gas Transmission Corp.
CAG–14. Docket No. TA83–2–61–000, West Lake Arthur Co.
CAG–15. Docket No. TA83–2–52–000 (PGA83–2, PGA83–1a, PGA82–2a and PGA82–16), Western Gas Interstate Co.
CAG–16. Docket No. TA83–2–10–000 (PGA83–2a), Tennessee Natural Gas Lines, Inc.
CAG–17. Docket No. TA83–2–14–000 (PGA83–2), Lawrenceburg Gas Transmission Corp.
CAG–18. Docket No. RP83–107–000, North Penn Gas Co.
CAG–19. Omitted
CAG–20. Docket No. RP83–84–000, Michigan Consolidated Gas Co. v. Panhandle Eastern Pipe Line Co.
CAG–21. Docket No. RP83–73–000, State of North Dakota v. Northern Natural Gas Co., Division of Internorth, Inc. and Midwestern Gas Transmission Co.
CAG–22. Docket No. OR83–2–000, Coastal States Marketing, Inc. and Coastal States Trading, Inc. v. Texas-New Mexico Pipeline Co.
CAG–23. Docket Nos. RP81–54–012, RP81–56–007, RP82–10–008, RP82–12–009, RP82–125–007, RP82–121–001 and RP83–47–000, Tennessee Gas Pipeline Co.
CAG–24. Docket Nos. TA81–2–7–000, TA82–1–7–000 and TA83–1–7–000, Southern Natural Gas Co.
CAG–25. Docket No. TA82–1–33–004, El Paso Natural Gas Co.
CAG–26. Docket No. RP82–83–000, Gas Transport, Inc.
CAG–27. Docket No. RP82–84–000, RP83–14–000 and RP83–45–000, Montana-Dakota Utilities Co.
CAG–28. Docket No. RP82–85–000, Western Gas Interstate Co.
CAG–29. Docket No. ST81–37–001, Consumers Power Co.
CAG–30. Docket No. ST81–469–001, Seagull Pipeline Corp.
CAG–31. Docket No. ST83–265–000, Producers Gas Co.
CAG–32. Docket No. ST83–283–000, Cabot Corp.
CAG–33. Docket No. ST83–297–000, Tejas Gas Corp.
CAG–34. Docket Nos. ST82–395–001, ST83–219–000 and ST83–248–000, Riverway Gas Pipeline Corp.
CAG–35. Docket Nos. ST79–39–000, et al., and CP83–134–000, et al., Houston Pipeline Co.
CAG–36. Docket No. RI83–6–000, Ecee, Inc.
CAG–37. Docket No. FI83–4–000, Exxon Corp.
CAG–38. Docket No. CI83–221–001, et al., Petro-Lewis Corp. (operator), et al.; Docket No. CI83–200–001, Samedan Oil Corp.; Docket No. CI83–208–001, Amerada Hess Corp.
CAG–39. Docket Nos. CI83–215–001 and CI83–220–001, Getty Oil Co.
CAG–40. Docket No. CI83–163–000, Texaco, Inc.
CAG–41. Docket No. CI78–932–003, et al., Odeco Oil & Gas Co., et al.
CAG–42. Pacific Interstate Transmission Co.
CAG–43. Docket Nos. CP82–392–001 and CP82–392–002, Natural Gas Pipe Line Co. of America
CAG–44. Docket No. CP82–177–002, United Gas Pipeline Co.
CAG–45. Docket No. CP82–366–001, K N Energy, Inc., (formerly Kansas-Nebraska Natural Gas Co., Inc.)
CAG–46. Docket No. CP76–362–007, et al., Texas Eastern Transmission Corp., et al.
CAG–47. Docket No. CP83–325–000, Northern Natural Gas Co., a Division of Internorth, Inc.
CAG–48. Docket Nos. CP82–500–000 and CP82–500–001, Northern Natural Gas Co., Division of Internorth, Inc.
CAG–49. Docket Nos. CP83–64–000 and 001, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG–50. Docket No. CP82–529–000, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG–51. Omitted.
CAG–52. Docket No. CP83–237–000, United Gas Pipe Line Co.,
CAG–53. Docket No. CP83–177–000, Consolidated Gas Supply Corp.
CAG–54. Docket No. CP83–247–000, Valero Interstate Transmission Co.
CAG–55. Docket No. CP83–194–000, Natural Gas Pipeline Co. of America
CAG–56. Docket No. CP83–156–000, Transcontinental Gas Pile Line Corp. and Columbia Gulf Transmission Co.
CAG–57. Docket No. CP83–241–000, United Gas Pipe Line Co.
CAG–58. Docket No. CP81–188–003, Consolidated Gas Supply Corp.
CAG–59. Docket No. CP79–345–000, Glacier Gas Co.
CAG–60. Docket Nos. CP81–301–000 and 001, American Natural Rocky Mountain Co.; Docket Nos. CP78–99–013, CP80–35–002, CP81–328–000 and 001, Colorado Interstate Gas Co.; Docket No. CP80–34–002, Panhandle Eastern Pipe Line Co.; Docket Nos. CP81–488–000 and 001, Colorado Interstate Gas Co.; Docket No. CP82–457–000, Trailblazer Pipeline Co.; Docket No. CP82–458–000, Natural Gas Pipeline Co., of America.
CAG–61. Docket No. CP82–107–002, Tennessee Gas Pipeline Co.
CAG–62. Docket No. CP82–34–003, Northern Natural Gas Co., Division of Internorth, Inc.
CAG–63. Docket No. CP82–305–000, Panhandle Eastern Pipeline Co.

**Power Agenda**

**I. Licensed Project Matters**

P–1. Project Nos. 3229–000 and 7265–001, City of Nashua

**II. Electric Rate Matters**

ER–1. Docket Nos. ER81–267–000 and ER81–341–000, Kentucky Utilities Co.
ER–2. Docket No. ER78–414–000, Delmarva Power & Light Co.
ER–3. Docket Nos. ER80–259–000, ER80–793–000, ER80–793–001, ER81–355–000, ER81–356–000 and ER81–357–000, Kansas Gas & Electric Co.
ER–4. Docket No. ER83–4011–000, Southwestern Power Administration System Power Rates

**Miscellaneous Agenda**

M–1. Docket No. RM80–40–000, filing requirements and procedures for the approval of Federal power marketing agencies
M–2. Docket No. PL83–5–000, Hydroelectric Power Project Development: Comprehensive analyses
M–3. Reserved
M–4. Reserved
M–5. Docket No. RM83–68–000, rules of practice and procedure: Revision of contested settlement procedure
M–6. Docket No. RM83–71–000, elimination of variable cost from natural gas pipe line minimum bill provision
M–7. Docket No. RM80–21–000, regulations implementing section 110(a)(1) of the Natural Gas Policy Act of 1978 for first sales under Sections 105 and 106(b), State severence taxes
M–8. Docket No. RM80–47–000, regulations implementing Section 110 of the Natural Gas Policy Act of 1978 and establishing policy under the Natural Gas Act
M–9. Docket No. GP82–5–000, Arkansas Louisiana Gas Co.
M–10. Docket No. GP81–22–000, Marathon Oil Co.

**Gas Agenda**

**I. Pipeline Rate Matters**

RP–1. Omitted
RP–2. Docket No. RP73–43–006 (PGA77–2), Mid Louisiana Gas Co.; Docket No. CI77–273–000, Gulf Oil Corp.; Docket No. CP77–352–000, Grand Bay Co.
RP–3. (a) Docket Nos. TA81–1–21–001 and TA81–2–21–001, Columbia Gas Transmission Corp.; (b) Docket No. RP82–119–000, Columbia Gulf Transmission Co.; Docket No. RP82–120–000, Columbia Gas Transmission Corp.

**II. Producers Matters**

CI–1. Reserved

**III. Pipeline Certificate Matters**

CP–1. Docket Nos. RP75–79–000 Lehigh Portland Cement Co. v. Florida Gas Transmission Co.; Docket No. CP77–44–001, Abitibi Corp. v. Florida Gas Transmission Co.
CP–2. Docket No. CP83–254–000, Montana Dakota Utilities Co.
CP–3. Docket No. CP83–75–000, Consolidated System LNG Co.
CP–4. Docket No. CP83–333–000, Panmark Gas Co.; Docket No. CP83–342–000, Trunkline Gas Co.; Docket No. CP83–343–000, Panhandle Eastern Pipe Line Co.; Docket No. CP83–354–000, Trunkline Gas Co. and Panmark Gas Co.; Docket No. CP83–355–000, Panhandle Eastern Pipe Line Co. and Panmark Gas Co.

**Kenneth F. Plumb,**

*Secretary.*

[S–1082–83 Filed 7–22–83; 2:20 pm]

BILLING CODE 6717–01–M

2

**COMMODITY FUTURES TRADING COMMISSION**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 48 FR 135, Wednesday, July 13, 1983.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:** 10 a.m., Tuesday, July 26, 1983.

**CHANGES IN THE MEETING:**

Introducing Brokers Final Rules—Cancelled until 10 a.m., Friday, July 29, 1983, fifth floor hearing room.

[S-1081-83 Filed 7-22-83; 1:34 pm]

BILLING CODE 6351-01-M

3

**FEDERAL RESERVE SYSTEM**

**TIME AND DATE:** 10 a.m., Monday, August 1, 1983.

**PLACE:** 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board (202) 452-3204.

Dated: July 22, 1983.

James McAfee,

*Associate Secretary of the Board.*

[S-1083-83 Filed 7-22-83; 3:22 pm]

BILLING CODE 6210-01-M

4

**NATIONAL COMMISSION ON STUDENT FINANCIAL ASSISTANCE:**

Cancellation of Public Meeting

**DATE:** July 26, 1983.

**TIME:** 9 a.m.–5 noon.

**PLACE:** Room 304, The Cannon House Office Building, Washington, D.C. 20001.

**PURPOSE:** The above meeting is hereby cancelled until further notice.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Jerue, Chief Executive Officer (202) 724-2914.

This meeting was cancelled by the Commission Chairman, Mr. David R. Jones.

Submitted the 21st day of July 1983.

**Richard T. Jerue,**

*Chief Executive Officer.*

[FR Doc. S-1079-83 Filed 7-22-83; 10:21 am]

BILLING CODE 6820-BC-M

5

**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 25, 1983, at 450 5th Street, N.W., Washington, D.C.

Closed meetings will be held on Tuesday, July 26, 1983, at 10 a.m., and on Thursday, July 28, 1983, following the 2:30 p.m. open meeting. Open meetings will be held on Thursday, July 28, 1983, at 9 a.m. and 2:30 p.m. in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans, Longstreth and Treadway voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 26, 1983, at 10 a.m., will be:

Formal orders of investigation.
Access to investigative files by Federal, State, or Self-regulatory authorities.
Institution of Administrative proceeding of an enforcement nature.
Institution of injunctive actions.
Consideration of amicus participation.
Opinion.

The subject matter of the closed meeting scheduled for Thursday, July 28, 1983, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Thursday, July 28, 1983, at 9 a.m., will be:

1. Consideration of whether to propose for comment revised versions of Form BD and Form BDW which are designed to make the forms more uniform. For further information, please contact Hugh T. Wilkinson at (202) 272-3115.

2. Consideration of whether to issue an order pursuant to Section 17(d) of the Investment Company Act of 1940 ("Act") and Rule 17d-1 thereunder, permitting the mutual funds within the IDS Group ("Funds"), and Investors Diversified Services, Inc., the Funds' investment manager and principal underwriter, to enter into and implement a joint arrangement for allocating distribution expenses among the Funds, and pursuant to Section 6(c) of the Act, granting exemptions from Sections 2(a)(35) and 22 (c) and (d) of the Act and Rules 2a-4, 17d-1(a) and 22c-1 under the Act in connection with the joint distribution arrangement. For further information, please contact Brion R. Thompson at (202) 272-3026.

3. Consideration of whether to adopt Rule 11a-2 under the Investment Company Act of 1940 which would permit registered insurance company separate accounts, subject to certain conditions, to make exchange offers without the terms of those offers having first been submitted to and approved by the Commission. For further information, please contact Thomas P. Lemke at (202) 272-2061.

4. Consideration of whether to adopt Rule 6c-8 under the Investment Company Act of 1940, which would provide registered insurance company separate accounts and others with exemptive relief from various provisions of the Act with respect to variable annuity contracts participating in such accounts to the extent necessary to permit them to impose a deferred sales load upon redemption of any such contract and to deduct a full annual fee under certain circumstances. For further information, please contact Thomas P. Lemke at (202) 272-2061.

5. Consideration of whether to adopt amendments to Rules 14a-3, 14b-1, 14c-2 and 17a-3 under the Securities Exchange Act of 1934 relating to certain recommendations made by the Advisory Committee on Shareholder Communications concerning communications between issuers and beneficial owners of securities held in nominee name. For further information, please contact Eric E. Miller at (202) 272-2589.

6. Consideration of whether to adopt proposed order exposure rule, Rule 11A-1 under the Securities Exchange Act of 1934. In this regard, the Commission will discuss whether an order exposure rule is necessary or desirable at the present time. For further information, please contact William Uchimoto at (202) 272-2409.

The subject matter of the open meeting scheduled for Thursday, July 28, 1983, at 2:30 p.m., will be:

Oral argument on an appeal by Alstead, Strangis & Dempsey, Inc. a registered broker-dealer, from the initial decision of an administrative law judge. For further information, please contact R. Moshe Simon at (202) 272-7400.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Michael Lefever at (202) 272-2468.

July 22, 1983.

[S-1080-83 Filed 7-22-83; 11:33 am]

BILLING CODE 8010-01-M

6

**SECURITIES AND EXCHANGE COMMISSION**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during

the week of August 1, 1983, at 450 5th Street, NW., Washington, D.C.

A closed meeting will be held on Tuesday, August 2, 1983, at 10 a.m.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Evans, Longstreth and Treadway voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, August 2, 1983, at 10 a.m., will be:

Settlement of administrative proceeding of an enforcement nature.

Access to investigative files by Federal, State, or Self-regulatory authorities.

Institution of injunctive action.

Opinion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Jerry Marlatt at (202) 272-2092.

July 21, 1983.

[S-1084-83 Filed 7-22-83; 4:02 pm]

BILLING CODE 8010-01-M

Federal Register

Tuesday
July 26, 1983

Part II

# Department of Labor

## Mine Safety and Health Administration

## Training and Retraining of Miners; Advance Notice of Proposed Rulemaking; Postponement

**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**30 CFR Part 48**

## Training and Retraining of Miners; Advance Notice of Proposed Rulemaking; Postponement

**AGENCY:** Mine Safety and Health Administration (MSHA), Labor.

**ACTION:** Notice of Postponement.

**SUMMARY:** Rulemaking action on MSHA's existing requirements for training and retraining of miners in 30 CFR Part 48 is postponed until further notice.

**ADDRESS:** Mine Safety and Health Administration, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235–1910.

**SUPPLEMENTARY INFORMATION:** On March 18, 1983 (48 FR 11669), the Mine Safety and Health Administration published an advance notice of proposed rulemaking (ANPRM) inviting public participation in the early stages of the Agency's review of the existing training and retraining regulations for miners in 30 CFR Part 48. Comments on the ANPRM were originally due by May 17, 1983. On April 22, 1983, MSHA extended the comment period to June 17, 1983 (48 FR 17517). In the ANPRM, MSHA stated that it would be evaluating the training requirements within the context of the Agency's ongoing review of the existing safety and health standards applicable to coal and metal and nonmetal mines. In response to the ANPRM, commenters from organizations representing major segments of the mining community recommended that MSHA postpone further rulemaking action on the training regulations until the review of some of the safety and health standards in 30 CFR Parts 55, 56, 57 and 75 is completed. Because of the intense interest in assuring that the most effective training regulations be developed, they suggested that a postponement would permit them time for a more careful, thorough and complete review. In light of these comments, MSHA has decided to postpone rulemaking action on the training regulations until further notice. In the interim, the Agency will continue internal review of the existing training programs and requirements and encourages the mining community to continue to focus on this very important aspect of miner health and safety.

Dated: July 21, 1983.

**Thomas J. Shepich,**

*Deputy Assistant Secretary for Mine Safety and Health.*

[FR Doc. 83–20169 Filed 7–25–83; 8:45 am]

**BILLING CODE 4510–43–M**

federal register

Tuesday
July 26, 1983

Part III

# Department of Energy

## Federal Energy Regulatory Commission

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

[Volume 943]

## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: July 18, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the **Federal Register.**

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487–4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

Section 102–1: New OCS lease
102–2: New well (2.5 Mile rule)
102–3: New well (1000 Ft rule)
102–4: New onshore reservoir
102–5: New reservoir on old OCS lease.

Section 107–DP: 15,000 feet or deeper
107–GB: Geopressured brine
107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation

Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

**Kenneth F. Plumb,**
*Secretary.*

NOTICE OF DETERMINATIONS — VOLUME 934

ISSUED JULY 18, 1983

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| OHIO DEPARTMENT OF NATURAL RESOURCES | | | | | | | | | |
| -ALTHEIRS OIL INC | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343519 | 3405320453 | 107-TF | | | | LEWIS SCOTT #1 | CHESHIRE TOWNSHIP | 9.0 | COLUMBIA GAS TRAN |
| -APPALACHIAN EXPLORATION INC | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343520 | 3415321259 | 107-TF | | | | W BURSE #2 | COPLEY | 73.0 | YANKEE RESOURCES |
| -ATLAS ENERGY GROUP INC | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343521 | 3415322118 | 102-2 | | 107-TF | | MCGILL #3 | KINSMAN | 0.0 | COLUMBIA GAS TRAN |
| -BASIN PRODUCING CO | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343522 | 3400720574 | 107-RT | | | | H & E RICHMOND UNIT #1 | DENMARK | 24.0 | |
| -BECK OIL & GAS CO | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343523 | 3413322803 | 103 | | 107-TF | | HAYDEN UNIT #1 | FRANKLIN | 0.0 | COLUMBIA GAS OF O |
| -BLACK RUN DEVELOPMENT CO | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343524B | 3411926670 | D 107-TF | | | | J W TAYLOR - L & P HOUSTON #1 | LICKING | 0.0 | NATIONAL GAS & OI |
| 8343524A | 3411926670 | 103 | | | | J W TAYLOR - L & P HOUSTON #1 | LICKING | 0.0 | NATIONAL GAS & OI |
| -BRANHAM RAYMOND | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343604 | 3411523111 | 107-TF | | | | KING #1 | MCCONNELLSVILLE | 98.0 | |
| -BUCKEYE OIL PRODUCING CO | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343525 | 3401322714 | 108 | | | | DON F & ELOISE SHRIMPLIN #2 | | 0.1 | COLUMBIA GAS TRAN |
| 8343526 | 3401322747 | 108 | | | | DON F & ELOISE SHRIMPLIN #3 | | 1.0 | COLUMBIA GAS TRAN |
| -CAVENDISH PETROLEUM OF OHIO INC | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343528 | 3411926485 | 103 | | 107-TF | | OHIO POWER 820-A | MEIGS | 50.2 | TEXAS EASTERN TRA |
| 8343527 | 3411926449 | 103 | | 107-TF | | OHIO POWER 7A | RICH HILL | 57.9 | TEXAS EASTERN TRA |
| -CLARENCE SHERMAN | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343530 | 3415723821 | 103 | | 107-TF | | HARTONG #1 | BUCKS | 14.6 | EAST OHIO GAS CO |
| 8343529 | 3407518072 | 103 | | 107-RT | | STUTZMAN #1 | CLARK | 7.3 | COLUMBIA GAS TRAN |
| -CLOVER OIL CO | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343531 | 3416923542 | 107-TF | | | | WEST #1 | CRESTON | 8.0 | COLUMBIA GAS TRAN |
| -COASTAL PETROLEUM CORP | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343532 | 3410323043 | 107-TF | | | | BURR-DIXON #1 | SHARON | 9.0 | EAST OHIO GAS CO |
| 8343533 | 3410323131 | 107-TF | | | | WESTERN RESERVE #12 | SHARON | 9.0 | EAST OHIO GAS CO |
| 8343534 | 3410323132 | 107-TF | | | | WESTERN RESERVE #8 | SHARON | 9.0 | EAST OHIO GAS CO |
| -DELTA RESOURCES INC | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343536 | 3410522525 | 103 | | 107-TF | | BARBA #1 | SALISBURY | 10.0 | COLUMBIA GAS TRAN |
| 8343548 | 3410522581 | 103 | | 107-TF | | BUCK #1 | RUTLAND | 10.0 | COLUMBIA GAS TRAN |
| 8343537 | 3410522534 | 103 | | 107-TF | | F C TAYLOR #1 | RUTLAND | 10.0 | COLUMBIA GAS TRAN |
| 8343539 | 3410522580 | 103 | | 107-TF | | HUNTER #1 | RUTLAND | 10.0 | COLUMBIA GAS TRAN |
| 8343538 | 3410522541 | 103 | | 107-TF | | JEFFERS/BRANHAM #1 | RUTLAND | 10.0 | COLUMBIA GAS TRAN |
| 8343535 | 3405320824 | 103 | | 107-TF | | OHIO POWER #29 | CHESHIRE | 10.0 | COLUMBIA GAS TRAN |
| 8343541 | 3410522586 | 103 | | 107-TF | | RAPP #1 | BEDFORD | 10.0 | COLUMBIA GAS TRAN |
| -DICK HART | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343542 | 3408924581 | 103 | | | | R DUNLAP #3 | FLINT RIDGE | 6.0 | |
| -DUSTY DRILLING COMPANY INC | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343543 | 3411522103 | 107-TF | | | | SIDWELL #2 | DEERFIELD | 0.9 | COLUMBIA GAS TRAN |
| -EAGLE MOUNTAIN ENERGY CORP | | RECEIVED: 06/29/83 JA: OH | | | | | | | |
| 8343544 | 3411522842 | 107-TF | | | | EDGELL UNIT #1 | MALTA | 5.0 | COLUMBIA GAS TRAN |
| 8343545 | 3411522843 | 107-TF | | | | G & V SHOOK #1 | MALTA | 2.0 | COLUMBIA GAS TRAN |
| -EDCO DRILLING & PRODUCING INC | | RECEIVED: 06/29/83 JA: OH | | | | | | | |

