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Monday
September 17, 1984

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Selected Subjects

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 915 and 944

Avocados Grown in South Florida and Imported Avocados; Grade and Maturity Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Finalization of interim final rule.

SUMMARY: The Department of Agriculture (USDA) has decided to leave in effect an interim final rule which established grade and maturity requirements for Florida avocados and imported avocados. The rule is necessary to assure the shipment of ample supplies of mature avocados of acceptable quality in the interest of producers and consumers.

EFFECTIVE DATE: October 17, 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 action 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.

The interim final rule was issued on May 18, 1984, and published in the **Federal Register** (49 FR 21697) on May 23, 1984. The rule added § 915.329 (Florida Avocado Regulation 29) under Marketing Order 915 effective May 23, 1984, and § 944.27 (Avocado Import Regulation 35) under Part 944 effective May 28, 1984, establishing minimum grade and maturity requirements for shipments of fresh avocados grown in South Florida and avocados imported into the United States, effective through April 30, 1985. The rule provided that interested persons could file public comments through June 22, 1984, none of which were received.

The Florida avocado regulation was based upon the recommendation of the Avocado Administrative Committee comprised of Florida avocado producers and handlers, and a public representative, and was issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The avocado import regulation (7 CFR Part 944) was issued under section 8e (7 U.S.C. 608e–1) of the Act. The Secretary finds that this action will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 915

Marketing agreements and orders, Avocados, Florida.

7 CFR Part 944

Food grades and standards, Imports, Avocados.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

PART 944—FRUITS; IMPORT REGULATIONS

Accordingly, the interim final rule published in the **Federal Register** (49 FR 21697) is adopted as a final rule.

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

Dated: September 11, 1984.

Thomas R. Clark,

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

[FR Doc. 84–24476 Filed 9–14–84; 8:45 am]
BILLING CODE 3410–02–M

7 CFR Part 915

Avocados Grown in South Florida; Container Regulation Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the dimensions of a currently authorized container used solely for export shipments of avocados to add more flexibility in the packing of fruit of larger sizes and varieties. The rule is designed to assure that export shipments of avocados are in containers suitable for that purpose.

DATES: *Effective date:* September 12, 1984.

Comments due: October 17, 1984.

ADDRESS: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250.

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 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 rule is issued under the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). This action is based upon the recommendations and information submitted by the Avocado Administrative Committee and upon other available information.

This rule revises the inside dimensions of the only container currently authorized solely for export shipments of avocados from 14½ x 11 1/16 x 3 5/16 inches, to 14½ x 11 1/16 and depth varying from 3½ to 5 inches. Authorizing handlers to vary the depth of this container from 3½ to 5 inches is designed to provide more flexibility in the packing of avocados by permitting larger sized fruit to be packed in the container, including the larger fruited varieties. Current requirements that the avocados be packed in a single layer in this container, and that the net weight of

the avocados be not less than 8.5 pounds would remain in effect. Specifying container dimensions, the minimum net weight of avocados packed in the container, and pack requirements are designed to insure that avocados are not damaged during transit. This particular container requirement is necessary to protect the quality of avocados shipped to export markets, thereby expanding the demand for avocados in such markets.

Accordingly, the Secretary finds that upon good cause shown it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice, engage in other public procedures, and postpone the effective date of this final rule until 30 days afer publication in the **Federal Register** (5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. In addition, this action relieves restrictions on handlers, the rule was unanimously recommended by the committee at a public meeting, handlers are aware of the rule's provisions and need no additional time to comply therewith, and no constructive purpose would be served by delaying the effective date beyond the day of signature of the rule. The rule relieves handling requirements by slightly revising container specifications to provide more flexibility in the packing of additional sizes and varieties of avocados for export. The rule provides a 30-day comment period. A longer comment period would be contrary to the public interest, as any comments on the effect of the rule need be received within 30 days, so that any necessary changes can be made promptly to enhance orderly marketing of Florida avocados. All comments received will be considered prior to finalization of this interim rule. It is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 915

Agricultural marketing service, marketing agreements and orders, Avocados, Florida.

PART 915—[AMENDED]

Therefore, § 915.305 is amended by revising the introductory text in paragraph (a), and paragraph (a)(2), to read as follows:

§ 915.305 Florida Avocado Container Regulation.

(a) On and after September 12, 1984 no handler shall handle any avocados for the fresh market from the production area to any point outside thereof in containers having a capacity of more than 4 pounds of avocados unless the containers meet the requirements specified in this section: *Provided,* That the containers authorized in this section shall not be used for handling avocados for commercial processing into products pursuant to § 915.55(c).

* * * * *

(2) Containers with inside dimensions of 14½ x 11⁹⁄₁₆ and depth varying from 3½ to 5 inches: *Provided,* That such containers shall only be used for export shipments.

* * * * *

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

Dated: September 12, 1984.

Thomas R. Clark,

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

[FR Doc. 84–24553 Filed 9–14–84; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 917

Fresh Pears, Plums, and Peaches Grown in California; Further Amendment of Certified Farmers Markets Rule

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action revises provisions governing the exemption from regulations for California pears handled at certified farmers markets. Such provisions are designed to prevent such exempt fruit from entering fresh channels for other than the specified purposes and to ensure that the fruit sold at certified farmers markets is of acceptable quality.

EFFECTIVE DATE: September 17, 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 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.

The final rule is issued under the marketing agreement, as amended, and Marketing Order 917, as amended (7 CFR Part 917), regulating the handling of pears, plums, and peaches grown in California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The Pear Commodity Committee, which operates under Marketing Order 917, recommended the change in the rule covering pears that are sold at certified farmers markets at its annual regulatory meeting on June 27, 1984. The rule is based upon committee recommendations, information submitted by the committee, and other available information. The rule would extend to pears certain requirements recently adopted for peaches, plums, and nectarines shipped to certified farmers markets within the State of California (49 FR 28540). Pears were not covered under the recent rule because the rule change was needed for peaches, plums, and nectarines before the start of the 1984 pear season and the pear committee was not scheduled to meet until after the start of the 1984 season for the other fruits.

Currently, a person who both produces and handles the pears may sell at a certified farmers market up to 200 pounds of such fruit to any one person during any one day. Such fruit must meet minimum quality requirements specified in the California Food and Agricultural Code. These shipments are exempt under § 917.143(b) of the marketing order. The intent of the exemption provision was to help small growers by permitting them to sell fruit directly to consumers at the premises where the fruit is grown, at a nearby packinghouse or retail stand, or at certified farmers markets.

During past years, commercial packers have been shipping fruit sorted out at the packinghouse to certified farmers markets in increasing quantities. Since such shipments consist of fruit which is not eligible to be sold in commercial outlets, such fruit tends to be of low quality. Shipment of such fruit was not contemplated when the exemption provision was authorized.

There have been instances of fruit shipped from packinghouses to certified farmers markets which has not met minimum quality requirements. Also, there are indications that some fruit has been reported as handled under the certified farmers market exemption but diverted to commercial fresh market outlets. Because such fruit is shipped from packinghouses and is handled with properly graded fruit, it is difficult to ascertain compliance with marketing order regulations. The rule is designed to prevent such exempt fruit from entering fresh channels for other than the specified purposes and to ensure

that the fruit sold at certified farmers markets is of acceptable quality.

The final rule would restrict the sale of pears sorted out by a handler and sold at certified farmers markets to pears which meet all the quality requirements stated in Pear Regulation 12 (§ 917.461, i.e., the pears must grade at least U.S. Combination) except that they are soft and overripe. To provide additional safeguards, all pears sorted out by a handler (1) would be subject to the inspection and certification, assessment, and reporting requirements of the order and (2) must be packed in containers marked clearly that the fruit is for sale only at certified farmers markets. The container marking requirement is intended to assure that the fruit is sold only as specified.

Similar action was recently taken in regard to peaches and plums handled under Marketing Order 917 and nectarines handled under Marketing Order 916. It is highly desirable that the regulations provide equal treatment to all fruits covered under these two marketing orders.

The Secretary finds that it is impracticable and contrary to the public interest to postpone the effective date of this final rule until 30 days after publication in the **Federal Register** [5 U.S.C. 553) because of insufficient time between the date when information became available upon which this rule is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on this action at an open meeting at which the committee, without opposition, recommended amending the regulation as specified in the final rule. California pear handlers have been apprised of the amendment and the effective date. The provisions in the final rule are the same as those in a proposed rule published in the **Federal Register** (49 FR 32367) on August 14, 1984. The proposed rule provided that comments could be received through August 24, 1984. One comment was received. It was submitted by the California Department of Food and Agriculture and supported the proposed change. It is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 917

Marketing agreements and orders, Pears, Plums, Peaches, California.

The final rule amends § 917.143 (7 CFR Part 917) by revising paragraph (b)(4) to read as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

§ 917.143 Exemptions.

* * * * *

(b) * * *

(4) Such pears, plums and peaches are handled by the person who produces them; and the handling takes place (i) on the premises where grown, (ii) at a packinghouse or retail stand nearby which is operated by said handler, or (iii) at a certified farmers market in compliance with section 1392 of the regulations of the California Department of Food and Agriculture: *Provided,* That the exemption for certified farmers markets shall not apply to fruit sorted out by a handler unless such fruit is packed in containers clearly and legibly marked to show that the fruit contained therein is only to be sold at a certified farmers market, and the handler complies with regulations established under §§ 917.37, 917.41(a)(1), 917.45, and 917.50, except that such fruit may be handled to such markets if the fruit fails to meet the applicable grade only on account of being soft and overripe.

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

Dated: September 11, 1984.

Thomas R. Clark,

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

[FR Doc. 84–24477 Filed 9–14–84; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. NM–11; Special Conditions No. 25–ANM–5]

Special Conditions; Israel Aircraft Industries Model 1125 Westwind Astra Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued pursuant to §§ 21.16 and 21.101(b) of the Federal Aviation Regulations (FAR) to Israel Aircraft Industries (IAI) for the Model 1125 Westwind Astra series airplane. The airplane will have novel or unusual design features associated with an automatic takeoff thrust control system (ATTCS) and an unusually high operating altitude (45,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These special conditions contain the safety standards which the Administrator finds necessary, because of these design features, to establish a level of safety equivalent to that established in the regulations.

EFFECTIVE DATE: October 17, 1984.

FOR FURTHER INFORMATION CONTACT: James Walker (ATTCS) or Mark Quam (45,000 feet operation), Regulation and Policy Office, ANM–110, Aircraft Certification Division, FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168; telephone: (206) 431–2116/2134.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1981, IAI, Ben-Gurion International Airport, Israel, filed an application for a type certificate in the transport airplane category for the 1125 series airplane designated as the Model 1125 Westwind Astra series airplane. The 1125 series airplane is a derivative version of the 1121, 1123, and 1124 series airplanes, for which FAA Type Certificate No. A2SW was issued. The aircraft has two Garrett Model TFE–731–3B–100G turbofan engines mounted on pylons extending from the aft fuselage, a maximum takeoff weight of 23,500 pounds, a 9-passenger interior, and a 45,000-foot ceiling. Type certification of the Model 1125 Westwind Astra series airplane is being processed as a new type certificate in accordance with Subpart B of Part 21 of the FAR.

Israel Aircraft Industries filed an application for certification to operate the Model 1125 Westwind Astra series airplane up to a maximum altitude of 45,000 feet. The oxygen protective capability is limited to 40,000 feet (in this case the passenger equipment). If failure occurs leading to cabin altitudes in excess of 40,000 feet, the event will most likely be catastrophic. Further, with the ATTCS installed and operating, takeoffs can be made with engine thrust set at less than the maximum takeoff thrust approved for the airplane under existing conditions. If an engine fails during takeoff, the automatic system will reset the fuel control fuel metering schedule on the operating engine to provide the maximum takeoff thrust.

Discussion of Comments

A notice of proposed special conditions was published in the **Federal Register** (49 FR 9906; March 16, 1984) for comment. The only comments received were relative to the high altitude special condition proposals.

Two commenters objected to the reduction in the structural inspection

interval required for operation at higher altitudes.

FAA Response: The inspection program for the pressure vessel is necessary to assure that a structural failure causing rapid decompression while operating at the higher altitudes is extremely improbable. Service experience has shown that decompressions due to structural failures are not extremely improbable. The consequences of a rapid decompression above 41,000 feet could be catastrophic while the same failure condition probably would not be at lower altitudes. Rapid decompressions are not usually catastrophic because most failures occur at altitudes within the protective capability of the oxygen equipment. Application of this inspection criteria to structure other than the pressure vessel is not necessary because, under present inspection programs, structural damage in these areas is usually detected before progressing to a catastrophic failure condition.

The inspection intervals prescribed under § 25.571 assure that structural damage will be detected before the residual strength level falls below limit load. Normally the critical crack associated with a limit load condition is orders of magnitude away from a catastrophic condition. However, the critical crack length associated with cabin decompression at high altitude defines a potentially catastrophic condition. Both conditions must be investigated.

One commenter stated the last part of the "note" of the special condition Figure 4 that allows only two minutes exceedence of 25,000 feet does not correspond to the 4.5 minutes allowed in the basic curve of Figure 4. The two minutes should be replaced by five minutes.

FAA Response: The FAA does not concur. The basic Figure 4 criteria limits the maximum altitude to 37,000 and is based on the assumption that all occupants will be breathing oxygen after the failure leading to decompression. In the event the basic Figure 4 criteria cannot be met, the alternative criteria (see Figure 4) is provided. This criteria allows the cabin altitude to exceed 37,000 feet, but not more than 40,000 feet. The passengers may not be capable of donning oxygen masks when exposed to this altitude range during rapid decompression. To compound the physiological problem, the oxygen dispensing systems have not proven 100 percent reliable. Therefore to prevent permanent physiological damage to the occupants who may pass out before receiving oxygen, or are unable to receive oxygen, the decompression exposure time above 25,000 feet is not to exceed two minutes total time.

Type Certification Basis

The type certification basis is as follows: Part 25 of the FAR effective February 1, 1965, Amendments 25–1 through 25–54; Part 36 of the FAR, Amendments 36–1 through the current amendment; Special Federal Aviation Regulation No. 27, Amendment 27–4 through the current amendment; and the special conditions for high altitude operations and for an ATTCS system contained herein.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance with § 21.17(a)(1) do not contain adequate or appropriate safety standards because of novel or unusual features of the airplane. Special conditions, as appropriate, are now issued after public notice in accordance with §§ 11.28 and 11.49 and will become part of the type certification basis in accordance with § 21.17(a)(2).

List of Subjects in 14 CFR Part 21

Air transportation, Aircraft, Aviation safety.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued to Israel Aircraft Industries for the Model 1125 Westwind Astra series airplanes:

I. Operation Above 41,000 Feet to 45,000 Feet

A. Pressure Vessel Integrity

1. The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with Special Condition D. (Pressurization) must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

2. Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

3. In addition to the requirements of § 25.365, the fuselage pressure vessel should be capable of withstanding maximum regulated pressure combined with 1 g flight loads with a frame or stringer failed and two adjacent panels cracked, without total failure of the fuselage or without floor collapse.

B. Ventilation

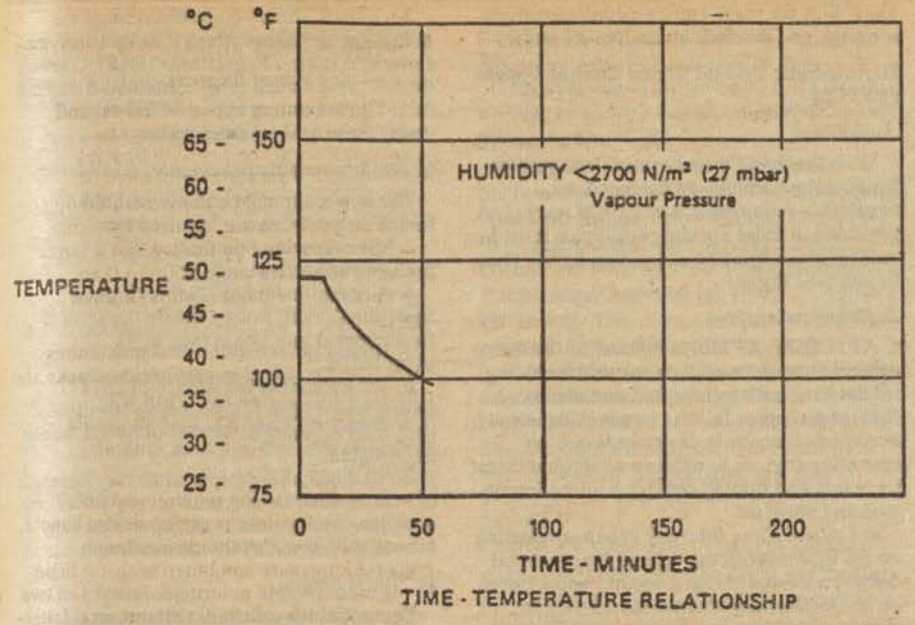
In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system which could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

C. Air Conditioning

In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

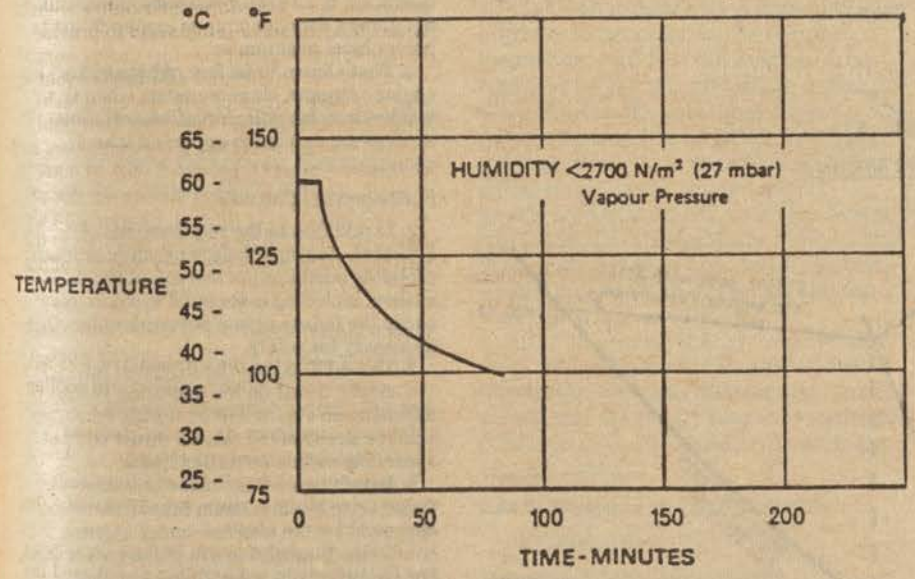
1. After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

2. After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.



TIME - TEMPERATURE RELATIONSHIP

FIGURE 1



MAXIMUM TIME-TEMPERATURE RELATIONSHIP

FIGURE 2

D. Pressurization

In addition to the requirements of § 25.841, the following apply:

1. The pressurization system, which includes for this purpose bleed air, air conditioning and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

a. Any probable double failure in the pressurization system (apply § 25.1309, Amendment 41, if desired).

b. Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area which produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

2. The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

a. The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

b. The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

c. Complete loss of thrust from all engines.

3. In showing compliance with paragraphs D1 and D2 of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

For Figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

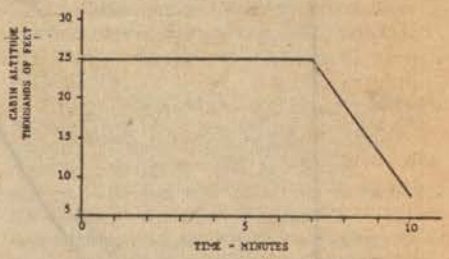


FIGURE 3
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all passengers.)

For Figure 4, time starts at the moment cabin pressure exceeds 8,000 feet during depressurization.

If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed

25,000 feet is two minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

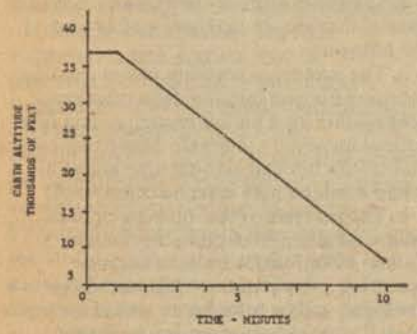


FIGURE 4
CABIN ALTITUDE - TIME HISTORY
(Supplemental oxygen available to all passengers.)

E. Oxygen Equipment and Supply

1. A continuous flow oxygen system must be provided for the passengers.

2. A quick-donning pressure demand mask with mask-mounted regulator must be provided for the pilots. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within five seconds.

II. Automatic Takeoff Thrust Control System (ATTCS)

A. General

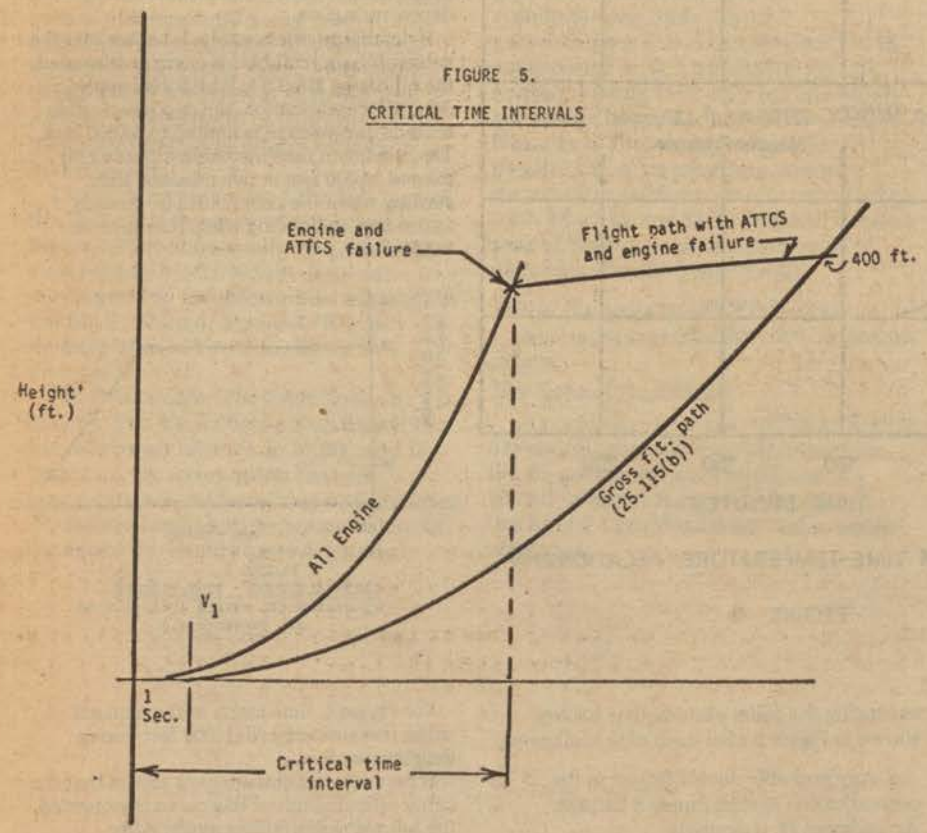
With the ATTCS and associated systems functioning normally as designed, all applicable requirements of Part 25, except as provided in these special conditions, must be met without requiring any action by the crew to increase thrust.

B. Definitions

1. *ATTCS.* An ATTCS is defined as the entire automatic system used on takeoff, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, actuate fuel controls or power levers on operating engines to achieve scheduled thrust increase, and furnish cockpit information on system operation.

2. *Critical Time Interval.* When conducting an ATTCS takeoff, the critical time interval between V1 and minus 1 second and a point on the minimum performance, all-engine flight path where, assuming a simultaneous engine and ATTCS failure, the resulting minimum flight path thereafter intersects the Part 25 required gross flight path at no less than 400 feet from the takeoff surface. This definition is shown in the following graph (Figure 5):

FIGURE 5.
CRITICAL TIME INTERVALS



3. *Takeoff Thrust.* Notwithstanding the definition of "takeoff thrust" in Part 1 of the Federal Aviation Regulations (FAR), "takeoff thrust" means each thrust obtained from each initial thrust setting approved for takeoff under these special conditions.

C. Performance Requirements

The applicant must comply with the following performance requirements.

1. The following reliability and performance criteria apply:

a. Automatic Takeoff Thrust Control System (ATTCS) failure during the critical time interval must be shown to be improbable.

b. The concurrent existence of an ATTCS failure and engine failure during the critical time interval must be shown to be extremely improbable.

c. All applicable performance requirements of Part 25 must be met with an engine failure occurring at the most critical point during takeoff with the ATTCS system functioning.

D. Thrust Setting

The initial takeoff thrust setting on each engine at the beginning of the takeoff roll may not be less than:

1. Ninety (90) percent of the thrust level set by the ATTCS (the maximum takeoff thrust approved for the airplane under existing conditions);

2. That requirement to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power level position; or

3. That shown to be free of hazardous engine response characteristics when thrust is advanced from the initial takeoff thrust level to the maximum approved takeoff thrust.

E. Powerplant Controls

1. In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS system, including associated systems, may cause the failure of any powerplant function necessary for safety.

2. The ATTCS must be designed to:

a. Apply thrust on the operating engine following an engine failure during takeoff to achieve the selected takeoff thrust without exceeding engine operating limits;

b. Permit manual decrease or increase in thrust up to the maximum takeoff thrust approved for the airplane under existing conditions through the use of the power level. For aircraft equipped with limiters that automatically prevent engine operating limits from being exceeded under existing conditions, other means may be used to increase the maximum level of thrust controlled by the power levels in the event of an ATTCS failure provided the means is located on or forward of the power levers, is easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meets the requirements of § 25.777, paragraphs (a), (b), and (c);

c. Provide a means to verify to the flightcrew before takeoff that the ATTCS is in a condition to operate; and

d. Provides a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

F. Powerplant Instruments

In addition to the requirements of § 25.1305:

1. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

2. If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during takeoff.

(Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.28 and 11.49)

Note.—This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule at general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

Issued in Seattle, Washington, on August 30, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24458 Filed 9-14-84; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 84-NM-10-AD; Amdt. 39-4913]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to certain Boeing Model 747 series airplanes which requires inspection for cracks and repair, as necessary, of the frame to tension tie joints at body station 760 (Group I and II airplanes) or body station 780 (Group III airplanes). This action is prompted by a report of a crack which occurred during fatigue testing. An undetected crack could result in loss of cabin pressurization and extensive structural damage.

EFFECTIVE DATE: October 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Mr. Owen Schrader, Airframe Branch, ANM-120S, FAA, Northwest Mountain Region, Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington; telephone (206) 431-2923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an AD to require inspection for and repair of cracks in the structure was published in the **Federal Register** on April 30, 1984 (49 FR 18310). The comment period for the proposal closed on June 15, 1984.

Interested persons have been afforded an opportunity to participate in the making of this AD. Due consideration has been given to the one comment which was received from the Air Transport Association of America (ATA).

The ATA, on behalf of one operator, requested that the repetitive inspection interval be increased to 3700 landings to be in agreement with the Service Bulletin. The FAA concurs, as the 3000 landing figure was an editorial error, and paragraph A. of the AD has been revised accordingly.

It is estimated that 72 airplanes of U.S. registry are affected by this AD, that it will take approximately 3 man-hours per airplane to accomplish the required inspection, and that the average labor cost will be $40 per man-hour. Based on these figures, the total cost impact of the AD is estimated to be $8640. For these reasons, this rule is not considered to be a major rule under the criteria of Executive Order 12291, or a significant rule under DOT Regulatory Policies and Procedures. Few, if any, small entities within the meaning of the Regulatory Flexibility Act are affected.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

Boeing: Applies to Boeing Model 747 series airplanes, certificated in all categories, listed in Boeing Service Bulletin 747-53-2088, Revision 2, or later FAA approved revisions.

To detect cracks and prevent failure of the frame to tension tie joint structure, accomplish the following unless already accomplished:

A. For airplanes that have been modified in accordance with Service Bulletin 747-53-2088, within the next 500 landings after the effective date of this AD or prior to the accumulation of 8,000 landings, whichever is later, perform a close visual inspection of the tension tie at body station (BS) 760 on Group I and Group II airplanes, and at BS 780 on Group III airplanes, for cracks in the areas identified in Service Bulletin 747-53-2088, Revision 2, or later FAA approved revisions. Repeat inspections at intervals not to exceed 3700 landings. If cracks are found, repair and modify in accordance with Service Bulletin 747-53-2088, Revision 2, or later FAA approved revisions, prior to further pressurized flight. Inspections are to continue after repair.

B. For airplanes that have been modified in accordance with Service Bulletin 747-53-2088, within the next 1000 landings after the effective date of this AD or prior to the accumulation of 10,000 landings after modification, whichever is later, perform a close visual inspection of the tension tie at BS 760 on Group I and Group II airplanes, and at BS 780 on Group III airplanes, for cracks in the areas identified for inspection in Service Bulletin 747-53-2088, Revision 2, or later FAA approved revisions. Repeat inspections at intervals not to exceed 8000 landings. If cracks are found, repair in accordance with Service Bulletin 747-53-2088, Revision 2, or later FAA approved revisions, prior to further pressurized flight. Inspections are to continue after repair.

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

D. For purposes of complying with this AD, subject to acceptance by the assigned FAA Maintenance Inspector, the number of landings may be determined by dividing each airplane's time in service by the operator's fleet average time from takeoff to landing for the airplane type.

E. Aircraft may be ferried to a base for maintenance in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations.

F. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, may adjust the inspection times specified in this AD to permit compliance at an established inspection period of an operator, if the request contains substantiating data to justify the adjustment period.

This amendment becomes effective October 19, 1984.

(Secs. 313(a), 314(a), 601 through 610, and 1102 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1430, and 1502); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89)

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979);

and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because few, if any, Boeing Model 747 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Seattle, Washington, on September 4, 1984.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 84-24459 Filed 9-14-84; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. G-2855]

The American College of Obstetricians and Gynecologists; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Modifying order.

SUMMARY: This order reopens the proceeding and modifies the Commission Order entered by consent against The American College of Obstetricians and Gynecologists ("ACOG"), 88 F.T.C. 955. In accordance with the ACOG request, the original Order has been modified by deleting Paragraph II(B), which barred the association from advising in favor of or against any relative value scale developed by third parties; and by inserting a provision identical to that contained in the Commission Order entered against *Michigan State Medical Society*, 101 F.T.C. 191. This provision allows ACOG more freedom to discuss any issue, including reimbursement, with third-party payers and governmental entities.

DATES: Consent Order issued on December 14, 1976, Modifying Order issued August 28, 1984.

FOR FURTHER INFORMATION CONTACT: FTC/L-301-18, Selig S. Merber, Washington, D.C. 20580, (202) 634-4662.

SUPPLEMENTARY INFORMATION: In the Matter of The American College of Obstetricians and Gynecologists. Codification appearing at 42 FR 4119 remains unchanged.

List of Subjects in 16 CFR Part 13

Fee schedules, Trade practices.

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

Order Reopening and Modifying Final Order in Docket No. C-2855

By petition filed May 2, 1984, the American College of Obstetricians and Gynecologists ("ACOG") asked the Commission to reopen and modify the Commission order in Docket No. C-2855 entered by consent against ACOG on December 14, 1976 ("Order"). ACOG requested that the Commission modify the Order by (a) deleting Paragraph II(B) of the Order, which prohibits ACOG from advising in favor of or against any relative value scale developed by third parties (except that ACOG is permitted to provide historical data), and (b) inserting a provision identical to a provision contained in the Commission's Order in *Michigan State Medical Society*, Docket No. 9129, 101 F.T.C. 191 (1983) ("*Michigan State*") that would allow ACOG more freedom to discuss issues relating to reimbursement with third-party payers and governmental entities. ACOG's petition was placed on the public record and no comments were received.

Upon consideration of ACOG's petition and other relevant information, the Commission finds that the public interest would be served by deleting Paragraph II(B) of the Order and by inserting the relevant provision contained in the order in *Michigan State*. ACOG has demonstrated that the Order's restriction on ACOG's ability to discuss relative value scales with third-party payers and governmental entities has caused injury to ACOG and the public that outweighs any benefit that may be derived from the restriction. Modification is also consistent with the Commission's decision in *Michigan State*.

The Order continues to prohibit ACOG from developing or circulating its own relative value guide for use by its members. In addition, although the Order no longer will prohibit ACOG from discussing relative value scales with governmental entities and third-party payers, serious antitrust concerns would arise were ACOG to negotiate or attempt to negotiate an agreement with any such party or engage in any type of coercive activity to effect such an agreement.

Accordingly,

It is ordered, that this matter be, and it hereby is, reopened and that the Order in Docket No. C-2855 be modified (1) to delete Paragraph II(B) and to redesignate Paragraphs II(C) and II(D) of the Order Paragraphs II(B) and II(C) respectively (2) to renumber Paragraphs III, IV and V of the Order Paragraphs IV, V and VI respectively; and (3) to insert the following:

III

It is further ordered that this order shall not be construed to prevent ACOG from:

A. Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government, executive agency, or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding.

B. Providing information or views, on its own behalf or on behalf of its members, to third-party payers concerning any issue, including reimbursement.

By direction of the Commission.

Issued: August 28, 1984.

Emily H. Rock,

Secretary.

[FR Doc. 84-24475 Filed 9-14-84; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

Antibiotic, Nitrofuran, and Sulfonamide Drugs in Animal Feeds; Nitrofurazone and Furazolidone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to provide for interim marketing by Hess & Clark, Inc., of nitrofurazone premixes for use in the manufacture of swine feeds. The regulations are also amended to add Hess & Clark as a sponsor of premixes containing furazolidone for use in combination with other drugs in the manufacture of chicken, turkey, and swine feeds.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 6, 1974 (39 FR 28393) (corrected September 27, 1974) (39 FR 34682), FDA proposed to amend 21 CFR 135.109 (recodified 21 CFR 558.15) by listing those drug sponsors, drug premixes, and combination medicated products for which sponsors had provided commitments to comply with

certain regulatory requirements for safety and effectiveness studies. In the final rule published in **Federal Register** of February 25, 1976 (41 FR 8281) (effective March 26, 1976), FDA listed sponsors that had submitted commitments by the required date to undertake the required studies. The final rule inadvertently did not reflect that Hess & Clark had submitted commitments to carry out the required studies for using nitrofurazone premixes to make swine feeds (NADA 6–395). While the rule listed Hess & Clark as a sponsor of furazolidone premixes to be used alone to make feeds for chickens, turkeys, or swine (NADA 9–073), its listing as a sponsor for such use in combination with other drugs was omitted. Accordingly, the Center for Veterinary Medicine is amending 21 CFR 558.15 to properly reflect Hess & Clark's approval.

NADA 6–395 is the subject of a notice of opportunity for hearing (NOOH) on a proposal to withdraw approval, which published in the **Federal Register** of August 17, 1976 (41 FR 34899). NADA 9–073 is the subject of a similar NOOH that published in the **Federal Register** of May 13, 1976 (41 FR 19907). This change in § 558.15 affects neither the NOOH's nor the Center's underlying conclusions in any manner.

This document provides for inclusion of the existing interim approvals in the regulations. It does not involve submission of data to demonstrate safety and effectiveness. Because the applications were approved before July 1, 1975, the sponsor is not required to submit a summary of safety and effectiveness data and information under the freedom of information provisions of 21 CFR 514.11(e)(2)(ii). However, a summary of the basis of approval is available upon request in accordance with 21 CFR 514.11(e)(2)(i).

The Center for Veterinary Medicine has determined pursuant to 21 CFR 25.24(b)(22) (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.

PART 558—[AMENDED]

Therefore, under the Federal, 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 Center for Veterinary Medicine (21 CFR 5.82), § 558.15 is amended in paragraph (g)(1) in the table by removing the entry "SmithKline Animal Health Products," and by adding it at the end of the table under the entry for "Hess & Clark and SmithKline Animal Health Products" as set forth below; and in paragraph (g)(2) by revising the entry "SmithKline Animal Health Products" to read "Hess & Clark and SmithKline Animal Health Products".

§ 558.15 Antibiotic, nitrofuran, and sulfonamide drugs in the feed of animals.

* * * * *

(g) * * *
(1) * * *

Drug sponsor	Drug premix	Species	Use levels	Indications for use
Hess & Clark and Smith-Kline Animal Health Products.	* * *	* * *	* * *	* * *
Do	....do	Swine	0.055 percent (500 g/ton).	Treatment of necrotic enteritis caused by *S. choleraesuis.*

* * * * *

Effective date. September 17, 1984.

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

Dated: September 7, 1984.

Lester M. Crawford,

Director, Center for Veterinary Medicine.

[FR Doc. 84-24516 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 39

Indian School Equalization Program; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Correction of Interim rule with request for comments.

SUMMARY: The Bureau published on September 4, 1984 (49 FR 34820) an interim rule revising the present requirements of four (4) "Average Daily Membership" (ADM) count weeks and requires one ADM count week for the timely distribution of funds to Bureau funded schools. The revision will address ADM, count weeks, computation of ADM, provisions for declining enrollment, and the schedule for allotments. This document corrects the September 4 publication to reflect changes made during the review processes under Executive Order 12291. Such changes were erroneously omitted from the document submitted to the Office of Federal Register. For the convenience of the reader, the Bureau is publishing the complete interim rule.

DATES: This document will become effective September 17, 1984. Comments are due October 17, 1984.

ADDRESS: Written comments should be directed to the Director, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior, 18th and "C" Streets, NW., Washington, DC 20240. If preferred, comments may be delivered to Room 3510, Main Interior Building, 18th and "C" Streets, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Nancy Garrett (202) 343–2123.

SUPPLEMENTARY INFORMATION: The authority to issue rules and regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9). This interim rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The Office of Indian Education Programs during its review and analysis of the student ADM counts of this year and previous years has found that: (1) The differences in ADM among four count weeks are not significant; (2) considerable savings in staff time and funds will be realized by eliminating extra count weeks; (3) the current process delays final allotment until the school year for which the funds were appropriated has virtually ended; and (4) school board members, school supervisors, and Area/Agency personnel have emphasized that instituting effective measures requires earlier notification and allotment of funds. Based on the above four findings, we are proposing to eliminate three of the four count weeks for computing the average daily membership. Section 39.32 is being changed to reflect the reduction of average daily membership count weeks from four to one. In addition, new terms have been added and terms have been redefined to provide clarity for the public. In order to realize these benefits in the school year 1984–85, which would be contrary to the public interest to forego, these regulations have to be in effect by the beginning of the school year. Therefore, in accordance with 5 U.S.C. 553(b)(B), the Bureau finds good

cause for the regulations to take effect without proposed rule making. Further, in accordance with 5 U.S.C. 553(d)(3), the Bureau finds good cause for the regulations to be effective upon publication, since otherwise, allotments of funds to schools would be delayed.

The policy of the Bureau is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions or objections regarding this interim rule to the location identified in the Address section of this preamble. Comments must be received on or before the date specified in the **DATE** section of this preamble.

The Bureau of Indian Affairs has determined that this rule is not a major rule within the terms of Executive Order 12291 because it will not have a major effect on the economy and will not result in a major increase in costs or prices for consumer, individual industries, Federal, State or local government agencies or geographic regions. Furthermore, because of these factors, it does not have a significant economic effect on a substantial number of small entities within the terms of the Regulatory Flexibility Act.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.*

The primary author of this document is Nancy Garrett, Deputy Director, Office of Indian Education Programs, 18th and "C" Streets, NW., Washington, DC 20240, (202) 343-2123.