BILLING CODE 6717-01-M

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| 8343547 | | 3416723827 | | 103 | | HANNA ED-6A | WARREN | 18.0 | |
| 8343546 | | 3403126631 | | 108 | | MCWEENY ED-1A | | 18.0 | COLUMBIA GAS TRAN |
| -ENTERPRISE ENERGY CORP | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343548 | | 3411926603 | | 103 | 107-TF | OHIO POWER CO #14 | NEWTON | 27.3 | TEXAS EASTERN TRA |
| -ENVIRDGAS INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343549 | | 3400922774 | | 103 | 107-TF | DRYDOCK COAL #41TR | TRIMBLE | 27.3 | |
| -EVERFLOW EASTERN INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343550 | | 3415723810 | | 103 | 107-TF | LEGG #1 | UNION | 0.0 | |
| 8343552 | | 3415723827 | | 103 | 107-TF | RAYMOND DAY #1 | GOSHEN | 0.0 | |
| 8343551 | | 3415723826 | | 103 | 107-TF | TUSCARAWAS COUNTY COMMISSIONERS #2 | GOSHEN | 0.0 | |
| -FREDERICK PETROLEUM CORP | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343553 | | 3416726814 | | 107-DV | | C BAKER #1 | AURELIUS | 7.0 | |
| -GASEARCH INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343554 | | 3400722204 | | 103 | 107-TF | SOLAREK UNIT #1 | CHERRY VALLEY | 20.0 | |
| -GENERAL ELECTRIC CO | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343555 | | 3400722171 | | 103 | 107-TF | BELL #1 | CHERRY VALLEY | 20.0 | EAST OHIO GAS CO |
| -GREENLAND PARTNERSHIP | 83-1 | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343556 | | 3412725888 | | 107-TF | | CAMERON #5 | MONDAY CREEK | 20.0 | PARMOUNT TRANSMIS |
| -HERALD OIL & GAS CO | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343558 | | 3410522674 | | 107-TF | | REED-DURST #1 | SALISBURY | 4.2 | COLUMBIA GAS TRAN |
| -J D DRILLING CO | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343560 | | 3410522343 | | 107-TF | | CHARLES ESKEW #7 | SALISBURY | 6.0 | COLUMBIA GAS TRAN |
| 8343561 | | 3410522441 | | 107-TF | | EDITH FORREST #1 | SALISBURY | 7.0 | COLUMBIA GAS TRAN |
| 8343562 | | 3410522442 | | 107-TF | | EDITH FORREST #2 | SALISBURY | 6.0 | COLUMBIA GAS TRAN |
| 8343564 | | 3410522451 | | 107-TF | | EDWARD ARCHER ETAL #3 | SALISBURY | 8.0 | COLUMBIA GAS TRAN |
| 8343563 | | 3410522450 | | 107-TF | | EDWARD ARCHER ETAL #4 | SALISBURY | 7.0 | COLUMBIA GAS TRAN |
| 8343565 | | 3410522607 | | 107-DV | | EUGENE T GERMAN #1 | OLIVE | 9.0 | COLUMBIA GAS TRAN |
| 8343559 | | 3405320820 | | 107-TF | | MALCOLM & ROMA WARD #1 | CHESHIRE | 8.0 | COLUMBIA GAS TRAN |
| -J P WHITE | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343566 | | 3405320817 | | 108 | | GARBER #1 | | 50.0 | EAST OHIO GAS CO |
| -K S T OIL & GAS CO INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343567 | | 3415723178 | | 108 | | OWENS #2 | | 10.0 | REPUBLIC STEEL CO |
| 8343568 | | 3415321264 | | 103 | 107-TF | TANNERT #1 | HUDSON | 50.0 | YANKEE RESOURCES |
| -KENOIL | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343569 | | 3416923450 | | 107-TF | | JOHN EBERLY #1 | CHESTER | 2.0 | COLUMBIA GAS TRAN |
| -KRAMER EXPLORATION CO | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343577 | | 3410522602 | | 103 | 107-TF | BUMGARDNER #2 | RUTLAND | 10.0 | COLUMBIA GAS TRAN |
| 8343572 | | 3405320811 | | 103 | 107-TF | OHIO POWER CO #10 | CHESHIRE | 10.0 | COLUMBIA GAS TRAN |
| 8343571 | | 3405320786 | | 103 | 107-TF | OHIO POWER CO #14 | CHESHIRE | 10.0 | COLUMBIA GAS TRAN |
| 8343570 | | 3405320785 | | 103 | 107-TF | OHIO POWER CO #24 | CHESHIRE | 10.0 | COLUMBIA GAS TRAN |
| 8343575 | | 3405320821 | | 103 | 107-TF | OHIO POWER CO #26 | CHESHIRE | 0.0 | COLUMBIA GAS TRAN |
| 8343576 | | 3405320822 | | 103 | 107-TF | OHIO POWER CO #27 | CHESHIRE | 10.0 | COLUMBIA GAS TRAN |
| 8343574 | | 3405320813 | | 103 | 107-TF | OHIO POWER CO #8 | CHESHIRE | 10.0 | COLUMBIA GAS TRAN |
| 8343573 | | 3405320812 | | 103 | 107-TF | OHIO POWER CO #9 | CHESHIRE | 10.0 | COLUMBIA GAS TRAN |
| -L & M PETROLEUM INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343578 | | 3412725689 | | 107-TF | | LUPEVRUNT HUSTON #1 | SALT LICK | 10.0 | |
| -LOMAK PETROLEUM INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343581 | | 3412122977 | | 107-TF | | B IAMS UNIT #1 | SHARON | 24.0 | YANKEE RESOURCES |
| 8343580 | | 3405320489 | | 107-TF | | H LUXEMBERG #6 | BURTON | 24.0 | YANKEE RESOURCES |
| 8343579 | | 3405320450 | | 107-TF | | M SHECHTER #1 | BURTON | 24.0 | YANKEE RESOURCES |
| 8343582 | | 3412122982 | | 107-TF | | W KRILL UNIT #1 | SHARON | 24.0 | YANKEE RESOURCES |
| 8343583 | | 3412122893 | | 107-TF | | W SMITH #1-MD | SHARON | 24.0 | YANKEE RESOURCES |
| -MC TAGGART H F | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343557 | | 3416708184 | | 108 | | H F MC TAGGART STATION #2425 | ROBERTS FARM | 15.1 | RIVER GAS CO |
| -MGN DEVELOPMENT CO | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343584 | | 3416722712 | | 107-PE | | LYNN E OVIATT #1 | | 0.5 | RIVER GAS CO |
| -MITCHELL ENERGY CORPORATION | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343585 | | 3408722350 | | 103 | 107-TF | C E WILSON UNIT #1 350 | SOUTH ARABIA (CLINTON | 0.0 | |
| 8343586 | | 3408722351 | | 103 | 107-TF | PAYNE UNIT #1 351 | SOUTH ARABIA (CLINTON | 7.5 | |
| -NOBLE OIL CORP | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343593 | | 3413323020 | | 107-TF | | DUFFIELD #1 | FREEDOM | 20.0 | PARK OHIO INDUSTR |
| 8343589 | | 3413322281 | | 107-TF | | HOLLENBACH #2 | FREEDOM | 20.0 | PARK-OHIO INDUSTR |
| 8343594 | | 3413323021 | | 107-TF | | KAISER #1 | FREEDOM | 20.0 | K S T OIL & GAS C |
| 8343591 | | 3413322842 | | 107-TF | | KAVALIREK UNIT #1 | PALMYRA | 20.0 | GENERAL ELECTRIC |
| 8343592 | | 3413323010 | | 107-TF | | KIBLER #1 | EDINBURG | 20.0 | GENERAL ELECTRIC |
| 8343590 | | 3413322766 | | 107-TF | | PARIS RESORTS #1 | PARIS | 20.0 | GENERAL ELECTRIC |
| 8343588 | | 3413322270 | | 107-TF | | PETRY-GOTTSCHALK #1 | EDINBURG | 20.0 | GENERAL ELECTRIC |
| 8343587 | | 3412725933 | | 107-TF | | WATTS #2A | HARRISON | 20.0 | NATIONAL OIL & GA |
| -NORTHEASTERN ENERGY | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343595 | | 3410323367 | | 103 | 107-TF | SEGA #1 | WADSWORTH | 20.0 | EAST OHIO GAS CO |
| -OLE MISS OIL & GAS INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343596 | | 3407523231 | | 107-TF | | WEITBRECHT #7 | MECHANIC | 1.5 | COLUMBIA GAS TRAN |
| -OMEGA OIL CORP | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343597 | | 3412122764 | | 107-DV | | HADEY BONAR #1 | ELK | 30.0 | |
| -ONEAL PETROLEUM INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343598 | | 3411523187 | | 107-TF | | WORTMAN-SEARS UNIT #1 | MEIGSVILLE | 35.0 | COLUMBIA GAS TRAN |
| -OXFORD OIL CO | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343618 | | 3412725817 | | 103 | 107-TF | DELMAR PRITCHARD #2 | HARRISON | 10.0 | |
| 8343623 | | 3407524012 | | 103 | | PEARL LEONARD TATE #2 | MONROE | 10.0 | |
| -PEMCO GAS INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343599 | | 3411925961 | | 103 | 107-TF | WILSON SMITH #2 | ADAMS | 7.3 | COLUMBIA GAS TRAN |
| -PINE TOP ESTATES PARTNERSHIP | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343600 | | 3415321343 | | 103 | 107-TF | WEILAND-MILLER #1 | BATH | 0.0 | EAST OHIO GAS CO |
| -POI ENERGY INC | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343601 | | 3400520486 | | 103 | 107-TF | HENRY #3 | BAINBRIDGE | 55.0 | |
| 8343602 | | 3400722074 | | 103 | 107-TF | W MILLER #1 | ROME | 41.0 | |
| 8343603 | | 3400722117 | | 103 | 107-TF | W MILLER #2 | ROME | 38.0 | |
| -RESERVE EXPLORATION CO | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343605 | | 3412122980 | | 107-DV | | KENNETH ADDIS #2 | MACKSBURG | 18.3 | FREDERICK PETROLE |
| -ROVI RESOURCES CORP | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343606 | | 3411926613 | | 107-TF | | E WILSON #1 | BLUE ROCK | 11.0 | |
| 8343607 | | 3411926614 | | 107-TF | | E WILSON #2 | BLUE ROCK | 11.0 | |
| -STRATA CORP | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343608 | | 3400922288 | | 107-TF | | KASLER 1-R | ROME | 5.0 | |
| -THE BENATTY CORPORATION | | | | RECEIVED: 06/29/83 JA: OH | | | | | |
| 8343615 | | 3411926599 | | 103 | 107-TF | DITTMAR #1 | BLUE ROCK | 35.0 | TEXAS EASTERN PIP |
| 8343609 | | 3411925446 | | 103 | 107-TF | HUDDLESTON UNIT #1 | BLUE ROCK | 20.0 | TEXAS EASTERN PIP |
| 8343610 | | 3411925903 | | 103 | 107-TF | J STALEY #2 | BLUE ROCK | 3.0 | TEXAS EASTERN PIP |
| 8343611 | | 3411926042 | | 103 | 107-TF | R MITCHELL #4 | BLUE ROCK | 20.0 | TEXAS EASTERN PIP |
| 8343612 | | 3411926478 | | 103 | 107-TF | R MITCHELL #5 | BLUE ROCK | 25.0 | TEXAS EASTERN PIP |
| 8343613 | | 3411926508 | | 103 | 107-TF | R MITCHELL #6 | BLUE ROCK | 25.0 | TEXAS EASTERN PIP |
| 8343614 | | 3411926509 | | 103 | 107-TF | S COX #4 | BLUE ROCK | 25.0 | TEXAS EASTERN PIP |
| 8343617 | | 3411926609 | | 103 | 107-TF | W DEARTH #7 | HARRISON | 30.0 | NATIONAL GAS CORP |
| 8343616 | | 3411926608 | | 103 | 107-TF | W DEARTH UNIT #6 | HARRISON | 40.0 | NATIONAL GAS CORP |

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| -TIGER OIL INC | | | | RECEIVED: | 06/29/83 | JA: OH | | | |
| 8343619 | | 3412725790 | | 107-TF | | T JOHNSON #3 | MADISON | 3.0 | NEWZANE GAS CO |
| -VICTOR MCKENZIE | | | | RECEIVED: | 06/29/83 | JA: OH | | | |
| 8343620 | | 3411926552 | | 103 | 107-TF | F STRATE #1 | CLAY | 20.0 | |
| 8343621 | | 3411726615 | | 103 | | RALPH HARRIS #1 | HOPEWELL | 20.0 | NATIONAL GAS & OI |
| 8343622 | | 3412725879 | | 103 | 107-TF | ROGER WOOLFE #1 | CLAYTON | 20.0 | |
| 8343624 | | 3411926582 | | 103 | 107-TF | TOM MILLER #1 | CLAY | 20.0 | |

**OKLAHOMA CORPORATION COMMISSION**

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| -ANDERMAN/SMITH OPERATING CO | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343497 | 9965 | 3514920085 | | 107-TF | | LEONARD #1 | ELK CITY | 48.0 | MICHIGAN WISCONSI |
| -ARCO OIL AND GAS COMPANY | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343513 | 20818 | 3504722081 | | 102-4 | | DALE WEHLING #2 | SOUTH DOUGLAS | 18.3 | ARCO OIL & GAS CO |
| 8343515 | 20816 | 3504722215 | | 102-4 | | EDNA LANG #1 | SOUTH DOUGLAS | 20.0 | ARCO OIL & GAS CO |
| 8343496 | 11273 | 3500700000 | | 108-ER | | EDNIN A MCGREW UNIT #1 | MOCANE - LAVERNE | 40.2 | TRANSWESTERN PIPE |
| 8343514 | 20817 | 3504722097 | | 102-4 | | KURT KRAUSSE #1 | SOUTH DOUGLAS | 18.3 | ARCO OIL & GAS CO |
| -ARGONAUT ENERGY CORPORATION | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343502 | 22591 | 3505900000 | | 108 | | STANLEY #1 | MOCANE-LAVERNE | 7.2 | NORTHERN NATURAL |
| -CHAMPLIN PETROLEUM COMPANY | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343500 | 22638 | 3513700000 | | 108 | | BROOKS-HERVEY #2 | MARLOW | 9.0 | NATURAL GAS OPERA |
| -CITIES SERVICE COMPANY | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343501 | 22592 | 3513900000 | | 108 | | SPARKS D #1 | W HOUGH | 3.7 | NORTHERN NATURAL |
| -CLARK RESOURCES INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343486 | 22113 | 3507323696 | | 103 | | KERR 18-1 | SOONER TREND | 180.9 | WARREN PETROLEUM |
| -DAVIS OIL COMPANY | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343484 | 22530 | 3501722416 | | 103 | | MARCELLUS #1 | FORT RENO | 0.0 | PHILLIPS PETROLEU |
| -DICK BAILEY | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343487 | 21990 | 3511121228 | | 108 | | PINE #1 | BRINTON | 4.5 | PHILLIPS PETROLEU |
| -EASTOK PETROLEUM CORP | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343510 | 22006 | 3509120532 | | 103 | | EASTOK PETROLEUM #3 | COALTON-TIGER MOUNTAI | 75.0 | CARR GAS CO |
| -EL DORADO DRILLING INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343516 | 20142 | 3507122529 | | 103 | | P & D FARMS #30-81-1 | | 12.8 | SUN GAS CO |
| -ENSERCH EXPLORATION INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343494 | 20079 | 3508720520 | | 103 | | BILLIE J HARMON #1 | BLANCHARD | 200.0 | LONE STAR GAS CO |
| 8343495 | 20078 | 3508720794 | | 103 | * | BROOKS-ROGERS #1 | BLANCHARD | 216.0 | LONE STAR GAS CO |
| 8343493 | 20681 | 3508720831 | | 103 | | D E DUNSWORTH #1-31 | BLANCHARD | 75.0 | LONE STAR GAS CO |
| -FULLER PETROLEUM INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343485 | 22363 | 3501722393 | | 103 | | WALTHER #1 | MUSTANG WEST | 511.0 | PHILLIPS PETROLEU |
| -FUNK EXPLORATION INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343490 | 20834 | 3513921643 | | 102-4 | | BLASER FARMS #1 | DOMBEY WEST | 350.0 | PANHANDLE EASTERN |
| 8343491 | 20835 | 3500722372 | | 102-4 | | MARINE #1-21 | CAMRICK GAS AREA | 300.0 | PANHANDLE EASTERN |
| -GMG OIL & GAS CORP | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343506 | 22576 | 3511122058 | | 108 | | THOMAS 1-32 | NUYAKA | 7.8 | PHILLIPS PETROLEU |
| -GETTY OIL COMPANY | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343488 | 21612 | 3504321572 | | 103 | | HASBROOK #24-3 | FONDA | 261.0 | PHILLIPS PETROLEU |
| -GILL JOHN K | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343509 | 22342 | 3511124126 | | 103 | | HENRY 'M' #1 | BALD HILL | 50.0 | PHILLIPS PETROLEU |
| -HOLD OIL CORP | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343511 | 20820 | 3506120506 | | 102-2 | | ARMY CORPS OF ENGINEERS #1-35 | BROOKEN | 35.0 | ARKANSAS LOUISIAN |
| 8343512 | 20819 | 3506120527 | | 102-2 | | ARMY CORPS OF ENGINEERS #2-35 | BROOKEN | 55.0 | ARKANSAS LOUISIAN |
| -JUMAS OIL PART CORP | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343499 | 22639 | 3510720325 | | 108 | | FERGUSON #3-C & 3-B | LYONS-QUINN | 15.3 | PHILLIPS PETROLEU |
| -MICHIGAN WISCONSIN PIPE LINE CO | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343483 | 22598 | 3501520629 | | 108 | | BAKER #1 | SOUTH NILES | 7.0 | MICHIGAN WISCONSI |
| 8343482 | 22599 | 3501120698 | | 108 | | NEELY #1-14 | N E SQUAW CREEK | 6.0 | MICHIGAN WISCONSI |
| -PETROLEUM INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343517 | 19934 | 3587207560 | | 103 | | GOODRICH "C" #3 | WEST GOLDSBY | 100.0 | SUN EXPLORATION & |
| -PHILLIPS PETROLEUM COMPANY | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343498 | 22646 | 3505121007 | | 108 | | FOLSOM A #1 | | 2.1 | TRANSOK PIPELINE |
| -PORTS OF CALL OIL CO | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343518 | 19754 | 3510920602 | | 102-4 | 103 | SHARPE #18-1 | SOONER TREND | 164.0 | MOBIL OIL CORP |
| -RAMSEY PROPERTY MANAGEMENT INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343503 | 22589 | 3506320979 | | 103 | | GOLDEN #1 | | 18.9 | TRANSOK PIPE LINE |
| 8343505 | 22587 | 3506320987 | | 103 | | HAMMOND #1 | | 40.4 | TRANSOK PIPELINE |
| 8343504 | 22588 | 3506320894 | | 103 | | RUSSELL #1 | SAND CREEK | 43.2 | TRANSOK PIPE LINE |
| -SAKET PETROLEUM CO | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343477 | 22680 | 3511122344 | | 108 | | LEE #2 | | 11.5 | PHILLIPS PETROLEU |
| 8343481 | 22675 | 3511122687 | | 108 | | NOBLE #1 | | 9.1 | PHILLIPS PETROLEU |
| 8343480 | 22676 | 3511120038 | | 108 | | VAUGHAN #1 | | 5.2 | PHILLIPS PETROLEU |
| 8343479 | 22677 | 3511122674 | | 108 | | VAUGHAN #2 | | 12.1 | PHILLIPS PETROLEU |
| 8343478 | 22678 | 3511122793 | | 108 | | WATSON-LANGFORD #1 | | 0.0 | PHILLIPS PETROLEU |
| -SAMEDAN OIL CORPORATION | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343492 | 20823 | 3501722171 | | 102-2 | | SPEAR #1-8 | | 60.0 | PHILLIPS PETROLEU |
| -SOUTHBROOK ENERGIES INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343508 | 22496 | 3511108000 | | 103 | | BABY JANE #1 | POLLYANNA | 45.0 | PHILLIPS PETROLEU |
| -TEXACO INC | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343507 | 22578 | 3507323044 | | 103 | | EVELYN LESTER #1 | OKARCHE NE | 154.0 | CONOCO INC |
| -ZINKE & TRUMBO LTD | | | | RECEIVED: | 06/28/83 | JA: OK | | | |
| 8343489 | 20847 | 3512920708 | | 102-2 | | DUPREE #1-36 | EAST HAMMON | 500.0 | PRODUCERS GAS CO |

[FR Doc. 83-20099 Filed 7-25-83; 8:45 am]
BILLING CODE 6717-01-C

[Volume 935]

## Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: July 18, 1983.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

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Categories within each NGPA section are indicated by the following codes:

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102–2: New well (2.5 Mile rule)
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107–CS: Coal Seams
107–DV: Devonian Shale
107–PE: Production enhancement
107–TF: New tight formation
107–RT: Recompletion tight formation
Section 108: Stripper well
108–SA: Seasonally affected
108–ER: Enhanced recovery
108–PB: Pressure buildup

**Kenneth F. Plumb,**

*Secretary.*

NOTICE OF DETERMINATIONS VOLUME 935

ISSUED JULY 18, 1983

| JD NO | JA DKT | API NO | D SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|
| MICHIGAN DEPARTMENT OF NATURAL RESOURCES | | | | | | | | |
| -SHELL OIL CO | | | RECEIVED: | 06/30/83 | JA: MI | | | |
| 8343707 | | 2113700000 | 102-4 | | PALOMBIT 1-29A | OTSEGO LAKE 29 | 202.0 | MICHIGAN CONSOLID |
| 8343709 | | 2107934613 | 102-4 | | STATE BLUE LAKE 3-23A | BLUE LAKE 23A | 219.7 | MICHIGAN CONSOLID |
| 8343708 | | 2113700000 | 102-4 | | STATE CHARLTON 1-11 | CHARLTON 11 | 1895.0 | MICHIGAN CONSOLID |
| 8343711 | | 2110100000 | 102-4 | | STATE CLEON 3-28 | CLEON 29B | 960.0 | MICHIGAN CONSOLID |
| 8343718 | | 2101900000 | 102-4 | | STATE COLFAX 1-26 | COLFAX 25 | 54.0 | MICHIGAN CONSOLID |
| 8343706 | | 2101900000 | 102-4 | | STATE COLFAX 2-25 | COLFAX 25 | 86.0 | MICHIGAN CONSOLID |
| ** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, ALBUQUERQUE,NM | | | | | | | | |
| -BLACKWOOD & NICHOLS CO LTD | | | RECEIVED: | 06/29/83 | JA: NM 4 | | | |
| 8343692 | NM 0221-83PB | 3004510589 | 108-PB | | NORTHEAST BLANCO UNIT #59-24 | BLANCO MESAVERDE NE 2 | 18.0 | EL PASO NATURAL G |
| 8343693 | NM-0183-83PB | 3004522528 | 108-PB | | NORTHEAST BLANCO UNIT #65 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343629 | NM 222-83PB | 3004522528 | 108-PB | | NORTHEAST BLANCO UNIT #65 | BLANCO MESAVERDE | 20.0 | EL PASO NATURAL G |
| -CONSOLIDATED OIL & GAS INC | | | RECEIVED: | 06/29/83 | JA: NM 4 | | | |
| 8343690 | NM-0124-83PB | 3003921510 | 108-PB | | TRIBAL C #11A | | 0.0 | NORTHWEST PIPELIN |
| -EL PASO EXPLORATION CO | | | RECEIVED: | 06/29/83 | JA: NM 4 | | | |
| 8343691 | NM-0155-83PB | 3003922073 | 108-PB | | JICARILLA 120 C #16 | SOUTH BLANCO | 0.0 | EL PASO EXPLORATI |
| -EL PASO NATURAL GAS COMPANY | | | RECEIVED: | 06/29/83 | JA: NM 4 | | | |
| 8343667 | NM 0190-83PB | 3004500000 | 108-PB | | BLANCO #15 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343683 | NM-0178-83PB | 3003920783 | 108-PB | | CANYON LARGO UNIT#236 | SOUTH BLANCO PICTURED | 0.0 | EL PASO NATURAL G |
| 8343665 | NM0225-83-PB | 3004500000 | 108-PB | | DELMI TURNER #1 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343654 | NM-0209-83PB | 3004500000 | 108-PB | | EL PASO #2 | AZTEC PICTURED CLIFFS | 0.0 | EL PASO NATURAL G |
| 8343666 | NM0227-83-PB | 3004520819 | 108-PB | | GRAMBLING A #4 | SOUTH BLANCO PICTURED | 0.0 | EL PASO NATURAL G |
| 8343659 | NM 0214-83PB | 3004521983 | 108-PB | | GRAMBLING C #11 J | BLANCO PICTURED CLIFF | 0.0 | EL PASO NATURAL G |
| 8343678 | NM 0194-83PB | 3004520273 | 108-PB | | HUERFANO UNIT #127R | BASIN DAKOTA | 0.0 | EL PASO NATURAL G |
| 8343649 | NM-0244-83PB | 3004520309 | 108-PB | | HUERFANO UNIT #182 | BASIN DAKOTA | 0.0 | EL PASO NATURAL G |
| 8343639 | NM-0123-83PB | 3004520309 | 108-PB | | HUERFANO UT #182 | BASIN | 0.0 | EL PASO NATURAL G |
| 8343679 | NM 0196-83PB | 3003906282 | 108-PB | | HUGHES #9 | BALLARD PICTURED CLIF | 0.0 | EL PASO NATURAL G |
| 8343663 | NM 0223-83PB | 3004507764 | 108-PB | | HUGHES A #3 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343636 | NM-0143-83PB | 3004521191 | 108-PB | | JONES #4 | BLANCO | 0.0 | EL PASO NATURAL G |
| 8343686 | NM 0171-83PB | 3004509752 | 108-PB | | KELLY B #1 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343632 | NM-0139-83PB | 3004506280 | 108-PB | | LODEWICK #10 | BASIN | 0.0 | EL PASO NATURAL G |
| 8343631 | NM-0138-83PB | 3004506326 | 108-PB | | LODEWICK #8 | BASIN | 0.0 | EL PASO NATURAL G |
| 8343687 | NM 0175-83PB | 3004509028 | 108-PB | | LUDWICK #8 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343682 | NM 0201-83PB | 3004560060 | 108-PB | | MOORE #3 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343635 | NM-0142-83PB | 3004521025 | 108-PB | | MUDGE #38 | BLANCO | 0.0 | EL PASO NATURAL G |
| 8343664 | NM 0224-83PB | 3004521084 | 108-PB | | MUDGE #42 | BLANCO PICTURED CLIFF | 0.0 | EL PASO NATURAL G |
| 8343642 | NM-0168-83PB | 3004512081 | 108-PB | | NEUDECKER #5 | AZTEC | 0.0 | EL PASO NATURAL G |
| 8343660 | NM 0217-83PB | 3004520841 | 108-PB | | NYE #6 | AZTEC PICTURED CLIFF | 0.0 | EL PASO NATURAL G |
| 8343648 | NM-0231-83PB | 3003960094 | 108-PB | | RINCON UNIT #97 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343641 | NM-0169-83PB | 3004520281 | 108-PB | | ROELOFS #4 | BLANCO | 0.0 | EL PASO NATURAL G |
| 8343684 | NM 0176-83PB | 3003907206 | 108-PB | | SAN JUAN 27-4 UNIT #19 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343657 | NM 0212-83PB | 3003920383 | 108-PB | | SAN JUAN 27-4 UNIT #57 | BASIN DAKOTA | 0.0 | EL PASO NATURAL G |
| 8343689 | NM 0159-83PB | 3003920732 | 108-PB | | SAN JUAN 27-4 UNIT #62 | TAPACITO PICTURED CLI | 0.0 | EL PASO NATURAL G |
| 8343634 | NM-0141-83PB | 3003920828 | 108-PB | | SAN JUAN 27-4 UNIT #89 | TAPACITO | 0.0 | EL PASO NATURAL G |

BILLING CODE 6717-01-M

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| 8343674 | NM 0177-83PB | 3003906847 | | 108-PB | | SAN JUAN 27-5 UNIT #68 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343672 | NM 0162-83PB | 3003982363 | | 108-PB | | SAN JUAN 27-5 UNIT #80 | TAPACITO PICTURED CLI | 0.0 | EL PASO NATURAL G |
| 8343675 | NM 0197-83PB | 3003907255 | | 108-PB | | SAN JUAN 28-4 UNIT #5 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343638 | NM-0136-83PB | 3003907218 | | 108-PB | | SAN JUAN 28-4 UNIT #8 | BLANCO | 0.0 | EL PASO NATURAL G |
| 8343668 | NM 0174-83PB | 3003907342 | | 108-PB | | SAN JUAN 28-5 UNIT #46 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343669 | NM 0204-83PB | 3003907137 | | 108-PB | | SAN JUAN 28-6 UNIT #11 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343655 | NM-0202-83PB | 3003907271 | | 108-PB | | SAN JUAN 28-6 UNIT #32 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343673 | NM 0161-83PB | 3003920608 | | 108-PB | | SAN JUAN 28-6 UNIT #172 | SOUTH BLANCO PICTURED | 0.0 | EL PASO NATURAL G |
| 8343658 | NM 0213-83PB | 3003920872 | | 108-PB | | SAN JUAN 28-6 UNIT #192 | BLANCO SOUTH PICTURED | 0.0 | EL PASO NATURAL G |
| 8343653 | NM-0208-83PB | 3003920897 | | 108-PB | | SAN JUAN 28-6 UNIT #194 | SOUTH BLANCO PICTURED | 0.0 | EL PASO NATURAL G |
| 8343676 | NM 0195-83PB | 3003907087 | | 108-PB | | SAN JUAN 28-6 UNIT #27 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343678 | NM 0167-83PB | 3003907197 | | 108-PB | | SAN JUAN 28-6 UNIT #38 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343677 | NM 0193-83PB | 3003907308 | | 108-PB | | SAN JUAN 28-6 UNIT #8 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343652 | NM-0329-82PB | 3003907308 | | 108-PB | | SAN JUAN 28-6 UNIT #8 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343647 | NM-0230-83PB | 3003907130 | | 108-PB | | SAN JUAN 28-6 UNIT #80 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343662 | NM-0219-83PB | 3003920574 | | 108-PB | | SAN JUAN 28-6-UNIT #130 | BASIN DAKOTA | 0.0 | EL PASO NATURAL G |
| 8343685 | NM0207-83PB | 3003907263 | | 108-PB | | SAN JUAN 28-7 UNIT #11 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343680 | NM 0198-83PB | 3003907449 | | 108-PB | | SAN JUAN 28-7 UNIT #21 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343633 | NM-0140-83PB | 3003921093 | | 108-PB | | SAN JUAN 28-7 UNIT #242 | BASIN | 0.0 | EL PASO NATURAL G |
| 8343645 | NM-0164-83PB | 3003907411 | | 108-PB | | SAN JUAN 28-7 UNIT #30 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343644 | NM-0163-83PB | 3003907172 | | 108-PB | | SAN JUAN 28-7 UNIT #37 | SOUTH BLANCO PICTURED | 0.0 | EL PASO NATURAL G |
| 8343688 | NM 0173-83PB | 3003907671 | | 108-PB | | SAN JUAN 29-7 UNIT #101 | BASIN DAKOTA | 0.0 | EL PASO NATURAL G |
| 8343630 | NM-0170-83PB | 3003907808 | | 108-PB | | SAN JUAN 30-4 UNIT #14 | EAST BLANCO | 0.0 | EL PASO NATURAL G |
| 8343637 | NM-0137-83PB | 3003907902 | | 108-PB | | SAN JUAN 30-4 UNIT #23 | EAST BLANCO | 0.0 | EL PASO NATURAL G |
| 8343661 | NM 0218-83PB | 3003920777 | | 108-PB | | SAN JUAN 30-4 UNIT #34 | EAST BLANCO PICTURED | 0.0 | EL PASO NATURAL G |
| 8343643 | NM-0228-83PB | 3003907895 | | 108-PB | | SAN JUAN 30-6 UNIT #37 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343640 | NM-0097-83PB | 3003907895 | | 108-PB | | SAN JUAN 30-6 UNIT #37 | BLANCO | 0.0 | EL PASO NATURAL G |
| 8343651 | NM 0279-83PB | 3003907895 | | 108-PB | | SAN JUAN 30-6 UNIT #37 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343671 | NM 0166-83PB | 3003907876 | | 108-PB | | SAN JUAN 30-6 UNIT #49 X | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343650 | NM-0287-82PB | 3003907831 | | 108-PB | | SAN JUAN 30-6 UNIT #42 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343646 | NM-0229-83PB | 3004511165 | | 108-PB | | SCOTT #2 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343656 | NM 0210-83PB | 3004521135 | | 108-PB | | SUNRAY H #3 | BLANCO PICTURED CLIFF | 0.0 | EL PASO NATURAL G |
| 8343681 | NM 0200-83PB | 3004512098 | | 108-PB | | TAPP #5 | SOUTH BLANCO PICTURED | 0.0 | EL PASO NATURAL G |
| -JEROME P MCHUGH | | | | RECEIVED: 06/29/83 | | JA: NM 4 | | | |
| 8343628 | NM-0944-82 | 3003920266 | | 108 | | APACHE #5 | BASIN DAKOTA | 169.0 | NORTHWEST PIPELIN |
| 8343626 | NM-0945-82 | 3003920131 | | 108 | | JICARILLA #7 | BASIN DAKOTA | 91.0 | NORTHWEST PIPELIN |
| -NORTHWEST PIPELINE CORPORATION | | | | RECEIVED: 06/29/83 | | JA: NM 4 | | | |
| 8343701 | NM-0147-83PB | 3003921130 | | 108-PB | | JICARILLA 92 #8 | BLANCO MESAVERDE | 0.0 | NORTHWEST PIPELIN |
| 8343699 | NM-0145-83PB | 3003907944 | | 108-PB | | ROSA #18 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343703 | NM-0146-83PB | 3003907963 | | 108-PB | | ROSA UNIT #16 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343702 | NM-0154-83PB | 3003978356 | | 108-PB | | SAN JUAN 30-5 UNIT #25 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343700 | NM-0153-83PB | 3003907799 | | 108-PB | | SAN JUAN 30-5 UNIT #30 | BASIN DAKOTA | 0.0 | EL PASO NATURAL G |
| 8343696 | NM-0150-83PB | 3003907916 | | 108-PB | | SAN JUAN 31-6 UNIT #22 | BLANCO MESAVERDE | 0.0 | NORTHWEST PIPELIN |
| 8343697 | NM-0149-83PB | 3003982398 | | 108-PB | | SAN JUAN 31-6 UNIT #23 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343698 | NM-0148-83PB | 3003920779 | | 108-PB | | SAN JUAN 31-6 UNIT #24 | BASIN DAKOTA | 0.0 | NORTHWEST PIPELIN |
| 8343695 | NM-0152-83PB | 3004511135 | | 108-PB | | SAN JUAN 32-8 UNIT #14 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| 8343694 | NM-0037-83PB | 3004511135 | | 108-PB | | SAN JUAN 32-8 UNIT #14 | BLANCO MESAVERDE | 0.0 | EL PASO NATURAL G |
| -STEVENS OPERATING CORP | | | | RECEIVED: 06/29/83 | | JA: NM 4 | | | |
| 8343627 | NM-1836-82 | 3000561595 | | 102-2 | 107-TF | MANAGAN FEDERAL #4 | UNDESIGNATED ABO | 140.0 | TRANSWESTERN PIPE |
| -YATES PETROLEUM CORPORATION | | | | RECEIVED: 06/29/83 | | JA: NM 4 | | | |
| 8343625 | NM 2003-82 | 3000561701 | | 103 | | LONG ARROYO "MQ" FEDERAL #2 | WILDCAT MORROW | 0.0 | TRANSWESTERN PIPE |
| ********** | | | | | | | | | |
| ** DEPARTMENT OF THE INTERIOR, MINERALS MANAGEMENT SERVICE, TULSA,OK | | | | | | | | | |
| ********** | | | | | | | | | |
| -GETTY OIL COMPANY | | | | RECEIVED: 06/29/83 | | JA: OK 6 | | | |
| 8343704 | OKA-1815-82 | 3501720021 | | 107-PE | | J C PAVY #1 | WATONGA TREND | 0.0 | MUSTANG FUEL CORP |
| -SAMSON RESOURCES COMPANY | | | | RECEIVED: 06/29/83 | | JA: OK 6 | | | |
| 8343705 | OK-A-0587-83 | 3512120849 | | 103 | | NAVY UNIT #1 | EAST ASHLAND | 177.9 | ARKANSAS LOUISIAN |