List of Subjects in 25 CFR Part 39

Indian education, Schools, Grant programs—education, Grant programs—Indians.

PART 39—THE INDIAN SCHOOL EQUALIZATION PROGRAM

25 CFR Part 39 is amended as follows:

1. In § 39.30, paragraphs (b) and (c) are revised as set forth below, and paragraphs (d), (e) and (f) are removed.

§ 39.30 Definitions.

* * * * *

(b) "Count week" means the last full week in September for the purposes of calculating allotments.

(c) "Student classification" means any special student need area that receives a separate weighting through the Indian School Equalization Formula.

2. Section 39.32 is revised to read as follows:

§ 39.32 Annual computation of average daily membership.

(a) Average daily membership (ADM) as defined in § 39.2(f) shall be determined during the last full school week in September during which all students eligible under the definition shall be counted by student program classification.

(b) The Director shall direct the receipt and management of information necessary to obtain timely ADM reports from schools. Agency education offices and, in the case of off-reservation boarding schools, Area education offices together with each school's supervisor and school board chairperson where a board exists shall be responsible for certifying the validity of each school's student counts. The September ADM will be used to determine final allotments for the school year.

3. Section 39.35 is revised to read as follows:

§ 39.35 Computation of average daily membership (ADM) for tentative allotments.

Tentative allotments for each future year's funding shall be based on the ADM for the September count week of the current year.

4. Section 39.36 is revised to read as follows:

§ 39.36 Declining enrollment provision.

If the decline of a school's average daily membership exceeds ten percent in any given school year, the school may elect to request funding based on the average of the current and previous years' September ADM count.

5. In § 39.50 paragraph (d) "Initial allotments" is redesignated as paragraph (e) and revised; a new paragraph (d) "Final allotment" is added; paragraph (e) "Responsible fiscal agent" is redesignated as paragraph (f) with no change, and paragraph (f) "Tentative allotments" is redesignated as paragraph (g) and revised to read as follows:

§ 39.50 Definitions.

* * * * *

(d) "Final allotment" means that notice of funds available to schools, based on the September student count as computed through the Indian School Equalization Formula (ISEF) based on full distribution of Indian School Equalization Program (ISEP) funds available for the fiscal year.

(e) "Initial allotment" means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula prior to any adjustments due to fluctuating student counts.

* * * * *

(g) "Tentative allotment" means that notice of funds available to schools based on the September student count as computed through the Indian School Equalization Formula based on a proposed appropriation in the President's budget for the next fiscal year.

6. Section 39.51 is revised to read as follows:

§ 39.51 Notice of allotments.

The Director shall notify school administrators and boards of allotments of funds based on the September ADM count established under Subpart B of this Part according to the following schedule:

(a) Tentative allotments shall be made by March 15 of the prior fiscal year;

(b) Initial allotments shall be made not later than November 15 of the fiscal year; and

(c) Final allotments shall be made not later than January 15 of the fiscal year.

Dated: September 7, 1984.

Ken Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 84-24077 Filed 9-14-84; 8:45 am]

BILLING CODE 4310-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[A-8-FRL-2671-1]

Standards of Performance for New Stationary Sources and National Emission Standards for Hazardous Air Pollutants Delegation of Authority in Region VIII

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: This notice is to clear up any confusion which may have arisen concerning the specific subparts of the Federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) which are delegated to each of the States in EPA Region VIII to enforce. These States are Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Dale M. Wells, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 844–6131.

SUPPLEMENTARY INFORMATION: The New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) are Federal regulations for industries and pollutants of national concern. These regulations were first promulgated in 1971 and have been delegated to the States for enforcement since 1974. The list of affected industries has grown each year, however, and not all industries have a potential for locating in each of the States. As each new subpart has been added, every State has not always adopted an equivalent regulation to enable State enforcement.

The State of Utah has incorporated by reference all present and future NSPS and NESHAPS regulations and does have the authority and resources to enforce them. Utah will automatically receive delegation of each new NSPS and NESHAPS subpart, as it is promulgated. The other States must adopt an equivalent State regulation prior to delegation.

The lists below indicate the delegation status of each State in Region VIII for each NSPS and NESHAPS subpart. This Notice is issued under the authority of Sections 111 and 112 of the Clean Air Act.

(Secs. 111 and 112, 42 U.S.C. 7412 of the Clean Air Act)

List of Subjects

40 CFR Part 60

Air pollution control, Aluminum, Ammonium sulfate plants, Asphalt, Cement industry, Coal copper, Electric power plants, Glass and glass products, Grains, Intergovernmental relations, Iron, Lead, Metals, Metallic minerals, Motor vehicles, Nitric acid plants, Paper and paper products industry, Petroleum, Phosphate, Sewage disposal, Steel sulfuric acid plants, Waste treatment and disposal, Zinc, Tires, Incorporation by reference, Can surface coating, Sulfuric acid plants, Industrial organic chemicals, Organic solvent cleaners, Fossil fuel-fired steam generators, Fiberglass insulation, Synthetic fibers.

40 CFR Part 61

Air pollution control, Asbestos, Beryllium, Hazardous materials, Mercury, Vinyl chloride.

Dated: August 8, 1984.

John G. Welles,

Regional Administrator.

PART 60—[AMENDED]

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

Subpart A—General Provisions

§ 60.4 [Amended]

In § 60.4 the table below is added as follows:

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS FOR REGION VIII

Subpart	State					
	Colorado	Montana	North Dakota	South Dakota	Utah	Wyoming
A General provisions	*	*	*	*	*	
D Fossil fuel fired steam generating units constructed after 8/17/71	*	*	*	*	*	*
Da Electric utility steam generating units constructed after 9/18/75	*	*	*	*	*	*
E Incinerators	*	*	*	*	*	*
F Portland cement plants	*	*	*	*	*	*
G Nitric acid plants	*	*	*	*	*	*
H Sulfuric acid plants	*	*	*	*	*	*
I Asphalt concrete plants	*	*	*	*	*	*
J Petroleum refineries	*	*	*	*	*	*
K Storage vessels for petroleum liquids constructed after 6/11/73 prior to 5/19/78	*	*	*	*	*	*
Ka Storage vessels for petroleum liquids constructed after 5/18/78	*	*			*	*
L Secondary lead smelters	*	*			*	*
M Secondary brass and bronze ingot production	*	*			*	*
N Iron and steel plants	*	*			*	*
O Sewage treatment plants	*	*	*	*	*	*
P Primary copper smelters	*	*			*	*
Q Primary zinc smelters	*	*			*	*
R Primary lead smelters	*	*			*	*
S Primary aluminum reduction plants	*	*			*	*
T Phosphate fertilizer industry: Wet process phosphoric acid plants	*	*	*		*	*
U Phosphate fertilizer industry: Super phosporic acid plants	*	*	*		*	*
V Phosphate fertilizer industry: Diammonium phosphate plant	*	*	*		*	*
W Phosphate fertilizer Industry: Triple super phosphate plant	*	*	*		*	*
X Phosphate fertilizer industry: Granular triple supper phosphate storage facilities	*	*	*		*	*
Y Coal preparation plants	*	*	*	*	*	*
Z Ferralloy production facilities	*	*			*	*
AA Steel plants: Electric arc furnaces	*	*			*	*
BB Kraft pulp mills	*	*			*	*
CC Glass manufacturing plants	*	*			*	*
DD Grain elevators	*	*	*	*	*	*
EE Surface coating of metal furniture	*	*			*	*
GG Stationary gas turbines	*	*	*	*	*	*
HH Lime manufacturing plants	*	*	*	*	*	*
KK Lead—acid battery manufacturing plants	*				*	*
LL Metalic minerals					*	*
MM Automobile and light duty surface coating operations	*	*			*	*
NN Phosphate rock plants	*				*	*
PP Ammonium sulfate manufacturing	*	*			*	*
QQ Graphic Arts: Publication rotogravure printing	*				*	*
SS Industrial surface coating: Large appliances	*				*	*
TT Metal coil surface coating	*				*	*
UU Asphalt processing and roofing manufacture	*				*	*
VV Synthetic organic chemical manufacturing: Equipment leaks of VOC					*	
WW Beverage can coating	*				*	
XX Bulk gasoline terminals	*				*	
HHH Synthetic fiber production					*	

* Indicates delegation.

PART 61—[AMENDED]

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

Subpart A—General Provisions

§ 61.04 [Amended]

In § 61.04 the table below is added as follows:

DELEGATION STATUS OF NATIONAL EMISSION STANDARDS FOR HAZARDSOUS AIR POLLUTANTS (NESHAPS) IN REGION VIII

Subpart	State					
	Colorado	Montana	North Dakota	South Dakota	Utah	Wyoming
A General provisions	(*)		(*)		(*)	
B Asbestos	(*)		(*)		(*)	
C Beryllium	(*)		(*)		(*)	
D Beryllium rocket motor firing	(*)		(*)		(*)	
E Mercury	(*)		(*)		(*)	
F Vinyl chloride	(*)		(*)		(*)	

*Indicates delegation.

[FR Doc. 84-24494 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 81

[A-8-FRL-2671-6]

Designation of Areas of Air Quality Planning Purposes; Attainment Status Redesignation; Utah

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of final rule.

SUMMARY: The EPA gives notice that the final rule approving the redesignation of the attainment status for Salt Lake County and Utah County from non-attainment to attainment for total suspended particulates (TSP) on July 11, 1984 (49 FR 28243) has been withdrawn. Information received from the Utah Air Conservation Committee indicates that these Counties have exceeded primary and secondary TSP NAAQS in 1984. This action does not affect any other part of the notice, i.e., approval of the Utah State Implementation Plan for TSP, lifting of the construction moratorium for TSP in Salt Lake County, and the correction in the December 21, 1983 (48 FR 58378) approval of the Utah carbon monoxide plan for Provo, Utah.

EFFECTIVE DATE: This action is effective on September 10, 1984.

ADDRESS: Copy of the State submittal is available for public inspection during normal business hours at: Environmental Protection Agency, Region VIII, Air Programs Branch, 1860 Lincoln Street, Denver, Colorado 80295.

FOR FURTHER INFORMATION CONTACT: Robert R. DeSpain, Chief, Air Programs Branch, Environmental Protection Agency, 1860 Lincoln Street, Denver, Colorado 80295, (303) 844-3471.

SUPPLEMENTARY INFORMATION: On December 2, 1983 (48 FR 54348), following a request from the State of Utah, EPA redesignated several areas in Utah from non-attainment to attainment for TSP under Section 107 of the Clean Air Act. In that action, EPA declined to redesignate Salt Lake and Utah Counties. Salt Lake County did not have an approved Part D SIP. Utah County was designated non-attainment because of violations caused by the U.S. Steel facility.

Subsequent submittals by the State indicated that the last measured violation of primary standards in Utah and Salt Lake Counties occurred in 1980 and the last measured violation of the secondary standard occurred in 1981.

On July 11, 1984 (49 FR 28243), EPA published a final rulemaking approving the Utah State Implementation Plant for TSP for Salt Lake County and lifted the construction moritorium for TSP in Salt Lake County. That action also redesignated Salt Lake and Utah Counties to attainment for TSP.

On August 10, 1984, EPA received comments from Dr. J.R. Macfarlane, Chairman of the Utah Air Conservation Committee stating that TSP data for Salt Lake and Utah Counties show exceedances of primary and secondary NAAQS for first quarter (Jan.-Mar.) of 1984.

Because the new data suggests that the redesignation to attainment is inappropriate, EPA is withdrawing that portion of the July 11, 1984 (49 FR 28243) action regarding redesignation of Salt Lake and Utah Counties to attainment for TSP. EPA is doing so without providing prior notice and opportunity to comment because it finds there is good cause within the meaning of 5 U.S.C. 553(b) to do so. Notice and comment will be impractical because EPA needs to withdraw its approval quickly in order to consider the comments from the State. In addition, further notice is not necessary because EPA has already informed the public it would follow this procedure if adverse or critical comments were received by August 10, 1984. For the same reasons, EPA finds it has good cause under 5 U.S.C. 553(b) to make this withdrawal immediately effective.

EPA will review the State's submittal and determine the course of action. After review and consultation with the State, another notice will be published announcing new rulemaking on this issue and provide time for public comment.

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

List of Subjects in 40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

This rulemaking is issued under the authority of Section 107, 110, 172 and 176 of the Clean Air Act (42 U.S.C. 7407, 7410, 7502 and 7506).

Dated: September 10, 1984.

Alvin L. Alm,

Acting Administrator.

Therefore, the amendment to § 81.345 appearing at 49 FR 28243, July 11, 1984 which was to become effective September 10, 1984 is withdrawn.

[FR Doc. 84-24498 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

46 CFR Part 572

[Docket No. 84-32]

Rules Governing Agreements by Ocean Common Carriers and Other Persons

AGENCY: Federal Maritime Commission.

ACTION: Interim rule and request for comments.

SUMMARY: This rule states the Commission's policy that an agreement filed pursuant to the Shipping Act of 1984 must be definite, complete and specific with regard to the authority contained therein. The rule establishes guidelines for distinguishing between impermissible open-ended authority and allowable interstitial authority. This statement of policy and rule is necessary to enable the Commission to evaluate the impact of an agreement, to monitor its operations, and to clarify the scope of the antitrust immunity contained therein.

DATE: Interim rule effective upon publication. Comments on or before October 17, 1984.

ADDRESS: Address comments (original and 20 copies) to: Francis C. Hurney, Secretary, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5740.

Joseph C. Polking, Director, Bureau of Agreements and Trade Monitoring, Federal Maritime Commission, 1100 L Street, NW., Washington, D.C. 20573, (202) 523-5787.

SUPPLEMENTARY INFORMATION: The Shipping Act of 1984 (46 U.S.C. app. 1701-1720) (hereinafter referred to as "the Act" or "the 1984 Act") requires the Commission to conduct both a technical and substantive review of agreements filed pursuant to section 5 of the Act (46 U.S.C. app. 1704). Section 5 requires that a true copy of every agreement within the scope of the Act be filed with the Commission. Under section 6(b) of the Act (46 U.S.C. app. 1705(b)), the Commission must conduct a preliminary review to determine whether an agreement meets the requirements of section 5. The Commission is authorized to reject agreements that do not meet these requirements. Under section 6(g) (46 U.S.C. app. 1705(g)), the Commission must review an agreement to determine whether it is substantially anticompetitive and is likely to result in an unreasonable reduction in transportation service or an unreasonable increase in transportation cost. In performing its review functions under section 6, the Commission must observe strict timeframes which are mandated by statute.

The 1984 Act also places an obligation on the Commission to monitor operations conducted pursuant to an agreement. In this regard, the Commission's responsibility to evaluate an agreement under section 6(g) continues after an agreement becomes effective. In addition, section 10 of the Act (46 U.S.C. app. 1709) enumerates certain acts which are prohibited. Section 10(a)(2) prohibits a person from operating under an agreement required to be filed under section 5 that has not become effective under section 6. Section 10(a)(3) prohibits a person from operating under an agreement required to be filed under section 5 except in accordance with the terms of the agreement.

Section 7 of the Act (46 U.S.C. app. 1706) provides for an exemption from the antitrust laws for certain enumerated categories of agreements. Section 7(a)(2) states, in relevant part, that the antitrust laws do not apply to:

> * * * any activity or agreement within the scope of this Act, whether permitted under or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that (A) it is pursuant to an agreement on file with the Commission and in effect when the activity took place * * *.

In order to ensure that the Commission may adequately fulfill its responsibilities under the Act to review and monitor agreements and to ensure that agreements are stated with sufficient precision to determine the scope of the antitrust immunity conferred upon them, the Commission is amending its rules governing agreements by ocean common carriers and other persons subject to the Act (46 CFR Part 572).[1] These amendments consist of a new rule stating Commission policy regarding the clarity, completeness and specificity required of agreements and a new rule which distinguishes between impermissible open-ended authority and allowable interstitial authority.

I. Addition to Subpart A—General Provisions

Section 572.103 Policies.

The addition to Subpart A, § 572.103, adds a new paragraph (g) which states Commission policy regarding the clarity, completeness and specificity required in agreements. An agreement filed under the Shipping Act of 1984 must be clear and definite in its terms, must embody the complete present understanding of the parties and must set forth the specific authorities and conditions under which the members of the agreement will conduct their operations and regulate the relationships among the agreement members.

An agreement should be sufficiently clear and definite in its essential terms so as to apprise the Commission of the activities which will be undertaken pursuant to the agreement so that the Commission may evaluate its probable economic impact. At the same time, the Commission does not interpret the 1984 Act to require agreements to be drafted to a degree of exactitude that deprives the parties of a reasonable extent of commercial flexibility—within clearly defined parameters—to respond to changing trade conditions.

One purpose of this policy is to ensure that the Commission may fulfill its responsibility to review an agreement prior to its effectiveness. Under section 6(g) of the Act, the Commission is charged with making an analysis of the competitive impact of an agreement. This evaluation would be made difficult or impossible where an agreement is vague, incomplete or contains open-ended authority.

A second purpose of this policy is to enable the Commission to monitor operations under an agreement once it has gone into effect. The Commission's role as a monitoring agency has been heightened under the 1984 Act which generally allows most agreements to go into effect after a brief waiting period. Because of this shift in emphasis in the regulatory regime, it becomes even more important to have an agreement which is clear, complete and definite. In this regard, it should be noted that section 10(a)(2) prohibits any person from operating under an agreement that has not become effective and that section 10(a)(3) prohibits any person from operating under an agreement except in

[1] On May 29, 1984, the Commission published Interim Rules which implement those provisions of the Shipping Act of 1984 which govern agreements by ocean common carriers and other persons subject to the Act (49 FR 22296). These rules were issued pursuant to authority contained in section 17(b) of the Act (46 U.S.C. app. 1716(b)) to issue interim rules without observing the normal notice and comment procedures required by the Administrative Procedure Act (5 U.S.C. 553). The preamble to these rules stated that persons could file emergency comments prior to the effective date for consideration by the Commission. A number of such comments were received, and on June 14, 1984, the Commission published amendments to its interim agreements' rules making certain modifications and corrections in these rules (49 FR 24697). These Interim Rules, as amended, went into effect on June 18, 1984. They are codified in Title 46 of the Code of Federal Regulations at Part 572.

accordance with its terms. It is, therefore, also in the interest of the parties to an agreement to state their agreement with precision.

Finally, agreement authority should be stated completely and specifically in order to avoid, to the maximum degree possible, any ambiguity concerning antitrust immunity for any activity conducted under the agreement. Exemptions from the antitrust laws are generally strictly and narrowly construed. The 1984 Act, however, extends antitrust immunity to an activity undertaken or entered into "with a reasonable basis to conclude that it is pursuant to an agreement on file with the Commission and in effect when the activity took place." The risk of assuming that a particular activity is pursuant to a stated authority is one that is undertaken by the parties to an agreement. In order for the parties to avoid difficult issues regarding the scope of antitrust coverage, the Commission believes it is best that agreement activities and authorities be stated as clearly as possible.

The Shipping Act of 1984 does not affect previously established Commission policy regarding the clarity, completeness and specificity required in agreements. Accordingly, the new policy statement in § 572.103(g) merely represents a codification of that established policy. There is, however, a greater need for such a restatement of policy under the 1984 Act to enable the Commission to carry out its review functions within strict statutory deadlines and adequately monitor subsequent operations.

II. Addition to Subpart D—Filing and Form of Agreements

Section 572.406 Clear and definite agreements.

The addition to Subpart D adds a new § 572.406 which establishes guidelines for the completeness required of agreements and distinguishes between impermissible open-ended authority and permitted interstitial authority.