[FR Doc. 83-20098 Filed 7-25-83; 8:45 am]

BILLING CODE 6717-01-C

[Volume 936]

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**Kenneth F. Plumb,**
*Secretary.*

NOTICE OF DETERMINATIONS VOLUME 936
ISSUED JULY 18,1983

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| **NEW YORK DEPARTMENT OF ENVIRONMENTAL CONSERVATION** | | | | | | | | | |
| -LENAPE RESOURCES CORP | | | | RECEIVED: | 07/01/83 | JA: NY | | | |
| 8343722 | 5177 | 3105117356 | | 107-TF | | D D ROGERS UNIT #1 LRC #151 | CALEDONIA | 20.0 | NEW JERSEY NATURA |
| 8343721 | 5185 | 3105117354 | | 107-TF | | E NIXON #1 LRC #146 | CALEDONIA | 20.0 | NEW JERSEY NATURA |
| 8343719 | 5187 | 3105117406 | | 107-TF | | K WALTON #1 LRC #181 | CALEDONIA | 20.0 | NEW JERSEY NATURA |
| 8343720 | 5186 | 3105117357 | | 107-TF | | STURM & WILSON UNIT #1 LRC #153 | CALEDONIA | 20.0 | NEW JERSEY NATURA |
| 8343723 | 5178 | 3105117375 | | 107-TF | | W H DOOLITTLE #1 LRC #166 | CALEDONIA | 20.0 | NEW JERSEY NATURA |
| -TIMBERLAY PETROLEUM CO | | | | RECEIVED: | 07/01/83 | JA: NY | | | |
| 8343714 | 5172 | 3105117336 | | 103 | 107-TF | ANDERSON #1 | AVON | 18.3 | TENNESSEE GAS PIP |
| 8343713 | 5171 | 3105117394 | | 103 | 107-TF | ANDREWS #1 | AVON | 18.3 | TENNESSEE GAS PIP |
| 8343715 | 5173 | 3105117392 | | 103 | 107-TF | KIME #1 | AVON | 18.3 | TENNESSEE GAS PIP |
| 8343712 | 5170 | 3105117395 | | 103 | 107-TF | STEELE #1 | AVON | 22.0 | TENNESSEE GAS PIP |
| 8343718 | 5176 | 3105117393 | | 103 | 107-TF | THOMPSON #1 | AVON | 18.3 | TENNESSEE GAS PIP |
| 8343717 | 5175 | 3105117408 | | 103 | 107-TF | TUCHRELLO #1 | AVON | 22.0 | TENNESSEE GAS PIP |
| 8343716 | 5174 | 3105117337 | | 103 | 107-TF | WADSWORTH #4 | AVON | 14.6 | TENNESSEE GAS PIP |
| **TEXAS RAILROAD COMMISSION** | | | | | | | | | |
| -AEGEAN OIL CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343822 | F-01-66874 | 4217731396 | | 102-2 | 103 | ROBERT GRAUKE UNIT #1 | PEACH CREEK (BUDA) | 6.5 | SUNBURST ENERGIES |
| -ALTA ENERGY CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343914 | F-08-69029 | 4231732615 | | 103 | | CHOATE #1 | SPRABERRY (TREND AREA | 17.7 | PHILLIPS PETROLEU |
| 8343922 | F-7C-69079 | 4246131976 | | 103 | | WOOLEY #1 | SPRABERRY (TREND AREA | 29.4 | PHILLIPS PETROLEU |
| -AMOCO PRODUCTION CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343882 | F-10-68785 | 4235731340 | | 103 | | EARL WAIDE #2 | S E FARNSWORTH | 48.0 | |
| 8343983 | F-08-69432 | 4213534104 | | 103 | | FRANK COWDEN R/A "K" #27 | COWDEN NORTH (STRAWN) | 0.6 | WESTAR TRANSMISSI |
| 8343875 | F-7C-68397 | 4223531343 | | 103 | | JANE ELIZABETH CHARLTON #1 | BROOKS (SAN ANGELO) | 0.0 | NORTHERN NATURAL |
| -ANDERSON PETROLEUM INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343766 | F-7C-063962 | 4210534155 | | 103 | 107-TF | GENERAL CRUDE 3-4 | AMERICAN (CANYON) | 60.0 | ANDERSON PIPELINE |
| 8343818 | F-7C-66769 | 4210534071 | | 103 | 107-TF | LAURA HOOVER ESTATE "B" 2-7 | OZONA (CANYON SAND) | 200.0 | ANDERSON PIPELINE |
| 8343819 | F-7C-66770 | 4210534324 | | 103 | 107-TF | LAURA HOOVER ESTATE "B1" 1-6 | OZONA (CANYON SAND) | 200.0 | ANDERSON PIPELINE |
| 8343815 | F-7C-66732 | 4210500000 | | 103 | 107-TF | LAURA HOOVER ESTATE "D" 3-52 | OZONA (CANYON SAND) | 100.0 | ANDERSON PETROLEU |
| 8343817 | F-7C-66767 | 4210534327 | | 103 | 107-TF | LAURA HOOVER UNIT 4-52 | OZONA (CANYON SAND) | 200.0 | ANDERSON PIPELINE |
| -APEX PETROLEUM INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343841 | F-7B-67677 | 4208300000 | | 102-4 | | JOHN E WOLF #19 | WOLF (SERRATT LOWER) | 0.0 | EL PASO HYDROCARB |
| -BALLARD EXPLORATION CO INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343873 | F-05-68378 | 4221330366 | | 102-4 | | WARREN #1 | TRINIDAD S E (TRAVIS | 130.0 | |
| -BANAM CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343895 | F-7B-68924 | 4215131549 | | 102-4 | | STRICKLAND #1-2 | SATURDAY EAST (CANYON | 0.0 | CONOCO INC |
| -BERT FIELDS JR | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343932 | F-06-69174 | 4228300000 | | 103 | | J JOHNSON A-1 #2 | WASKOM (HILL UPPER) | 108.0 | ARKANSAS LOUISIAN |
| -BLACK DOME ENERGY CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343872 | F-7B-68282 | 4236732017 | | 102-4 | | KAISER #1 | TINTOP (ATOKA LOWER) | 0.0 | LIQUID ENERGY COR |
| -BRADY W PRODUCTION CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343965 | F-8A-69369 | 4216500000 | | 108 | | R H CUMMINS #1 #020113 | HOMANN (YATES) | 10.0 | WESTAR TRANSMISSI |
| -BRAMMER ENGINEERING INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343826 | F-06-67142 | 4220330977 | | 103 | 107-TF | DR J F ROSBOROUGH - #2 | BLOCKER (COTTON VALLE | 300.0 | UNITED GAS PIPE L |

BILLING CODE 6717-01-M

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| -BRANNON & MURRAY | | | | | | | | | |
| 8343936 | F-7B-69213 | 4208333224 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -BRIDWELL OIL CO | | | | 103 | | DIBRELL ESTATE 4A | GAYLE | 40.0 | SOUTHWESTERN GAS |
| 8343987 | F-7B-69444 | 4241734852 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343988 | F-7B-69445 | 4241734851 | | 103 | | JAMES T MATTHEWS #2 | BIRTHDAY (MORAN) | 40.0 | LONE STAR GAS CO |
| -C. J. WOFFORD | | | | 103 | | JAMES T MATTHEWS #3 | BIRTHDAY (MORAN) | 40.0 | LONE STAR GAS CO |
| 8343725 | F-7B-025821 | 4214330643 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343726 | F-7B-029643 | 4214330652 | | 103 | | H G HIGGINBOTTOM #1 | ERATH COUNTY REGULAR | 6.0 | CORONADO TRANSMIS |
| -CHASE PRODUCTION CO | | | | 103 | | PARKER-HIGGINBOTTOM #1 | ERATH COUNTY REGULAR | 6.0 | CORONADO TRANSMIS |
| 8343968 | F-10-69384 | 4217900000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343967 | F-10-69383 | 4217900000 | | 103 | | A COMBS 139 #8 RRC-00459 | PANHANDLE | 12.0 | PHILLIPS PET CO |
| -CHESTER R UPHAM JR | | | | 103 | | A COMBS 139 #9 RRC-00460 | PANHANDLE | 12.0 | PHILLIPS PET CO |
| 8343733 | F-7B-053888 | 4236300000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -CIBOLA OIL & GAS CORP | | | | 102-4 | | KESSLER #1-T | SCHWARTZ (4200) | 0.0 | SOUTHWESTERN GAS |
| 8343727 | F-06-044852 | 4242330456 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -CINCO OIL & GAS INC | | | | 102-4 | 103 | MAYNARD WELL #1 | CHAPEL HILL (TRAVIS P | 40.0 | PINE WOOD GAS CO |
| 8343919 | F-01-69075 | 4217700000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -CLAYTON W WILLIAMS JR | | | | 102-2 | | BRZOZOWSKI #1 | PEACH CREEK (BUDA) | 159.8 | |
| 8343754 | F-03-062702 | 4214900000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -CONOCO INC | | | | 102-2 | | CAROLYN ELIAS #1 | GIDDINGS (AUSTIN CHAL | 0.0 | VALERO TRANSMISSI |
| 8343738 | F-04-056864 | 4250531533 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343813 | F-04-66625 | 4250531687 | | 103 | 107-TF | BELIA R BENAVIDES "B" #3 | HUNDIDO (LOBO) | 0.0 | UNITED TEXAS TRAN |
| 8343935 | F-08-69189 | 4238931377 | | 103 | 107-TF | BELIA R BENAVIDES "B" #5 | HUNDIDO (LOBO) | 0.0 | UNITED TEXAS TRAN |
| 8343837 | F-04-67596 | 4247933430 | | 102-4 | 103 | TXL 43 #5 ID NOT ASS. | JESS BURNER (DELAWARE | 13.9 | EL PASO NATURAL G |
| -CORPENING ENTERPRISES | | | | 102-2 | 107-TF | VAQUILLAS RANCH H #28 | VAQUILLAS RANCH (WILC | 548.0 | E I DUPONT DE NEM |
| 8343785 | F-7B-065040 | 4236700000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -CORPUS CHRISTI OIL AND GAS CO | | | | 102-4 | | SMEED #1 | SMEED (STRAWN) | 0.0 | EMPIRE GAS CO |
| 8343775 | F-06-064482 | 4208730716 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -CREWS OIL CO | | | | 102-4 | | STATE TRACT 188 WELL #1 | NINE MILE POINT E | 0.0 | CENTRAL POWER & L |
| 8343762 | F-7C-063488 | 4239932579 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -DELTA DRILLING CO | | | | 102-4 | 103 | ALEXANDER #1 | CREWS (FRY LOWER) | 0.0 | LONE STAR GAS CO |
| 8343927 | F-8A-69144 | 4203300000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -DELTA OIL & GAS CO | | | | 103 | | L C DRUM #4 63852 | MYRTLE N W (STRAWN) | 0.0 | SUN EXPLORATION & |
| 8343881 | F-7B-68777 | 4242900000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -DIAMARK ENERGY CORP | | | | 103 | | LINK RANCH "E" RRC 17992 | STEPHENS COUNTY REGUL | 0.0 | LONE STAR GAS CO |
| 8343885 | F-7C-68836 | 4208131170 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -DIAMOND SHAMROCK CORPORATION | | | | 103 | | JEWELL #1 | BLOODWORTH (5700) | 52.9 | SUN EXPLORATION & |
| 8343779 | F-10-064694 | 4235731265 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -EASTLAND OIL CO | | | | 102-2 | | BUCKMINSTER #2-13 | PERRYTON WEST | 0.0 | |
| 8343995 | F-08-69482 | 4238931362 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -ECHO PRODUCTION INC | | | | 103 | | H & M "C" #1 | KEN REGAN (DELAWARE) | 36.0 | UNITED TEXAS TRAN |
| 8343874 | F-7B-68391 | 4236300009 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -EDWIN S NICHOLS EXPLORATIONS LTD | | | | 107-PE | | W T GREEN #1 041597 | GRAFORD (BEND CONGLOM | 40.0 | LONE STAR GAS CO |
| 8343781 | F-7B-064721 | 4236333026 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343877 | F-7B-68517 | 4236333089 | | 102-4 | | ANGELINA RIEBE #2-A | RIEBE (ATOKAH CONGL) | 150.0 | LONE STAR GAS CO |
| -EMERGY-AGRI PRODUCTS INC | | | | 102-4 | | H W RIEBE #1 | RIEBE (ATOKAH CONGL) | 100.0 | TEXAS UTILITIES F |
| 8343989 | F-10-69454 | 4206531403 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -ENRE CORP | | | | 103 | | GORES #6 (ID# 05201) | PANHANDLE CARSON | 50.0 | GETTY OIL CO |
| 8343868 | F-7B-68239 | 4205934027 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343848 | F-7B-67874 | 4205934016 | | 102-4 | | BELL-MCFARLANE #1 | ENRE S (ELLENBURGER) | 0.0 | BENGAL GAS TRANSM |
| -EXXON CORPORATION | | | | 102-4 | | SNYDER MINERAL TRUST 139 #1 | S M T (ELLENBURGER) | 20.0 | BENGAL GAS TRANSM |
| 8343937 | F-03-69272 | 4233930571 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343782 | F-08-064943 | 4210333035 | | 103 | | CONROE FIELD UNIT #1939 | CONROE | 146.0 | MORAN UTILITIES C |
| 8343789 | F-08-065613 | 4210333036 | | 103 | | CORDONA LAKE UNIT #69 | CORDONA LAKE | 4.0 | ARMCO STEEL CORP |
| 8343972 | F-08-69395 | 4200303893 | | 103 | | CORDONA LAKE UNIT #70 | CORDONA LAKE | 3.0 | ARMCO STEEL CORP |
| 8343994 | F-03-69479 | 4246132637 | | 108 | | FULLERTON CLEARFORK UNIT #4418 | FULLERTON | 1.0 | PHILLIPS PETROLEU |
| 8343977 | F-04-69413 | 4227331725 | | 103 | | H C COCKBURN #122 | MAGNET WITHERS | 35.8 | ARMCO STEEL CORP |
| 8343975 | F-04-69410 | 4227331725 | | 102-4 | | KING RANCH E LAURELES B-17-D 104922 | BINA N E (M-50) | 657.0 | ARMCO STEEL CORP |
| 8343971 | F-08-69394 | 4208302647 | | 102-4 | | KING RANCH E LAURELES B-17-F 104919 | BINA N E (M-22) | 620.0 | ARMCO STEEL CORP |
| 8343970 | F-08-69393 | 4208300610 | | 108 | | MEANS-QUEEN #1 OIL UNIT #1511 | MEANS (QUEEN SAND) | 1.0 | PHILLIPS PETROLEU |
| 8343839 | F-8A-67640 | 4216332504 | | 108 | | MEANS-QUEEN #1 OIL UNIT #1615 | MEANS (QUEEN SAND) | 1.0 | PHILLIPS PETROLEU |
| 8343976 | F-04-69412 | 4204731209 | | 103 | | ROBERTSON CLEARFORK UNIT #3501 | ROBERTSON N (CLEAR FO | 15.0 | PHILLIPS PETROLEU |
| 8343992 | F-04-69463 | 4248930659 | | 102-4 | | SANTA FE RANCH 80-F (10226) | SANTA FE (F-78) | 175.0 | ARMCO STEEL CORP |
| -FALCON PETROLEUM COMPANY | | | | 103 | | SAUZ RANCH MULATOS PAST 167 10202 | WILLAMAR WEST (MIOCEN | 130.0 | NATURAL GAS PIPEL |
| 8343998 | F-10-69456 | 4235731131 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343883 | F-10-68823 | 4235731209 | | 103 | | BUSCH #1 | PERRYTON WEST (MORROW | 0.0 | PHILLIPS PETROLEU |
| -FIRST TRIAD CORP | | | | 102-4 | | NEST EGG #1 | FALCON (MORROW UPPER) | 0.0 | PHILLIPS PETROLEU |
| 8343770 | F-7B-064222 | 4236732306 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -FLAG-REDFERN OIL CO | | | | 102-4 | | BERKLEY WATERS "A" #1 | MARMAC (MARBLE FALLS) | 249.0 | SOUTHWESTERN GAS |
| 8343886 | F-08-68838 | 4247532516 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -FRED M NEWMAN INC | | | | 103 | | RECTOR #1 #27227 | PAYTON | 9.8 | DELHI GAS PIPELIN |
| 8343924 | F-08-69093 | 4237100000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -FROST OIL CO INC | | | | 102-4 | | UNIVERSITY 4 D #2 | CARDINAL | 72.0 | NORTHERN NATURAL |
| 8343908 | F-7B-69003 | 4235330917 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343923 | F-7C-69084 | 4208103112 | | 102-4 | | CECIL L SMITH #4-246 | WHITE HAT S E | 0.0 | LONE STAR GAS CO |
| 8343904 | F-7C-68998 | 4208131062 | | 102-4 | | JOHN DOUGLAS THORN #1-270 | RAY | 0.0 | LONE STAR GAS CO |
| 8343903 | F-7B-68997 | 4235330798 | | 102-4 | | TEXFEL PETROLEUM CORP #1-269 | RAY | 0.0 | LONE STAR GAS CO |
| 8343906 | F-7B-69000 | 4235330868 | | 102-4 | | WHITE HAT RANCH #1-246 | WHITE HAT S E | 0.0 | LONE STAR GAS CO |
| 8343905 | F-7B-68999 | 4235330913 | | 102-4 | | WHITE HAT RANCH #2-246 | WHITE HAT S E | 0.0 | LONE STAR GAS CO |
| 8343902 | F-7B-68996 | 4235331004 | | 102-4 | | WHITE HAT RANCH #3-246 | WHITE HAT S E | 0.0 | LONE STAR GAS CO |
| 8343907 | F-7B-69001 | 4235331005 | | 102-4 | | WHITE HAT RANCH #4-246 | WHITE HAT S E | 0.0 | LONE STAR GAS CO |
| -GETTY OIL COMPANY | | | | 102-4 | | WHITE HAT RANCH #5-246 | WHITE HAT S E | 0.0 | LONE STAR GAS CO |
| 8343767 | F-03-064062 | 4204100000 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343768 | F-05-064063 | 4216100000 | | 102-2 | | BECKER-DUNCAN #1 | BRYAN (WOODBINE) | 0.0 | FERGUSON CROSSING |
| 8343830 | F-05-67288 | 4216100000 | | 102-4 | | FRANKLIN SCURLOCK "E" #1 | INGRAM TRINITY (RODES | 0.0 | LONE STAR GAS CO |
| 8343760 | F-08-062938 | 4210332953 | | 102-4 | | FRANKLIN SCURLOCK "L" #1 | INGRAM TRINITY (RODES | 0.0 | LONE STAR GAS CO |
| -GHZ ENERGY CORP | | | | 103 | | NORTH MCELROY UNIT #3943F RRC 20377 | MCELROY | 1.0 | PHILLIPS PETROLEU |
| 8343869 | F-04-68241 | 4247933506 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -GROTHE BROTHERS | | | | 102-4 | 107-TF | VAQUILLAS RANCH #8 | VAQUILLAS RANCH (WILC | 350.0 | NATURAL GAS PIPEL |
| 8343809 | F-7B-066325 | 4241734895 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -GULF OIL CORPORATION | | | | 102-4 | | W C ALLEN #7 | ALLEN (CADDO) | 38.0 | LONE STAR GAS CO |
| 8343962 | F-03-69365 | 4204130612 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343991 | F-03-69458 | 4204130522 | | 102-2 | | A L GARNER UNIT 1 WELL #1 | KURTEN (WOODBINE) | 6.8 | PRODUCER'S GAS CO |
| 8343964 | F-03-69367 | 4215731413 | | 102-2 | | DANSBY UNIT II WELL #1 | KURTEN (WOODBINE) | 1.0 | PRODUCER'S GAS CO |
| 8343960 | F-03-69363 | 4204130534 | | 103 | | F I BOOTH -A- WELL #54 | THOMPSON | 70.1 | UNITED TEXAS TRAN |
| 8343961 | F-03-69364 | 4204130478 | | 102-2 | | HUMPHRIES UNIT V WELL #1 | KURTEN (BUDA) | 65.0 | |
| 8343963 | F-03-69366 | 4204130503 | | 102-2 | | MCKINNEY UNIT 1 WELL #1 | KURTEN (BUDA) | 98.6 | |
| 8343945 | F-08-69332 | 4237134098 | | 102-2 | | RILEY UNIT 1 WELL #1 | KURTEN (WOODBINE) | 32.4 | PRODUCER'S GAS CO |
| 8343958 | F-08-69361 | 4210332785 | | 103 | | TROPORO DEVONIAN UNIT #3-8 | TROPORO (DEVONIAN) | 1.3 | NORTHERN GAS PROD |
| -GULF SANDS OIL CO | | | | 103 | | W N WADDELL #1129 | UNIVERSITY WADDELL (D | 0.0 | |
| 8343748 | F-02-060678 | 4202531898 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -HEISER HARVEY | | | | 102-4 | | M J WHITE #1 ID NO PENDING | TYNAN (3350) | 90.0 | GULF STATES EQUIT |
| 8343959 | F-08-69362 | 4231732542 | | RECEIVED: | 07/01/83 | JA: TX | | | |
| -HILL INTERNATIONAL PRODUCTION CO | | | | 103 | | KUHLMAN FARMS #1 | SPRABERRY TREND AREA | 4.3 | ADOBE OIL & GAS C |
| | | | | RECEIVED: | 07/01/83 | JA: TX | | | |

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| 8343894 | F-03-68890 | 4204130876 | | 102-2 | | W PRESNAL #1 | KURTEN (BUDA) | 8.0 | FERGUSON CROSSING |
| -HILLIARD OIL & GAS INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343986 | F-08-69442 | 4211531775 | | 102-2 | | E O BARRON #1 | KEY WEST | 0.0 | PHILLIPS PETROLEU |
| 8343982 | F-02-69431 | 4229732956 | | 102-4 | | PATTESON #2 | PATTESON RANCH | 45.0 | UNITED TEXAS TRAN |
| -HOUSTON PETROLEUM CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343855 | F-03-68103 | 4219931626 | | 102-4 | | L L WILLIAMS #1 | FLETCHER | 246.0 | TEXAS EASTERN TRA |
| -HUGHES & HUGHES | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343849 | F-04-67897 | 4240931711 | | 102-4 | | FLINN HEIRS #1 | TAFT SOUTH (8500) | 73.0 | HOUSTON PIPE LINE |
| -HUMBLE EXPLORATION CO INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343829 | F-03-67242 | 4228700000 | | 102-2 | 103 | CARMELLA #1 | GIDDINGS (AUSTIN CHAL | 0.0 | PHILLIPS PETROLEU |
| 8343824 | F-03-66936 | 4228700000 | | 102-2 | 103 | CRYSTAL UNIT | GIDDINGS (AUSTIN CHAL | 0.0 | PHILLIPS PETROLEU |
| -HUNT OIL COMPANY | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343852 | F-7C-68016 | 4246131986 | | 102-4 | | V T AMACKER 79 #3 | AMACKER-TIPPETT S W C | 115.0 | EL PASO NATURAL G |
| -INDIAN WELLS OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343973 | F-7C-69401 | 4223532032 | | 103 | | TANKERSLEY 707-1 | IRION W CANYON | 0.0 | NORTHERN NATURAL |
| 8343974 | F-7C-69402 | 4223532056 | | 103 | | WINTERBOTHAM 27-1 | BROOKS (CANYON K) | 0.0 | NORTHERN NATURAL |
| -INLAND OCEAN INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343825 | F-02-67067 | 4229700000 | | 102-4 | | LEE #1 | N E MOUNTAIN VIEW | 365.0 | HOUSTON PIPELINE |
| -INWOOD EXPLORATION INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343820 | F-78-66820 | 4242933497 | | 103 | | THOMAS-FRANK #1 | STEPHENS COUNTY REGUL | 97.0 | LONE STAR GAS CO |
| -JACKSON EXPLORATION INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343993 | F-84-69472 | 4231732650 | | 103 | | MIDDLETON #1 | ACKERLY (DEAN SAND) | 22.0 | ADOBE OIL & GAS C |
| -JAMES M FORGOTSON | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343734 | F-06-054039 | 4240100000 | | 103 | 107-TF | C A HINKLE ESTATE G U #2 | OAK HILL (COTTON VALL | 0.0 | HYDROCARBON LTD |
| -JAMES WALKER | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343740 | F-01-057932 | 4217731264 | | 102-4 | | FLOYD #1 #100925 | FLOYD (BUDA) | 13.0 | VALERO TRANSMISSI |
| -KAARI OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343998 | F-10-69494 | 4217931321 | | 103 | | RANDALL #2 (ID# 05364) | PANHANDLE GRAY | 50.0 | CABOT PIPELINE CO |
| -L & M OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8344006 | F-09-69520 | 4207732569 | | 103 | | CODY #1 #22103 | JOY (STRAWN) | 38.0 | LONE STAR GAS CO |
| 8344007 | F-09-69521 | 4207732773 | | 103 | | CODY #2 #22103 | JOY (STRAWN) | 30.0 | LONE STAR GAS CO |
| -LAYTON ENTERPRISES INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343920 | F-8A-69076 | 4207931653 | | 103 | | REED WRIGHT #D-5 | LEVELLAND | 8.9 | CITIES SERVICE CO |
| 8343921 | F-8A-69077 | 4207931646 | | 103 | | REED WRIGHT #E-4 | LEVELLAND | 8.9 | CITIES SERVICE CO |
| -LOSURE PETROLEUM CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343861 | F-10-68142 | 4223331510 | | 103 | | ADAMS-COLLINS #1 | PANHANDLE E (ALBANY D | 140.0 | DIAMOND SHAMROCK |
| -LOUTEX ENERGY INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343912 | F-03-69020 | 4204130842 | | 102-2 | | DYLAN #1 | KURTEN (BUDA) | 54.8 | FERGUSON CROSSING |
| 8343910 | F-03-69018 | 4204130787 | | 102-2 | | MATEJKA #1 | KURTEN (BUDA) | 36.5 | FERGUSON CROSSING |
| 8343909 | F-03-69017 | 4204130852 | | 102-2 | | MAUROI #1 | KURTEN (BUDA) | 54.8 | FERGUSON CROSSING |
| 8343911 | F-03-69019 | 4204130736 | | 102-2 | | MILLER #1 | KURTEN (BUDA) | 27.4 | FERGUSON CROSSING |
| -M W D OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343898 | F-08-68942 | 4210300000 | | 108 | | B T COWDEN "B" WELL #1 | GIBB | 7.0 | PHILLIPS PETROLEU |
| 8343897 | F-08-68941 | 4210300000 | | 108 | | B T COWDEN "B" WELL #2 | GIBB | 7.0 | PHILLIPS PETROLEU |
| 8343896 | F-08-68940 | 4210300000 | | 108 | | B T COWDEN "B" WELL #3 | GIBB | 7.0 | PHILLIPS PETROLEU |
| -MAJOR EXPLORATION INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343780 | F-01-064695 | 4216332132 | | 103 | | MELMS #6 | PEARSALL (BUDA LIME) | 3.0 | TIPPERARY GAS CO |
| -MARALO INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343985 | F-08-69441 | 4208333421 | | 103 | | BENNETT #1 | BAKKE (WOLFCAMP) | 0.0 | PHILLIPS PETROLEU |
| 8343984 | F-08-69440 | 4208333466 | | 103 | | W H SLOAN "C" #1 | DEEP ROCK (PENN) | 9.0 | PHILLIPS PETROLEU |
| -MARK PRODUCING INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343840 | F-03-67668 | 4215731419 | | 102-4 | | BONNER-ZWEINER #1 | PROPOSED KENDLETON (F | 365.0 | |
| -MARSHALL EXPLORATION INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343899 | F-06-68958 | 4236531425 | | 108 | | SABINE ROYALTY #4 | BELLE BOWER (PALUXY U | 18.0 | TENNESSEE GAS PIP |
| -MARTIN EXPLORATION MGMT CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343729 | F-7C-046263 | 4210533472 | | 103 | 107-TF | HOOVER ESTATE #2-6 | AMERICAN | 47.0 | EL PASO NATURAL G |
| 8343730 | F-7C-046264 | 4210533399 | | 103 | 107-TF | HOOVER ESTATE #3-15 | AMERICAN | 50.0 | EL PASO NATURAL G |
| 8343728 | F-7C-046262 | 4210533413 | | 103 | 107-TF | HOOVER ESTATE #4-6 | AMERICAN | 56.0 | EL PASO NATURAL G |
| -MCMILLAN OPERATING CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343776 | F-78-064553 | 4209300000 | | 103 | | JOINER #2 | MITTIE (MARBLE FALLS) | 0.0 | LONE STAR GAS CO |
| -MITCHELL ENERGY CORPORATION | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343784 | F-78-064999 | 4236700000 | | 108 | | A R TATE #1 #076565 | TOTO (BEND CONGL LOWE | 0.0 | NATURAL GAS PIPEL |
| 8343787 | F-09-065155 | 4249700000 | | 108 | | ADAMS-SOUTHWEST #1 029183 | BOONSVILLE (BEND CONG | 0.0 | CORONADO TRANSMIS |
| 8343808 | F-09-066314 | 4249700000 | | 108 | | CLED RAN "A" #1 | BOONSVILLE (BEND CONG | 0.0 | CORONADO TRANSMIS |
| 8343794 | F-8A-065930 | 4249732484 | | 103 | | GERTRUDE BILBERRY #4 | BOONSVILLE (BEND CONG | 368.0 | NATURAL GAS PIPEL |
| 8343753 | F-78-062638 | 4236700000 | | 108 | | HOWARD SPRAGUE #1 #089377 | RENO (CONGL) | 0.0 | CORONADO TRANSMIS |
| 8343772 | F-78-064350 | 4236700000 | | 108 | | J BROUMLEY #2 094869 | BUCK RANCH (ATOKA) | 0.0 | CORONADO TRANSMIS |
| 8343926 | F-09-69135 | 4249700000 | | 108 | | J J LARGENT #3 094394 | MORRIS (CONS CONGL) | 0.0 | NATURAL GAS PIPEL |
| 8343847 | F-09-67857 | 4249732513 | | 103 | | J V HAMPTON #5 | BOONSVILLE (BEND CONG | 219.8 | NATURAL GAS PIPEL |
| 8343807 | F-09-66309 | 4249700000 | | 108 | | JESSIE LOVELL #1 #084362 | BOONSVILLE (BEND CONG | 0.0 | NATURAL GAS PIPEL |
| 8343764 | F-09-063812 | 4249700000 | | 108 | | JOHN E SMITH #1 F-033151 | BOONSVILLE/BEND CONGL | 0.0 | NATURAL GAS PIPEL |
| 8343823 | F-05-66935 | 4229530646 | | 103 | 107-TF | MUSE-DUKE #2 | PERSONVILLE N (COTTON | 273.8 | SOUTHWESTERN GAS |
| 8343743 | F-09-058553 | 4249700000 | | 108 | | MYRTLE MAY #1 028733 | BOONSVILLE (BEND CONG | 0.0 | NATURAL GAS PIPEL |
| 8343811 | F-09-66552 | 4249700000 | | 108 | | R N WILLIFORD #1 #028851 | BOONSVILLE (BEND CONG | 0.0 | NATURAL GAS PIPEL |
| -MOBIL PRDG TEXAS & NEW MEXICO INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343943 | F-8A-69338 | 4221933763 | | 103 | | NORTH CENTRAL LEVELLAND UNIT #371 | LEVELLAND | 8.0 | AMOCO PRODUCTION |
| 8343863 | F-08-68161 | 4230130389 | | 102-4 | | W D JOHNSON E #5 | DIMMIT (CHERRY CANYON | 30.7 | INTRATEX GAS CO |
| 8343862 | F-08-68147 | 4230130390 | | 102-4 | | W D JOHNSON E #6 | DIMMIT (CHERRY CANYON | 31.4 | INTRATEX GAS CO |
| -MONSANTO COMPANY | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343850 | F-08-67906 | 4217331379 | | 103 | | BRUNSON #1 | POWELL (8300) | 73.0 | PHILLIPS PETROLEU |
| 8343928 | F-08-69158 | 4247532757 | | 103 | | MAUDE #1 | RHODA WALKER (CANYON | 18.0 | |
| -MOODY ENERGY CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343925 | F-10-69097 | 4221131549 | | 103 | | GRACIE -121- #2 WELL | CANADIAN SE (DOUGLAS) | 0.0 | DIAMOND SHAMROCK |
| -MORRIS STEPHENS | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343916 | F-09-69056 | 4223733999 | | 102-4 | | JOHN RIDER C #1 | RIDER (MARBLE FALLS) | 100.0 | LONE STAR GAS CO |
| 8343917 | F-09-69057 | 4223734729 | | 103 | | MINEOLA RIDER B #1 | BURTONS CHAPEL S (ELL | 72.0 | LONE STAR GAS CO |
| 8343918 | F-09-69058 | 4223734918 | | 103 | | MINEOLA RIDER B #2 | JACK COUNTY REGULAR ( | 108.0 | LONE STAR GAS CO |
| -MOSBACHER PRODUCTION CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343831 | F-03-67334 | 4245730344 | | 102-4 | | RICE INSTITUTE #B-5 | HICKSBAUGH (YEGUA 554 | 90.0 | ARCO OIL & GAS CO |
| -NORTHERN OIL & GAS INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8344005 | F-10-69515 | 4223300000 | | 108 | | BURNETT "A" WELL #7 RRC #01728 | PANHANDLE | 3.9 | GETTY OIL CO |
| 8344004 | F-10-69514 | 4223300000 | | 108 | | BURNETT "A" WELL #8 RRC #01728 | PANHANDLE | 7.1 | GETTY OIL CO |
| 8344003 | F-10-69508 | 4223300000 | | 108 | | COCKRELL WELL #1 RRC #03091 | PANHANDLE | 0.2 | GETTY OIL CO |
| 8344002 | F-10-69507 | 4223300000 | | 108 | | COCKRELL WELL #2 RRC #03091 | PANHANDLE | 1.9 | GETTY OIL CO |
| 8344001 | F-10-69506 | 4223300000 | | 108 | | COCKRELL WELL #3 RRC #03091 | PANHANDLE | 1.6 | GETTY OIL CO |
| 8344000 | F-10-69505 | 4223300000 | | 108 | | COCKRELL WELL #4 RRC #03091 | PANHANDLE | 1.9 | GETTY OIL CO |
| 8343999 | F-10-69504 | 4223300000 | | 108 | | COCKRELL WELL #5 RRC #03091 | PANHANDLE | 1.7 | GETTY OIL CO |
| -OJB INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343749 | F-7B-061307 | 4208332663 | | 102-2 | | RICHARD VAUGHN #2 | COLEMAN COUNTY REGULA | 15.0 | LONE STAR GAS CO |
| -OSBORNE OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343865 | F-01-68210 | 4232332020 | | 103 | | ODC-BARCLAY 106-1 | CHITTIM (5600) | 155.0 | MAN-GAS TRANSMISS |
| 8343866 | F-01-68211 | 4232331863 | | 102-4 | | ODC-BARCLAY 113-2 | CHITTIM W (RODESSA 55 | 62.0 | MAN-GAS TRANSMISS |
| -OXTEX INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343966 | F-04-69381 | 4204700000 | | 108 | | CAGE A-1 | CAGE RANCH | 5.9 | TRUNKLINE GAS CO |

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| -PEND OREILLE OIL & GAS CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343833 | F-02-67422 | 4229700000 | | 102-4 | | C S NELSON TRUST #8-L | GEORGE WEST WEST | 0.0 | UNITED TEXAS TRAN |
| 8343834 | F-02-67423 | 4229700000 | | 102-4 | | C S NELSON TRUST #8-U | GEORGE WEST WEST | 0.0 | UNITED TEXAS GAS |
| -PENNZOIL COMPANY | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8344008 | F-10-69525 | 4248330798 | | 102-4 | | BAIRD #1 | MILLS RANCH | 4.4 | NATURAL GAS PIPEL |
| -PENNZOIL PRODUCING COMPANY | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343747 | F-04-060315 | 4235500000 | | 108-ER | | CLARA DRISCOLL #A-9 | AGUA DULCE | 0.0 | UNITED GAS PIPE L |
| 8343765 | F-04-063989 | 4221500000 | | 108-ER | | SAVAGE B UNIT #B-1-L | HIDALGO (CORD) | 0.0 | VAL GAS CO |
| -PETROLEUM EQUITIES CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343786 | F-7C-065124 | 4243532915 | | 103 | 107-TF | SCHULTZ #6 | INTERSTATE (CANYON) | 73.0 | PRODUCERS GAS CO |
| -PETRUS OPERATING CO INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343947 | F-05-69350 | 4234933201 | | 102-4 | | CARPENTER #7 | INGRAM TRINITY (RODES | 0.0 | DELHI GAS PIPELIN |
| -PHILLIPS PETROLEUM COMPANY | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343948 | F-08-69351 | 4213504420 | | 108 | | (02122) BLAKENEY #3 | GOLDSMITH (CLEARFORK) | 9.0 | EL PASO NATURAL G |
| 8343955 | F-08-69358 | 4249531359 | | 108 | | (16091) BASH #16 | KEYSTONE (COLBY) | 7.0 | SID RICHARDSON GA |
| 8343954 | F-08-69357 | 4249500753 | | 108 | | (16091) BASH #4 | KEYSTONE (COLBY) | 15.0 | SID RICHARDSON GA |
| 8343956 | F-08-69359 | 4213503764 | | 108 | | (18713) GOLDSMITH ADOBE UNIT #18-03 | GOLDSMITH (5600') | 1.0 | EL PASO NATURAL G |
| 8343952 | F-08-69355 | 4213507817 | | 108 | | (18713) GS ADOBE UNIT #27-02 | GOLDSMITH (5600) | 2.0 | EL PASO NATURAL G |
| 8343953 | F-08-69356 | 4213520680 | | 108 | | (21556) NORTH PENWELL UNIT #140 | PENWELL | 2.0 | EL PASO NATURAL G |
| 8343949 | F-08-69352 | 4237132682 | | 108 | | (77135) MITCHELL-F #1 | PUCKETT EAST (STRAWN) | 3.0 | NORTHERN NATURAL |
| 8343724 | F-10-062692 | 4242100000 | | 108-ER | | BUTLER A#1 | TEXAS HUGOTON | 0.0 | MICHIGAN WISCONSI |
| 8343788 | F-10-065600 | 4223331312 | | 108 | | CHILDERS O M #7 | PANHANDLE HUTCHINSON | 0.0 | EL PASO NATURAL G |
| 8343950 | F-08-69353 | 4232901331 | | 108 | | GOLLADAY B#1 | SPRABERRY (TREND AREA | 4.0 | NORTHERN NATURAL |
| 8343812 | F-10-66557 | 4235731363 | | 102-4 | | NITSCHKE A #2 | ALFAR (ST LOUIS) | 0.0 | |
| 8343838 | F-10-67601 | 4229531268 | | 103 | | PEERY B #2 | PERRY (CLEVELAND) | 0.0 | |
| 8343951 | F-7C-69354 | 4243530422 | | 108 | | WARD C #1 | SONORA (CANYON UPPER) | 18.0 | INTRATEX GAS CO |
| 8343821 | F-10-66841 | 4223300000 | | 103 | | YAKE G #15 | PANHANDLE HUTCHINSON | 0.0 | EL PASO NATURAL G |
| -PRUDENTIAL ENERGY CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343981 | F-06-69428 | 4222530437 | | 102-2 | | LARUE A #1 | PEARSON CHAPEL (EDWAR | 75.0 | EXXON GAS SYSTEM |
| 8343979 | F-06-69426 | 4222530446 | | 102-2 | | LARUE B #1 | PEARSON CHAPEL (EDWAR | 0.0 | EXXON GAS SYSTEM |
| 8343980 | F-06-69427 | 4222530444 | | 102-2 | | WHALEY #1 | PEARSON CHAPEL (EDWAR | 0.0 | EXXON GAS SYSTEM |
| -QUESTA OIL & GAS CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343806 | F-7C-66176 | 4210534287 | | 103 | 107-TF | PIERCE 44-1 | OZONA (CANYON SAND) | 0.0 | NORTHERN NATURAL |
| -QUINTANA PETROLEUM CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343939 | F-02-69295 | 4239131613 | | 103 | | THOMAS O'CONNOR "C" 85-L | TOM OCONNOR (5900 SAN | 100.0 | UNITED TEXAS TRAN |
| -RANKIN OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343878 | F-08-68520 | 4213533497 | | 103 | | CROSS #1 | HARPER | 2.0 | PHILLIPS PETROLEU |
| 8343938 | F-08-69292 | 4200332684 | | 103 | | ERNESTEEN B #1 | FUHRMAN MASCHO | 2.0 | PHILLIPS PETROLEU |
| 8343892 | F-08-68873 | 4200332851 | | 103 | | FLY 1 | FUHRMAN-MASCHO | 1.0 | PHILLIPS PETROLEU |
| 8343893 | F-08-68874 | 4200332857 | | 103 | | FLY 2 | FUHRMAN-MASCHO | 1.0 | PHILLIPS PETROLEU |
| 8343930 | F-08-69168 | 4200332420 | | 103 | | LEONA A 1 | FUHRMAN-MASCHO | 2.0 | PHILLIPS PETROLEU |
| 8343929 | F-08-69165 | 4200332168 | | 103 | | PEBSWORTH #1 | MIX SOUTH | 1.0 | PHILLIPS PETROLEU |
| -RK PETROLEUM CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343915 | F-08-69038 | 4231732686 | | 103 | | GLEN COX #4 #21702 | SPRABERRY (TREND AREA | 0.0 | NORTHERN NATURAL |
| -ROBERT P LAMMERTS | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343769 | F-03-064187 | 4204100000 | | 102-2 | | H L H #1 | KURTEN (GEORGETOWN) | 0.0 | FERGUSON CROSSING |
| -ROCO PETROLEUM INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343889 | F-7B-68843 | 4204933309 | | 103 | | BUCY #1 | M J REID (MARBLE FALL | 40.0 | LONE STAR GAS CO |
| -RYDER SCOTT OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343978 | F-09-69415 | 4223734991 | | 102-4 | | CAMPSEY #4 | COOPER (CONGLOMERATE) | 103.0 | TEXAS UTILITIES F |
| -SAGE ENERGY CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343898 | F-03-68859 | 4214931516 | | 102-2 | | BECK #1 RRC #16470 | GIDDINGS (AUSTIN CHAL | 135.0 | PHILLIPS PETROLEU |
| 8343846 | F-03-67781 | 4214931499 | | 102-2 | | CHERRY "A" #1 RRC #16449 | GIDDINGS (BUDA) | 21.6 | PHILLIPS PETROLEU |
| 8343804 | F-03-65969 | 4214931435 | | 102-2 | | EDGAR UNIT #1 RRC #104476 | GIDDINGS (EDWARDS) GA | 320.8 | PHILLIPS PETROLEU |
| 8343802 | F-03-65962 | 4214900000 | | 102-2 | | HUMP UNIT #1 | GIDDINGS (AUSTIN CHAL | 0.0 | PHILLIPS PETROLEU |
| 8343801 | F-03-65961 | 4214900000 | | 102-2 | | LEAR #2 | GIDDINGS (AUSTIN CHAL | 0.0 | PHILLIPS PETROLEU |
| 8343800 | F-03-65960 | 4214931468 | | 102-2 | | MARTINEZ "A" #2 RRC #16411 | GIDDINGS (AUSTIN CHAL | 22.5 | PHILLIPS PETROLEU |
| 8343799 | F-03-65956 | 4214931476 | | 102-2 | | WETJEN UNIT #1 RRC #16446 | GIDDINGS (AUSTIN CHAL | 11.5 | PHILLIPS PETROLEU |
| -SAXON OIL COMPANY | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343750 | F-08-061404 | 4231700000 | | 103 | | PARHAM #1 | BREEDLOVE EAST (SPRAB | 0.0 | PHILLIPS PETROLEU |
| 8343751 | F-08-061408 | 4231700000 | | 103 | | RICHARDS "A" #1 | BREEDLOVE EAST (SPRAB | 0.0 | PHILLIPS PETROLEU |
| -SCANDRILL INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343854 | F-09-68864 | 4250336724 | | 103 | | CENCEBAUGH #3 | YOUNG COUNTY REGULAR | 7.3 | MID-STATE GAS COR |
| 8343879 | F-09-68766 | 4223734976 | | 103 | | D L MURRY #1 | JACK COUNTY REGULAR | 25.6 | LONE STAR GAS CO |
| 8343746 | F-09-059927 | 4223734722 | | 102-4 | 103 | DUERSON #19 | CHALIN (STRAWN) | 36.5 | LONE STAR GAS CO |
| 8343880 | F-09-68768 | 4223734647 | | 103 | | ED SEWELL #2 | JACK COUNTY REGULAR | 212.4 | TEXAS UTILITIES F |
| 8343868 | F-09-68139 | 4223734514 | | 103 | | H J RICHARDS "C" #1 | JACK COUNTY REGULAR | 25.6 | LONE STAR GAS CO |
| 8343858 | F-09-68137 | 4223734566 | | 103 | | JOHNSON #1 | BRYSON EAST | 40.1 | LONE STAR GAS CO |
| 8343816 | F-09-66742 | 4250336248 | | 102-4 | | MCCLOUD #4 | D G J (MISS) | 102.2 | LONE STAR GAS CO |
| 8343871 | F-09-68275 | 4223735075 | | 103 | | MCCONNELL #5 | BRYSON EAST | 109.5 | LONE STAR GAS CO |
| 8343891 | F-09-68863 | 4223735078 | | 103 | | MCCONNELL #6 | BRYSON EAST | 38.3 | LONE STAR GAS CO |
| 8343859 | F-09-68138 | 4223734599 | | 103 | | W BENNETT #1 | BRYSON EAST | 25.6 | TEXAS UTILITIES F |
| 8343853 | F-09-68062 | 4223734619 | | 103 | | W L RICHARDS #8 | BRYSON EAST | 40.1 | LONE STAR GAS CO |
| -SCARTH OIL & GAS CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343737 | F-10-055860 | 4229530521 | | 108-ER | | PIPER 601-1 | BRADFORD (CLEVELAND) | 0.0 | TRANSWESTERN PIPE |
| -SHAR-ALAN OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343741 | F-03-058094 | 4231330390 | | 102-4 | | E L MCWHORTER #1 | MADISONVILLE NE (GEOR | 0.0 | LONE STAR GAS CO |
| 8343851 | F-03-68015 | 4231330416 | | 102-4 | | W P SINGLETARY | MADISONVILLE N E (GEO | 0.0 | LONE STAR GAS CO |
| -SOHIO PETROLEUM CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343942 | F-08-69305 | 4217331394 | | 103 | | SPRABERRY DRIVER UNIT #882 | SPRABERRY (TREND AREA | 0.0 | EL PASO NATURAL G |
| -SOUTHLAND ROYALTY CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343856 | F-7C-68114 | 4241331298 | | 103 | 107-TF | G H NEILL #2 | ELDORADO N | 104.0 | ARCO OIL & GAS CO |
| -STALLWORTH OIL & GAS INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343836 | F-7B-67535 | 4236700000 | | 107-TF | | LOKEY #3 | LOKEY (ATOKA 1250) | 25.0 | LONE STAR GAS CO |
| -SUN EXPLORATION & PRODUCTION CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343774 | F-04-064429 | 4227331458 | | 103 | | A T CANALES #55 | TIJERINA-CANALES-BLUC | 255.0 | |
| 8343876 | F-04-68515 | 4242731706 | | 102-4 | | B G DEGARCIA #38 | GARCIA | 112.0 | |
| 8343940 | F-8A-69299 | 4221933658 | | 103 | | CENTRAL LEVELLAND UNIT #270 | LEVELLAND | 0.4 | AMOCO PRODUCTION |
| 8343941 | F-8A-69300 | 4221933660 | | 103 | | CENTRAL LEVELLAND UNIT #271 | LEVELLAND | 0.4 | AMOCO PRODUCTION |
| 8343832 | F-04-67402 | 4224900000 | | 108 | | P CANALES #134 | T C B (SECOND TIJERIN | 3.0 | |
| 8343736 | F-04-054919 | 4242731632 | | 102-4 | | REILLY HEIRS #25 | FROST | 105.8 | |
| 8343805 | F-7B-66167 | 4213334146 | | 103 | | STATE OF TEXAS 'J' #1 | EASTLAND COUNTY REGUL | 55.9 | LONE STAR GAS CO |
| -SUPERIOR OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343803 | F-04-65963 | 4240931704 | | 103 | | MINNIE S WELDER #64 | | 17.0 | TENNESSEE GAS PIP |
| -TAMARACK PETROLEUM CO INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343844 | F-7C-67711 | 4246131681 | | 103 | | EXXON CONDEN "D" #1 (RRC #09033) | SPRAYBERRY (TREND ARE | 13.0 | EL PASO NATURAL G |
| 8343761 | F-7C-063212 | 4241331234 | | 103 | 107-TF | MERTZ "74" #1 (RRC #103983) | ELDORADO SOUTH (CANYO | 91.0 | ADOBE GAS CO |
| -TEMPLETON ENERGY INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343864 | F-7C-68206 | 4239932665 | | 102-4 | | MOSTAD #1 | SYKES (ELLENBURGER) | 259.0 | UNION TEXAS PETRO |
| -TENNECO OIL COMPANY | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343739 | F-10-056983 | 4239330818 | | 102-4 | | BRAINARD #1-7 | WILLOW CREEK | 180.0 | TRANSWESTERN PIPE |
| 8343745 | F-03-059206 | 4220131367 | | 102-4 | | RICHARDS JENNIE RUTH #1 | KATY EAST (WILCOX 103 | 0.0 | UNITED TEXAS TRAN |
| -TEXACO INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343796 | F-08-065953 | 4243131287 | | 102-4 | | E B COPE #5 | COMGER SW | 165.4 | VALERO TRANSMISSI |