Section 572.406(a) requires that an agreement reflect the full and complete *present* understanding of the parties as to its essential terms. The agreement must set forth in adequate detail the procedures and arrangements under which the activity permitted by the agreement is to take place once the agreement becomes effective. For example, an agreement which merely stated that the parties are authorized "to operate a joint service," without indicating the number, or range of vessels, committed to the service would not be deemed to reflect the full understanding of the parties. Such a deficiency would defeat any meaningful Commission review. Similarly, a statement in a joint service agreement which authorized the parties to "acquire substitute or additional tonnage" would result in a situation where the Commission would be unable to evaluate the economic impact of the agreement on the trade under section 6(g). Finally, a filed agreement which referred to or was governed by another agreement not filed with the Commission would be incomplete. It should be noted that operation under an agreement which is incomplete may constitute a violation of section 10(a)(3) of the Act.

Section 572.406(a) also requires that agreements be specific as to the understanding of the parties. Agreements should specify the authority of the agreement and the activities to be conducted under it. The rule does not contemplate that every activity be enumerated in detail. However, general grants of authority which do not specify the activities under the agreement are not favored. For example, an agreement which, as its authority, merely recited the statutory language of section 4(a)(1)–(7) of the Act would require some further clarification. Otherwise, review of such an agreement would be virtually meaningless. Such general statements of authority, even where clarified by subsequent refinement, should be avoided.

Section 572.406(b) proscribes the use of clauses in agreements which contain open-ended authority unless such provisions expressly state that any further such agreement cannot become operative unless filed and effective under the 1984 Act. A problem of open-ended authority arises where an agreement allows for *future* substantive modification of an agreement without specifically requiring filing under section 5. Such general authority to make future modifications without filing with the Commission would subvert the Commission's ability to review and monitor an agreement. Because any such future modifications to an agreement would generally become effective within 45 days after the amendment is filed with the Commission, there is no undue burden or delay in gaining effectiveness of an agreement.

Section 572.406(c) provides that activities which may reasonably be viewed as interstitial to a stated agreement authority need not be expressly stated. For example, authority to establish OCP rates would be viewed as interstitial to general ratemaking authority. However, establishment of a tariffed contract rate system would not be interstitial. Changes in the terms and conditions of a charter party underlying a space charter agreement would generally be interstitial. However, changes in the number of vessels (or range of number of vessels) and definition of vessel capacity (or range of capacities) dedicated in a joint service or space charter agreement would not. The rule allows flexibility to make changes for tariff matters or routine operational and administrative matters having no anticompetitive effect.

The rule does not state how the Commission will treat an agreement that is not sufficiently specific, complete and definite. In most cases, such deficiencies could probably be corrected through informal discussions between the Commission's staff and the parties. An agreement which is severely deficient, however, may be rejected, investigated or subject to a formal request for additional information or to challenge in the court under section 11(h) of the Act.

III. Conclusion

This rule is being published as an interim rule, pursuant to section 17(b) of the Act, with opportunity for comment. It will become effective on publication and will serve as an interim rule until such time as a final rule supersedes it. All interested persons have been provided 30 days to comment on the interim rule. This interim rule and all comments filed within the 30-day period will be used as the basis for a final rule pursuant to the requirements of the Administrative Procedure Act (5 U.S.C. 553).

The Chairman of the Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that these rules will not have a significant economic impact on a substantial number of small entities, within the meaning of that Act.

OMB clearance for the interim rules in 46 CFR Part 572 has been granted under OMB Number 3072–0045. These interim amendments will also be submitted, and comments on the information collection aspects of the amendments may be made at the time the interim rules are formally submitted to OMB as Final Rules.

List of Subjects in 46 CFR Part 572

Antitrust, Contracts, Maritime carriers.

PART 572—[AMENDED]

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553) and sections 5, 6, 7, 10 and 17 of the Shipping Act of 1984 (46 U.S.C. app. 1704, 1705, 1706, 1709, 1716), the Federal Maritime Commission hereby amends Title 46, Code of Federal Regulations, Part 572, Subchapter D as follows:

1. In Subpart A, § 572.103, add a new paragraph (g) to read as follows:

§ 572.103 Policies.

* * * * *

(g) An agreement filed under the Shipping Act of 1984 must be clear and definite in its terms, must embody the complete understanding of the parties, and must set forth the specific authorities and conditions under which the parties to the agreement will conduct their present operations and regulate the relationships among the agreement members.

2. In Subpart D, add a new § 572.406 to read as follows:

§ 572.406 Clear and definite agreements.

(a) Any agreement required to be filed by the Act and the rules of this part shall be the complete agreement among the parties and shall specify in detail the substance of the understanding of the parties.

(b) Except as provided in paragraph (c) of this section, open-ended or vague agreement clauses which contemplate a further agreement or give the parties authority to discuss and/or negotiate a further agreement, the terms of which are not fully set forth in the enabling agreement, will be permitted only if the enabling agreement indicates that any such further agreement cannot go into effect unless filed and effective under the Act;

(c) Further specific agreements or understandings which are established pursuant to express enabling authority in an agreement are considered interstitial and are permitted without further filing under section 5 of the Act only when the further agreement concerns: (1) Routine operational or administrative matters which will have no anticompetitive effect; or (2) establishment of tariff rates, rules, and regulations which are routine and ordinary.

By the Commission.

Francis C. Hurney,

Secretary.

[FR Doc. 84-24457 Filed 9-14-84; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 90, and 94

[PR Docket No. 83-991; FCC 84-414]

Elimination of Outdated or Unnecessary Rules in the Private Land Mobile Radio Services and the Private Operational-Fixed Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Report and Order deleting various rules for the Private Land Mobile Radio Services (Part 90) and the Private Operational-Fixed Microwave Service (Part 94) which are outdated or unnecessary to the efficient administration of the subject services. This action is part of the Commission's ongoing Regulatory Review Program, which seeks to remove those rules which may no longer be necessary.

EFFECTIVE DATE: October 18, 1984.

FOR FURTHER INFORMATION CONTACT: Harold Salters, Private Radio Bureau (202) 632-7597.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 1

Practice and procedure.

47 CFR Part 90

Private land mobile radio services, Radio.

47 CFR Part 94

Radio.

Report and Order

In the matter of amendment of Parts 1, 90 and 94 of the Commission's Rules to eliminate outdated and unnecessary rules; PR Docket No. 83-991.

Adopted: September 5, 1984.
Released: September 11, 1984.

By the Commission.

Introduction and Background

1. On September 9, 1983, the Commission adopted a *Notice of Proposed Rule Making*, pursuant to its Regulatory Review Program, concerning the elimination of those provisions of the Commission's Rules governing the Private Land Mobile Radio Services and the Private Operational-Fixed Microwave Service which were outdated or no longer necessary for the effective regulation of those services.[1] Among other things, the *Notice* proposed the elimination of various notification and filing requirements; the deletion of the frequency set-aside for itinerant operations in the Special Industrial Radio Service and the Business Radio Service; the elimination of certain technical requirements on control stations transmitting on mobile service frequencies; and the consolidation of various rule sections governing emergency communications.

2. Six sets of comments were filed in response to the *Notice* in this proceeding. Commenters were the Association of American Railroads (AAR), the Central Committee on Telecommunications of the American Petroleum Institute (API), Forest Industries Telecommunications (FIT), Motorola, Inc. (Motorola), the National Association of Business and Educational Radio, Inc. (NABER), and the Special Industrial Radio Service Association, Inc. (SIRSA). No reply comments were filed.

Discussion

3. All commenters supported our efforts to eliminate unnecessary restrictions from the Rules codified in 47 CFR Parts 1, 90 and 94 governing the Private Land Mobile Radio Services and the Private Operational-Fixed Microwave Service. Several of the proposals contained in our *Notice* elicited support from the commenting parties; other proposals elicited no comments. We are adopting without further discussion several of the *Notice's* noncontroversial proposals, including: deletion of the rule regarding shared use of broadcast antenna structures (§ 1.915); deletion of the rule regarding rented communications equipment (§ 1.956); deletion of references to private radio applications filed prior to December 12, 1960 (§ 1.962); deletion of the provision permitting applicants participating in an area-wide medical communications plan to file the plan with their applications (§ 90.35); revision of the rule regarding license terms (§ 90.149); deletion of the rule requiring notification of the use of special identifiers in the Public Safety and Special Emergency Radio Services (§ 90.425); deletion of the filing requirement regarding tower maintenance agreements (§ 90.441); assigning the Radiolocation Service a new designator (§ 90.555); deletion of a reference to a non-existent rule (§ 94.31); deletion of the notification requirement regarding discontinued microwave stations (§ 94.53); deletion of the rule requiring notification of the commencement or discontinuance of

[1] *Notice of Proposed Rule Making* (FCC 83-397), released September 22, 1983, 48 FR 43355 (September 23, 1983).

microwave station operation (§ 94.55); and correction of a mis-specified frequency pair (§ 94.90).

4. In our *Notice*, we also proposed the deletion of technical requirements for control stations operating on frequencies in the 450–470 MHz band located within 75 miles of the center of specified urban areas. No comments opposed this proposal. In support, Forest Industries Telecommunications (FIT) stated: "FIT agrees that it is enough that control stations are licensed on a secondary, non-interference basis to mobile service communications." We agree that the retention of these technical restrictions serves no useful purpose and, in addition to removing these technical requirements with respect to control stations in the 450–470 MHz band, we are also adopting the proposed conforming amendments to delete these restrictions on control stations operating in the 800 HMz band.[2]

5. In the *Notice*, we proposed eliminating and/or revising five rule sections in Parts 90 and 94 concerning emergency communications in order to consolidate similar rule provisions and eliminate eight notification requirements. These rules require licensees to notify the Commission and the Engineer in Charge of the Radio District in which the station is located when the licensee's station is used for emergency communications and when such emergency use is terminated. Several commenters supported our proposal; none opposed it. Motorola stated:

> Motorola supports the proposal to eliminate the notification requirement as to the beginning and termination of emergency communications. Since the rules in question * * * were enacted, experience has not shown a need for the notification requirements present in the rules; that is, the great majority of licensees have demonstrated that they can suspend normal operations in the event of an emergency, provide emergency communications, and properly return to their normal authorized communications. The administrative burdens on both licensees and on the Commission related to the notice requirements are not justified.
>
> Similarly, Motorola supports the proposed revisions to § 90.411 * * *. The present rule limits civil defense communications to those which a particular licensee would be eligible to provide under its normal criteria for eligibility. This limitation appears to be either superfluous (since the licensee is already permitted to provide such communications) or counterproductive (defeating the very purpose of the rule, to permit civil defense communications which a licensee might not normally be permitted to provide). There is no reason to anticipate that this added flexibility would result in improper communications by licensees. At any rate, the Commission will, under proposed Section 90.411, have the authority to order the discontinuance of such special use.

We agree, and accordingly adopt revised rules governing emergency communications in the Private Land Mobile Radio Services and the Private Operational-Fixed Microwave Service.[3]

6. The commenters identified only two areas of disagreement with our proposals: itinerant frequency set-asides in the Business and Special Industrial Radio Services and deletion of the prohibition contained in Part 94 against the transmission of program material to cable television systems. Additionally, one commenter proposed additional rules for simplification or elimination which were not contained in the *Notice*.

Itinerant Frequencies

7. In the *Notice*, we proposed to eliminate the last remaining distinctions in the rules between frequencies for permanent area use and frequencies for itinerant operations by making all frequencies in the Business and Special Industrial Radio Services available for operation on a permanent basis. Temporary or wide-area use was proposed to be permitted upon a showing of need. NABER, in its comments, requested clarification of our proposed rule to redesignate the itinerant frequencies for "general" rather than "permanent" use. If such a clarification was not made, NABER indicated that it opposed our proposal because the frequency coordinator "may not be able to confirm the accuracy and quality of the licensee's frequency selection if temporary or wide-area systems were randomly interspersed among the frequencies set aside for permanent area use." Motorola offered similar concerns about this aspect of the *Notice*. SIRSA strongly opposed our proposal, stating:

> Allowing "itinerant" operation on any frequency allocated to the Special Industrial Radio Service, based on a "showing of need" would be tantamount to eliminating frequency coordination in the Special Industrial Radio Service since "itinerant" users could "show up" on any given channel without prior frequency coordination. [Footnote omitted]. Itinerant operations could destroy the value of the Special Industrial Radio Service for more than 45,000 "permanent" use licensees; and it is for this reason, we respectfully submit, that the Commission designated frequencies for "itinerant" users. Contrary to the suggestion made by the Commission in its Notice that continued designation of these frequencies for "itinerant" operations appears to be unnecessary for spectrum management purposes, it is absolutely necessary for spectrum management purposes that the "itinerant" classification remain as presently found in the rules.

While noting that some 1,600 users almost 94,000 mobile transmitters employ itinerant frequencies in the Special Industrial Radio Service, SIRSA went on to conclude:

> Continuing to designate a few channels for "itinerant" use will assure a "home" for users having short term communication requirements over a wide area without causing destructive interference to licensees having more permanent requirements. Adoption of the proposal to amend 690.73 could result in chaotic conditions on any frequency in the Special Industrial Radio Service instead of a limited number of instances of interference that only lasts for a short duration on four assignments where all users realize that interference may be experienced from time to time as users move into and out of a particular geographic area.

8. We are persuaded by the arguments advanced by SIRSA (in which API concurred), along with the reservations expressed by NABER and Motorola, that the public interest is best served by retaining the current rules. We therefore decline to adopt the proposed rules in this matter.

Additional Rule Sections

9. The AAR suggested in its comments that we consider revising or eliminating rule §§ 90.443, 90.445, 90.447 and 94.113 concerning station records; and §§ 90.215 and 94.85 concerning transmitter measurements. In support of its suggestion, AAR states:

> The Commission's regulartory objective would be better served by eliminating the specific "how to do" requirements contained in these rules and relying on the responsibility imposed on all licensees to assure that their radio facilities are operated in accordance with the Commission's rules and the terms and conditions of their licenses.

These comments will be taken under advisement and reviewed along with other comments received in response to our *Notice* in General Docket 84–361[4] regarding rules that will be reviewed pursuant to the Regulatory Flexibility Act of 1980.

Transmission of Program Material to Cable Television Systems

10. In the *Notice*, we proposed to delete § 94.25(h) of our Rules governing the Private Operational-Fixed Microwave Service (POFS). This rule

[2] *See* Appendix, Part 90, paragraphs 4, 7 and 19.

[3] *See* Appendix, Part 90, paragraphs 8–11; Part 94, paragraph 1.

[4] *List of Rules to be Reviewed Pursuant to Section 610 of the Regulatory Flexibility Act During 1983–84*, FCC 84–135, released April 12, 1984. 49 FR 17045 (April 23, 1984).

prohibits the acceptance of applications for authorizations to construct POFS systems for the transmission of program material to cable television systems. In support of our proposal, we noted that the Commission had specifically permitted such service to be provided in the microwave frequency bands above 21,200 MHz.[5]

11. FIT and AAR commented in opposition to our proposal. They believe the prohibition on transmission to cable television systems is still applicable, and, in any case, should not have been proposed to be deleted in the context of a "non-controversial" regulatory review rule making proceeding. FIT presented its argument, stating:

> The substance of § 94.25(h) was adopted in the mid 1960s in Docket 15586 as part of a series of policy decisions regarding the requirements of the cable television industry for microwave relay facilities. In that Docket, the Commission established a new radio service for the cable television industry, the [Community Antenna Relay Service], and also decided to discontinue authorizing cable TV microwave relay systems in the Business Radio Service and later in the Private Operational-Fixed Microwave Service. [Citations omitted]. These decisions are incorporated in Paragraph (h) of § 94.25 and in § 94.9(b)(3). While the Commission, in Docket 19671, eliminated some restrictions against the transmission of video program material by certain private microwave stations, its decision in Docket 19671 was not intended to reopen the Private Operational-Fixed Microwave Service to the cable industry. Therefore, Paragraph (h) should not be eliminated, certainly not in the context of this proceeding which deals only with noncontroversial deletions or revision of clearly outdated or unnecessary rules.

AAR commented in similar fashion to FIT.

12. While FIT accurately describes the origin of rule § 94.25(h), it has misconstrued the Commission's intention in adopting its *Memorandum Opinion and Order* in Docket 19671, *supra*. In that document, which was effective August 1, 1983, we amended § 94.9 governing permissibility of communications to read as follows:

* * * * *

(b) The radio facilities shall not be used for any of the following:

* * * * *

(2) Transmission of program material for use in connection with broadcasting, except that:

(i) The facilities may be used to transmit program material from one location to another, provided that the operational-fixed frequencies do not serve as the final link in the chain of distribution of the program material to *broadcast stations*.

* * * * *

(3) To provide the final link in the chain of transmission of program material to cable television systems, multipoint distribution systems, or master antenna TV systems, *except in the frequency bands above 21,200 MHz*.

[Emphasis added.]

13. Clearly, the rules adopted in Docket 19671 permit the transmission of program material to cable television systems so long as the OFS frequencies above 21.2 GHz are employed. Since the existing provision of § 94.25(h) prohibiting the acceptance of applications to construct OFS stations for transmission of program material to cable television systems is in contradiction to the rules the Commission promulgated in Docket 19671, we are amending it to specify that the prohibition applies only to authorizations for transmission facilities operating in the frequency bands below 21.2 GHz.

Miscellaneous Matters

14. We are taking this opportunity to make several minor editorial changes, such as correcting typographical errors and mis-designated references, and clarifying some rule sections in Parts 90 and 94. With respect to these amendments, which are found in the attached Appendix, we find that good cause exists for dispensing with the notice and comment procedures of the Adminstrative Procedure Act, 5 U.S.C. 553. As these changes involve minor, noncontroversial amendments, public notice and comment is unnecessary. The following subparagraphs set out those editorial changes which did not appear in the *Notice* in this proceeding:

(a) *Section 90.75:* Corrections are made to update references to rule sections whose numbers were changed during our Part 90 consolidation of 1978; to correct a reference to another paragraph in that section; and to correct a reference to Subpart Q, which governs developmental operations.

(b) *Sections 90.360 and 90.611:* Paragraph (d) of each section is clarified to indicate that applications which are dismissed are not always physically returned to the applicant; paragraph (e) of each section is clarified to conform it to § 90.141 governing resubmitted applications for facilities above 470 MHz.

(c) *Sections 90.364, 90.607, 90.627 and 90.631(a):* These rule sections are clarified to indicate that, for purposes of trunked systems loading only, control stations are counted along with vehicular and portable mobile units.[6]

(d) *Section 90.631(b):* This provision is clarified to remove the reference to "waiting lists." For Subpart S frequencies it is not the existence of a waiting list that triggers the "takeback" provision, but rather the fact that all trunked channels in the system's geographic area are assigned.

(e) *Section 90.555:* Typographical errors in the Table at paragraph (b) are corrected.

(f) *Section 90.637:* A typographical error is corrected.

(g) *17 rule sections in Part 90:* In each of 17 rule sections, a reference to Subpart P is corrected to specify Subpart Q, which governs developmental operations.

(h) *Section 94.15:* A typographical error is corrected.

(i) *Section 94.63:* This section is revised to add references to multiple address radio systems which were inadvertently omitted when we adopted rules authorizing these systems.

(j) *Section 94.65:* This section is revised in order to bring it into conformance with the rules we adopted in Docket 19671, *supra*, and in the *Report and Order* in Gen. Docket 80–112, 48 FR 33873 (July 26, 1983).

(k) *Sections 94.67 and 94.71:* These sections are revised in order to bring them into conformance with the rules we adopted in Docket 19671, *supra*, that permit digital transmissions. Hence digital transmission standards are added for frequency tolerance and emission and bandwidth limitations.