| JD NO | JA DKT | API NO | D | SEC(1) | SEC(2) | WELL NAME | FIELD NAME | PROD | PURCHASER |
|---|---|---|---|---|---|---|---|---|---|
| 8343731 | F-84-047946 | 4242731591 | | 102-4 | | GUERRA SHARE 8-D #22 | ROMA EAST (QUEEN CITY | 36.5 | |
| 8343797 | F-8A-065954 | 4216532425 | | 103 | | J B ROBERTSON #58 | ROBERTSON N (CLEARFOR | 8.1 | PHILLIPS PETROLEU |
| 8343793 | F-08-065721 | 4232931125 | | 102-4 | | MIDLAND "AH" FEE #1 | BRADFORD RANCH | 212.8 | EL PASO NATURAL G |
| 8343791 | F-8A-065719 | 4221933653 | | 103 | | MONTGOMERY ESTATE DAVIES NCT-2 #95 | LEVELLAND | 0.0 | AMOCO PRODUCTION |
| 8343795 | F-8A-65952 | 4221933655 | | 103 | | MONTGOMERY ESTATE DAVIES NCT-2 #96 | LEVELLAND | 41.2 | AMOCO PRODUCTION |
| 8343792 | F-8A-065720 | 4250132286 | | 103 | | ROBERTS UNIT #2435 | WASSON | 29.6 | SHELL OIL CO |
| 8343783 | F-8A-064991 | 4250132285 | | 103 | | ROBERTS UNIT #3133 | WASSON | 5.8 | SHELL OIL CO |
| 8343763 | F-08-063534 | 4243131274 | | 102-4 | | STERLING "S" FEE #2 | CONGER SW | 43.8 | VALERO TRANSMISSI |
| 8343810 | F-08-066396 | 4243131281 | | 103 | | V E BROWNFIELD #5 | CONGER (PENN) | 195.7 | VALERO TRANSMISSI |
| 8343827 | F-08-067172 | 4213534079 | | 103 | | WEST JORDAN UNIT #401A | JORDAN | 13.1 | PHILLIPS PETROLEU |
| 8343798 | F-8A-065955 | 4216532489 | | 103 | | WHARTON UNIT #106 | HARRIS | 35.3 | PHILLIPS PETROLEU |
| 8343828 | F-8A-67221 | 4216532483 | | 103 | | WHARTON UNIT #113 | HARRIS | 0.0 | PHILLIPS PETROLEU |
| -THE ANSCHUTZ CORPORATION | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343773 | F-03-064352 | 4203931856 | | 102-4 | | RENN #2 | DANBURY (12100-A) | 633.0 | DOW CHEMICAL USA |
| -TOM BROWN INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343996 | F-7C-69483 | 4238332441 | | 103 | | CYNTHIA MALONE "B" #2 | SPRABERRY (TREND AREA | 43.0 | EL PASO NATURAL G |
| 8343888 | F-7C-68840 | 4243531308 | | 103 | 107-TF | HILL-EDWIN S MAYER JR "MM" #1 | SAWYER (CANYON) | 73.0 | LONE STAR GAS CO |
| 8343887 | F-7C-68839 | 4243531302 | | 103 | 107-TF | HILL-EDWIN S MAYER JR "OO" #1 | SAWYER (CANYON) | 73.0 | LONE STAR GAS CO |
| -TRICENTROL RESOURCES INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343845 | F-02-67755 | 4217531647 | | 102-4 | | LEOLA F GLEINSER #1 | ANDER (1400 SAND) | 86.0 | VALERO TRANSMISSI |
| 8343758 | F-03-062892 | 4216730134 | | 102-4 | | STATE TRACT 146-S #1-L | CAPLEN | 95.0 | TEJAS GAS CORP |
| 8343759 | F-03-062893 | 4216730134 | | 102-4 | | STATE TRACT 146-S #1-U | CAPLEN | 29.0 | TEJAS GAS CORP |
| 8343757 | F-03-062891 | 4216730138 | | 102-4 | | STATE TRACT 146-S #2 | CAPLEN | 183.0 | WINNIE PIPELINE C |
| 8343755 | F-03-062888 | 4216730139 | | 102-4 | | STATE TRACT 146-S #4-L | CAPLEN | 183.0 | WINNIE PIPELINE C |
| 8343756 | F-03-062889 | 4216730139 | | 102-4 | | STATE TRACT 146-S #4-U | CAPLEN | 183.0 | WINNINE PIPELINE |
| -TRINITY EXPLORATION CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343893 | F-7B-67708 | 4213334757 | | 102-4 | | B L WHITE #2 | T E C (CADDO) | 1.0 | EL PASO HYDROCARB |
| 8343842 | F-7B-67706 | 4213334694 | | 102-4 | | COX #3 | T E C (CADDO) | 2.0 | EL PASO HYDROCARB |
| -TXO PRODUCTION CORP | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343744 | F-02-058923 | 4205730932 | | 102-4 | | CLARK I-1 | LONG MOTT (6750 BLK A | 0.0 | UNITED GAS PIPELI |
| 8343867 | F-08-68229 | 4222732989 | | 103 | | FRYAR #3 | BIG SPRING (FUSSELMAN | 100.0 | GETTY OIL CO |
| 8343857 | F-10-68135 | 4235700000 | | 102-4 | | GRAMSTORFF #3 | BOOKER N (MORROW UPPE | 200.0 | DELHI GAS PIPELIN |
| 8343913 | F-8A-69021 | 4203330838 | | 103 | | MILLER "U" #3 | LUCY NE (STRAWN B) | 60.0 | SUN OIL CO |
| 8343752 | F-02-062574 | 4223931804 | | 103 | | WATSON B-3 | MORALES (FRIO F) | 0.0 | DELHI GAS PIPELIN |
| -U S OPERATING INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343790 | F-03-065711 | 4228731333 | | 102-2 | | PHYLLIS #1 RRC ID# N/A | GIDDINGS (BUDA) | 0.0 | PERRY PIPELINE CO |
| -UNITED CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343969 | F-8A-69385 | 4207931198 | | 108 | | SLAUGHTER ESTATE #1 089798 | LEVELLAND (SAN ANDRES | 16.0 | EL PASO NATURAL G |
| -UPHAM OIL & GAS CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343742 | F-09-058292 | 4249700000 | | 103 | | EARL KELLEY #2 | BOONESVILLE (BEND CON | 0.0 | LONE STAR GAS CO |
| -VOLVO PETROLEUM INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343777 | F-03-064558 | 4233930541 | | 102-4 | | J E BREED GAS UNIT #1 | FRIENDSHIP DEVELOPMEN | 3188.5 | |
| -W B D OIL & GAS CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343934 | F-10-69180 | 4234130825 | | 103 | | JONATHAN #3 (ID# 05148) | PANHANDLE MOORE FIELD | 70.0 | PHILLIPS PETROLEU |
| 8343933 | F-10-69179 | 4234130919 | | 103 | | JONATHAN #6 (ID# 05148) | PANHANDLE MOORE | 70.0 | PHILLIPS PETROLEU |
| 8343931 | F-10-69173 | 4234130902 | | 103 | | LYNCH #9 (03676) | PANHANDLE MOORE | 70.0 | PHILLIPS PETROLEU |
| -WARREN PETR CO A DIV OF GULF OIL CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343946 | F-08-69333 | 4210333126 | | 103 | | M B MCKNIGHT #143 | SAND HILLS (MCKNIGHT) | 0.5 | EL PASO NATURAL G |
| 8343957 | F-08-69360 | 4210333127 | | 103 | | M B MCKNIGHT #147 | SAND HILLS (MCKNIGHT) | 0.2 | EL PASO NATURAL G |
| 8343944 | F-08-69331 | 4210332516 | | 108 | | UNIVERSITY P #8 | DUNE | 8.5 | EL PASO NATURAL G |
| -WARRIOR MANAGEMENT CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343870 | F-02-68261 | 4228531650 | | 102-4 | 103 | PASTOR #1 | SPEAKS SW (3275) | 188.0 | HOUSTON PIPE LINE |
| -WATSON EXPLORATION INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343997 | F-10-69493 | 4206531087 | | 103 | | TWO BAR RANCH #2-96 | PANHANDLE CARSON COUN | 135.0 | CABOT PIPELINE CO |
| -WES-TEX DRILLING COMPANY | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343835 | F-7B-67459 | 4235331410 | | 103 | | JORDAN RANCH "A" #1 | SUGGS (ELLENBURGER) | 0.0 | LONE STAR GAS CO |
| -WHITEHEAD PRODUCTION CO INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343900 | F-7B-68973 | 4204932529 | | 102-4 | | NIENDORFF "A" #1 | | 18.2 | EL PASO HYDROCARB |
| 8343901 | F-7B-68974 | 4204932966 | | 102-4 | | NIENDORFF "A" 2 | HAYNES (CROSS CUT) | 18.2 | EL PASO HYDROCARB |
| -WILLIAM PERLMAN | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343732 | F-7C-052679 | 4243530255 | | 108-ER | | ADA CAUTHORN #401 | SHURLEY RANCH (CANYON | 0.0 | EL PASO NATURAL G |
| 8343735 | F-7C-054052 | 4243500000 | | 108-ER | | DAN A CAUTHORN B-1 | CAUTHORN RANCH (STRAW | 0.0 | EL PASO NATURAL G |
| 8343778 | F-7C-064589 | 4243532773 | | 103 | | GORDON STEWART 78 1/2 #1X | SAWYER (CANYON) | 0.0 | EL PASO HYDROCARB |
| 8343771 | F-7C-064271 | 4243532836 | | 102-2 | 102-TF | IDA CAUTHORN #1355 | SHURLEY RANCH (CANYON | 0.0 | EL PASO NATURAL G |
| -WINN EXPLORATION/DULCE CO | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343884 | F-10-68835 | 4250731778 | | 102-4 | | PRYOR RANCH #108 | WINN-DULCE | 0.0 | VALERO TRANSMISSI |
| -WOOLF & MAGEE INC | | | | RECEIVED: | 07/01/83 | JA: TX | | | |
| 8343814 | F-03-66703 | 4237330540 | | 102-4 | | R E BIRCH GAS UNIT #4 | DAMASCUS (SEAMANS) | 1000.0 | UNITED GAS PIPELI |

[FR Doc. 83-20100 Filed 7-25-83; 8:45 am]

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federal register

Tuesday
July 26, 1983

Part IV

# Department of Health and Human Services

Food and Drug Administration

## Oral Mucosal Injury Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 353**

**[Docket No. 78N-0196]**

## Oral Mucosal Injury Drug Products for Over-the-Counter Human Use; Tentative Final Monograph

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a notice of proposed rulemaking in the form of a tentative final monograph that would establish conditions under which over-the-counter (OTC) oral mucosal injury drug products (drug products which relieve oral soft tissue injury by cleansing or promoting the healing of minor oral wounds of irritations) are generally recognized as safe and effective and not misbranded. FDA is issuing this notice of proposed rulemaking after considering the report and recommendations of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products and public comments on an advance notice of proposed rulemaking that was based on those recommendations. This proposal is part of the ongoing review of OTC drug products conducted by FDA.

**DATES:** Written comments, objections, or requests for oral hearing on the proposed regulation before the Commissioner of Food and Drug by September 26, 1983. New data by July 26, 1984. Comments on the new data by September 26, 1984. These dates are consistent with the time periods specified in the agancy's revised procedural regulations for reviewing and classifying OTC drugs (21 CFR 330.10). Comments on the agency's economic impact determination by November 23, 1983.

**ADDRESS:** Written comments, objections, new data, or requests for oral hearing to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, National Center for Drugs and Biologics (HFN-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of November 2, 1979 (44 FR 63270) FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking to establish a monograph for OTC oral mucosal injury drug products, together with the recommendations of the Advisory Review Panel on OTC Dentifrice and Dental Care Drug Products, which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by January 24, 1980. Reply comments in response to comments filed in the initial comment period could be submitted by February 25, 1980.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA-305), Food and Drug Administration (address above), after deletion of a small amount of trade secret information. In response to the advance notice of proposed rulemaking, the Panel Chairman, one drug manufacturers' association, five drug manufacturers, and two individual consumers submitted comments. Copies of the comments received are on public display in the Dockets Management Branch.

The advance notice of proposed rulemaking, which was published in the Federal Register on November 2, 1979 (44 FR 63270), was designated as a "proposed monograph" in order to conform to terminology used in the OTC drug review regulations (21 CFR 330.10). Similarly, the present document is designated in the OTC drug review regulations as a "tentative final monograph." Its legal status, however, is that of proposed rule. In this tentative final monograph (proposed rule) to establish Part 353 (21 CFR Part 353) the FDA states for the first time its position on the establishment of a monograph for OTC oral mucosal injury drug products. Final agency action on this matter will occur with the publication at a furture date of a final monograph, which will be a final rule establishing a monograph for OTC oral mucosal injury drug products.

This proposal constitutes FDA's tentative adoption of the Panel's conclusions and recommendations on OTC oral mucosal injury drug products as modified on the basis of the comments received and the agency's independent evaluation of the Panel's report. Modifications have been made for clarity and regulatory accuracy and to reflect new information. Such new information has been placed on file in the Dockets Management Branch (address above). These modifications are reflected in the following summary of the comments and FDA's responses to them.

The OTC procedural regulations (21 CFR 330.10) have been revised to conform to the decision in *Cutler* v. *Kennedy*, 475 F. Supp. 838 (D.D.C. 1979). (See the Federal Register of September 29, 1981; 46 FR 47730).) The Court in *Cutler* held that the OTC drug review regulations were unlawful to the extent that they authorized the marketing of Category III drugs after a final monograph had been established. Accordingly, this provision has been deleted from the regulations, which now provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during OTC drug rulemaking process before the establishment of a final monograph.

Although it was not required to do so under *Cutler*, FDA will no longer use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage, but will use instead the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III). This document retains the concepts of Categories I, II, and III at the tentative final monograph stage.

The agency advises that the conditions under which the drug products that are subject to this monograph would be generally recognized as safe and effective and not misbranded (monograph conditions) will be effective 12 months after the date of publication of the final monograph in the Federal Register. On or after that date, no OTC drug products that are subject to the monograph and that contain nonmonograph conditions, i.e., conditions that would cause the drug to be not generally recognized as safe and effective or to be misbranded, may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved new drug application. Further, any OTC drug products subject to this monograph that are repackaged or relabeled after the effective date of the monograph must be in compliance with the monograph regardless of the date the product was initiallly introduced or initially delivered for introduction into interstate commerce. Manufacturers are encouraged to comply voluntarily with the monograph at the earliest possible date.

In the advance notice of proposed rulemaking for OTC oral mucosal injury drug products (published in the **Federal Register** of November 2, 1979 (44 FR 63270)), the agency suggested that the conditions included in the monograph (Category I) be effective 30 days after the date of publication of the final monograph in the **Federal Register** and that the conditions excluded from the monograph (Category II) be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph, regardless of whether further testing was undertaken to justify their future use. Experience has shown that relabeling of products covered by the monograph is necessary in order for manufacturers to comply with the monograph. New labels containing the monograph labeling have to be written, ordered, received, and incorporated into the manufacturing process. The agency has determined that it is impractical to expect new labeling to be in effect 30 days after the date of publication of the final monograph. Experience has shown also that if the deadline for relabeling is too short, the agency is burdened with extension requests and related paperwork.

In addition, some products will have to be reformulated to comply with the monograph. Reformulation often involves the need to do stability testing on the new product. An accelerated aging process may be used to test a new formulation; however, if the stability testing is not successful, and if further reformulation is required, there could be a further delay in having a new product available for manufacture.

The agency wishes to establish a reasonable period of time for relabeling and reformulation in order to avoid an unnecessary disruption of the marketplace that could not only result in economic loss, but also interfere with consumers' access to safe and effective drug products. Therefore, the agency is proposing that the final monograph be effective 12 months after the date of its publication in the **Federal Register**. The agency believes that within 12 months after the date of publication most manufacturers can order new labeling and have their products in compliance in the marketplace. However, if the agency determines that any labeling for a condition included in the final monograph should be implemented sooner, a shorter deadline may be established. Similarly, if a safety problem is identified for a particular nonmonograph condition, a shorter deadline may be set for removal of that condition from OTC drug products.

All "OTC Volumes" cited throughout this document refer to the submissions made by interested persons pursuant to the call-for-data notice published in the **Federal Register** of January 30, 1973 (38 FR 2781) or to additional information that has come to the agency's attention since publication of the advance notice of proposed rulemaking. The volumes are on public display in the Dockets Management Branch.

## I. The Agency's Tentative Conclusions on the Comments

### *A. General Comments on Oral Mucosal Injury Drug Products*

1. One comment contended that OTC drug monographs are interpretive, as opposed to substantive, regulations. The comment referred to statements on this issue submitted earlier to other OTC rulemaking proceedings.

The agency addressed this issue in paragraphs 85 through 91 of the preamble to the procedures for classification of OTC drug products, published in the **Federal Register** of May 11, 1972 (37 FR 9464) and in paragraph 3 of the preamble to the tentative final monograph for antacid drug products, published in the **Federal Register** of November 12, 1973 (38 FR 31260). FDA reaffirms the conclusions stated there. Subsequent court decisions have confirmed the agency's authority to issue substantive regulations by rulemaking. See, e.g., *National Nutritional Foods Association* v. *Weinberger*, 512 F. 2d 688, 696–98 (2d Cir. 1975) and *National Association of Pharmaceutical Manufacturers* v. *FDA*, 487 F. Supp. 412 (S.D.N.Y. 1980), *aff'd*, 637 F. Ed 887 (2d Cir. 1981).

2. One comment noted that the Panel's definition of "prophylactic" contains the word "preventative" as a synonym for "prophylactic." However, the comment stated that the word "preventative" is a noun, whereas "prophylactic" is an adjective, so that these two words are not synonymous. The comment suggested that correct usage would be to state that "prophylactic" is synonymous with "preventive" rather than "preventative."

The words "prophylactic" and "preventative" each can be properly used as a noun and an adjective (Ref. 1). Therefore, the Panel was correct in considering the two terms to be synonymous.

**Reference**

(1) Webster's Third New International Dictionary, G. & C. Merriam Company, Springfield, Mass., 1976, s.v. "preventative" and "prophylactic."

### *B. Comments on Specific Oral Mucosal Injury Active Ingredients*

3. One comment cited a newspaper article on the Panel's report which stated that the Panel recommended peroxide as the only nonprescription substance that can safely and effectively clean mouth and gum injuries. The comment stated that while peroxide may be the only drug product sold without prescription, one teaspoon of salt dissolved in a glass of warm water and used as a mouth wash is a very effective substance. The comment added that the salt solution not only helps clean the mouth, but also toughens the gums, helps to heal the gums after tooth extraction, and helps to heal bleeding gums. The comment also stated that a certain commercial drug product (containing camphor and phenol) was effective in relieving pain of sore gums.

The Panel classified 1.5 to 3 percent hydrogen peroxide in aqueous solution and 10 percent carbamide peroxide in anhydrous glycerin as Category I OTC oral wound cleansers. The agency agrees with the Panel's recommendations. The Panel did not receive any data on the use of salt in warm water for the uses claimed by the comment and did not discuss the use of salt solution as an oral wound cleanser or oral wound healing agent. The comment also did not submit any data. Camphor and phenol, the ingredients in the commercial drug product mentioned by the comment, were reviewed by the Panel as oral mucosal analgesics in its report on drug products for relief of oral discomfort. (See the **Federal Register** of May 25, 1982; 47 FR 22712.) The agency will consider the combination of these ingredients for relief of the pain of sore gums in its tentative final monograph on drug products for relief of oral discomfort, which will be published in a future issue of the **Federal Register**.

4. Three comments objected to the Panel's recommendation to place sodium perborate monohydrate in Category II as an oral wound cleanser. To support their requests for Category I status, all of the comments submitted data emphasizing the safety of sodium perborate monohydrate when used as a mouthrinse.

One of the comments stated that the majority of boron toxicity incidents cited in the literature involve direct application of borates to open wounds or ingestion by infants under 1 year of age. Another of the comments maintained that the Panel's literature references on sodium perborate toxicity were related to early reports of the action of boric acid and boric acid salts

when misused as antiseptics. The comment added that literature references cited by the Panel regarding irritating effects attributed to the use of sodium perborate (e.g., chemical burns, hairy tongue, and edema of the lips) were taken from publications more than 40 years old that actually dealt with the excessive use of unbuffered sodium perborate, not with the proper use of sodium perborate monohydrate. The comment cited 30 years of marketing experience of sodium perborate monohydrate mouthrinse without a related occurrence of any of these adverse effects.

The comment maintained that the Panel had made an inaccurate assessment of the potential risk of boron poisoning when sodium perborate monohydrate is used as an oral wound cleanser. Although the Panel concluded that the maximum safe dose of boron for ingestion by adults is 90 milligrams (mg) per day (44 FR 63282), the comment pointed out that a considerable difference of opinion exists regarding the toxicity of boron in humans. The comment added that, when properly used, sodium perborate monohydrate mouthrinse actually delivers much less than 90 mg boron per day and that the level of boron absorption is very low.

The comment contended that the Panel's Category II classification of sodium perborate monohydrate is inconsistent with the action of other panels (e.g., the Advisory Review Panel on OTC Ophthalmic Drug Products, the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products, and the Dental Device Panel (Bureau of Medical Devices)) that permitted boron in OTC products even when its presence was not strictly considered a pharmaceutical necessity. The comment also expressed concern that the Panel's classification of sodium perborate monohydrate in Category II was based upon its interpretation of a request from the Committee on Drugs of the American Academy of Pediatrics. The comment pointed out that, in a January 25, 1974 letter to the Commissioner, the Committee requested that FDA "take action to remove boric acid and boric acid salts from all over-the-counter products unless they have been shown to be necessary to the efficacy of the product" (Ref. 1), and the Panel had apparently interpreted this as a request to remove all boron-containing products from the OTC market.

The comment asserted that the Panel's recommendation at 44 FR 63281 that an oral wound cleanser must deliver 1.5 to 3 percent hydrogen peroxide to be effective is arbitrary and undocumented. The comment stated that there are no data showing that a product containing an amount of sodium perborate monohydrate that breaks down in water to deliver 1.3 to 1.4 percent hydrogen peroxide is a less effective oral wound cleanser than a solution of at least 1.5 percent hydrogen peroxide.

The agency has reviewed the Panel's recommendations and the additional data submitted by the comments and concludes that the data demonstrate the safety of sodium perborate monohydrate when used as an oral wound cleanser. One study showed that 6 months' use of sodium perborate as a tooth powder produced no irritating effects in the subjects (Ref. 2). Two studies showed that very little boron is absorbed into the blood after use of sodium perborate monohydrate as a mouthrinse (Refs. 3 and 4). A human retention study established the mean quantity or boron left behind in the mouth after use of a sodium perborate monohydrate mouthrinse as 5 mg per rinse (or 20 mg per day if one rinses four times a day) (Ref. 5). Acute, subacute, and chronic toxicity studies showed minimal adverse reactions when various boron compounds were administered orally or intravenously to laboratory animals (Refs. 6, 7, and 8). Three literature reviews on the toxicology of boron compounds stressed their relative nontoxicity to humans and noted that the acute lethal dose of boric acid and its salts in humans varies from 3 grams (g) for infants to 45 g for an adult, suggesting that boron is relatively more toxic to children (Refs. 9, 10, and 11).

Data compiled by the National Clearinghouse for Poison Control Centers showed only 26 accidental ingestions of sodium perborate monohydrate (including 10 in children under 5 years of age) over a 9-year period. In the 26 reported ingestions, there were only two reports of symptoms, neither of which occurred in children under 5 years of age. There were no hospitalizations and no fatalities (Ref. 12).

Following the April 28, 1978 adoption of the Panel's report, the Committee on Drugs of the American Academy of Pediatrics submitted a letter of clarification to FDA, dated July 18, 1978, stating in part that the sodium perborate monohydrate component was necessary for the efficacy of a product submitted to the Panel for review as on oral wound cleanser (Ref. 13). The agency concurs.

The agency believes that there is sufficient evidence to support a dose of sodium perborate monohydrate that releases 1.3 to 1.4 percent hydrogen peroxide in the mouth. Oral wound cleansing by a hydrogen peroxide-containing compound is a physical pheomenon based on its foaming activity in the mouth that results from the release of molecular oxygen when hydrogen peroxide comes into contact with tissue or salivary catalase. This foaming action loosens and lifts out debris, thus cleansing the wound. The measurement of doses of hydrogen peroxide may be variable and, therefore, the amount of molecular oxygen released is also variable, depending upon the quantity of rinse in a person's mouth. Therefore, based upon these facts and the long marketing history of the ingredient, the agency believes that a lower limit of 1.3 percent for the effectiveness of hydrogen peroxide as an oral wound cleanser is justified.

Based on its evaluation of the submitted documents, including data not available to the Panel, and the long history of safe marketing of sodium perborate monohydrate, the agency concludes that sufficient evidence exists to support the reclassification of 1.2 g sodium perborate monohydrate in aqueous solution (dissolved in approximately 20 milliliters (mL) of warm water) for use up to four times daily, from Category II to Category I when used as an oral wound cleanser.

Because some reports suggest that boron is more toxic to children than to adults (Refs. 9, 10, and 11), and children are more likely to swallow the rinse (44 FR 63278), oral wound cleansing products containing sodium perborate monohydrate should be labeled not for use by children under 6 years of age unless directed by a dentist or doctor. In addition, the agency is proposing that dosage units be limited to not more than 1.2 g sodium perborate monohydrate. The agency, therefore, is proposing the following directions in this tentative final monograph for products containing sodium perborate monohydrate:

*For use as an oral rinse.* Dissolve 1.2 grams of sodium perborate monohydrate in 1 ounce (30 milliliters) of warm water. Use immediately. Swish solution around in the mouth over the affected area for at least 1 minute and then spit it out. Do not swallow. Use up to four times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: Consult a dentist or doctor.

The agency is also proposing that the Category I indication for use in the cleansing of gum irritation due to erupting teeth (teething), in § 353.50(b)(1)(ii) of the Panel's proposed

monograph, be classified as Category II labeling for oral wound cleansers containing sodium perborate monohydrate because teething occurs in children at an age that is contraindicated for the use of sodium perborate monohydrate. The agency is proposing a professional labeling section in this tentative final monograph, § 353.80, that contains the indication for the use of oral wound cleansers other then sodium perborate monohydrate for the cleansing of gum irritation due to teething. The agency believes that such usage should be under the direction of a doctor or dentist.

The agency's detailed comments and evaluations on the data are on file in the Dockets Management Branch (Ref. 14).

**References**

(1) Letter from S. J. Yaffe, American Academy of Pediatrics, to the Commissioner, FDA, Comment No. C00003, Docket No. 78N–0196, Dockets Management Branch.

(2) Bodecker, C. F., and L. R. Cahn, "Effect of Daily Use of Flavored Sodium Perborate as a Dentifrice for a Six Months Period," *Journal of Dental Research*, 17:161–172, 1938.

(3) Edwall, L., B. Karlen, and A. Rosen, "Absorption of Boron after Mouthwash Treatment with Bocosept," *European Journal of Clinical Pharmacology*, 15:417–420, 1979.

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(13) Letter from J. D. Lockhart, American Academy of Pediatrics, to M. M. Freeman, FDA, Comment No. C00003, Docket No. 78N–0196, Dockets Management Branch.

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*C. Comments on Dosages for Oral Mucosal Injury Active Ingredients*

5. One comment suggested expanding recommended § 353.10(a)(1), which states "carbamide peroxide 10 percent in anhydrous glycerin," by adding the words "either as a liquid or gel."

The form of the vehicle is not relevant to the safety or effectiveness of this active ingredient; and in the absence of restrictive language in the monograph, either a liquid or gel dosage form can be used. Therefore, the change recommended by the comment is unnecessary.

6. Two comments objected to the Panel's omission of directions for use as an oral rinse of drug products containing carbamide peroxide in anhydrous glycerin. Pointing out that labeling submitted to the Panel for carbamide peroxide in anhydrous glycerin included provision for such use and that the Panel's recommended monograph allows for use of hydrogen peroxide both by direct application and as an oral rinse, the comments requested that directions for use of carbamide peroxide as an oral rinse be added to the mongraph. One comment suggested the following wording for the directions: "For use as an oral rinse, place 10–20 drops onto tongue. Mix with saliva. Swish around in the mouth over the affected area for at least one minute and then spit out. Use up to four times daily after meals and at bedtime, or as directed by a dentist or a physician. Children under 12 years of age should be supervised in the use of this product. For children under 2 years of age, there is no recommended dosage except under the advice and supervision of a dentist or physician."

The agency agrees that the directions for use of carbamide peroxide should include instructions for use as an oral rinse and accepts the comment's suggested wording with some modifications. The agency proposes to add the following directions for carbamide peroxide in anhydrous glycerin under § 353.50(d)(1)(ii) in this tentative final monograph:

*For use as an oral rinse.* Place 10 to 20 drops onto tongue. Mix with saliva. Swish around in the mouth over the affected area for at least 1 minute and then spit out. Use up to four times daily after meals and at bedtime, or as directed by a dentist or a doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: consult a dentist or doctor.

*D. Comments on Labeling of Oral Mucosal Injury Drug Products*

7. One comment stated that FDA lacks statutory authority to prescribe exclusive lists of terms from which indications for use for OTC drug products must be drawn and to prohibit labeling terminology which is truthful, accurate, not misleading, and intelligible to the consumer.

During the course of the OTC drug review, the agency has maintained that a monograph describing the conditions under which an OTC drug will be generally recognized as safe and effective and not misbranded must include both specific active ingredients and specific labeling. (This policy has become known as the "exclusivity rule.") The agency's position has been that it is necessary to limit the acceptable labeling language to that developed and approved through the OTC drug review process in order to ensure the proper and safe use of OTC drugs. The agency has never contended, however, that any list of terms developed during the course of the review literally exhausts all the possibilities of terms that appropriately can be used in OTC drug labeling. Suggestions for additional terms or for other labeling changes may be submitted as comments to proposed or tentative final monographs within the specified time periods or through petitions to amend monographs under § 330.10(a)(12).

During the course of the review, FDA's position on the "exclusivity rule" has been questioned many times in comments and objections filed in response to particular proceedings and in correspondence with the agency. The agency has also been asked by The Proprietary Association to reconsider its position. To assist the agency in resolving this issue, FDA conducted an open public forum on September 29, 1982, at which interested parties presented their views. The forum was a legislative type administrative hearing under 21 CFR Part 15 that was held in response to a request for a hearing on the tentative final monographs for nighttime sleep-aids and stimulants (published in the **Federal Register** of June 13, 1978; 43 FR 25544). Details of the hearing were announced in a notice published in the **Federal Register** of July 2, 1982 (47 FR 29002). The agency's

decision on this issue will be announced in the **Federal Register** following conclusion of its review of the material presented at the hearing.