Conclusion

15. In summary, the Commission is adopting all material aspects of our *Notice* in this proceeding except that we decline to change the frequency set-aside for itinerant operations in the Business and Special Industrial Radio Services. In adopting these rule amendments, we are eliminating thirteen distinct filing and/or notification requirements to which licensees and applicants were formerly subject, as well as eliminating all technical requirements on control stations operating on a secondary basis and consolidating and simplifying the rules governing emergency communications. Additional amendments of an editorial nature are made to Parts 90 and 94.

16. In the *Notice* adopted in this proceeding, the Commission certified

[5] *Memorandum Opinion and Order*, Docket 19671 (FCC 83–245), released June 23, 1983, 48 FR 32578 (July 18, 1983); *Memorandum Opinion and Order* dismissing pet. recon., Docket 19671 (FCC 84–234), released June 5, 1984. The petition for reconsideration filed in this proceeding did not address the issue of transmission to cable television systems.

[6] *See Memorandum Opinion and Order*, PR Docket 79–191 *et al.*, FCC 83–474, released November 1, 1983, 48 FR 51917 (November 15, 1983) at paragraph 11.

that the rule changes proposed would not have a significant economic impact on a substantial number of small entities. Accordingly, the Commission concluded that Sections 603 and 604 of the Regulatory Flexibility Act do not apply to this proceeding. Therefore, there is no requirement for a final regulatory flexibility analysis of the rule changes now being adopted.

17. Accordingly, it is ordered, that effective October 18, 1984, Parts 1, 90 and 94 of the Commission's Rules, 47 CFR Parts 1, 90 and 94, are amended as shown in the attached Appendix. Authority for this action is found in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303.

18. It is further ordered, that this proceeding is terminated.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 1, 90 and 94 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 1—PRACTICE AND PROCEDURE

Subpart F—Private Radio Services Applications and Proceedings

§ 1.915 [Removed]

1. Section 1.915 is removed in its entirety.

§ 1.956 [Removed]

2. Section 1.956 is removed in its entirety.

3. Section 1.962 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1.962 Public notice of acceptance for filing; petitions to deny applications of specified categories.

(a) Except as qualified in paragraph (b) of this section, the provisions of this section shall apply to all applications for authorizations, and substantial amendments thereof, for the following categories of stations and services:

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

§ 90.35 [Amended]

1. Section 90.35 is amended by removing and reserving paragraph (b).

2. In § 90.75, corrections are made by revising paragraph (c)(39)(x), paragraph (d)(4) and paragraph (e)(2). As corrected, the section reads as follows:

* * * * *

§ 90.75 Business Radio Service.

(c) * * *

(39) * * *

(x) Operational fixed stations authorized under this paragraph are exempt from the requirements of §§ 90.137(b), 90.429(d), 90.425 and 90.433.

* * * * *

(d) * * *

(4) Low-power mobile stations of 100 mW or less output power may be assigned any frequency separated by 12.5 kHz from a regularly assigned frequency in the bands 460.650–460.875 MHz and 465.650–465.875 MHz listed in paragraph (b) of this section, for one-way, non-voice biomedical telemetry operations in hospitals, or in medical or convalescent centers.

(e) * * *

(2) Frequencies in the ranges 30.56–30.57 MHz, 35.00–35.01 MHz, 35.99–36.00 MHz and 37.00–37.01 MHz are available for assignment to applicants in this service subject to the provisions of Subpart Q.

* * * * *

3. In § 90.149, paragraph (a) is amended as set forth below and paragraph (b) is corrected by changing the phrase "Subpart P" to read "Subpart Q".

§ 90.149 License term.

(a) Licenses for stations authorized under this part will be issued for a term not to exceed five years from the date of the original issuance, modification or renewal.

* * * * *

4. In § 90.249, paragraph (a)(2) is revised as set forth below to delete the reference to paragraph (b) and paragraph (b) is removed and marked [Reserved].

§ 90.249 Control stations.

* * * * *

(a) * * *

(2) A control station associated with mobile relay station(s) may, at the option of the applicant, be assigned the frequency of the associated mobile station. In the Railroad Radio Service such a control station may be assigned any mobile service frequency available for assignment to mobile stations in that service. Such operation is on a secondary basis to use of the frequency for regular mobile service communications.

* * * * *

(b) [Reserved]

* * * * *

5. In § 90.360, paragraphs (d) and (e) are revised to read as follows:

§ 90.360 Processing of applications.

* * * * *

(d) An application which is dismissed will lose its place in the processing line.

(e) If an application is returned for correction and resubmitted and received by the Commission within 30 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 30 days it will lose its place in the processing line.

6. Section 90.364, is amended by revising paragraph (b)(2) and adding new paragraph (b)(3) to read as follows:

§ 90.364 Limitation on the number of frequency pairs assignable for trunked systems and on the number of trunked systems.

* * * * *

(b) * * *

(2) The licensee's existing trunked system(s) authorized on or before October 16, 1982 is loaded to at least 80% of its authorized capacity of vehicular and portable mobile units and control stations.

(3) The licensee's existing trunked system(s) authorized after October 16, 1982 is loaded to at least 80 vehicular and portable mobile units and control stations per channel.

§ 90.376 [Amended]

7. In § 90.376, paragraphs (a)(2), (a)(3) and (a)(4) are removed. Paragraph (a)(1) is redesignated paragraph (b).

8. Section 90.407 is revised to read as follows:

§ 90.407 Emergency communications.

The licensee of any station authorized under this part may, during a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake or similar disaster, utilize such station for emergency communications in a manner other than that specified in the station authorization or in the rules and regulations governing the operation of such stations. The Commission may at any time order the discontinuance of such special use of the authorized facilities.

§ 90.409 [Removed]

9. Section 90.409 is removed in its entirety.

10. Section 90.411 is revised to read as follows:

§ 90.411 Civil defense communications.

The licensee of any station authorized under this part may, on a voluntary basis, transmit communications

necessary for the implementation of civil defense activities assigned such station by local civil defense authorities during an actual or simulated emergency, including drills and tests. The Commission may at any time order the discontinuance of such special use of the authorized facilities.

§ 90.413 [Removed]

11. Section 90.413 is removed in its entirety.

12. Section 90.425 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 90.425 Station identification.

* * * * *

(a) * * *

(4) * * *

(i) In the Public Safety and Special Emergency Radio Services, mobile units licensed to a governmental entity and which operate on frequencies above 30 MHz may use an indentifier which contains, at a minimum, the name of the licensee if the licensee maintains at the station a list of the special identifier(s) to be used by the mobile units.

* * * * *

13. Section 90.441 is revised to read as follows:

§ 90.441 Inspection and maintenance of tower marking and associated control equipment.

* * * * *

(b) Licensees operating stations licensed under this part which share a tower used for antenna and/or antenna supporting purposes with other licensees under this chapter may designate in writing one licensee or a nonlicensed agent to be responsible for maintenance and inspection of the tower and maintenance of the inspection log. In such cases, a copy of the agreement must be kept in each participating licensee's station records.

14. Section 90.555 is amended as follows:

A. In paragraph (a), revise the entries under the heading "Industrial Services", and add a new heading "Radiolocation" and entry just after the entries for Industrial Services to read as set forth below.

B. In the table to paragraph (b), redesignate all references to "IR", as "RS", and also, under Megahertz, revise the entries "39.44–39.50 to read as set forth below:

§ 90.555 Combined frequency listing.

(a) * * *

Industrial Services

IB—Business.
IF—Forest products.
IM—Motion picture.
IP—Petroleum.
IS—Special industrial.
IT—Telephone maintenance.
IW—Power.
IX—Manufacturers.
IY—Relay press.

Radiolocation Service

RS—Radiolocation.

Land Transportation Services

* * * * *

(b) * * *

Frequency	Services	Special limitations
*	* * * *	
39.44	PP	
39.46	PP	Intersystems operation.
39.48	PP	
39.50	PL, PP	
*	* * * *	

15. In § 90.607, paragraph (c)(2) is revised to read as follows:

§ 90.607 Supplemental information to be furnished by applicants for facilities under this subpart.

* * * * *

(c) * * *

(2) Specify the number of vehicular and portable mobile units and control stations to be placed in operation within the term of the license.

* * * * *

16. In § 90.611, paragraphs (d) and (e) are revised to read as follows:

§ 90.611 Processing of applications.

* * * * *

(d) An application which is dismissed will lose its place in the processing line.

(e) If an application is returned for correction and resubmitted and received by the Commission within 30 days from the date on which it was returned to the applicant, it will retain its place in the processing line. If it is not received within 30 days it will lose its place in the processing line.

17. In § 90.627, paragraph (b)(2) is revised to read as follows:

§ 90.627 Limitation on the number of frequency pairs that may be assignable for trunked systems and on the number of trunked systems.

* * * * *

(b) * * *

(2) The licensee's existing trunked system is loaded to at least 80 vehicular and portable mobile units and control stations per channel.

18. In § 90.631, paragraphs (a) and (b) are revised to read as follows:

§ 90.631 Trunked systems loading requirements.

(a) Trunked systems will be authorized on the basis of a loading criterion of 100 mobile stations per channel. For purposes of determining compliance with trunked system loading requirements under this subpart, the term "mobile station" includes vehicular and portable mobile units and control stations.

(b) Each applicant for a trunked system shall certify that a minimum of 60 mobiles for each channel authorized will be placed in operation within three years of initial license grant, and that a minimum of 80 mobiles for each channel authorized will be placed in operation within five years of initial license grant. If at the end of three years or five years a trunked system is not loaded to the prescribed levels and all trunked channels are assigned in the system's geographic area, authorization for channels not loaded to 100 mobile stations cancels automatically. All licenses are subject to this condition.

* * * * *

§ 90.637 [Amended]

19. In § 90.637, paragraphs (a)(2), (a)(3) and (a)(4) are removed. Paragraph (a)(1) is redesignated paragraph (b). In new paragraph (b), the last word "communication" is corrected to read "communications".

20. In each of the following rule sections, a correction is made by revising the phrase "Subpart P" to read "Subpart Q".

Sections

90.19(f)(4)
90.23(d)(2)
90.25(d)(4)
90.53(c)(4)
90.63(a)(2)
90.67(e)(2)
90.69(e)(2)
90.71(e)(2)
90.73(f)(2)
90.79(d)(18)
90.79(f)(2)
90.81(f)(2)
90.89(d)(3)
90.91(d)(5)
90.93(c)(9)
90.95(d)(14)
90.95(e)(3)

PART 94—PRIVATE OPERATIONAL-FIXED MICROWAVE SERVICE

1. In § 94.11, paragraph (b) is revised to read as follows:

§ 94.11 Points of communication.

* * * * *

(b) *Emergency communications.* During a period of emergency in which the normal communication facilities are disrupted as a result of hurricane, flood, earthquake, or similar disaster, stations may be used for emergency

communications unrelated to the licensee's activities. The Commission may at any time order discontinuance of such special use of the authorized facilities.

§ 94.15 [Corrected]

2. In § 94.15, paragraph (a) is amended by changing the word "as" in the first sentence to "are".

3. In § 94.25, paragraph (b) is revised and paragraph (h) is revised as set forth below:

§ 94.25 Filing of applications.

* * * * *

(b) Every application for a radio station authorization and all correspondence relating thereto, shall be filed with the Commission's offices in Gettysburg, Pennsylvania and shall be addressed to: Federal Communications Commission, Gettysburg, Pennsylvania 17325.

* * * * *

(h) Applications for authorizations to construct microwave operational-fixed radio stations for transmission of program material to cable television systems will not be accepted, except in the frequency bands above 21,200 MHz.

* * * * *

§ 94.31 [Amended]

4. In § 94.31, paragraph (g) is removed and marked [Reserved].

5. Section 94.53 is revised to read as follows:

§ 94.53 Discontinuance of station operation.

In case of permanent discontinuance of a station licensed under this part, the licensee shall forward the station license to the Federal Communications Commission, Gettysburg, Pennsylvania 17325, for cancellation. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.

§ 94.55 [Removed]

6. Section 94.55 is removed in its entirety.

7. Section 94.63 is amended by revising paragraph (b) introductory text to read as follows:

§ 94.63 Interference protection criteria for operational-fixed stations.

* * * * *

(b) The interference protection criteria for operational-fixed stations, other than those licensed on frequencies set out in §§ 94.65(a)(1), 94.90 and 94.91 are as follows:

* * * * *

8. Section 94.65 is amended by revising paragraph (f) and footnotes 1 and 2 to paragraph (f) to read as follows:

§ 94.65 Frequencies.

* * * * *

(f) *2500–2690 MHz:* The channels 2650–2656 MHz, 2662–2668 MHz and 2674–2680 MHz, and the corresponding response frequencies 2686.9375 MHz, 2687.9375 MHz, and 2688.9375 MHz may be assigned for operational-fixed stations. Such assignments are subject to the condition that all operational-fixed stations must comply with the technical standards applicable to stations in the Instructional Television Fixed Service (ITFS) contained in Subpart I of Part 74 of this chapter.[1] Operational-fixed stations authorized in this band as of July 16, 1971 which do not comply with the above provisions may continue to operate at their presently assigned frequencies. Requests for subsequent license renewals or modifications for existing licenses will be considered; however, expansion of systems comprised of such stations will not be permitted.

2650–2656	2686.9375 [2]
2662–2668	2687.9375 [2]
2674–2680	2688.9375 [2]

* * * * *

9. Section 94.67 is amended by revising footnote 2 to the frequency tolerance table to read as follows:

§ 94.67 Frequency tolerance.

* * * * *

[2] In accordance with the technical standards contained in Subpart I, Part 74 of this chapter when A5 emission is to be employed. Otherwise, the frequency tolerance shall be 0.0025%

* * * * *

10. Section 94.71 is amended by revising footnote 3 to the table in paragraph (b) to read as follows:

§ 94.71 Emission and bandwidth limitations.

* * * * *

(b) * * *

[3] Assignments for applications proposing to employ amplitude modulation (A5) for the transmission of a video signal will be made in accordance with the technical standards governing the Instructional Television Fixed Service contained in Subpart I, Part 74 of this chapter. For applications not proposing to employ a video signal, the standards contained in paragraph (c) below shall apply.

* * * * *

§ 94.90 [Amended]

11. Section 94.90 is amended by changing the reference in the introductory paragraph from "12,200/12,460" to "12,220/12,460".

[FR Doc. 84-24398 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

[1] Pursuant to § 94.69, however, stations licensed on the channels specified in this paragraph may employ any type of emission consistent with efficient use of the spectrum and good engineering practice, except that Type B, damped-wave emission will not be authorized.

[2] Response frequencies: when authorized, they may be paired respectively with the channels 2650–2656, 2662–2668 and 2674–2680 MHz and used in accordance with the technical standards prescribed for ITFS response stations in Part 74, Subpart I, of this chapter.

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47 CFR Part 73

[MM Docket No. 83-1022; RM-4576]

FM Broadcast Stations in Houghton and Hancock, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 242 to Houghton, Michigan, in response to a petition filed by Midwest Radio Consultants, Inc. The assignment could provide a second FM service to Houghton.

EFFECTIVE DATE: November 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: .

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Houghton and Hancock, Michigan); MM Docket No. 83–1022 RM–4576.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 48 FR 45433, published October 5, 1983, proposing the assignment of Class C Channel 242 to either Hancock or Houghton, Michigan, in response to a petition filed by Midwest Radio Consultants, Inc. ("petitioner"). The proposal would add a second FM service to either community. Petitioner filed comments supporting its original proposal to make a hyphenated assignment. However, petitioner states

that if the assignment can be made to only one community, the assignment should be made to Houghton because it is the county seat and the larger of the two communities. No other comments were received.

2. The Commission has determined that the public interest would be served by assigning Channel 242 to Houghton. An interest has been shown for its use and such an assignment could provide a second local service to that community. We found no reason to grant a hyphenated assignment. Both communities already have their own FM stations which demonstrates their separate identities. The channel can be assigned to Houghton consistent with the minimum distance separation requirements of § 73.207 of the Commission's Rules.[1] Canadian concurrence has been received.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(c)(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 ordered. That effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's rules, is amended as follows:

City	Channel No.
Houghton, MI	242, 249A

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

5. For further information concerning the above, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–24509 Filed 9–14–84; 8:45 am]

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47 CFR Part 73

[MM Docket No. 83–1141; RM–4497]

FM Broadcast Station in Saugatuck, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 224A to Saugatuck, Michigan, in response to petitions filed by David C. Schaberg. The assignment could provide a first FM broadcast service to Saugatuck.

EFFECTIVE DATE: November 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations (Saugatuck, Michigan); MM Docket No. 83–1141, RM–4497.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. In response to a petition filed by David C. Schaberg ("petitioner"), the Commission adopted a *Notice of Proposed Rule Making*, 48 FR 51658, published November 10, 1983, proposing the assignment of FM Channel 224A to Saugatuck, Michigan, as its first FM assignment. Petitioner filed comments indicating that it would file an application to construct and operate on Channel 224A, if assigned. Supporting comments were also filed by Robert A. Sherman. No opposing comments were received.

2. The proposed assignment of Channel 224A to Saugatuck can be made in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.[1] Canadian concurrence has been received.

3. The Commission has determined that the public interest would be served by assigning Channel 224A to Saugatuck, Michigan, since it could provide a first FM broadcast service to that community.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(i), 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 ordered, That effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the community listed below:

City	Channel No.
Saugatuck, MI	224A

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

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–24510 Filed 9–14–84; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 83–1142; RM–4503; RM–4674]

FM Broadcast Stations in Charlotte Amalie, VI, and Isabel Segunda, PR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 296A to Charlotte Amalie, Virgin Islands, as that community's fourth local assignment, at the request of John T. Galanses.

EFFECTIVE DATE: November 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Charlotte Amalie, Virgin Islands, and Isabel Segunda, Puerto Rico); MM Docket No. 83–1142, RM–4503, RM–4674.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 51661, published November 10, 1983, which sought comments on the request of John T. Galanses ("Galanses") to assign FM Channel 282 to Charlotte

---

[1] An assignment to either Houghton or Hancock would fail to provide two existing stations the 16 kilometer buffer zone now permitted to Class C stations with less than a 300 meter antenna height. However, this requirement applies to petitions filed after March 1, 1984. See BC Docket 80–90, 94 FCC 2d 152 (1983), recons. 49 FR 10460 published March 20, 1984.

[1] It should be noted that the assignment of 224A to Saugatuck, Michigan, does not provide the 16 kilometer buffer zone for WKJE–FM, Channel 225, Cadillac, Michigan. See Docket 80–90, 49 FR 10260, published March 20, 1984. This requirement applies to petitions filed after March 1, 1984. David A. Schaberg's petition was received on June 6, 1983.

Amalie, Virgin Islands, as that community's fourth FM allocation. A petition filed by Reynald Charles d/b/a Third Angel Corporation, requesting assignment of the same channel at Charlotte Amalie, was accepted as comments in support of the request. Doroteo Laboy filed a petition for rule making looking toward the assignment of FM Channel 280A to Isabel Segunda, Puerto Rico, as that community's second local assignment. It was accepted as a counterproposal in this proceeding but later withdrawn.[1] Comments in opposition to the Charlotte Amalie proposal were filed by Thousand Islands Corporation ("Thousand Islands"), licensee of AM Station WVWI, Charlotte Amalie. Comments, counterproposal and reply comments were filed by Galanses.

2. Based on the Commission's action in May, 1983, increasing the antenna heights permitted by Class A stations in Puerto Rico and the Virgin Islands, Galanses filed comments and a counterproposal requesting that Channel 296A be assigned in lieu of Channel 282.[2] He further stated that should Third Angel Corporation wish to apply for a separate channel, Channel 285A could also be assigned at Charlotte Amalie. Galanses concluded by restating that he would apply for Channel 296A, if assigned.