8. One comment disagreed with the Panel's recommendation that inactive ingredients be listed in the labeling of OTC oral mucosal injury drug products. The comment stated that a list of inactive ingredients in the labeling would be meaningless, confusing, and misleading to most consumers. The comment noted that the act does not require that inactive ingredients of drug products be included on a label and argued that requiring the listing of these ingredients in descending order of quantity poses additional problems because labels would have to be changed as quantities of inactive ingredients change.

The agency agrees with the Panel's recommendation. Although the act does not require the complete identification of inactive ingredients in the labeling of OTC drug products, section 502(e) [21 U.S.C. 352(e)] does require disclosure of certain ingredients, whether included as active or inactive components in a product. In the absence of authority to require the inclusion of all the inactive ingredients in OTC drug product labeling, the agency urges manufacturers to list all inactive ingredients voluntarily as suggested by the Panel. This information will enable consumers with known allergies or intolerance to certain ingredients to select products with increased confidence of safe use.

9. One comment suggested that the Panel's indication in § 353.50(b)(1)(i) for oral wound cleansers, "For temporary use in the cleansing of wounds caused by minor oral irritation or injury such as following minor dental procedures, or from dentures or orthodontic appliances," was intended to read "For temporary use in the cleansing of minor wounds caused by oral irritation * * *." The comment also stated that the following truthful claims could be made for oral wound cleansers and oral wound healing agents based on language not recommended by the Panel but contained in or referenced in its report: "cleanses wounds caused by trauma, minor dental procedures, and other irritations of the oral soft tissues," "assists in the removal of foreign material from small superficial oral wounds," "physically removes debris from wounds," and "aids in the healing of small superficial oral wounds."

The agency believes that the Panel intended to convey to consumers the message that OTC oral wound cleanser products should be used for self-medication to cleanse minor wounds resulting from dental work, dentures, or orthodontic appliances. To reflect this intention, the agency is placing the word "minor" before the word "wounds" in the revised indication for oral wound cleansers in this tentative final monograph. Likewise, the agency is revising the Panel's definitions of "oral wound cleanser" and "oral wound healing agent" in § 353.3 (c) and (d) to reflect their use in minor oral wounds.

The comment's suggested phrase "cleanses wounds caused by traum, minor dental procedures, and other irritations of the oral soft tissues" is ambiguous. The terms "trauma" and "oral soft tissues" lack precise meaning for most consumers. The agency believes that the terms "accidental injury" and "irritations of the mouth and gums" will be more readily understood by consumers than the terms "trauma" and "irritations of the oral soft tissues." The term "minor dental procedures" was recommended by both the Panel and the comment. With minor revisions, the claim suggested by the comment would result in an indication statement that is very similar to the indication recommended by the Panel, but more meaningful to consumers. In addition, the agency is proposing that the term "minor gum inflammation" be classified as Category I and is including it in this indication. (See comment 13 below.) Therefore, the agency is proposing to revise the Panel's recommended indication as follows: "For temporary use in cleansing minor wounds or gum inflammation resulting from minor dental procedures, dentures, orthodontic appliance, accidental injury, or other irritations of the mouth and gums."

The agency believes that the statements "assists in the removal of foreign material from small superficial oral wounds" and "physically removes debris from wounds" are consistent with the labeling information the Panel intended to convey and that these statements, with light modifications to ensure accurate reflection of the agency's and the Panel's positions on labeling of OTC oral mucosal injury drug products, will provide the consumer with meaningful information on the use of oral wound cleansers. A new section ([§ 353.50(b)(3)] entiled "Other allowable statements" is being proposed in this tentative final monograph. The statements "assists in the removal of foreign material from minor oral wounds" and "physically removes debris from minor oral wounds" are included in this section and may be used in the labeling of oral wound cleanser drug products in addition to the required indication, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

The phrase "aids in the healing of minor oral wounds" is not included in ([§ 353.50(b) in this tentative final monograph. The Panel classified all oral wound healing agents in Category III [44 FR 63284 to 63287). Because no comments were received on this issue, the agency is accepting the Panel's classification and is not proposing any indications for oral wound healing agents in this tentative final monograph.

10. Two comments urged that the terms "oral discomfort," "relief of minor discomfort of minor wounds," and "soothing relief of minor wounds," be allowed in the labeling of oral wound cleansers such as carbamide peroxide in anhydrous glycerin. The comments stated that oral wound cleansers may contribute to the relief of oral discomfort due to a lesion through their cleaning and debriding action.

The Panel stated that oral mucosal injury drug products differ pharmacotherapeutically from other dental care agents, such as agents for relief or oral discomfort, in that they have no direct effect on oral discomfort, e.g., they have no anesthetic, analgesic, or protective effect (44 FR 63280). The Panel felt that these products may only indirectly provide relief of discomfort, are intended to act directly either as a cleanser or wound healing agent, and do no relieve the pain that may be associated with oral wounds. Therefore, the Panel classified the term "oral discomfort" in Category II when associated with oral mucosal injury drug products (44 FR 63284). In a separate report on drug products for the relief of oral discomfort, published in the **Federal Register** of May 25, 1982 (47 FR 22711), the Panel stated that drug products for the relief of oral discomfort are intended to act directly in terms of their specific pharmacotherapeutic properties, e.g., as local anesthetics.

The agency agrees with the Panel that labeling indications and claims for oral wound cleansers, such as "soothing" and "for relief of oral discomfort," are as yet unsupported by scientific data or evidence. The agency believes that cleansing a painful wound does not necessarily relieve the pain, and the comments did not submit data to substantiate such claims for oral mucosal injury active ingredients. However, the agency will consider reclassification of the claims "for relief of oral discomfort" and "soothing" to Category I for oral mucosal injury drug

products if adequate data are submitted to substantiate claims that an ingredient's cleansing action is "soothing" or provides "relief of oral discomfort." Because the Panel stated that oral mucosal injury drug products may indirectly provide relief of discomfort, the agency reclassifies these term from Category II to Category III in this document.

11. Two comments disagreed with the Panel's recommendations regarding "canker sores" and urged that canker sores be allowed as an indication in the Category I labeling of oral wound cleansers. The comments emphasized that canker sores are self-limiting, and that the consumer is unlikely to be adversely affected by self-treating canker sores because of the Panel's 7-day limitation of use if no improvement occurs. One comment added that canker sores tend to recur in the same persons and once diagnosed professionally (or recognized) are amenable to self-diagnosis and self-treatment by such persons. The other comment suggested the following indication: "For temporary use in the cleansing of canker sore lesions when this condition has been diagnosed by a physician."

The agency has received conflicting recommendations regarding canker sores. The Dental Panel indicated that the term "canker sore" is vague to the consumer and that canker sores cannot be self-diagnosed. The Advisory Review Panel on OTC Miscellaneous Internal Drug Products addressed the self-treatment of canker sores with orally ingested agents and defined canker sores as aphthous stomatitis, aphthous ulcers, and sores which occur on the mucous membranes of the oral cavity (often the movable areas) characterized by small whitish ulcerative lesions surrounded by a red border (see the Federal Register of January 5, 1982 (47 FR 504)). The Miscellaneous Internal Panel concluded that canker sores may be self-diagnosable, but are not amenable to self-treatment because their cause cannot be determined by the consumer (47 FR 505). The agency believes that, while the cause of canker sores may not be determinable by a consumer, topically applied oral wound cleansers could provide a useful function by removing debris that might become lodged in the ulcerated tissue of a canker sore. The 7-day limitation of use placed by the Dental Panel on topically applied oral wound cleansers would alert the consumer to consult a dentist or doctor if the condition for which the oral wound cleanser was used did not improve. The term canker sores has been used in the labeling of marketed products for many years. The agency believes that consumers have a general understanding of the term. Therefore, the agency proposes the following indication for oral wound cleansers (§ 353.50(b)(1)(ii)) in this tentative final monograph: "For temporary use to cleanse canker sores."

12. One comment disagreed with the Panel's placing the term "an aid to regular oral hygiene" in Category II. The comment did not object to the Panel's concern about the use of this term in the labeling of oral wound cleanser drug products, but was concerned that the term could not be used in the labeling of other products containing the same active ingredient used in an oral wound cleanser drug product but labeled for a different indication or for cosmetic use. As an example, the comment cited use of such products as an aid to regular oral hygiene by cleaning or orthodontic appliances and requested that reference to the term "an aid to regular oral hygiene" be deleted as a Category II claim for oral wound cleansing drug products.

The Panel's Category II designation of the term "an aid to regular oral hygiene" applies only to ingredients used as oral wound cleansers and not to be same ingredients used for other indications. At a later date, another panel, the Advisory Review Panel on OTC Oral Cavity Drug Products, discussed the term "oral hygiene" in its report on oral health care drug products and evaluated the ingredients in oral wound cleanser drug products for other uses in the mouth (see the Federal Register of May 25, 1982 (47 FR 22760)). Therefore, the agency is not classifying the term "oral hygiene" in this tentative final monograph. Use of the term "oral hygiene" in oral health care drug product labeling and any oral health care indications for active ingredients that are also oral wound cleansers will be discussed in the tentative final monograph for OTC oral health care drug products, to be published in a future issue of the Federal Register.

13. One comment urged that the term "minor gum inflammation" be reclassified from Category II to Category I in the labeling of both oral wound cleansers and oral wound healing agents. The comment contended that the term does not necessarily indicate the presence of bacterially caused gingivitis or periodontal disease, which the Panel viewed as serious conditions requiring treatment and supervision by a dentist or doctor (44 FR 63284). The comment suggested that "gum inflammation" may, instead, be due to toothbrush or "prophylaxic" abrasion, tooth extraction, minor surgical procedures, or orthodontia and urged that the term "minor gum inflammation" be reclassified in Category I, especially since the Panel proposed a warning against using these products for more than 7 days.

The agency agrees with the comment. The term "gum inflammation" when used alone could be interpreted by consumers as a serious condition. However, the Panel defined the term "minor gum disorders (injury)" as "inflammation related to mechanical irritation or minor injury of the gingival tissues" (44 FR 63273) and used this term to describe the type of conditions that the comment is urging be denoted as "gum inflammation" in the labeling of oral wound cleansers and wound healing agents. The agency believes that the term "minor gum inflammation" when associated with labeling describing dental procedures, dentures, orthodontic appliances, or accidental injury as the cause of the inflammation is an appropriate indication for oral wound cleansing agents. The warning proposed in § 353.50(c), which limits OTC use of oral mucosal injury drug products to 7 days, instructs the consumer to seek professional advice if the symptoms persist, do not improve, or become worse, or if swelling or fever develops. (See comment 17 below.)

Therefore, the agency is proposing that the term "minor gum inflammation" when associated with conditions such as minor dental procedures, dentures, orthodontic appliances, or accidental injury be classified in Category I. The agency is proposing the following indication for oral wound cleanser drug products in this tentative final monograph: "For temporary use in cleansing minor wounds or minor gum inflammation resulting from minor dental procedures, dentures, orthodontic appliances, accidental injury, or other irritations of the mouth and gums" (see comment 9 above). Because there are no Category I oral wound healing agents included in this tentative final monograph, no indications for these products are being proposed in this tentative final monograph.

14. One comment objected to the Panel's Category III classification of the term "oxygenating" for oral wound healing agents (44 FR 63287). The comment argued that this term is not necessarily related to tissue oxygen content when qualified by additional statements such as to "flush out food particles that ordinary brushing can miss" or to "clean and debride damaged tissue so natural wound healing can occur." The comment requested that

terms such as "oxygen rich foam" or "oxygen containing" be allowed in the labeling of oral wound healing agents to describe the mechanism by which the product works.

The OTC drug review program establishes conditions under which OTC drugs are generally recognized as safe and effective and not misbranded. Two principal conditions examined during the review are allowable ingredients and allowable labeling. The FDA has determined that it is not practical—in term of time, resources, and other considerations—to set standards for all labeling found in OTC drug products. Accordingly, OTC drug monographs regulate only labeling related in a significant way to the safe and effective use of covered products by lay persons. OTC drug monographs establish allowable labeling for the following items: product statement of identity, names of active ingredients; indications for use; directions for use; warnings against unsafe use, side effects, and adverse reactions; and claims concerning mechanism of drug action.

The agency believes terms such as "oxygen rich foam" and "oxygen containing" are product specific and are only peripherally related to the safe and effective use of OTC oral mucosal injury drug products. Accordingly, the terms "oxygen rich foam" and "oxygen containing" are outside the scope of the OTC drug review. The agency emphasizes that these claims are, however, subject to the prohibitions in section 502 of the act (21 U.S.C. 352) relating to labeling that is false and misleading. Such terms will be evaluated in conjunction with normal enforcement activities relating to that section of the act. Moreover, any term that is outside the scope of the review, even though it is truthful and not misleading, may not appear in any portion of the labeling required by the monograph and may not detract from such rquired information.

15. One comment, from the Chairman of the Dental Panel, stated that the Panel's report needed clarification at 44 FR 63274 and 63283 to reflect that the Panel considered antimicrobial drug products which have antigingivitis claims or imply an antigingivitis claim through control of plaque (antiplaque) to be Category II at the time that the Panel completed its report, but that the Panel did not consider antiplaque agents in a thorough enough manner to allow placement in Category II and deferred evaluation of antiplaque ingredients and labeling claims to the Oral Cavity Panel. Another comment agreed with the Panel's recommendation, stating that "there is no currently available agent for plaque control or gingivitis prevention which could be placed in Category I."

The agency concurs with the Panel Chairman's clarification. The Panel deferred the evaluation of antimicrobial antiplaque ingredients and labeling claims to the Oral Cavity Panel. Antiplaque claims were discussed in that Panel's "minority report on antimicrobial agents" in the advance notice of proposed rulemaking on OTC oral health care drug products, which was published in the **Federal Register** of May 25, 1982 (47 FR 22893). The agency will address antiplaque ingredients and labeling claims, and their relationship to the prevention of gingivitis, in the tentative final monograph for oral health care drug products, to be published in a future issue of the **Federal Register**.

16. One comment pointed out that the Dental Panel (44 FR 63280) deferred consideration of antiseptic and antimicrobial claims to the Oral Cavity Drug Products Panel, which considered such claims only for the oral cavity and not for the gums or gingival tissue. The comment urged that antiseptic claims for minor injuries of the gum be specifically addressed in this tentative final monograph because such claims were not discussed in any panel's report.

In its report, the Dental Panel discussed drug products marketed for treatment of minor oral injuries but did not specifically address antiseptic claims. The Panel deferred consideration of ingredients having antiseptic claims to the Oral Cavity Panel (44 FR 63280). That Panel reviewed data for many antimicrobial agents, including the deferred ingredients, and discussed topical use of these drugs for the indications of sore mouth and sore throat, but did not specifically address antiseptic claims for minor injuries of the oral cavity, gum, or gingival tissue (47 FR 22760). FDA finds no difference between antisepsis of minor injuries of the gum or gingival tissue and other areas of the oral cavity. Therefore, the agency believes that all topical antiseptic ingredients and claims pertaining to the treatment of minor injuries of the oral cavity, including the mucous membranes of the mouth and throat, the gums, and the gingiva, can be most effectively addressed as a single topic in the tentative final monograph for oral health care drug products, to be published in a future issue of the **Federal Register**. Antiseptic claims for oral mucosal injury drug products are not addressed in this tentative final monograph.

17. Three comments suggested additions to the following warning recommended by the Panel for oral mucosal injury drug products in § 353.50(c)(1)(i): "Not to be used for a period exceeding 7 days." One of the comments endorsed the warning, but suggested that it include a statement that patients consult their dentist or physician if the condition persists beyond 7 days, adding that the patient should do something positive in addition to merely discontinung use of the product. Another of the comments stated that these products should not be limited to a specific time period if there is improvement in the condition during their use and suggested that the warning be reworded to be similar to the following: "If symptoms do not improve in seven days or if inflammation, fever or infection develops, discontinue use and see your dentist or physician."

The Panel's rationale for limiting use of OTC Oral mucosal injury drug products to 7 days was its belief that a lack of improvement of an apparent oral mucosal injury may indicate the presence of a serious condition, e.g., cancer or periodontal disease; that continued use of the product might delay diagnosis and treatment of such a condition; and that the available scientific evidence indicates that there are no indications that warrant the use of any oral mucosal injury drug product beyond 7 days except under the advice of a dentist or doctor (44 FR 63282). The agency concurs with the Panel's recommendation to limit OTC use to 7 days, but recognizes that treatment with an OTC oral mucosal injury drug product of a condition that has improved over a 7-day period should not necessarily be discontinued. However, treatment beyond 7 days should be under the care of a dentist or doctor.

The Panel recommended two warnings for oral mucosal injury drug products, "Not to be used for a period exceeding 7 days" and "Discontinue use and see your dentist or physician promptly if irritation persists, inflammation develops, or if fever and infection develop" (44 FR 63289). The Agency is proposing that these warnings be combined for clarity and stated in terms more readily understood by consumers in the following warning under § 353.50(c), which, the agency believes, meets the concerns expressed by the comments: "Do not use this product for more than 7 days unless directed by a dentist or doctor. If symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling or fever develops, see your dentist or doctor promptly."

*E. Comments on Testing Guidelines*

18. Two comments addressed the testing guidelines recommended to move an oral wound healing agent from Category III to Category I, suggesting that animal oral mucosal models other than the beagle dog indicated by the Panel should be acceptable, that models other than collagen synthesis may be useful in measuring the rate of wound healing, that data may be obtained from skin models in which only epidermal tissue is removed, and that data should be obtained by evaluating the activity of a drug in wound repair models which provide information pertinent to indications. The comments stressed that testing guidelines should be recommendations but not requirements because other tests may be available or designed which are more appropriate for testing agents for the indication or oral wound healing.

The agency agrees that the tests recommended by the Panel should be recommendations rather than requirements. Also, the Panel's guidelines do not preclude the use of any advances or improved methodology in the future (44 FR 63287). In fact, the Panel stated that "* * * industry and FDA are encouraged to develop other models to measure wound healing effectiveness * * *" (44 FR 63288).

The agency has not addressed specific testing guidelines in this document and offers the Category III testing guidelines as the Panel's recommendations without adopting them or making any formal comment on them. In revising the OTC drug review procedures relating to Category III, published in the Federal Register of September 29, 1981 (46 FR 47730), the agency advised that tentative final monographs will not include recommended testing guidelines for conditions that industry wishes to upgrade to monograph status. Instead, the agency will meet with industry representatives at their request to discuss testing protocols. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any oral mucosal injury drug product ingredient as well as testing protocals. (See part II. paragraph A.2. below—Testing of Category II and Category III conditions.)

**II. The Agency's Tentative Adoption of the Panel's Report**

*A. Summary of Ingredient Categories and Testing of Category II and Category III Conditions*

1. *Summary of ingredient categories.* The agency has reviewed all claimed active ingredients submitted to the Panel, as well as other data and information available at this time, and has made the following change in the categorization of oral mucosal injury active ingredients proposed by the Panel. The agency is proposing to reclassify sodium perborate monohydrate, used as an oral wound cleanser, in Category I instead of Category II as recommended by the Panel. As a convenience to the reader, the following list is included as a summary of the categorization of oral mucosal injury active ingredients proposed by the Panel and the agency.

| Oral mucosal injury active ingredients | Panel | FDA |
|---|---|---|
| 1. Oral Wound Cleansers: | | |
| Carbamide peroxide in anhydrous glycerin | I | I |
| Hydrogen peroxide in aqueous solution | I | I |
| Sodium perborate monohydrate | II | I |
| 2. Oral Wound Healing Agents: | | |
| Allantoin | III | III |
| Carbamide peroxide in anhydrous glycerin | III | III |
| Chlorophyllins, water soluble | III | III |
| Hydrogen peroxide in aqueous solution | III | III |

2. *Testing of Category II and Category III conditions.* The Panel recommended testing guidelines for oral mucosal injury drug products (44 FR 63287). The agency is offering these guidelines as the Panel's recommendations without adopting them or making any formal comment on them. Interested persons may communicate with the agency about the submission of data and information to demonstrate the safety or effectiveness of any oral mucosal injury ingredient or condition included in the review by following the procedures outlined in the agency's policy statement published in the Federal Register of September 29, 1981 (46 FR 47740). This policy statement includes procedures for the submission and review of proposed protocols, agency meetings with industry or other interested persons, and agency communications on submitted test data and other information.

*B. Summary of the Agency's Changes*

FDA has considered the comments and other relevant information and concludes that it will tentatively adopt the Panel's report and recommended monograph with the changes described in FDA's responses to the comments above and with other changes described in the summary below. A summary of the changes made by the agency follows.

1. The agency is reclassifying sodium perborate monohydrate, used as an oral wound cleanser, from Category II to Category I. New data submitted to FDA, along with data originally submitted to the Panel, support the safe and effective use of sodium perborate monohydrate as an oral wound cleanser. (See comment 4 above.)

2. The agency is proposing that the Panel's recommended indications for oral would cleanser drug products be revised in this tentative final monograph to read as follows: "For temporary use in cleansing minor wounds or minor gum inflammation resulting from minor dental procedures, dentures, orthodontic applicances, accidental injury, or other irritations of the mouth and gums." (See comments 9 and 13 above.)

3. The agency is proposing to move the indication found in § 353.50(b)(1)(ii) of the advance notice of proposed rulemaking, "For temporary use in the cleansing of gum irritation due to erupting teeth (teething)," to a new section in the tentative final monograph entitled "Professional labeling." Because the directions for oral wound cleansers specify supervised use in children under 12 years of age and prohibit use in children under 2 years of age except upon the recommendation of a dentist or doctor, the use of those ingredients for teething is contraindicated except under the supervision of a dentist or doctor. In addition, the agency is proposing that this indication for use for teething not be permitted as labeling for products containing sodium perborate monohydrate because boron is more toxic to children than to adults. (See comment 4 above.)

4. The agency is proposing to add the following indication for oral wound cleansers to § 353.50(b)(1) in this tentative final monograph: "For temporary use to cleanse canker sores." (See comment 11 above.)

5. The agency is proposing a new section (§ 353.50(b)(3)) in this tentative final monograph entitled "Other allowable statements" to include the following statements: "Assists in the removal of foreign material from minor oral wounds" and "Physically removes debris from minor oral wounds." (See comment 9 above.)

6. The agency is reclassfying the terms "soothing" and "for relief of oral discomfort" from Category II to Category III in this tentative final monograph. The agency will consider reclassification of these terms to Category I in the final monograph if adequate data are submitted to substantiate claims that an ingredient's cleansing action is "soothing" or provides "relief of oral discomfort." (See comment 10 above.)

7. The agency is proposing to combine the two warning statements in § 353.50(c)(1) (i) and (ii) of the advance notice of proposed rulemaking. The revised warning, found in § 353.50(c) in

this tentative final monograph, reads as follows: "Do not use this product for more than 7 days unless directed by a dentist or doctor. If symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling or fever develops, see your dentist or doctor promptly." (See comment 17 above.)

8. The agency is proposing to expand the labeling of carbamide peroxide as an oral wound cleanser by providing directions for use as an oral rinse in § 353.50(d)(1) of this tentative final monograph. (See comment 6 above.)

9. The agency is revising the definition of oral mucosal injury agent in § 353.3(b) of this tentative final monograph to be more consistent with the indications for oral mucosal injury drug products.

10. The agency is redesignating proposed Subpart D of the monograph as Subpart C and is placing the labeling sections under Subpart C.

11. In an effort to simplify OTC drug labeling, the agency proposed in a number of tentative final monographs to substitute the word "doctor" for "physician" in OTC drug monographs on the basis that the word "doctor" is more commonly used and better understood by consumers. Based on comments received to these proposals, the agency has determined that final monographs and other applicable OTC drug regulations will give manufacturers the option of using either the word "physician" or the word "doctor." This tentative final monograph proposes that option.

The agency proposes to revoke the existing caution statement in § 369.20 for sodium perborate (sodium perborate monohydrate) mouthwash, gargle, and toothpaste at the time that the monographs for oral mucosal injury drug products, oral cavity drug products, and anticaries drug products become effective.

The agency has examined the economic consequences of this proposed rulemaking in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this proposed rule for OTC oral mucosal injury drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act Pub. L. 96-354. That assessment included a discretionary Regulatory Flexibility Analysis in the event that an individual rule might impose an unusual or disproportionate impact or small entities. However, this particular rulemaking for OTC oral mucosal injury drug products is not expected to pose such an impact on small businesses. Therefore, the agency certifies that this proposed rule, if implemented, will not have a significant economic impact on a substantial number of small entities.

The agency invites public comment regarding any substantial or significant economic impact that this rulemaking would have on OTC oral mucosal injury drug products. Types of impact may include, but are not limited to, costs associated with product testing, relabeling, repackaging, or reformulating. Comments regarding the impact of this rulemaking on OTC oral mucosal injury drug products should be accompanied by appropriate documentation. Because the agency has not previously invited specific comment on the economic impact of the OTC drug review on oral mucosal injury drug products, a period of 120 days from the date of publication of this proposed rulemaking in the **Federal Register** will be provided for comments on this subject to be developed and submitted. The agency will evaluate any comments and supporting data that are received and will reassess the economic impact of this rulemaking in the preamble to the final rule.

The agency has determined that under 21 CFR 25.24(d)(9) (proposed in the **Federal Register** of December 11, 1979; 44 FR 71742) this proposal 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.

**List of Subjects in 21 CFR part 353**

OTC drugs; Oral mucosal injury drug products.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371)), and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)), and under 21 CFR 5.11, it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 353, to read as follows:

## PART 353—ORAL MUCOSAL INJURY PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

**Subpart A—General Provisions**



**Subpart B—Active Ingredients**



**Subpart C—Labeling**



Authority: Secs. 201(p), 502, 505, 701, 52 Stat. 1041–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321(p), 352, 355, 371); secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704).

### Subpart A—General Provisions

**§ 353.1 Scope.**

(a) An over-the-counter oral mucosal injury drug product in a form suitable for topical administration is generally recognized as safe and effective and is not misbranded if it meets each of the conditions in this part and each of the general conditions established in § 330.1.

(b) References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

**§ 353.3 Definitions.**

As used in this part:

(a) *Oral mucosal injury.* Injury occurring to the soft tissue in the oral cavity.

(b) *Oral mucosal injury agent.* An agent that relieves oral soft tissue injury by cleansing or promoting the healing of minor oral wounds or irritations.

(c) *Oral wound cleanser.* A nonirritating preparation that assists (physically or chemically) in the removal of foreign material from minor oral wounds and does not delay wound healing.

(d) *Oral wound healing agent.* A nonirritating agent that aids in the healing of minor oral wounds by means other than cleansing and irrigating, or by serving as a protectant.

## Subpart B—Active Ingredients

### § 353.10 Oral mucosal injury active ingredients.

The active ingredient of the product consists of any of the following, within the established concentration for each ingredient:

(a) *Oral wound cleansers.*

(1) Carbamide peroxide 10 percent in anhydrous glycerin.

(2) Hydrogen peroxide 3 percent in aqueous solution.

(3) Sodium perborate monohydrate 1.2 gram dry powder to be dissolved in 30 milliliters of water.

(b) *Oral wound healing agents.* [Reserved]

### § 353.20 Permitted combinations of active ingredients.

(a) Any single oral wound healing agent identified in § 353.10(a) may be combined with any single generally recognized as safe and effective oral antiseptic.

(b) Any single oral wound cleanser identified in § 353.10(b) may be combined with any single generally recognized as safe and effective oral antiseptic.

(c) Any single oral wound healing agent identified in § 353.10(b) may be combined with a denture adhesive.

## Subpart C—Labeling

### § 353.50 Labeling of oral mucosal injury drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug(s), if any, and identifies the product as either an "oral wound cleanser" or an "oral wound healing agent."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to one or more of the following phrases:

(1) *For oral wound cleanser drug products.*

(i) "For temporary use in cleansing minor wounds or minor gum inflammation resulting from minor dental procedures, dentures, orthodontic appliances, accidental injury, or other irritations of the mouth and gums."