3. In its opposition, Thousand Islands does not appear to oppose the assignment of an additional FM allocation at Charlotte Amalie *per se*, but rather calls into question the intention of Galanses to apply for the frequency. It bases this belief on the purported delay of Galanses in submitting an amended application for use of Channel 236 at Christiansted, Virgin Island, which was assigned at his request, and the fact that less than three months after Commission grant of the application, Galanses filed an application for transfer of control of the corporation holding the construction permit to the minority shareholder. As of the date of its pleading, Thousand Islands stated that the station was still unbuilt. Galanses responded by pointing out the Station WJKC, Channel 236 at Christiansted went on the air on October 29, 1983, and reaffirmed his intention to apply for and operate a station at Charlotte Amalie.[3] He attempts to verify this affirmation by detailing his actions concerning activation of FM channels which have been allocated to other localities at his request.

4. We do not find the allegations of Thousand Islands concerning Galanses' statement of intent appropriate for resolution at this stage. Galanses has provided the Commission with the necessary statement indicating his intention to promptly apply for use of the channel and provide service to the community of Charlotte Amalie. The good faith intentions of a prospective applicant are generally assumed in a rule making proceeding. Otherwise, the legitimacy of a petitioner's interest cannot be adequately settled without an evidentiary hearing. See *Fort Smith, Arkansas*, 47 FR 23189, published May 27, 1982, and *Northampton, Massachusetts*, 49 FR 4491, published February 7, 1984. However, Thousand Islands can properly raise allegations concerning the intentions of Galanses at the application stage.

5. Based on the above discussion, we find that the assignment of Channel 296A to Charlotte Amalie, as that community's fifth local allotment, to be in the public interest. We are not assigning an additional FM channel to Charlotte Amalie at this time as no timely expression of interest was received.[4] Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(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 ordered, That effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended to read as follows for the community listed below:

City	Channel No.
Charlotte Amalie, VI	226, 250, 266, 271, and 296A.

6. It is further ordered, that this proceeding is terminated.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-24511 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-1233; RM-4542]

FM Broadcast Station in Bloomfield, NM

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 283 to Bloomfield, New Mexico, as that community's first FM allocation, at the request of KBRY, Inc.

EFFECTIVE DATE: November 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b) Table of Assignments, FM Broadcast Stations (Bloomfield, New Mexico); MM Docket No. 83-1233, RM-4542.

Adopted: August 31, 1984.

Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it the *Notice of Proposed Rule Making*, 48 FR 53725, published November 29, 1983, proposing the assignment of Channel 283 to Bloomfield, New Mexico, as that community's first local FM allocation. The *Notice* was issued in response to a request filed by KBRY, Inc. ("petitioner"). Petitioner filed comments reiterating its intention to apply for the channel, if assigned. No other comments have been received. Channel 283 can be

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[1] Borinquen Broadcasting Company, licensee of Station WVJP-FM, Caguas, Puerto Rico, filed comments in opposition which will not be considered herein as they relate solely to the Isabel Segunda proposal.

[2] See *Report and Order*, BC Docket 81-421, 48 FR 24898, published June 3, 1983.

[3] Thousand Islands filed a response to the reply comments of Galanses accompanied by a request for its acceptance. We will not consider the response. There is no provision in the rules for the customary filing of responses to reply comments and the information contained therein is not of decisional significance. See, § 1.415(d) of the Commission's Rules.

[4] The record in this proceeding closed on January 11, 1984. On July 23, 1984, Sterling Communications filed comments on behalf of Reynald Charles restating his interest in the assignment of Class B Channel 282 to Charlotte Amalie. However, there was no explanation given as to why the response was filed seven months late nor was it accompanied by a request for the consideration of such late-filed comments. Further, no mention is made as to whether Charles is seeking the assignment of a sixth channel at Charlotte Amalie, in addition to Channel 296A as proposed by Galanses, or whether Charles would accept a Class A channel in light of the Commission's action in BC Docket 81-421, as discussed in paragraph 2, *infra*. Therefore, we shall not accept the late-filed pleading of Reynald Charles. However, should he desire the allocation of a sixth FM channel, he may re-petition the Commission to assign either a Class B or a Class A channel.

assigned to Bloomfield in compliance with the Commission's minimum distance separation and other technical requirements.

2. In view of the fact that this assignment could provide Bloomfield with its first local FM service, we believe the assignment to be in the public interest. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(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 ordered That effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the community listed below, to read as follows:

City	Channel No.
Bloomfield, NM	283

3. It is further ordered, that this proceeding is terminated.

4. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–24512 Filed 9–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–1344; RM–4643]

FM Broadcast Station in Manteo, NC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 252A to Manteo, North Carolina, as that community's second local FM service, in response to a petition filed by Bayliss Broadcasting Company.

EFFECTIVE DATE: November 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Manteo, North Carolina); MM Docket No. 83–1344, RM–4643.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 466, published January 4, 1984, proposing the assignment of Channel 252A to Manteo, North Carolina, as that community's second local FM service. The *Notice* was adopted in response to a petition filed by Bayliss Broadcasting Co. ("petitioner"). Supporting comments were filed by petitioner reiterating its intention to apply for the channel, if assigned. No comments in opposition to the proposal were received.

2. The Commission believes that the public interest would be served by the assignment of FM Channel 252A to Manteo, North Carolina, in order to provide a second FM service to the community. The assignment can be made in compliance with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i) 5(c)(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 ordered, that effective November 19, 1984, the FM Table of Assignments, § 73.202(b) of the Commission's Rules, is amended for the following city:

City	Channel No.
Manteo, NC	252A, 257A

4. It is further ordered, that this proceeding is terminated.

5. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84–24513 Filed 9–14–84; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 83–472; RM–4331]

TV Broadcast Station in Little Rock, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns UHF Television Channel 42 to Little Rock, Arkansas as its fifth commercial television channel, in response to a petition filed by Millard V. Oakley.

EFFECTIVE DATE: November 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Station (Little Rock, Arkansas); MM Docket 83–472, RM–4331.

Adopted: August 31, 1984.
Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making* 48 FR 26463, published June 8, 1983, proposing the assignment of UHF Television Channel 42 to Little Rock, Arkansas, as its fifth commercial television assignment, in response to a petition filed by Millard V. Oakley ("petitioner"). Supporting comments were filed by the petitioner in which he restated his intention to apply for Channel 42, if assigned to Little Rock. Comments in opposition to the proposal were filed by Little Rock Communications Associates ("LRCA") permittee of Station KLRT–TV (Channel 16) Little Rock, Arkansas. Petitioner did not respond.

2. LRCA in its comments argues that to add Channel 42 at Little Rock would be contrary to Commission policy, harmful to the development of service in the Little Rock area, and inefficient from a technical standpoint. In this regard it notes that the Commission in recent months has granted a construction permit for Channel 26 at Hot Springs, Arkansas, and Channel 39 at Pine Bluff, Arkansas, and there is also on file an application for Channel 25 at Pine Bluff. These communities are said to be in the Little Rock ADI and would provide

service to that area. LRCA claims that the proposed assignment is contrary to Commission policy of postponing consideration of requests for additional television assignments to cities with authorized but unused assignments until all existing allocations have been put to use, citing UHF channel assignments at *San Diego, California* 13 R.R. 2d 1553, 1556 (1968), *Baytown, Texas* 12 R.R. 2d 1581, 1583 (1968) and *Waukegan, Illinois* 15 R.R. 2d 1509, 1511 (1969). IRCA also contends that the Commission in the San Diego case denied a petition for an additional allocation because it determined the community was not suffering from a critical shortage of assignments, outlets or services, and that a more exact assessment of the community's needs could be made after all the assigned channels were in operation. In its opinion, the San Diego case is directly applicable to the Little Rock proposal. LRCA further claims that the assignment of Channel 42 to Little Rock would seriously threaten the economic viability of KRLT (Channel 16), Little Rock's only independent UHF station. As a final matter LRCA argues that spacing and interference limitations would make it relatively difficult and costly to transmit a usuable signal on Channel 42. For these reasons LRCA urges the Commission not to adopt the proposal.

3. After consideration of the proposal and comments filed in the proceeding, we have concluded that the requested assignment would be in the public interest. The petitioner has adequately demonstrated a need for a fifth commercial assignment at Little Rock. Although Little Rock receives service from nearby cities, these stations are obligated to their community of license and cannot be expected to serve Little Rock to the same extent as a local station. With respect to the concerns of LRCA that a Channel 42 assignment at Little Rock would be restricted in the choice of a transmitter site, it must be assumed that the petitioner was aware of this limitation when he expressed an interest in the channel. In the past we have not been persuaded to refuse to make an assignment because it limited the choice of site so long as it did not preclude being able to obtain a proper site from which the station could provide the requisite city coverage. It appears that the opposition's comments are concerned more with the competitive impact of another station in the Little Rock market. However, we have held that economic issues are not an obstacle in making an assignment, as they are more adequately resolved at the application stage. See *Sanger, Clovis, Visalia and Fresno, California*, 49 RR 2d 579 (1981) and *Beaverton, Michigan*, 44 RR 2d 55 (1978). The cases cited by LRCA concerning the prior use of unoccupied channels are outdated cases. Current Commission policy makes no such requirements. Rather additional channels will be assigned in order to accommodate other interests and avoid hearings. Here however, there are no other Little Rock channels available for petitioners to apply.

4. Accordingly, in view of the above, it is ordered, that effective November 19, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's Rules, is amended to include the community listed below, as follows:

City	Channel No.
Little Rock, AR	*2-, 4, 7-, 11, 16-, *36, and 42.

5. Authority for the adoption of the amendment herein contained Section 4(1), 5(c)(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.

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

7. For further information concerning the above, contact Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-24507 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-825; RM4480]

TV Broadcast Station in Orlando, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns UHF Television Channel 27 to Orlando, Florida, in response to a petition filed by Allen Sheets. The assignment could provide a fifth commercial television service to Orlando.

EFFECTIVE DATE: November 19, 1984.

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

FOR FURTHER INFORMATION CONTACT: Montrose H. Tyree, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations (Orlando, Florida); MM Docket 83–825, RM–4480.

Adopted: August 31, 1984.

Released: September 11, 1984.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making* 48 FR 37485, published August 18, 1983, proposing the assignment of UHF Television Channel 27 to Orlando, Florida, as its fifth commercial television service. The *Notice* was issued in response to a petition filed by Allen Sheets ("petitioner"). Supporting comments were filed by the petitioner restating his intention to apply for the channel, if assigned. Daytona Beach Television Associates (DBTA) filed comments in opposition to the proposal.[1] Petitioner did not respond.

2. DBTA comments that it is opposed to the assignment because a Channel 27 transmitter site located at the reference point for Orlando would be 5.11 miles short spaced to its proposed site for Channel 26 at Daytona Beach, instead of 4.6 miles as stated in the *Notice* DBTA submitted engineering data to substantiate its claim.[2]

3. After careful consideration of the proposal and comments presented in this proceeding, we have determined that Orlando will benefit from the requested assignment, since it would provide for a fifth commercial television service to the community. As stated in the *Notice* the transmitter site is restricted to 4.6 miles south of the city coordinates (see fn. 2) to avoid short-spacing to Station WMFE-TV, Channel * 24, Orlando, and to the Application for Channel 26 at Daytona Beach, Florida.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 202 (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 ordered, that effective November 19, 1984, the Television Table of Assignments, § 73.606(b) of the Commission's rules, is amended with respect to the following community:

[1] Daytona Beach Television Associates (DBTA) is an applicant for television Channel 26, Daytona Beach, Florida.

[2] DBTA's Engineering study utilized reference coordinates different from the National Atlas coordinates used by the Federal Communications Commission.

City	Channel No.
Orlando, FL	6-, 9, * 24-, 27, 35+, and 65.

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

6. For further information concerning this proceeding, contact Montrose H. Tyree, Mass Media Bureau (202) 634-6530.

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 84-24508 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 195

[Admt. 195.31; Docket No. PS-77]

Transportation of Hazardous Liquids by Pipeline; Isolated Corrosion Pitting

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This amendment revises the standard governing isolated corrosion pitting on hazardous liquid pipelines by replacing it with a standard similar to the one governing localized corrosion pitting on gas transmission lines. The current standard is too restrictive because it does not permit the use of technological advances in evaluating the strength of corroded pipe. This amendment will reduce costs to industry and consumers without reducing pipeline safety.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Copies of this amendment may be obtained from the Dockets Branch, Room 8426, Materials Transportation Bureau, U.S. Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Frank Robinson, (202) 426-2392.

SUPPLEMENTARY INFORMATION: By a letter dated May 21, 1982, The American Petroleum Institute (API), a national trade association involved in most areas of the petroleum industry, petitioned MTB to revise the Federal safety standard in § 195.416(g) governing isolated corrosion pitting. The API asked that the standard be revised to reflect the corrosion pitting criteria found in § 451.6.2(a)(7) of the American Society of Mechanical Engineers (ASME) Code B31.4, "Liquid Petroleum Transportation Piping Systems," (1979 Edition).

With regard to steel pipe that is required to be examined for external corrosion, § 195.416(g) currently provides:

> If isolated corrosion pitting is found, the operator shall repair or replace the pipe unless—
>
> (1) The diameter of the corrosion pits is less than the nominal wall thickness as measured at the surface of the pipe; and
>
> (2) The remaining wall thickness at the bottom of the pits is at least 70 percent of the nominal wall thickness.

This standard was derived from a notice of proposed rulemaking (33 FR 10213; July 17, 1968) which in § 180.416(g) proposed that pipe be replaced if corrosion pitting reduces the original wall thickness by 10 percent or more. The technical basis for the modified version of the rule finally adopted as quoted above was not explained in the final rule document (34 FR 15473; Oct. 4, 1969).

On the basis of research conducted by Battelle Columbus Laboratories ("Summary of Research to Determine the Strength of Corroded Areas in Line Pipe", J.F. Kiefner and A.R. Duffy, July 20, 1971), as reflected in the B31.4 Code. API asserts in its petition that § 195.416(g) is unduly stringent. The current rule causes pipe to be replaced or repaired when these remedial measures are not needed for safety.

The Battelle research developed and tested criteria, incorporating mathematical expression of length and depth of corroded areas, to predict the pressure strength of corroded pipe. For pit depths equal to 80 percent or more of nominal wall thickness, the criteria require repair or replacement of pipe. For pit depths less than 80 percent of nominal wall thickness, the criteria permit continued operation of pipe at its current maximum pressure if the measured aggregate length of the corroded area is equal to or less than a calculated value. The pipe may be operated at a calculated reduced pressure if the length is longer than the calculated value.

The underlying premise of these criteria is that the minimum stress level at which pipe will fail in corrosion pits is 100 percent of the pipe's specified minimum yield strength (SMYS). Since the maximum operating pressure permitted under Part 195 produces a maximum stress level of 72 percent of SMYS, the criteria provide a 1.4 (100/72) factor of safety. This factor is greater than the minimum 1.25 factor of safety provided under § 195.406(a)(3) by hydrostatic pressure testing. The 1.25 factor, which results from limiting maximum operating pressure to 80 percent of test pressure, is generally accepted as a sufficient measure of pipeline integrity.

MTB concurs with API's criticism of the current standard for accepting or rejecting isolated corrosion pitting because it has no apparent scientific foundation and does not emphasize pipe strength. The remaining pressure strength of pipe material in a corroded area is the most important consideration in determining whether the pipe can safely continue in use. Although evaluating that strength is a complex problem, the Battelle criteria have gained recognition as an acceptable method of evaluation. Not only are the criteria included in the B31.4 Code-1979, but they are also in the ASME B31.8 Code for gas pipelines and the ASME *Guide for Gas Transmission and Distribution Piping Systems—1982.*

In view of the safety provided by the Battelle criteria, their widespread acceptance by the industry, and the potential for cost savings, the MTB published a notice of proposed rulemaking (48 FR 46589, October 13, 1983) proposing to grant API's petition and amend § 195.416(g) to allow use of the Battelle criteria. Rather than including the criteria directly in § 195.416(g), the notice proposed the adoption of a performance standard because it would permit the use of future technological developments. Although the B31.4 Code provisions that API recommended are not performance standards, the MTB standard in 49 CFR 192.485(b) for localized corrosion pitting on gas transmission lines is written in performance terms. This Part 192 standard for pipelines comparable to interstate hazardous liquid pipelines and operated in similar environments has provided an acceptable level of safety without enforcement difficulties since its adoption in 1978 (36 FR 12302). MTB proposed in the notice therefore, that this standard, in a slightly modified form to fit the Part 195 regulatory context, be adopted for isolated corrosion pitting on hazardous liquid pipelines subject to Part 195 instead of the current § 195.416(g).

Eleven commenters responded to the notice in Docket PS-77. The American Petroleum Institute, the American Gas Association, the Interstate Natural Gas Association of America, as well as eight major pipeline operators. All of the commenters recommended adoption of the proposed standard.

One pipeline operator, while generally agreeing with the proposed rule to permit the use of the Battelle criteria for external corrosion pitting, recommended that § 195.418 also be revised to permit the use of the criteria for internal corrosion pitting. Although this recommendation goes beyond the scope of the notice, MTB believes the recommended rule change is unnecessary, because § 195.418 is written in performance terms that allow use of the Battelle criteria for evaluating internal corrosion effects where proper length and depth measurements can be made.

The notice of proposed rulemaking was presented to the Technical Hazardous Liquid Pipeline Safety Standards Committee on December 7, 1983. The committee found the proposed rule to be technically feasible, reasonable, and practicable.

Classification

The Regulatory Flexibility Act (94 Stat 1164, 5 U.S.C. 601) requires a review of certain rules proposed after January 1, 1981, for their effects on small businesses, organizations, and governmental bodies. I certify that the final rule will not have a significant economic impact on a substantial number of small entities because few, if any, interstate hazardous liquid pipelines are owned by small entities.

Since this proposed rule will have a positive effect on the economy of less than $100 million a year, will result in cost savings to consumers, industry, and governmental agencies, and no adverse effects are anticipated, the action is not "major" under Executive Order 12291. Also, it is not "significant" under Department of Transportation procedures (DOT Order 2100.5). Further, MTB has determined that this final rule does not require a full Regulatory Evaluation under those procedures. While the rule would provide definite cost savings for operators in many cases, the difference between the existing and revised requirements and the frequency at which savings would occur should result only in a minor cost savings impact on the hazardous liquid pipeline industry as a whole.

List of Subjects in 49 CFR Part 195

Pipeline safety, External corrosion, Isolated corrosion pitting.

PART 195—[AMENDED]

In view of the foregoing, MTB hereby revises § 195.416(g) to read as follows:

§ 195.416 External corrosion control.

* * * * *

(g) If localized corrosion pitting is found to exist to a degree where leakage might result, the pipe must be replaced or repaired, or the operating pressure must be reduced commensurate with the strength of the pipe based on the actual remaining wall thickness in the pits.

* * * * *

(49 U.S.C. 2002; 49 CFR 1.153 and Appendix A of Part 1)

Issued in Washington on September 12, 1984.

L.D. Santman,

Director, Materials Transportation Bureau.

[FR Doc. 84-24549 Filed 9-14-84; 8:45 am]

BILLING CODE 4910-60-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1011

Delegation of Authority to Chairman and Director, Office of Proceedings

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: On July 31, 1984, the Commission exercised its power under 49 U.S.C. 10305(a) to recall certain matters previously delegated to the Office of Proceedings' Review Board to Divisions of the Commission.

The Commission has decided to recall the authority to issue certificates and decisions authorizing abandonments or discontinuances when the proceeding is either (a) filed under 49 U.S.C. 10903 and not protested pursuant to 49 U.S.C. 10904(b); or (b) involves an application by Consolidated Rail Corporation (Conrail) under section 308 of the Regional Rail Reorganization Act of 1973. The Commission delegates the authority to issue these certificates and decisions to the Chairman of the Commission because applications filed under these provisions must be granted by the Commission.