(ii) "For temporary use to cleanse canker sores."

(2) *For oral wound healing agent drug products.* [Reserved]

(3) *Other allowable statements.* In addition to the required information specified in paragraphs (a), (b) (1) and (2), (c), and (d) of this section, the labeling of the product may contain any of the following statements, provided such statements are neither placed in direct conjunction with information required to appear in the labeling nor occupy labeling space with greater prominence or conspicuousness than the required information.

(i) "Assists in the removal of foreign material from minor oral wounds."

(ii) "Physically removes debris from minor oral wounds."

(c) *Warnings.* The labeling of the product contains the following warning under the heading "Warnings": *For products containing any ingredient identified in § 353.10 (a) and (b):* "Do not use this product for more than 7 days unless directed by a dentist or doctor. If symptoms do not improve in 7 days; if irritation, pain, or redness persists or worsens; or if swelling or fever develops, see your dentist or doctor promptly."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions."

(1) *For products containing carbamide peroxide identified in § 353.10(a)(1)*—(i) *For direct application.* Apply several drops directly to the affected area of the mouth. Allow the medication to remain in place at least 1 minute and then spit out. Use up to four times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: consult a dentist or doctor.

(ii) *For use as an oral rinse.* Place 10 to 20 drops onto tongue. Mix with saliva. Swish around in the mouth over the affected area for at least 1 minute and then spit out. Use up to four times daily after meals and at bedtime, or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: consult a dentist or doctor.

(2) *For products containing hydrogen peroxide identified in § 353.10(a)(2)*—(i) *For direct application.* Apply several drops of full strength (3 percent) solution to the affected area of the mouth. Allow the medication to remain in place at least 1 minute and then spit out. Use up to four times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 2 years of age: Consult a dentist or doctor.

(ii) *For use as an oral rinse.* Mix the full strength (3 percent) solution with an equal amount of warm water. Swish around in the mouth over the affected areas for a least 1 minute and then spit out. Use up to four times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of the product. Children under 2 years of age: consult a dentist or doctor.

(3) *For products containing sodium perborate monohydrate identified in § 353.10(a)(3) for use as an oral rinse.* Dissolve 1.2 grams of sodium perborate monohydrate in 1 ounce (30 milliliters) of warm water. Use immediately. Swish solution around in the mouth over the affected area for at least 1 minute and then spit out. Do not swallow. Use up to four times daily after meals and at bedtime or as directed by a dentist or doctor. Children under 12 years of age should be supervised in the use of this product. Children under 6 years of age: consult a dentist or doctor.

(e) The word "physician" may be substituted for the word "doctor" in any of the labeling statements in this section.

### § 358.80 Professional labeling.

The labeling of products containing carbamide peroxide identified in § 353.10(a)(1) and hydrogen peroxide identified in § 353.10(a)(2) provided to health professionals (but not to the general public) may contain the following indication: "For temporary use in the cleansing of gum irritation due to erupting teeth (teething.)"

Interested persons may, on or before September 26, 1983, submit to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments, objections, or requests for oral hearing before the Commissioner on the proposed regulation. A request for an oral hearing must specify points to be covered and time requested. Written comments on the agency's economic impact determination may be submitted on or before November 23, 1983. Three copies of all comments, objections, and requests are to be submitted, except that individuals may submit one copy. Comments, objections, and requests are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Comments, objections, and requests may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Any scheduled oral hearing will be announed in the **Federal Register.**

Interested persons, on or before July 26, 1984, may also submit in writing new data demonstrating the safety and effectiveness of those conditions not classifed in Category I. Written comments on the new data may be submitted on or before September 26, 1984. These dates are consistent with the time periods specified in the

agency's final rule revising the procedural regulations for reviewing and classifying OTC drugs, published in the **Federal Register** of September 29, 1981 (46 FR 47730). Three copies of all data and comments on the data are to be submitted, except that individuals may submit one copy, and all data and comments are to be identified with the docket number found in brackets in the heading of this document. Data and comments should be addressed to the Dockets Management Branch (HFA–305) (address above). Received data and comments may also be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In establishing a final monograph, the agency will ordinarily consider only data submitted prior to the closing of the administrative record on September 26, 1984. Data submitted after the closing of the administrative record will be reviewed by the agency only after a final monograph is published in the **Federal Register**, unless the Commissioner finds good cause has been shown that warrants earlier consideration.

Dated: July 8, 1983.

**Mark Novitch,**

*Acting Commissioner of Food and Drugs.*

**Margaret M. Heckler,**

*Secretary of Health and Human Services.*

[FR Doc. 83-20088 Filed 7-25-83; 8:45 am]

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federal register

Tuesday
July 26, 1983

Part V

# Department of the Interior

## Minerals Management Service

## 1983 Sale Offerings to Eligible U.S. Refiners of Royalty Oil Available From Federal Offshore and Onshore Leases

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### 1983 Sale Offerings to Eligible U.S. Refiners of Royalty Oil Available From Federal Offshore and Onshore Leases

**AGENCY:** Minerals Management Service, Interior.

**ACTION:** Notice of 3 Sale Offerings of Available Royalty Oil.

**SUMMARY:** The Minerals Management Service (MMS) of the Department of the Interior (DOI) is giving notice that it will conduct sales of both offshore and onshore royalty oil. The sales, to be conducted in three parts this fall, will include approximately 115,000 barrels of offshore crude oil and 35,000 barrels of onshore crude oil. This notice details the procedures which must be followed by applicants for participation in the three sale offerings.

**DATES:** Completed applications must be received by close-of-business (c.o.b.) on the following application dates for the respective sale dates:

| Sale No. | Application date | Sale date |
|---|---|---|
| 83-1 | Sept. 16, 1983 | Oct. 5, 1983. |
| 83-2 | Oct. 14, 1983 | Nov. 8, 1983. |
| 83-3 | Nov. 15, 1983 | Dec. 7, 1983. |

Except for good cause shown, applications received after the application dates will be rejected.

**ADDRESS:** Application forms for the contract purchase of Royalty-In-Kind (RIK) oil may be obtained from Minerals Management Service, Payor Accounting Branch, P.O. Box 5760 T.A., Denver, CO 80217. Completed applications should be returned to the same MMS office; the telephone number is (303) 231-3133. All sales will be held at the Denver Federal Center, Building 25, Room B1902, Lakewood, Colorado. Sales will commence at 9:00 a.m., local time.

**FOR FURTHER INFORMATION CONTACT:** RIK Sale Coordinator Dennis Whitcomb at (303) 231-3432.

**SUPPLEMENTARY INFORMATION:**

#### A. Royalty Oil Sale From Federal Offshore Leases

Pursuant to the provisions of the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1353, and 30 CFR Part 262 (formerly 10 CFR Part 391 which was transferred and redesignated in 48 FR 1181, January 11, 1983), the Secretary of the Interior, in consultation with the Secretary of Energy, has determined that small refiners do not have access to adequate supplies of crude oil at equitable prices. Accordingly, Sale No. 83-1 for royalty crude oil produced on the Outer Continental Shelf (OCS) will be limited to small refiners (as defined in 30 CFR 262.102) and will be conducted pursuant to the provisions of 30 CFR 262.110(b).

As MMS stated in the **Federal Register** of January 14, 1983 (48 FR 1833: Notice of Intent to Revise Timing of U.S. Royalty Oil Sales from Federal Offshore and Onshore Leases; request for comments), available royalty oil will be offered in separate sales, based on geographical regions. For Sale No. 83-1, RIK oil from Federal leases in the OCS regions of the Gulf of Mexico and the Pacific Coast will be sold under contracts beginning January 1, 1984, with an expiration date of January 1, 1985. Approximately 100,000 barrels per day from the Gulf OCS region and 15,000 barrels per day from the Pacific OCS region will be offered in this sale to qualified applicants. The effective beginning date of subsequent royalty oil contracts for production from these regions will be January 1, 1985, and every 3 years thereafter.

MMS is holding the sale at the Denver Federal Center in Lakewood, Colorado, as early as is consistent with giving adequate notice and information to qualified applicants. Before the sale, an information package will be sent to every applicant who has filed a timely application with MMS. The package will include such pertinent data as: (1) The lease locations, oil quality, and approximate quantities of oil by lease; (2) a copy of the Federal oil contract; (3) a statement on the contract award process and billing procedure; and (4) sale arrangements such as the date, location, and time of the sale.

Applications for Sale No. 83-1 should be filed in triplicate and must contain the information required in 30 CFR 262.140. In addition, the application should specify the date of the sale, the sale number and the telephone number of the refiner.

If the available OCS royalty oil is insufficient to satisfy the requirements of all small refiners who have made application, the oil will be prorated among all such refiners and a lottery will be held for purposes of selecting available leases. Additional information on the allocation process will be made available prior to and at the time of the sale.

#### B. Royalty Oil Sales From Federal Onshore Leases

Pursuant to 30 U.S.C. 192, the Secretary of the Interior has determined that sufficient supplies of crude oil are not available in the open market to refiners not having their own source of supply for crude oil. Accordingly, such refiners will be given a preference in sales of onshore Federal crude oil in Sales No. 83-2 and 83-3.

Sale No. 83-2 includes RIK oil from Federal leases in the States of Alaska, Arizona, California, Idaho, Nevada, New Mexico, Oklahoma, Oregon, Texas, and Washington and will be sold under contracts beginning February 1, 1984, with an expiration date of January 1, 1986. Approximately 15,000 barrels per day will be offered in this sale to qualified applicants. The effective beginning date of subsequent royalty oil contracts for production from these 10 States will be January 1, 1986, and every 3 years thereafter.

Sale No. 83-3 includes RIK oil from Federal leases in all other States and will be sold under contracts beginning March 1, 1984, with an expiration date of January 1, 1987. Approximately 20,000 barrels per day will be offered in this sale to qualified applicants. The effective beginning date of subsequent royalty oil contracts for this region will be January 1, 1987, and every 3 years thereafter.

MMS is holding the sales at the Denver Federal Center in Lakewood, Colorado, as early as is consistent with giving adequate notice and information to qualified applicants. Before the sale, an information package will be sent to every applicant who has filed a timely application with MMS. The package will include such pertinent data as: (1) The lease locations, oil quality, and approximate quantities of oil by lease; (2) a copy of the Federal oil contract; (3) a statement on the contract award process and billing procedure, and (4) sale arrangements such as the date, location, and time of the sale.

This offering is made pursuant to the regulations set forth in Title 30 CFR Part 225, with a modification in the definition of the term "eligible refiner." The definition of an "eligible refiner" is no longer appropriate in accordance with the decision of the U.S. District Court for the District of New Mexico in *Plateau, Inc. v. Department of the Interior*, and which subsequently was sustained on appeal by the Tenth Circuit Court of Appeals. The effect of that decision is to alter the criteria previously used in determining which applicants are qualified to pruchase royalty oil from onshore Federal leases. For this sale "eligible refiner" will conform to the Court's limitation to a refiner that does not have its own source of crude oil. The Department interprets the Court's decision to mean that an "eligible refiner" is a refiner not having its own source of supply for its crude oil needs.

and consequently for purposes of these sales is adopting the definition of an independent refiner formerly found in the Department of Energy regulations, 10 CFR 211.51 (1980).

All other provisions of the DOI regulations in 30 CFR Part 225 which require the applicant to qualify as a small business under the rules of the Small Business Administration similarly are negated. However, the definition of a "preference eligible refiner" is not affected by the *Plateau* decision. The Secretary of the Interior, in the exercise of the discretionary authority granted him by 30 U.S.C. 192, has elected to continue this geographic preference in the award of onshore Federal royalty oil contracts resulting from this offer. Thus, a preference will be granted to a refiner who applies to purchase onshore royalty oil produced in a designated area for use in its refinery located in the same geographical area. MMS has designated 6 onshore "preference" areas for this purpose as follows:

1. Alaska area includes the State of Alaska.

2. Western area includes the States of Arizona, California, Idaho, Nevada, Oregon, and Washington. Refineries located in Hawaii will also be given preference for oil produced in the Western area.

3. South Central area includes the States of New Mexico, Oklahoma, and Texas.

4. Central area includes the States of Kansas and Nebraska.

5. North Central area includes the States of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

6. Eastern area includes all other States in which qualified RIK applicants have refineries.

Application for Sales No. 83–2 and 83–3 should be filed in triplicate and must contain the information requested in 30 CFR 225.5. In addition, the application should specify:

1. The sale number and date of sale;

2. a listing of current royalty oil contracts, if any; and

3. a self-certification that the applicant is an eligible refiner.

### C. General Information

Applicants are advised that Pub. L. 96–451 provides civil and criminal penalties for false or inaccurate reporting. Applicants are also cautioned to provide adequate detail on each item in the application to preclude rejection of the application from further consideration. Accordingly, any questins on the application should be directed to the MMS office providing the application.

An otherwise eligible refiner will not be permitted to participate in a royalty sale if, at the time of the sale, that refiner is in arrears on payments owed (including interest) under a previously awarded royalty oil contract.

A purchaser of Federal royalty oil will be required to furnish a surety bond or an irrevocable straight letter of credit acceptable to MMS, 45 days prior to the effective date of the contract. The surety must be in an amount as designated by MMS which will approximate the value of Federal royalty oil that could be taken by the purchaser in a 90-day period. If a letter of credit is furnished, it must be maintained by the purchaser for the term of the contract plus 180 days or for whatever additional period of time MMS may specify.

Dated: July 20, 1983.

**Lucy R. Querques,**

*Acting Associate Director for Royalty Management, Minerals Management Service*

[FR Doc. 83-20256 Filed 7-25-83; 8:45 am]

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federal register

Tuesday
July 26, 1983

Part VI

# Environmental Protection Agency

## Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Conditional Registration

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 162**

**[OPP-30067A; FRL 2379-5]**

## Regulations for the Enforcement of the Federal Insecticide, Fungicide and Rodenticide Act; Conditional Registration

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

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes procedures for the conditional registration of pesticide products which are identical or substantially similar to those currently registered, and the conditional registration of new uses of existing pesticides, by the Environmental Protection Agency (EPA or Agency). This rule sets forth the applicable definitions, the data requirements for obtaining conditional registration, the conditions under which such applications will be approved or denied, and the mechanism for cancellation of conditional registrations, and makes conforming changes to other sections of Part 162. This rule replaces current regulations on conditional registration that the Third Circuit Court of Appeals found had been issued without adequate notice and comment opportunity.

**EFFECTIVE DATE:** Under FIFRA sec. 25(a)(4), this rule must be reviewed by Congress before it can become effective. A minimum of 60 days of continuous Congressional session is allowed for this review. Accordingly, this rule will become effective on the date that is 60 calendar days of continuous session of Congress after publication in the **Federal Register**. The Agency will issue a notice in the **Federal Register** announcing the date on which this rule became effective.

**FOR FURTHER INFORMATION CONTACT:** Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA (703-557-0592).

This address is for information only; the mailing address is 401 M St., SW, Washington, D.C. 20460.

**SUPPLEMENTARY INFORMATION:** OMB Clearance Number 2000-0012.

In the **Federal Register** of December 27, 1982 (47 FR 57624) the Agency reproposed regulations implementing the conditional registration provisions of FIFRA sec. 3. In response, EPA received nine sets of comments from pesticide producers and trade groups, a Federal agency, and an environmental group, most of whom supported the Agency's proposal. After describing the background of this rulemaking (Unit I), this preamble responds to the issues raised by the commenters. Specifically, Unit II discusses the Agency's policy of evaluating applications primarily under the conditional registration provisions of FIFRA sec. 3(c)(7). Unit III concerns the data requirements for applicants for registration, and Unit IV treats several issues about EPA's incremental risk assessment procedures. Finally, Unit V addresses a collection of miscellaneous, minor issues.

### I. Background

The reproposed regulations implement the conditional registration provisions of section 3(c)(7) (A) and (B) of FIFRA, which were enacted in 1978 to correct serious inequities that had arisen in the regulation of pesticide products.

In 1972, Congress passed comprehensive amendments to FIFRA which, among other things, directed EPA to register pesticides only if the products met new, higher standards set out in section 3(c)(5). Specifically, EPA could register a product only if the applicant could show, among other things, that the pesticide "will perform its intended function without unreasonable adverse effects on the environment." Applying the new standards, EPA was forced to reject most applications for new registration because there did not exist data sufficient to show that the pesticides met the new, stricter standards. Meanwhile, identical or substantially similar products already on the market could continue to be distributed and sold until EPA "reregistered" them using the new standards. (In reregistration the Agency reexamines all data on a pesticide and imposes requirements upon registrants to provide any additional data needed to show that the pesticide satisfies the standards of FIFRA sec. 3(c)(5).)

By 1977, it had become apparent that EPA would not be able to remove this inequitable "double standard" by quickly reregistering all then-registered products. Accordingly, at EPA's request, in 1978 Congress again amended FIFRA to create a conditional registration procedure which allowed new products to be sold and distributed even though the applicants could not provide all of the data required to meet the standards in section 3(c)(5). Specifically, FIFRA sec. 3(c)(7) authorized EPA to register pesticides conditionally if the Agency found, among other things, that the use of the products would not significantly increase the risk of unreasonable adverse effects on the environment.

EPA issued regulations implementing the conditional registration provisions of FIFRA, which were published in the **Federal Register** of May 11, 1979 (44 FR 27932), and were codified as new 40 CFR 162.18-1 through 162.18-5 and amended 40 CFR 162.7 and 162.8. These regulations established data requirements for conditional registration, the conditions under which conditional registration would be approved and denied, and a mechanism for cancellation of conditional registrations. EPA's conditional registration program has operated smoothly under these regulations for the last four years.

Mobay Chemical Company sued EPA challenging the implementation of the 1978 amendments, and on review of the District Court decision upholding EPA's regulations (both as to substance and procedure of adoption), the Third Circuit Court of Appeals ruled that EPA had failed to provide sufficient notice and opportunity for comment when it issued the conditional registration regulations. *Mobay Chemical Corp.* v. *Gorsuch*, 682 F.2d 419 (3d Cir. 1982), *cert. denied*, 103 S.Ct. 343 (1982). The court held that the regulations therefore were invalid, but has delayed making its order effective until September 1, 1983, so that EPA could complete a replacement rulemaking. In light of the Agency's experience with the 1979 regulations and its conclusion that they form a very workable means of implementing the conditional registration provisions of FIFRA, EPA reproposed the previous regulations without substantial change in the **Federal Register** of December 27, 1982 (47 FR 57624). This action responds to public comments on the reproposal and promulgates final conditional registration regulations.

### II. EPA's "Conditional Registration Only" Policy

Three commenters objected to the Agency's policy, reflected in proposed § 162.7, of evaluating applications for registration primarily under the provisions of FIFRA sec. 3(c)(7), which authorizes EPA to register pesticide products conditionally. These commenters argued that, on request, EPA must determine whether an applicant's product meets the standards for "unconditional" registration in FIFRA sec. 3(c)(5). They state further that there are disadvantages in having a conditional, rather than an unconditional, registration.

EPA rejects these comments. Not only does the statute give the Agency discretion to determine whether to evaluate applications under the

standards of section 3(c)(7) (conditional registration) or section 3(c)(5) (unconditional registration), but Congress also specifically endorsed the regulatory approach being challenged by the commenters. Moreover, any other approach would, in all likelihood, disrupt the workable procedures which have been followed for the last four years.

The commenters' argument that, on request, EPA is required to determine whether an application meets the standards for unconditional registration relies mainly on the language of section 3(c)(5). That provision states: "The Administrator shall register a pesticide if he determines that * * *" the product meets certain standards. The commenters, however, ignore the fact that FIFRA section 3(c)(5) requires only that EPA register a pesticide unconditionally if certain determinations are made. This provision does not require that EPA actually make any determinations. The commenters cannot properly infer such a requirement, particularly in view of the legislative history showing that in 1978 Congress intended to give EPA broad discretion to determine how best to expend its limited resources reviewing pesticides under FIFRA.

The legislative history clearly demonstrates that FIFRA section 3(c)(7) is intended to allow the issuance of conditional registrations without having all of the data necessary to support unconditional registration, and that a comprehensive analysis of the risks and benefits of a pesticide need not be performed until it is accomplished for all similar products already on the market. S. Rep. No. 95-334 at 20-21; H.R. Rep. No. 95-663 at 28.

Indeed, Congress specifically endorsed EPA's "Registration Standards" program, under which EPA would systematically collect and analyze data relevant to a particular pesticide active ingredient, and then develop a "Standard" identifying the acceptable uses of all currently registered products containing that active ingredient. The Registration Standards system promised to increase the Agency's efficiency in reregistering pesticides by enabling EPA to evaluate all products against a single standard based on all available relevant information, rather than making a separate determination for each product. See S. Rep., No. 95-334 at 2, 75, 89; H.R. Rep. No. 95-663 at 16, 19, 61.

The consequence of accepting the commenters' arguments would be to undermine EPA's ability to make registration and reregistration decisions efficiently. If the Agency were required to conduct an in-depth review of all data on a pesticide each time an applicant requested unconditional registration, EPA would lose control over the order in which it reviewed chemicals. Instead, the order would be determined by the sequence in which companies submitted applications. Moreover, EPA's review of an application would be limited to the uses of an active ingredient for which that registration was sought. Subsequent applications involving different uses might well involve a redundant and inefficient re-analysis of data reviewed earlier. These inefficiencies are avoided by EPA's decision to evaluate most applications for registration under FIFRA section 3 (c)(7) and to evaluate currently registered products using a Registration Standards system.

In addition, EPA disputes the commenters' suggestion that there are significant differences between a product registered conditionally and one registered unconditionally. There are no differences in the market place. Nothing in the labeling of the pesticide product indicates what type of registration a product has. Moreover, EPA can exercise the same kinds of regulatory controls over both types of products. Thus, for example, if EPA needs additional data to support continued registration of products containing a specific active ingredient, the Agency requires submission of such information by all registrants of such products without regard to whether the registrations are conditional or unconditional.

Nonetheless, one commenter argues that EPA could not impose additional data requirements on an unconditionally registered pesticide without first amending the Agency's pesticide registration data guidelines. EPA disagrees; nothing in FIFRA requires that EPA follow different procedures in imposing data requirements on products in these two categories. FIFRA section 3(c)(2)(B) requires registrants to submit additional data necessary to support the continued registration of any pesticide product, whether registered conditionally or unconditionally. This section does not require EPA to revise its data guidelines to issue notice of additional data requirements.

Two commenters argued that an unconditional registration is more desirable because it is not subject to summary cancellation as provided for conditional registrations under FIFRA section. 6(e). As a practical matter, the distinction is insignificant. The summary cancellation procedure is designed for use when a conditional registrant has failed to fulfill one of the conditions on his registration. Almost always, this will be a failure to provide data at the same time as required of registrants of similar products. If an unconditional registrant fails to provide such data required of him under section. 3(c)(2)(B), EPA may invoke the virtually identical, summary suspension procedures in section. 3(c)(2)(B)(iv). In fact, the cancellation procedures of FIFRA section. 6(e) will rarely (if ever) be used in connection with products registered under FIFRA section. 3(c)(7) (A) or (B) because the Agency will probably choose to apply the suspension provisions of section. 3(c)(2)(B) to all registrants, conditional and unconditional. If EPA issues a notice of intent to cancel the registration of a pesticide because its risks exceed its benefits, the registrant of any product may request a full adjudicatory hearing under FIFRA section. 6(b).

Finally, one commenter claimed that conditional registrants had potentially greater liability under tort law than unconditional registrants. While EPA concedes the theoretical possibility that different legal standards may be applied to the two categories of products, the Agency is unaware of any case in which the issue has arisen over the last four years while EPA has been granting conditional registrations. Moreover, it is doubtful that this theoretical difference would determine the outcome of any lawsuit.

In sum, EPA finds no compelling reason to abandon its policy of reviewing most applications under section 3(c)(7) of the Act. This policy was endorsed by Congress and is fundamental to the operation of both the reregistration and the conditional registration programs, which have worked smoothly and efficiently for the last four years.

### III. Data Requirements for Conditional Registration

Sections 162.8 and 162.163 of the proposal concerned data requirements for conditional registration. Specifically, proposed § 162.8 stated that an applicant must provide data showing that his product is acceptable for registration, including any data specifically required by EPA, and any other available factual information concerning the adverse effects of the pesticide on humans or the environment which has not previously been submitted to the Agency. Proposed § 162.163 elaborated on these requirements and listed specific kinds of product chemistry, efficacy, and hazard data ordinarily required to obtain a conditional registration. EPA received several comments on these sections.

One commenter requested that the regulations indicate the data requirements for conditional registration more specifically. The commenter argued that in the absence of specific data requirements, the provision allowing EPA to request additional information could lead to the imposition of excessive data requirements on applicants. In contrast, another commenter requested assurance that the Agency would apply its data requirements flexibly and would allow applicants a chance to discuss the need for specific data before any requirements are imposed.

These two comments reflect the tension inherent in any effort to write regulations specifying data requirements for registering pesticides. On one hand, applicants want a regulation to provide substantial certainty about the amount of data which the Agency will require. On the other hand, they want EPA to apply the data requirements on a case-by-case basis, taking info account the unique characteristics of each product. While trying to accommodate these two concerns, EPA must also retain for itself the flexibility to require all data necessary to evaluate a registration application.

The Agency believes that its conditional registration regulations, when read together with recently proposed regulations which set out pesticide registration data requirements, strike a reasonable balance among these concerns. See the proposed "Pesticide Registration Data Requirements," in the **Federal Register** of November 24, 1982 (47 FR 53192) to be codified at 40 CFR Part 158. While the conditional registration regulations are quite general, an applicant may refer to EPA's comprehensive proposed regulations to determine specifically what information is covered by the conditional registration regulations. For example, § 162.163(b)(2) of the conditional registration regulations contains a general requirement to provide efficacy data. This provision corresponds to the very specific efficacy requirements in proposed § 158.160. In addition, the proposed "Pesticide Registration Data Requirements" invite applicants to consult with Agency staff, and they also indicate that EPA will consider waiving data requirements on a case-by-case basis. See *id.* at 53201; proposed §§ 158.35, 158.40, and 158.45. Finally, proposed Part 158 also states in § 158.75 that the Agency may require additional data if it concludes that more information is necessary to make the statutorily required determinations. In sum, the recently proposed "Pesticide Registration Data Requirements" reflect EPA's agreement with the comments described above.

One commenter suggested that the language in proposed § 162.8(b) be revised to conform to similar language in section 6(a)(2) of FIFRA. The statute, which applies to registrants, provides:

> If at any time after the registration of a pesticide the registrant has additional factual information regarding unreasonable adverse effects on the environment of the pesticide, he shall submit such information to the Administrator.

Section 162.8 of the proposed regulation, which applies only to applicants, states:

> An applicant shall submit with his application any factual information regarding adverse effects of the pesticide on the environment or man that
>
> (1) Has been obtained by him or has come to his attention; and
>
> (2) Insofar as he is aware, has not previously been submitted to the Agency.

The commenter asks specifically that the word "unreasonable" be inserted before "adverse effects" in the regulation.

EPA considers the change suggested by the commenter unnecessary. The Agency wants all available information about the adverse effects of an applicant's product, so that EPA can determine whether it should be registered. The requested change might result in confusion about whether submission of "adverse effects" information was required if the applicant did not consider the adverse effects "unreasonable." Moreover, the Agency's published interpretations of the parallel requirement imposed on registrants by section 6(a)(2) of FIFRA is entirely consistent with the language of the proposed regulation. Refer to the statements of Agency policy issued in the **Federal Register** of August 23, 1978 (43 FR 37610) and July 12, 1979 (44 FR 40716).

One commenter objected to the suggestion in the preamble to the reproposal that EPA might require applicants to submit their marketing analyses or projections for a product so that the Agency could gauge the increase in exposure resulting from its registration. The commenter argued that such information is often speculative and that data on the environmental fate and toxicity of the product would be sufficient to make a decision regarding potential exposure. While fully recognizing that marketing projections are speculative and subject to possible error, the Agency believes that it is sound policy to require such information when no better data are available to evaluate the increase in exposure which is often an important part of the assessment of incremental risk.

Finally, the Agency has made a number of editorial revisions in the final regulation to respond to recent district court rulings in *National Agricultural Chemicals Association* v. *U.S. Environmental Protection Agency*, No. 79-2063 (D.D.C., Jan. 20, 1983), and *Monsanto Co.* v. *Acting Administrator*, No. 79-366C(1) (E.D. Mo., May 9, 1983). After reviewing the statute in light of these two decisions, the Agency has concluded that there is an important distinction in the statute between (1) EPA review of submitted or cited data to determine whether the applicant has satisfied the requirements of FIFRA that specify how an application must be supported and (2) EPA review of data (whether or not submitted or cited by the applicant) to determine whether to approve a properly supported application. Thus the editorial revisions reflect a distinction between the data an applicant must furnish (i.e., submit or cite in accordance with Agency procedures) to have a properly supported application and data that must be available for Agency review to permit EPA to determine on risk/benefit grounds whether to approve or deny the application. The Agency has issued interim procedures which describe how applicants can satisfy the statutory requirement to provide data to support their applications, and how EPA will review applications. See PR Notice 83-4 (and Addendum 83-4A), June 16, 1983, and the notice of availability of these procedures published in the **Federal Register** of July 13, 1983 (48 FR 32012). These procedures will remain in effect until the Agency promulgates final, effective rules governing the requirements for data supporting registration at the completion of the pending rulemaking proceeding to modify 40 CFR 162.9-1 through 162.9-8.

### IV. Incremental Risk Assessment Procedures

In order to conditionally register a product under FIFRA sec. 3(c)(7), the Agency is required to find that use of the pesticide will not significantly increase the risk of unreasonable adverse effects on the environment. In order to make this determination, EPA performs an incremental risk assessment, which was described in detail in the preamble to the reproposal. Several commenters questioned minor details of the incremental risk assessment procedure.

Two groups commented on EPA's assumption that entry of additional, identical products into the market will

divide the existing market among a larger number of pesticide products and registrants, but will not significantly increase overall pesticide usage. One commenter questioned the basis for this assumption, while the other agreed with it.

It is EPA's considered opinion that the pesticide market in general is finite, relatively "saturated" and inelastic. Price decreases, such as might be introduced by availability of "me-too" products, do not result in significantly greater pesticide usage. EPA believes that use of pesticides is geared to optimum use at least cost. Farmers already generally use as much of a given kind of pesticide as is necessary to maximize production; since addtional pesticide use would increase cost but yield no significant gains, farmers will not use more regardless of cost or availability. In much the same manner, a consumer generally will not purchase a pesticide unless a specific need arises, and then he will purchase based on price. In both situations, increased competition may decrease cost to the user, or shift the user's purchase from one company to another, but is unlikely to increase usage levels significantly.

One commenter requested that the final regulation define what constitutes a "significant" increase in the risk of unreasonable adverse effects on the environment, which would lead EPA not to issue a conditional registration. See § 162.167(a)(3). EPA considers it impossible to define this term in the abstract. The concept of risk has many dimensions—for example, number of people affected, type of adverse effect, and the group of people affected. Any major change in one of these (or other) aspects of risk could be deemed "significant" by the Agency. Because of the complexity of the judgments required in the incremental risk assessment procedure, EPA concludes that it would not be practical to attempt to develop a definition as suggested by the commenter.

One commenter claimed EPA's description of its incremental risk assessment procedures mistakenly equated increased exposure with increased risk. The commenter argued that the procedures should be revised to incorporate greater consideration of the toxicity of an applicant's product under the proposed terms and conditions of use. EPA agrees that the extent of risk depends both on exposure and toxicity factors, but believes that its current incremental risk assessment procedures adequately address both.

As stated in the preamble, an applicant may apply for conditional registration of a product for uses which differ from those of currently registered products, and which might result in different toxic effects, for example, because new species would be exposed or exposure would occur by a different route. In such cases, EPA would evaluate the possibility of "new" toxic effects, and might require new data in order to conduct that evaluation. For the most part, however, registration of additional uses will increase risks by adding to overall exposures, and the character of the adverse effects would not be likely to change. Thus, while the incremental risk assessment does not ignore possible changes in toxicity, it properly focuses more on changes in the level or route of exposure.

Finally, one commenter stated that neither the regulation nor the incremental risk assessment procedure described in the preamble makes a distinction between products which are "substantially similar" to currently registered products and products which "differ only in ways that would not significantly increase the risks of unreasonable adverse effects on the environment," even though both are included in FIFRA sec. 3(c)(7)(A). The commenter suggested that EPA define each group.

In view of the commenter's confusion about the treatment of these groups, the Agency will restate and clarify its procedures. Under EPA's incremental risk assessment procedures, "identical products," defined in § 162.160(c)(3), are assumed to cause no significant increase in the risk of unreasonable adverse effects. Products which are not "identical products" and which do not contain a "new use" as defined in § 162.160(c)(2), may be divided into products which are "substantially similar" to currently registered products and those which are not. Although the proposed regulation did not define the term "substantially similar," the Agency stated that it deemed a product "substantially similar" for purposes of incremental risk assessment if it has a composition and uses which fall within the range of composition and uses of currently registered products with the same active ingredient. The Agency would not require any additional data to approve conditional registration of such products.

The third group—products which are neither "identical" nor "substantially similar" to currently registered products and which do not contain a "new use"—are examined more closely in the incremental risk assessment process and applicants may be required to submit additional data. This treatment of products from the perspective of risk assessment is consistent with the statutory determination required by FIFRA sec. 3(c)(7). The Agency believes that no additional definitions or regulations are necessary to implement it.

### V. Miscellaneous Comments

1. *Notification of registration of new uses.* A commenter suggested that EPA should publish notice of the issuance of a conditional registration for a product containing a "new use," just as it publicly announces the receipt of applications for such products. EPA accepts the suggestion and has modified § 162.167(d) accordingly.

2. *Efficacy waiver.* One commenter opposed the Agency's decision to waive submission of most types of efficacy data. The commenter argued that requiring submission of efficacy data would impose little additional burden on applicants, and would not necessarily require any change in EPA's level of review of such data.

EPA has decided to retain the provisions concerning the waiver of efficacy data. These provisions were specifically authorized by Congress in the 1978 amendments to FIFRA sec. 3(c)(5). Since 1979, when the Agency began waiving the submission of most efficacy data, EPA has been able to redirect the substantial administrative resources needed for review to the task of hazard evaluation. During this time, EPA has not been apprised of any increase in the number of ineffective pesticide products on the market. Efficacy data issues are not limited to conditional registration situations. EPA will respond in more detail to comments on this policy in issuing final regulations on data requirements (see proposed 40 CFR Part 158 in the **Federal Register** of November 24, 1982, 47 FR 53192) and on the extension of the efficacy data waiver (see the **Federal Register** of September 15, 1982, 47 FR 40659).

3. *Identify conditional registrations on label.* One commenter recommended that EPA require pesticide labels to state if the product has been conditionally registered. While the purpose of this suggestion was not given, the commenter apparently considers such products more dangerous than products which have not been conditionally registered.

The Agency sees no basis for this change. Before conditionally registering a product, EPA must determine that its use will not significantly increase the risk of unreasonable adverse effects on the environment. In other words, the Agency must find that the conditionally registered product is not significantly more dangerous than those already on

the market. In many cases—for example, where the conditionally registered pesticide is identical to a currently marketed product—the risks are expected to be the same. Thus, the Agency does not think special labeling for conditionally registered pesticides would aid the consumer in picking safer products and accordingly rejects the commenter's suggestion.

4. *Redefine "minor use."* Noting that the preamble described special incremental risk assessment procedures for pesticides used on minor crops, one commenter suggested that EPA extend those procedures to products with aquatic uses and non-crop terrestrial uses. While EPA has a policy of giving special consideration to minor use pesticides, including many aquatic and non-crop terrestrial uses, such special treatment is neither necessary nor appropriate in the incremental risk procedures for conditional registration. Under FIFRA sec. 3(c)(7)(B), EPA may not conditionally register a product intended for use on a minor food or feed crop, if the product is under review in a Rebuttable Presumption Against Registration (RPAR) proceeding for risks relating to dietary exposure and there is an alternative registered pesticide for the same use. Thus, the preamble discussion properly addresses only those products intended for use on minor food and feed crops. It is not appropriate to extend the coverage of the regulations beyond that required by the statute.

The Agency's minor use policy statement issued in the Federal Register of March 5, 1979 (44 FR 12097) discusses the special treatment afforded minor uses. That notice stated that it was the Agency's policy that the FIFRA sec. 3(c)(7)(B) prohibition against RPAR'ed uses would apply equally to chemicals in the pre-RPAR stages of review. That policy has been modified—the prohibition will not apply unless the Agency has concluded that the RPAR criteria have been met.

5. *Reformulation of end-use product.* A commenter expressed support for what was perceived as an Agency policy prohibiting the use of end-use products in formulating a new pesticide product. (An end-use product is one which bears label directions for immediate use as a pesticide.) The Agency has no such policy; as explained below, the commenter's conclusion apparently was based on a misreading of a provision in the reproposed data compensation regulations, also issued on December 27, 1982 (47 FR 57635). That reproposal, in § 162.192(c), defines the term "end-use product" for purposes of applying the formulator's exemption from certain data compensation requirements set out in FIFRA sec. 3(c)(2)(D), and states, among other things, that the term "excludes products whose labeling allows use of the product to formulate other pesticide products." This regulation would not prohibit products from bearing both end-use labeling and labeling directions for reformulation. Rather it would simply state that products with both types of labeling do not qualify for the formulator's exemption. Moreover, the Agency does not plan to assert that it is a violation of FIFRA to produce an end-use product by using another registered end-use product, so long as such reformulation is not expressly prohibited by the label.

6. *Data compensation.* Three commenters objected to provisions of the data compensation regulations which were reproposed at the same time. A fourth commenter urged EPA to establish a record of all data considered in issuing conditional registrations, which could be used to resolve questions concerning data compensation obligations. Because these comments do not apply directly to the reproposed conditional registration regulations, EPA will not address them at this time. EPA will respond to them when it issues its final data compensation regulations.

## VI. Statutory Reviews

In accordance with FIFRA sec. 25(a), this final rule was submitted to the U.S. Department of Agriculture for comment. The Department of Agriculture had no comments on the rule.

Copies were also provided to the Committee on Agriculture of the U.S. House of Representatives, and the Committee on Agriculture, Nutrition, and Forestry of the U.S. Senate. No comments were received from either Committee.

## VII. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is major and, if necessary, conduct an appropriate Regulatory Impact Analysis. The Agency has conducted a preliminary study of the conditional registration regulation and has concluded that the rule is not major in terms of the annual cost impacts on the economy or in terms of cost or price increases for consumers or farmers. This regulation is significant in that it will have a positive impact on competition among producers of pesticide products and will increase the availability of pest control products to pesticide users. This rule has been submitted to the Office of Management and Budget for review as required by E.O. 12291.

This rule has also been reviewed under sec. 3(a) of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1165, 5 U.S.C. 60 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. Accordingly, I certify that this regulation does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

Under the Paperwork Reduction Act, EPA must identify any information collection burdens which would be imposed by this proposed regulation and must obtain clearance from the Office of Management and Budget for any such data collection activities. The information collection and recordkeeping requirements of the conditional registration program have been cleared under OMB Clearance Number 2000-0012, as part of the overall registration program.

### List of Subjects in 40 CFR Part 162

Intergovernmental relations, Labeling, Packaging and containers, Pesticides and pests, Administrative practices and procedures.

Dated: July 21, 1983.

**William D. Ruckelshaus,**

*Administrator.*

## PART 162—[AMENDED]

Therefore, 40 CFR Part 162 is amended as follows:

1. By revising § 162.7 to read as follows:

### § 162.7 Disposition of applications.

(a) *General.* Each application for new registration, reregistration, and amended registration, and each resubmission of any such application, will be processed as described in this section.

(b) *Notice of receipt of application for registration.* The Agency will acknowledge receipt of each application by returning to the applicant a notification of the date of receipt by the Agency.

(c) *Time for action with respect to application.* As expeditiously as possible, the Agency shall approve an application or deny it. Where practicable the Agency shall make its determination within 90 days after the receipt of the application.

(d) *Unconditional approval of applications under FIFRA sec. 3(c)(5).* (1) The Agency will conduct complete data evaluations required for issuance

of an unconditional registration under FIFRA sec. 3(c)(5) only:

(i) As part of the process of reregistering currently registered products; or

(ii) When acting on an application for registration of a product containing a new chemical; or

(iii) When the Agency determines that it would otherwise serve the public interest.

(2) The Agency will approve a request for the unconditional registration, reregistration, or amendment of the registration of a pesticide product under FIFRA sec. 3(c)(5) only after:

(i) It has conducted a comprehensive review of all available, pertinent data;

(ii) It has determined that sufficient data are available to satisfy the minimum requirements prescribed by the Agency; and

(iii) It has determined that, when considered with any restrictions proposed or agreed to by the applicant, the product meets the following criteria:

(A) The composition is such as to be effective for all uses set forth on the label;

(B) The product is not misbranded as defined in section 2(q) of the Act, and its labeling complies with the applicable requirements of the Act and § 162.10;

(C) The test data and other material required to be submitted with the registration application comply with the requirements of the Act and the requirements prescribed by the Agency;

(D) The pesticide will perform its intended function without unreasonable adverse effects on the environment and when used in accordance with widespread and commony recognized practice will not generally cause unreasonable adverse effects on the environment;

(E) There exist appropriate tolerances, exemptions from the tolerance requirements, and food additive regulations, in accordance with sections 402, 406, 408, and 409 of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 342, 346, 346a, and 348], if the proposed labeling bears directions for use on food or feed or if the intended use of the pesticide results or may reasonably be expected to result, directly or indirectly, in residues of the pesticide becoming a component of food or feed; and

(F) EPA has been notified by FDA that the product complies with the requirements of the Food and Drug Administration if the product, in addition to being a pesticide, is a "drug" within the meaning of section 201(g) of that Act, but is not a "new drug" or "new animal drug" under sections 201(p) and 201(w) respectively of the Federal Food, Drug, and Cosmetic Act.

(3) *Notice of approval.* The Administrator will promptly issue in the **Federal Register** a notice of approval of the registration for any pesticide product for which notice of application was issued under § 162.6(b)(6).

(e) *Conditional registration.* Any application for which a review of scientific data is needed, other than an application which the Agency determines may be considered for unconditional registration under paragraph (d) of this section, will be treated as an application for conditional registration under FIFRA sec. 3(c)(7) and will be reviewed and acted upon as set forth in §§ 162.160 through 162.177.

(f) *Denial of registration.* The Administrator shall deny an application reviewed under paragraph (d) of this section if any of the requirements of paragraph (d)(2) of this section are not met, or if there are insufficient data to make the required determinations.

(1) *Notification.* Promptly after making a determination to deny a registration, the Administrator shall notify the applicant by certified letter of the denial of registration and shall set forth the reasons and factual basis for the determination and the conditions, if any, which must be satisfied in order for the registration to be approved.

(2) *Opportunity for remedy by applicant.* (i) The applicant will have 30 days from the date of receipt of the certified letter to take the specified corrective action.

(ii) The applicant may petition the Administrator to withdraw his application. The Adminstrator may, in his discretion, deny any petition for withdrawal and proceed to issue a notice of denial in accordance with paragraph (f)(3) of this section.

(3) **Federal Register** *publication.* If the applicant fails to remedy the deficiency of his registration application, the Administrator shall promptly issue in the **Federal Register** a notice of denial of registration. Such notice shall set forth the reasons and factual basis for the denial and shall contain the name and address of the applicant, the product name, the name and percentage by weight of each active ingredient in the product, the proposed patterns of use, and the proposed classification.

(4) *Hearing rights.* Within 30 days following publication of the denial in the **Federal Register**, the applicant or any interested party with the written authorization of the applicant may request a hearing pursuant to section 6(b) of the Act and Part 164 of these regulations. If no hearing is timely requested, the denial shall become effective at the end of the 30 days.

(g) *Disposition of material submitted with the application.* The test data and other information submitted with an application shall become a part of the official file of the Agency for that application or registration. Except as provided by section 10 of the Act, within 30 days after the registration of a pesticide, the data called for in the registration statement together with such other scientific information as the Administrator deems relevant to his decision shall be made available for public inspection.

2. By revising § 162.8 to read as follows:

**§ 162.8 Data to be furnished by applicant.**

(a) An applicant for registration, reregistration, or amendment of a registration under FIFRA sec. 3(c)(5) shall furnish data as required by the Agency to determine whether his application may be approved under this Part.

(b) An applicant shall submit with his application any factual information regarding adverse effects of the pesticide on the environment or man that:

(1) Has been obtained by him or has come to his attention; and

(2) Insofar as he is aware, has not previously been submitted to the Agency.

Such information shall include, but shall not be limited to, published or unpublished laboratory studies and accident experience.

**§§ 162.18–1, 162.18–2, 162.18–3, 162.18–4, and 162.18–5 [Removed].**

3. By removing §§ 162.18–1, 162.18–2, 162.18–3, 162.18–4, and 162.18–5.

4. By adding a new Subpart E to read as follows:

**Subpart E—Conditional Registration Procedures**

Sec.



**Authority:** Sections 3(c)(7) and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*).

## Subpart E—Conditional Registration Procedures

**§ 162.160 Conditional registration overview.**

(a) *General.* FIFRA sec. 3(c)(7) authorizes the Agency to conditionally

register a pesticide product despite the fact that certain of the data required by or under the Act for a registration under FIFRA sec. 3(c)(5) may not have been submitted or evaluated comprehensively by EPA. A conditional registration is a registration for which the submission (or Agency review) of some data has been deferred to a future date. These sections describe the requirements for submission of an application for conditional registration, the disposition of applications, the conditions under which applications will be approved or denied, and the cancellation of conditional registrations.

(b) *Scope.* This Subpart E applies to each application for registration and amended registration, except:

(1) Any application for registration of a product containing a new chemical;

(2) Any application for amendment of a registration of a type listed in § 162.9–1(b); and

(3) Any application for registration or amended registration of a product that the Agency has determined may be reviewed and unconditionally registered under § 162.7(d).

(c) *Definitions.* All words and terms shall have the same meanings as given in the Act and § 162.3. In addition, the following terms are defined for the purposes of §§ 162.160 through 162.177:

(1) The term "new chemical" means an active ingredient that is not listed in the ingredients statement of any currently registered pesticide product.

(2) The term "new use" means a use pattern that is not included on labeling of any currently registered pesticide product containing the same active ingredient(s), that:

(i) Is a "changed use pattern" within the meaning of § 162.3(k); or

(ii) To be approved, requires the establishment of, or an increase in the level of, a tolerance or food additive regulation under the provisions of the Federal Food, Drug and Cosmetic Act, as amended, for the active ingredient(s) involved, or requires the establishment of an exemption from the requirement of such a tolerance.

(3) The term "identical product" means a product that is the subject of an application and, when compared to a currently registered product:

(i) Contains the same active and intentionally added inert ingredients, and, in the case of a manufacturing use product, the same impurities, each ingredient being in the same percentage; and

(ii) Would be labeled for identical or substantially similar uses, or for a subset of those uses.

**§ 162.163 Data required for agency review of applications for conditional registration.**

(a) *Manufacturing use products.* An application for conditional registration or amendment of a manufacturing use product may not be approved unless the following data are available to the Agency:

(1) *Chemistry data specific to the product.* (i) Product identity and disclosure of ingredients, including impurities;

(ii) A description of the manufacturing process, including composition and purity of starting and intermediate materials;

(iii) Analytical methods and sample assays for the impurities;

(iv) Physical and chemical properties; and

(v) If requested by the Agency, a sample of the product.

(2) *Hazard data.* Data sufficient to allow the Agency to determine that approval of the application would not cause a significant increase in the risk of any unreasonable adverse effect on the environment.

(i) If the Agency determines that the product is an identical product, or that it contains impurities and inert ingredients that differ from those of a registered product only in ways that would not significantly increase the risk of unreasonable adverse effects on the environment, the Agency will not require the applicant to furnish additional hazard data.

(ii) For any other manufacturing use product, the Agency may require the applicant to furnish additional data concerning the toxicity of the product, its ingredients and impurities, and the extent of exposure of populations and organisms to the toxic effects of the product, its ingredients and impurities.

(b) *End-use products.* Application for conditional registration or amendment of an end-use product may not be approved unless the following data are available to the Agency:

(1) *Chemistry data specific to the product.* (i) Product identity and disclosure of ingredients; and

(ii) If requested by the Agency, a sample of the product proposed for registration; and

(iii) If any active ingredient of the product is derived from any substance other than a registered product, data required by paragraph (a)(1) of this section.

(2) *Efficacy data.* (i) Efficacy data for each product that bears a claim to control pest microorganisms that pose a threat to human health and whose presence cannot be observed by the user, including, but not limited to, microorganisms infectious to man in any area of the inanimate environment;

(ii) Efficacy data for each product for which a new or added use is proposed, if the product contains an active ingredient, some uses of which have been suspended, cancelled, or are the subject of a notice issued under § 162.11(a)(3)(ii) and the risks identified in the Notice or suspension/cancellation action may reasonably be anticipated as a result of the new use; and

(iii) Efficacy data otherwise specifically requested by the Agency for any product.

(3) *Hazard data.* Data sufficient to allow the Agency to determine that approval of the application would not cause a significant increase in the risk of unreasonable adverse effects on the environment.

(i) If the Agency determines that a product is identical to a currently registered product, the new product will be regarded as one which would not cause a significant increase in the risk of any unreasonable adverse effect on the environment, and the Agency will not require the applicant to furnish additional hazard data.

(ii) For any other product, the Agency may require the applicant to furnish additional data concerning the product, the toxicity of the product or its ingredients to organisms that would be newly exposed to the product or that would be exposed by routes of exposure different from those associated with already registered products or uses, and the extent of additional exposure to the product that likely would result from use of the product as proposed. Applicants are encouraged to consult with the Agency to determine the data requirements needed for a particular risk assessment.

**§ 162.165 Application for conditional registration.**

(a) *General.* All provisions of §§ 162.1 through 162.17 apply to all applications submitted for conditional registration under FIFRA sections 3(c)(7) (A) and (B) except the following:

(1) Section 162.6(b)(5), Completeness of applications;

(2) Section 162.6(b) (1), (2), and (5) Applications for registration [under FIFRA sec. 3(c)(5)];

(3) Section 162.6(c), Five-Year cancellation;

(4) Section 162.7(c), Time for action with respect to application;

(5) Section 162.7(d), Approval of registration [under FIFRA sec. 3(c)(5)];

(6) The first sentence of § 162.7(f), Denial of registration;

(7) Section 162.11 (a) and (b), Rebuttable Presumption Against Registration, except as provided in § 162.167(b); and

(8) Section 162.11 (c) and (d), Use classification, except to the extent provided by § 162.165(b)(5).

(b) *Submission of applications.* (1) A separate application for conditional registration must be submitted (on forms which may be obtained by writing to the Agency) for each conditional registration desired. Applications shall include the supporting information prescribed in paragraph (b)(2) through (4) of this section.

(2) Each application must be accompanied by proposed labeling in accordance with § 162.6(b)(2)(i)(A) and § 162.10.

(3) Each application must include submissions or citations to data to the extent required by Agency procedures.

(4) Each application for registration of an end-use product must request classification in accordance with the following criteria:

(i) An end-use product must be labeled for Restricted use if an identical product is labeled for Restricted use, or if the product has been restricted in accordance with § 162.30 and is listed in § 162.31.

(ii) A use not previously accepted on a registered product containing the same active ingredients will be classified in accordance with § 162.11.

(iii) For all other applications, the product will be classified at reregistration or when uses of other similar products are classified, whichever occurs sooner.

**§ 162.167 Disposition of applications.**

(a) *Criteria for approval of conditional registration.* The Agency will approve a request for conditional registration under FIFRA sec. 3(c)(7) (A) or (B) if it determines that, when considered with any restrictions or conditions imposed:

(1) The product is not misbranded, as defined in FIFRA sec. 2(q), and its labeling complies with § 162.10; and

(2) The test data and other materials required to be submitted comply with the requirements of the Act, § 162.163, § 162.165, and Agency procedures;

(3) The use of the product will not cause a significant increase in the risk of unreasonable adverse effects on the environment; and

(4) Any tolerance, food additive regulation, exemption or other clearance required by the Federal Food, Drug, and Cosmetic Act (including clearance for pesticide uses which are also drug uses) has been obtained.

(b) *Conditional registration prohibition.* Notwithstanding the provisions of paragraph (a) of this section, the Agency will not approve an application under FIFRA sec. 3(c)(7)(B) to amend a registration to add a new use if:

(1) A Notice of Rebuttable Presumption Against Registration under § 162.11(a)(3)(ii) has been issued; and

(2) The proposed new use involves a major food or feed crop, or involves a minor food or feed crop for which there is an available and effective alternative pesticide registered which does not meet the criteria of § 162.11(a)(3)(ii). The determination of available and effective alternatives shall be made with the concurrence of the Secretary of Agriculture.

(c) *Conditions of conditional registration.* (1) Data not furnished at the time of application for conditional registration must be submitted or cited when all similar, currently registered products containing the same active ingredients are required to submit such data.

(2) The Agency may establish other terms and conditions as necessary.

(3) If the terms or conditions of conditional registration are not satisfied, the Agency will cancel the conditional registration in accordance with § 162.177.

(d) *Notices regarding changed use pattern.* The Agency will promptly issue in the **Federal Register** a notice of receipt of each application that involves a changed use pattern, as required by FIFRA sec. 3(c)(4). The Agency will also issue in the **Federal Register** a notice of approval of any application involving a new use.

(e) *Denial of conditional registration.* The Agency will deny conditional registration if the application for conditional registration fails to meet any of the requirements of § 162.167(a) or if there are insufficient data to make the required determination. Denial of conditional registration will be in accordance with the provisions set forth in § 162.7(f) (1) through (4).

**§ 162.177 Cancellation of conditional registration.**

(a) *General.* FIFRA sec. 6(e) pertains to the cancellation of conditional registrations for failure to satisfy the conditions imposed by the Agency at the time of registration. The Agency will issue a notice of intent to cancel the conditional registration of a product if the registrant fails to meet the conditions imposed under § 162.167(c). Cancellation under FIFRA sec. 6(e) may be accomplished by means of an expedited hearing.

(b) *Notice of intent to cancel.* The Agency will notify the registrant by certified mail, and the public by **Federal Register** notice, of its intent to cancel a conditional registration. The notice will provide that the registrant or any person adversely affected by the cancellation may, within 30 days from receipt by the registrant of the notice, request that a hearing be held.

(c) *Effective date of cancellation.* If no hearing request is received, the cancellation will become effective at the end of the 30-day period. The Agency will notify the registrant by certified mail of the final cancellation.

(d) *Continued sale and use of existing stocks.* The Agency may permit the continued sale and use of existing stocks of a pesticide whose conditional registration has been cancelled under such conditions and for such uses as it may specify. The Agency may permit such sale and use only if it determines that:

(1) Such sale and use are not inconsistent with the purposes of the Act and the regulations promulgated thereunder; and

(2) Such sale and use will not result in unreasonable adverse effects on man or the environment.

(e) *Hearing.* (1) If a request for hearing is received, the hearing will be conducted according to FIFRA sec. 6(d), and 40 CFR Part 164.

(2) Such hearing will be limited to the issue of whether the registrant complied with the conditions referred to in § 162.167(c), and whether the Agency's determination regarding sale and use of existing stocks of the product is correct.

(3) A hearing shall be conducted and a decision made within 75 days from receipt of a request for such hearing.

(4) The Administrator's decision upon completion of the hearing shall be final.

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