Concurrently, the Chairman has delegated the authority to issue these certificates and decisions to the Director of the Office of Proceedings.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245, or Wayne A. Michel (202) 275-7657.

SUPPLEMENTARY INFORMATION:

Comments: Since this is a final action undertaken to revise internal organization matters, formal comments are unnecessary. 5 U.S.C. 553(b)(A).

Prior to August 1, 1984, the Commission's Review Board decided licensing, rates, and finance proceedings including abandonments and discontinuances. On August 12 and September 12, 1983, the Commission voted to abolish the Review Board and to recall its docket for handling by Divisions of the Commission. The effective date for that action was established as July 31, 1984. All Review Board actions, with a few exceptions discussed in 49 CFR Parts 1011, 1115, and 1160, *Removal of Delegated Authority From the Review Board* (not printed), served August 1, 1984, were to be handled by the Divisions.

We have now decided to delegate certain abandonment and discontinuance proceedings to the Chairman. Specifically, the Chairman shall handle abandonment and/or discontinuance proceedings that either are (1) filed under 49 U.S.C. 10903 and not protested pursuant to 49 U.S.C. 10904(b), or (2) filed by Conrail pursuant to section 308(c)(2) of the Regional Rail Reorganization Act of 1973 (3R Act) (45 U.S.C. 748). This decisional authority is being delegated because applications filed under these provisions must be granted by the Commission. The Interstate Commerce Act provision covering abandonment and/or discontinuance applications states:

> (b) If no protest is received within 30 days after the application is filed, the Commission shall find that the public convenience and necessity require or permit the abandonment or discontinuance. 49 U.S.C. 10904(b).

The 3R Act provision governing Conrail abandonment and/or discontinuance applications contains similar language.

> (2) . . . An application for abandonment that is filed by [Conrail] under this subsection for a line for which a notice of insufficient revenues was filed under paragraph (1) shall be granted by the Commission within 90 days after the date such application is filed unless within such 90 day period, an offer of financial assistance is made in accordance with subsection (d) of this section with respect to such line. 45 U.S.C. 748(c)(2).

Thus, if certain formal procedural requirements are met, the Commission must authorize the abandonment and/or discontinuance applications.

Under these circumstances, we find that these matters are ministerial and should be delegated to the Chairman. For the same reason, the Chairman has decided to delegate consideration of these cases to the Director of the Office of Proceedings.

These changes require minor revisions of several sections in 49 CFR Part 1011. New paragraphs are added to specifically list the additional duties of the Chairman and Director of the Office of Proceedings, respectively. Since the rule changes only affect internal Commission procedures, they are issued

in final form and public comment is not required. The revisions in the Appendix are adopted.

This action does not affect significantly the quality of the human environment or energy conservation.

List of Subjects in 49 CFR Part 1011

Administrative practice and procedure, authority delegations.

These final rules are issued pursuant to 5 U.S.C. 553 and 49 U.S.C. 10305.

Dated: September 10, 1984.

By the Commission: Chairman Taylor, Vice Chairman Andre, Commissioners Sterret and Gradison.

James H. Bayne,

Secretary.

Appendix

49 CFR Chapter X is amended as follows:

1. Section 1011.5 is amended by adding new paragraphs (a) (8) and (9) to read as follows:

§ 1011.5 Delegations to individual Commissioners.

(a) * * *

(8) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903 and the Commission must find, pursuant to 49 U.S.C. 10904(b), that the public convenience and necessity require or permit the abandonment or discontinuance.

(9) Issuance of certificates and decisions authorizing the Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

* * * * *

§ 1011.6 [Amended]

2. Section 1011.6 is amended by amending the first sentence in paragraph (e)(1) by revising the phrase "in paragraphs (f)(2) and (k) of this section" to read "in paragraphs (f)(2) and (k) of this section and paragraphs (8) and (9) of § 1011.5(a)".

3. Section 1011.7 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 1011.7 Delegation of authority by the Chairman of the Interstate Commerce Commission.

* * * * *

(i) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903, and the Commission must find, pursuant to 49 U.S.C. 10904(b) that the public convenience and necessity require or permit the abandonment or discontinuance, is delegated to the Director of the Office of Proceedings.

(j) Issuance of certificates and decisions authorizing the Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed is delegated to the Director of the Office of Proceedings.

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Proposed Rules

Federal Register
Vol. 49, No. 181
Monday, September 17, 1984

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.

GENERAL ACCOUNTING OFFICE

4 CFR Part 21

Bid Protest Regulations

AGENCY: General Accounting Office.

ACTION: Proposed rule.

SUMMARY: This proposed amendment to Part 21 of title 4, Code of Federal Regulations implements sections 3551–3556 of title 31, United States Code (as added by section 2741 of the Competition in Contracting Act of 1984 (Pub. L. 98–369)) and establishes regulations for the consideration of bid protests by the General Accounting Office.

The proposed regulations are designed to insure compliance by both the General Accounting Office and the Federal agencies with the statutory time limits for the issuance of bid protest decisions. The proposed regulations follow the statutorily mandated time limits for reports by federal agencies and General Accounting Office decisions and also provide for the withholding of awards or the suspension of performance of contracts once a protest is filed.

DATE: The GAO will consider comments received on or before October 17, 1984.

ADDRESS: Send comments to U.S. General Accounting Office, Office of General Counsel, 441 G Street, NW., Washington, D.C. 20548.

FOR FURTHER INFORMATION CONTACT: James W. Vickers, Senior Attorney, General Accounting Office, by telephone (202) 275–6181.

SUPPLEMENTARY INFORMATION: The Competition In Contracting Act of 1984, Pub. L. 98–369, (the Act) provides for a procurement protest system whereby interested parties may protest to the Comptroller General alleged violations of a procurement statute or regulation with respect to a procurement or proposed procurement by a federal agency.

The major changes or additions to the current General Accounting Office Bid Protest Procedures (4 CFR Part 21 (1984)) are discussed in the following section analysis.

Section 21.0 contains the definitions of "interested party" and "federal agency" from section 3551 of the Act in addition to definitions of "contracting agency" and "contracting activity." The definitions of "working days" and "adverse agency action" are the same as in the current procedures.

Section 21.1 includes the definition of "protest" in section 3551 of the Act and provides in accordance with section 3552 of the Act that GAO will not decide protests filed initially with the General Services Administration Board of Contract Appeals. This section also sets forth the necessary elements of a protest including the requirement for a certificate of service showing that a copy of the protest has been served on the contracting agency.

Section 21.2 follows the basic timeliness rules of the current procedures and also contains strict procedural requirements for filing a protest.

Section 21.3 follows the current procedures with the addition of a 25-day deadline for filing the agency report, the procedure for extending the deadline and a description of what the report must contain. The time for comments on the report by the protester has been shortened to 7-days from the 10 days permitted under the current procedures. This section also lists examples of the type of cases which will be dismissed as not under GAO's jurisdiction and provides for summary dismissals. Finally, this section implements the provision of section 3555 of the Act that the failure of any party to comply with the stated time limits may result in the matter being decided without consideration of the late submission.

Section 21.4 implements sections 3553 (c)(1) and (d)(1) of the Act regarding withholding of award and suspension of contract performance following the filing of a protest.

Section 21.5 permits interested parties to request relevant documents from the agency as required by section 3553(f) of the Act.

Section 21.6 maintains our current bid protest conference mechanism but shortens the time limits and comment procedures reflecting the limited time under the Act to issue decisions.

Section 21.7 provides for the remedies set forth in section 3554(b)(1) of the Act and states that we will declare a successful protester to be entitled to costs only if the section 3554(b)(1) remedies are not feasible.

Section 21.8 sets forth the statutory deadlines for issuing decisions under normal and express option procedures and provides for extension of the 90-day period as permitted by section 3554(a)(1) of the Act.

Section 21.9 establishes the express option procedure required by section 3554(a)(2) of the Act and incorporates the 10-day deadline for agency reports in section 3553(b)(2)(c) of the Act. Streamlined procedures for hearing these protests are set forth.

Section 21.10 is similar to our current procedures except that a court must specifically request a decision and further provides for change of all deadlines if a court so orders.

Section 21.11 follows section 3554(d) of the Act.

Section 21.12 provides that GAO will continue to decide certain protest matters which it has traditionally considered, namely, protests of sales by federal agencies, and of procurements by the District of Columbia and by agencies of the government other than federal agencies, if they agree. GAO's protest function has for over 60 years proved to be a useful and beneficial dimension in the procurement/sales practices of the government. This section provides for a continuation of those benefits in situations where GAO's experience indicates they may be needed, but it omits particular features of section 2741(a) of the Competition in Contracting Act of 1984 which have not by that law been made applicable to these protests.

Section 21.13 follows our current procedures regarding requests for reconsideration.

List of Subjects in 4 CFR Part 21

Administrative practice and procedure, Government contracts.

It is proposed to revise 4 CFR part 21 to read as follows:

PART 21—BID PROTEST REGULATIONS

Sec.

Authority: Secs. 3551–3556 of title 31, United States Code.

§21.0 Definitions.

(a) "Interested party" means an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or by the failure to award a contract.

(b) "Federal agency" means any executive department or independent establishment in the executive branch, including any wholly owned government corporation, and any establishment in the legislative or judicial branch, except the Senate, the House of Representatives and the Architect of the Capitol and any activities under his direction.

(c) "Contracting agency" means a federal agency which has awarded or proposed to award a contract under a protested procurement.

(d) "Contracting activity" means that part of a contracting agency directly responsible for the award or proposed award of a contract under a protested procurement.

(e) All "days" referred to are deemed to be "working days" of the federal government unless otherwise designated.

(f) "Adverse agency action" is any action or inaction on the part of a contracting agency which is prejudicial to the position taken in a protest filed with the agency. It may include but is not limited to: a decision on the merits of a protest; a procurement action such as the award of a contract or the rejection of a bid despite the pendency of a protest; or contracting agency acquiescence in and active support of continued and substantial contract performance.

§ 21.1 Filing of Protest.

(a) An interested party may protest to the General Accounting Office a solicitaiton issued by or for a federal agency for the procurement of property or services, or the proposed award or the award of such a contract. A party who has filed a protest with the General Services Administration Board of Contract Appeals under section III(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)) with respect to a procurement or proposed procurement of automated data processing equipment and services may not file a protest with respect to that procurement with the General Accounting Office.

(b) Protests must be in writing and addressed as follows: General Counsel, General Accounting Office, Washington, D.C. 20548, Attention: Procurement Law Control Group.

(c) A protest filed with the General Accounting Office shall:

(1) Include the name, address and telephone number of the protester,

(2) Be signed by the protester or its representative,

(3) Identify the contracting activity and the solicitation and/or contract number,

(4) Set forth a detailed statement of the legal and factual grounds of protest including copies of relevant documents,

(5) Specifically request a ruling by the Comptroller General of the United States (Comptroller General) and

(6) State the form of relief requested. A copy of the protest (including relevant documents not issued by the contracting agency) shall be concurrently served upon the contracting agency and the contracting activity. The protest submissions filed with the General Accounting Office shall be accompanied by a certificate of such service.

(d) No formal briefs or other technical forms of pleading or motion are required. Protest submissions should be concise, logically arranged, and clearly state legally sufficient grounds of protest.

(e) A protest filed with the General Accounting Office may be dismissed for failure to comply with any of the requirements of this section.

§ 21.2 Time for filing.

(a)(1) Protests based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation but which are subsequently incorporated into the solicitation must be protested not later than the next closing date for receipt of proposals following the incorporation.

(2) In cases other than those covered in paragraph (a)(1) of this section, protests shall be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier.

(3) If a protest has been filed initially with the contracting agency, any subsequent protest to the General Accounting Office filed within 10-days of formal notification of or actual or constructive knowledge of initial adverse agency action will be considered, provided the initial protest to the agency was filed in accordance with the time limits prescribed in paragraphs (a)(1) and (a)(2) of this section, unless the contracting agency imposes a more stringent time for filing, in which case the agency's time for filing will control. In cases where an alleged impropriety in a solicitation is timely protested to a contracting agency, any subsequent protest to the General Accounting Office must be filed within the 10-day period provided by this paragraph.

(b) (1) The term "filed" regarding protests to the General Accounting Office means receipt of the protest submission in the Procurement Law Control Group of the General Accounting Office. A protest will not be considered filed unless it includes evidence of service upon the contracting agency and the contracting activity in accordance with paragraph (b)(2) of this section. The term "filed" regarding protests to the contracting agency means receipt in the contracting agency.

(2) Service upon the contracting agency and the contracting activity shall be made by delivering in person or by commercial mail carrier the protest submission to both locations or by depositing the protest submission properly addressed with postage prepaid, in the United States mail (certified, first class, or overnight mail only). Service upon a party is accomplished in the same manner.

(3) The original of the protest submission required to be served shall contain a certificate of service signed by the protester or its representative stating that service has been made, the date and manner of service.

(c) The Comptroller general, for good cause shown, or where he determines that a protest raises issues significant to the procurement system, may consider any protest which is not filed timely.

§ 21.3 Notice of protest, submission of agency report and time for filing of comments on report.

(a) The General Accounting Office shall notify the contracting agency within 1 day of the filing of a protest. The contracting agency shall immediately give notice of the protest to the contractor if award has been made or, if no award has been made, to all bidders or offerors who appear to have a substantial and reasonable prospect of receiving an award if the protest is denied. The contracting agency shall furnish copies of the protest submissions to such parties with instructions to communicate further directly with the General Accounting Office. Copies of any such communications shall be furnished to the contracting agency.

(b) Material submitted by a protester will not be withheld from any interested party outside the government or from any federal agency which may be involved in the protest except to the extent that the withholding of information is permitted or required by law or regulation. If the protester considers that the protest contains material which should be withheld, a statement advising of this fact must be affixed to the front page of the protest submission and the allegedly protected information must be so identified wherever it appears.

(c) The contracting agency shall file a complete report on the protest with the General Accounting Office within 25 days from the date of receipt of notice of the protest from the General Accounting Office. The contracting agency shall simultaneously serve the report upon the protester and interested parties who have responded to the notice given under paragraph (a) of this section. The report shall contain copies of the protest, the bid or proposal submitted by the protester and of the bid or proposal of the firm which is being considered for award, or whose bid or proposal is being protested, the solicitation, including the specifications or portions relevant to the protest, the abstract of bids or offers or relevant portions, any other documents that are relevant to the protest, and the contracting officer's statement setting forth findings, actions, recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to all allegations of the protest which the agency contests. The copy of the report filed with the General Accounting Office shall also include a certificate of service signed by an agency representative stating that service has been made, the date and manner of service. Service upon the protester and interested parties shall be made in the same manner as service upon the contracting agency and contracting activity provided for in § 21.2(b)(2).

(d) The contracting agency may request, in writing, an extension of the 25-day report submission time period. The request shall set forth the reasons for which the extension is needed. The Comptroller General will determine, in writing, whether the specific circumstances of the protest require a period longer than 25 days for the submission of the report and, if so, will set a new date for the submission of the report. Extensions are to be considered exceptional and will be granted sparingly. The agency should make its request for an extension as promptly as possible to permit it to timely submit a report should the Comptroller General deny the request.

(e) Comments on the agency report shall be filed with the General Accounting Office within 7 days after receipt of the report, with a copy served on the contracting agency and other participating interested parties. Failure of the protester to file comments, or to file a statement that it does not intend to file comments but desires a decision on the basis of the existing record, or to request an extension under this section within the 7-day period will result in dismissal of the protest. The Comptroller General upon a showing that the specific circumstances of the protest require a period longer than 7 days for the submission of comments on the agency report, may set a new date for the submission of such comments. Extensions are to be considered exceptional and will be granted sparingly.

(f) Notwithstanding any other provision of this section, when on its face a protest does not state a valid basis for protest or is untimely (unless the protest is to be considered pursuant to § 21.2(d)) the Comptroller General will summarily dismiss the protest without requiring the submission of an agency report. When the propriety of a dismissal becomes clear only after information is provided by the contracting agency or is otherwise obtained by the General Accounting Office, the Comptroller General shall dismiss the protest at that time. If the Comptroller General has dismissed the protest, he will notify the contracting agency that a report need not be submitted. Among the protests which may be dismissed without consideration of the merits are those concerning the following:

(1) Contract Administration. The administration of an existing contract is within the discretion of the contracting agency. Disputes between a contractor and the agency are resolved pursuant to the disputes clause of the contract and the Contract Disputes Act of 1978. 41 U.S.C. 601–13.

(2) Small Business Size Standards. Challenges of established size standards or the size status of particular firms are for review solely by the Small Business Administration. 15 U.S.C. 637(b)(6).

(3) Negative Determination of Responsibility of a Small Business Concern. The Small Business Administration, under its certificate of competency program, makes final dispositions of contracting office determinations that a small business firm is not responsible to perform a contract. 15 U.S.C. 637(b)(7)(A).

(4) Set-Asides and Awards Under Section 8(a) of the Small Business Act. Since contracts are let under section 8(a) of the Small Business Act to the Small Business Administration at the contracting officer's discretion and on such terms as agreed upon by the procuring agency and the Small Business Administration, the decision to effect a procurement under the 8(a) program and the award of an 8(a) subcontract are not subject to review absent a showing of possible fraud or bad faith or that regulations were violated. 15 U.S.C. 637(a).

(5) Affirmative Determination of Responsibility. Because a determination that a bidder or offeror is capable of performing a contract is based in large measure on subjective judgments which generally are not readily susceptible of reasoned review, an affirmative determination of responsibility will not be reviewed, absent a showing that such determination was made fraudulently or in bad faith or that definitive responsibility criteria in the solicitation were not met.

(6) Procurement Protested to the General Services Administration Board of Contract Appeals. Interested parties may protest a procurement or proposed procurement of automated data processing equipment and services to the General Services Administration Board of Contract Appeals. Once a particular procurement or proposed procurement is protested to the Board, the matter may not be the subject of a protest to the General Accounting Office. 40 U.S.C. 759(h), as amended by section 2713 of the Competition In Contrating Act of 1984, Pub. L. 98–369.

(7) Protests not filed either in the General Accounting Office or the

contrating agency within the time limits set forth in § 21.2.

(8) Procurements by agencies other than federal agencies as Defined by Section 3 of the Federal Property and Administration Services Act of 1979, 40 U.S.C. 472. Protest of procurements or proposed procurements by such agencies (e.g., U.S. Postal Service, Federal Deposit Insurance Corporation) are beyond the General Accounting Office bid protest jurisdiction as established in section 2741 of the Competition In Contracting Act of 1984, Pub. L. 98–369.

(9) Nonappropriated Fund Activities. The General Accounting Office has no authority under section 2741 of the Competition In Contracting Act of 1984, Pub. L. 98–369 to consider protests that do not involve the expenditure of appropriated funds.

(10) Walsh-Healey Public Contracts Act. Challenges of the legal status of a firm as a regular dealer or manufacturer within the meaning of the Walsh-Healey Act is for determination solely by the procuring agency, the Small Business Administration (if a small business is involved) and the Secretary of Labor. 41 U.S.C. 35–45.

(11) Judicial Proceedings. The General Accounting Office will not consider protests where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court, unless the court requests a decision by the General Accounting Office.

(g) A protest decision may not be delayed by the failure of a party to file a submission within the specified time limits. Consequently, the failure of any party or contracting agency to comply with the prescribed time limits may result in resolution of the protest without consideration of the untimely submission.

§ 21.4 Withholding of award and suspension of contract performance.

(a) When the contracting agency receives notice of a protest from the General Accounting Office prior to award of a contract it may not award a contract, including an order under a Federal Supply Schedule contract or a basic ordering agreement, under the protested procurement while the protest is pending unless the head of the procuring activity responsible for award of the contract determines in writing and reports to the General Accounting Office that urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for the General Accounting Office decision. This finding may be made only if the award is otherwise likely to occur within 30 calendar days. See section 3553(c) of the Competition In Contracting Act of 1984, Pub. L. 98–369.

(b) When the contracting agency receives notice of a protest from the General Accounting Office after award of a contract, but within 10 days of the date of contract award, it shall immediately direct the contractor to cease contract performance and to suspend related activities that may result in additional obligations being incurred by the government under that contract while the protest is pending. The head of the procuring activity responsible for award of the contract may authorize contract performance notwithstanding the pending protest if he determines in writing and reports to the General Accounting Office that:

(1) Performance of the contract is in the government's best interest, or

(2) Urgent and compelling circumstances significantly affecting interests of the United States will not permit waiting for the General Accounting Office's decision. See section 3553(d) of the Competition In Contracting Act of 1984, Pub. L. 98–369.

§ 21.5 Furnishing of protest-related information by contracting agencies.

Upon request by an interested party the contracting agency shall provide, to that party, within 5 days of receipt of the request, any document relevant to the protested procurement (including the report required by § 21.3(c)) that the party is entitled by law or regulation to receive.

§ 21.6 Conference.

(a) A conference on the merits of the protest may, at the sole discretion of the General Accounting, be held at the request of the protester, interested parties who have responded to the notice given under § 21.3(a), or the contracting agency. Requests for a conference should be made at the earliest possible time in the protest proceeding.

(b) Conferences will be held on a date set by the General Accounting Office no later than 5-days after receipt by the protester and interested parties of the agency report. All such interested parties shall be invited to attend. Ordinarily, only one conference will be held on a bid protest.

(c) If a conference is held, no separate comments under § 21.3(e) will be considered. The protester, all interested parties and the contracting agency shall file comments on the conference and report as appropriate with the General Accounting Office, with service on the other parties, within 5-days of the date on which the conference was held.

(d) The General Accounting Office may request that a conference be held if at any time during the protest proceeding it decides that such a conference is needed to clarify material issues. If such a conference is held, the General Accounting Office shall make such adjustments in the submission deadlines as it determines to be fair to all parties.

(e) Failure of the protester to file comments, or to file a statement that it does not intend to file comments but desires a decision on the basis of the existing record, or to request an extension under this section within the 5-day period set forth in paragraph (c) of this section will result in dismissal of the protest. The General Accounting Office may set a new date for the submission of comments under the circumstances set forth in § 21.3(e).

§ 21.7 Remedies.

(a) If the Comptroller General determines that a solicitation, proposed award, or award does not comply with statute or regulation, the Comptroller Generall shall recommend that the contracting agency implement any combination of the following remedies which the Comptroller General deems appropriate under the circumstances:

(1) Refrain from exercising options under the contract,

(2) Terminate the contract,

(3) Recompete the contract,

(4) Issue a new solicitation,

(5) Award a contract consistent with statute and regulation; or,

(6) Such other recommendations as the Comptroller General determines necessary to promote compliance.

(b) In determining the appropriate recommendation, the Comptroller General, shall, except as specified in paragraph (c) of this section, consider all the circumstances surrounding the procurement or proposed procurement including, but not limited to, the seriousness of the procurement deficiency, the degree of prejudice to other interested parties or to the integrity of the competitive procurement system, the good faith of the parties, the extent of performance, cost to the government, the urgency of the procurement and the impact of the recommendation on the contracting agency's mission.

(c) If the head of the procuring activity makes the finding referred to in § 21.4(b)(1) that performance of the contract notwithstanding a pending protest is in the government's best interest, the Comptroller General shall

make its recommendation under paragraph (a) of this section without regard to any cost or disruption from terminating, recompeting or rewarding the contract.

(d) If the Comptroller General determines that a solicitation, proposed award, or award does not comply with statute or regulation it may declare the protester to be entitled to the costs of:

(1) Filing and pursuing the protest, including reasonable attorney's fees; and

(2) Bid and proposal preparation.

(e) Ordinarily, the Comptroller General will allow the recovery of costs under paragraph (d) of this section only if it is not feasible to recommend any of the remedies listed in paragraphs (a)(2)–(5) of this section.

(f) If the Comptroller General decides that the protester is entitled to the recovery of such costs, the protester and the contracting agency shall attempt to reach agreement on the amount of the costs. If the protester and the contracting agency cannot reach agreement within a reasonable time, the Comptroller General will determine the amount.

§ 21.8 Time for decision by the General Accounting Office.

(a) The General Accounting Office shall issue a decision on a protest within 90 days from the date the protest is filed with it.

(b) In those protests for which the General Accounting Office invokes the express option under § 21.11, the General Accounting Office shall issue a decision within 45 calendar days from the date the protest is filed with it.

(c) The General Accounting Office may extend the deadlines in paragraph (a) of this section on a case-by-case basis by stating in writing the reasons that the specific circumstances of the protest require a longer period. Such extensions are regarded as exceptional, and are to be used in unique circumstances only.

§ 21.9 Express option.

(a) At the request of the protester, the contracting agency or an interested party for an expeditious decision, the Comptroller General will consider the feasibility of using an express option.

(b) The express option will be invoked solely at the discretion of the Comptroller General only in those cases suitable for resolution within 45 calendar days.

(c) Requests for the express option must be in writing and received in the General Accounting Office no later than 3 days after the protest is filed. The Comptroller General will determine within 2 days of receipt of the request whether to invoke the express option and will notify the contracting agency, protester and interested parties who have responded to the notice under § 21.3(a).

(d) When the express option is used the filing deadlines in § 21.3 and the provisions of § 21.6 shall not apply and:

(1) The contracting agency shall file a complete report with the Procurement Law Control Group of the General Accounting Office on the protest within 10 days from the date it receives notice from the General Accounting Office that the express option will be used, with service upon the protester and interested parties who have responded to the notice under § 21.3(a).

(2) Comments on the agency report shall be filed with the General Accounting Office within 5 days after receipt of the report with a copy served on the contracting agency and other participating interested parties.

(3) The General Accounting Office may arrange a conference to ascertain and clarify the material issues at any time deemed appropriate during the protest proceeding.

(4) The General Accounting Office shall issue its decision within 45 calendar days from the date the protest is filed with it.

§ 21.10 Effect of judicial proceedings.

(a) The Comptroller General will dismiss any protest where the matter involved is the subject of litigation before a court of competent jurisdiction or has been decided on the merits by such a court.

(b) Paragraph (a) of this section shall not apply where the court requests a decision by the General Accounting Office.

(c) Where the court requests a decision by the General Accounting Office, the times for filing the agency report (§ 21.3(c)), filing comments on the report (§ 21.3(e)), holding a conference and filing comments (§ 21.6), and issuing a decision (§ 21.8) may be changed if the court so orders.

§ 21.11 Singing and distribution of decisions.

Each bid protest decision shall be signed by the Comptroller General or a designee for that purpose. A copy of the decision shall be made available to all participating interested parties, the protester, the head of the contracting activity responsible for the protested procurement, the senior procurement executive of each federal agency involved, and any member of the public.

§ 21.12 Nonstatutory protests.

(a) The General Accounting Office may consider protests concerning sales by a federal agency or procurements by agencies of the government other than federal agencies as defined in § 21.0(b) or by the District of Columbia, if they agree to have their protests decided by the general Accounting Office.

(b) All of the provisions of these Bid Protest Regulations shall apply to any nonstatutory protest decided by the Comptroller General, except for the provisions of § 21.4 pertaining to withholding of award and suspension of contract performance, and except for the provision of § 21.7(d) pertaining to entitlement to attorney's fees.

§ 21.13 Request for reconsideration.

(a) Reconsideration of a decision of the General Accounting Office may be requested by the protester, any interested party who participated in the protest, and any federal agency involved in the protest. The General Accounting Office will not consider any request for reconsideration which does not contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered which was not available to the party during the pendency of the protest.

(b) Request for reconsideration of a decision of the General Accounting Office shall be filed, with copies to any federal agency and interested parties who participated in the protest, not later than 10-days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the General Accounting Office.

(c) A request for reconsideration shall be subject to those bid protest procedures consistent with the need for prompt and fair resolution of the matter.

Milton J. Socolar,

Special Assistant to the Comptroller General of the United States.

[FR Doc. 84-24532 Filed 9-14-84; 8:45 am]

BILLING CODE 1610-10-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories and Possessions and Areas Under its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Food Distribution Program Regulations (7 CFR Part 250) to require a 100 percent yield factor for all substitutable donated foods which have been made available to processors for conversion into different end products pursuant to agreements with distributing, subdistributing or recipient agencies.

DATE: To be assured of consideration comments must be received or postmarked on or before November 16, 1984.

ADDRESS: Comments should be sent to: Beverly King, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22303.

Comments in response to these rules may be inspected at 3101 Park Center Drive, Room 506, Alexandria, Virginia during normal business hours (8:30 a.m. to 5:00 p.m., Mondays through Fridays).

FOR FURTHER INFORMATION CONTACT: Beverly King, Chief, Program Administration Branch, (703) 756–3660.

SUPPLEMENTARY INFORMATION: Any new information collection and recordkeeping requirements contained in this rule are subject to approval by the Office of Management and Budget before becoming effective.

Classification

This action has been reviewed under Executive Order 12291 and has not been classified major because it does not meet any of the three criteria identified under the Executive Order. This action will not have an annual effect on the economy of $100 million or more nor will it have a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. This action will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic or export markets.

This rule has been reviewed with regard to the Regulatory Flexibility Act (Pub. L. 96–354). Robert E. Leard, Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Background

Section 250.15 of the current regulations sets forth the terms and conditions under which distributing agencies, subdistributing agencies, or recipient agencies may enter into contracts for processing of donated foods. Among other things, processors are required to provide as part of the processing contract a description of each end product to be processed and the quantity of each donated food and any other ingredient which is needed to yield a specific number of each end product. The current regulations do not, however, set forth a specific yield requirement.

The Department is proposing to establish a 100 percent yield factor for all substitutable foods. A yield factor is that percentage of a donated food which must be returned in the end product. It is necessary to set the yield factor at 100 percent in order to set an equitable standard of performance so as to assure that no food processor enjoys unjust enrichment as a result of involvement in this program.

Although the Department understands that actual processing losses can vary by food-type and end product, the Department is proposing to revise § 250.15(d)(4)(ii) to require a 100 percent yield factor for all substitutable donated foods for any processing agreement. A 100 percent yield factor is defined in such a way that if, for example, 100 pounds of donated food are delivered to a food processor, 100 pounds of donated food (or food of that type) must appear in the end product. A 100 percent yield factor is not being required for "nonsubstitutable" donated foods. Meat and poultry items which are the chief nonsubstitutable items may have considerable weight loss due to the cooking or deboning processes; therefore, a 100 percent yield factor would be impracticable and result in a much higher price being charged to the recipient agencies for the end products.

List of Subjects in 7 CFR Part 250

Aged, Agricultural commodities, Business and industry, Food assistance programs, Food donations, Food processing, Grant programs-social programs, Infants and children, Price support programs, Reporting requirements, School breakfast and lunch programs, Surplus agricultural commodities.

PART 250—[AMENDED]

Accordingly, § 250.15 is amended by revising paragraph (d)(4)(ii) to read as follows:

§ 250.15 State Processing of donated foods.

* * * * *

(d) * * *

(4) * * *

(ii) A description of each end product, the quantity of each donated food and any other ingredient which is needed to yield a specific number of units of each end product (except that the contracting agency may permit the processor to specify the total quantity of any flavorings or seasonings which may be used without identifying the ingredients which are, or may be, components of flavorings or seasonings), and the yield factor for each donated food. The yield factor is the percentage of the donated food which must be returned in the end product distributed to eligible recipient agencies. The yield factor for substitutable donated foods must be 100 percent.

* * * * *

(Catalog of Federal Domestic Assistance No. 10.550)

(Sec. 416, Pub. L. 81–439, as amended)

Dated: September 11, 1984.

Sonia F. Crow,

Acting Administrator.

[FR Doc. 84–24568 Filed 9–14–84; 8:45 am]

BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

7 CFR Parts 301 and 319

[Docket No. 84–351]

Cancellation of Hearing on Unshu Oranges

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document announces that the public hearing concerning a rulemaking proposal to relieve geographic restrictions on importing Unshu oranges from Japan into the United States (see 49 FR 32207–32209, August 13, 1984), scheduled for Tuesday, September 18, 1984, in Washington, D.C., is cancelled.

FOR FURTHER INFORMATION CONTACT: Thomas O. Gessel, Director, Regulatory Coordination Staff, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

Done at Washington, D.C., this 14th day of September, 1984.

H.L. Ford,

Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.

[FR Doc. 84-24718 Filed 9-14-84; 10:35 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

7 CFR Part 1007

[Docket No. AO-366-A21]

Milk in the Georgia Marketing Area; Recommended Decision and Opportunity To File Written Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision recommends that no change be made in the Georgia order. A cooperative association proposed that aseptically processed fluid milk products that are exported outside the continental United States be exempt from pricing and pooling under the Georgia milk order. The decision concludes that the hearing record does not establish that the proposed exemption would substantially improve export sales by the cooperative association.

DATE: Comments are due on or before October 9, 1984.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20205 (202) 447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing:

Issued May 10, 1983; published May 16, 1983 (48 FR 21962).

Supplemental Notice of Hearing:

Issued May 26, 1983; published June 1, 1983 (48 FR 24391).

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this recommended decision with respect to proposed amendments to the tentative marketing agreement and order regulating the handling of milk in the Georgia marketing area. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C., 20250, on or before 20 days after publication in the **Federal Register**. The exceptions should be filed in quadruplicate. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The issue was considered at a hearing held at Hapeville, Georgia on July 12-13, 1983 pursuant to notices thereof issued May 10, 1983 and May 26, 1983 (48 FR 21962 and 48 FR 24391).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. However, no participants at the hearing testified about any potentially adverse impact of the proposals on small businesses.

The material issue on the record relates to:

An exemption from pricing and pooling under the Georgia milk order for aseptically processed fluid milk products exported outside the continental United States.

Findings and Conclusions

The following findings and conclusions on the material issue are based on evidence presented at the hearing and the record thereof:

An exemption from pricing and pooling under the Georgia milk order for aseptically processed fluid milk products exported outside the continental United States should not be adopted.

The Georgia milk order presently provides that a distributing plant, located in the marketing area, that processes and distributes primarily aseptically processed fluid milk products shall be fully regulated by the Georgia milk order irrespective of the market or markets in which the products may be distributed. Also, the Georgia order classifies and prices as Class I milk all dispositions of aseptically processed fluid milk products. This includes domestic and export sales.

Dairymen, Inc. (DI) a cooperative association of dairy farmers, proposed that producer milk used in aseptically processed fluid milk products that are exported from the continental United States be exempt from pricing and pooling under the Georgia milk order. As revised at the hearing, the proposed exemption would not apply to shipments to Alaska and Hawaii.

Under the modified proposal, "exempt milk" would be milk received at a pool plant in bulk form from a dairy farmer who produced it, or a cooperative association, to the extent of the quantity of any skim milk and butterfat disposed of in the form of an aseptically processed and packaged fluid milk product for export to any area located outside the United States. To obtain the exemption, the dairy farmer or cooperative association would have to notify the market administrator and the receiving handler that non-producer status for such milk was elected beginning with the month in which the election was made and continuing for each following month until cancelled in writing.

The Milk Indusry Foundation (MIF), a trade association of milk dealers, proposed that whatever classification and pooling is provided for exported aseptically processed fluid milk products also be provided for all other exported fluid milk products. At the hearing, and in a post-hearing brief, the DI position was that the cooperative would not object to the adoption of the MIF proposal if a hearing record for the market affected demonstrated a need for it.

The MIF witness also proposed a revision of the DI proposal. The revision would allow a handler and not a dairy farmer or a cooperative association to designate what milk supplies would be "non-producer milk" in applying the proposed exemption from regulation.

Proponent's Presentation

The following points were made by the DI witness presenting the position of the cooperative association for the hearing record:

1. Exemption provisions are common in milk orders.

2. DI sells aseptically processed milk products in Puerto Rico, the Philippines, Nigeria, Aruba, Curacao, Montserrat, San Andreas, the Bahamas, and other countries. These sales compete directly with aseptically processed fluid milk products from Quebec Province, Canada, and from plants located in the European Economic Community (EEC). The export sales of the cooperative are at a distinct disadvantage in competing with these foreign sales because the Canadian milk is exempt from Canadian

pricing regulations and the EEC milk is subsidized. Consequently, the development of DI export sales is greatly hindered, particularly in the relatively nearby Caribbean area.

3. Specific price and cost information to describe the competitive situation in export markets is extremely limited. The competing EEC plants have an advantage over DI of 15 cents a quart on raw milk costs. This consists of an EEC "target price" of $11.92 a hundredweight for milk of 3.7 percent butterfat content and an export subsidy of $3.71 a hunderweight compared with a Georgia milk order Class I price of $15.20 a hunderdweight of milk of 3.7 percent butterfat content as of January 1983. DI competes with EEC plants for sales in the Bahamas, Montserrat, Curacao and Aruba.

4. Assuming that EEC processing, packaging and marketing costs are about the same as for DI, and that butterfat values are about the same, the competitive disadvantage of the DI pool plant at Savannah, Georgia, would be altered only by the relative locations of the Savannah plant and the EEC plants to the respective export markets.

5. DI competes also with aseptically processed fluid milk products from Canada in the Bahamas, Curacao, Aruba and Puerto Rico. Canadian sales also are made to Antigua and Jamaica. In December 1982, Canada exported aseptically processed fluid milk products (2 percent butterfat content) to Puerto Rico for 39 cents a quart compared with 55 cents a quart for DI. The Canadian sales had an advantage of 16 cents a quart.

6. Adoption of the proposal would enable DI to expand substantially its sales of aseptically processed milk, particularly in the relatively nearby Caribbean area. Such expansion would improve the operating efficiency of the DI pool plant at Savannah, Georgia, tend to reduce the quantity of milk used in Class III, increase blend prices to producers, improve the U.S. balance of trade, and reduce government purchases of dairy products.

There was no supporting testimony for the DI proposal from any of the 11 organizations represented at the hearing.

Opponents' Presentations

A. The DI proposal was opposed by four dairy farmer cooperatives supplying milk to the Upper Florida, Tampa Bay, and Southeastern Florida marketing areas on the following basis:

1. Handlers buying milk from the Florida cooperatives sell up to 1.5 million pounds of Class I milk each month outside the continental U.S. If the proposed exemption were adopted, a similar exemption should be provided for handlers regulated by the Florida orders who export fresh milk.

2. Producers associated with the Florida milk markets produce milk for a Class I market. If aseptically processed milk from the U.S. cannot compete in foreign markets without financial loss, such losses should be confined to the firms engaged in the business. The milk order program is not an appropriate place to seek financial relief for private business decisions that do not turn out as well as anticipated.

B. The DI proposal also was opposed by the Atlanta Dairies Cooperative on the basis that it would reduce Class I sales under the Georgia milk order and reduce blend prices to producers. Also, the Georgia producers would have to carry the reserve supply of milk associated with DI sales of export milk.

C. The DI proposal was opposed by the Southland Corporation, Borden, Inc., and 20 handlers regulated by the Middle Atlantic and New York-New Jersey milk orders on the following basis:

1. If the proposed exemption is adopted, a similar one should be adopted to cover all fluid milk products exported from the U.S. whether processed by handlers regulated by the Georgia milk order or any other milk order.

2. The Department should not adopt the unprecedented provision that producers should designate which milk is exempt from regulation and which is not.

3. Southland and Borden each operate plants regulated under Florida milk orders and from which substantial quantities of fluid milk products are processed for distribution to the Caribbean area. Some of the sales are to U.S. military bases outside the continental U.S.

4. Aseptically processed milk is a fluid milk beverage and competes with fresh fluid milk in the U.S. and in foreign markets. The consistent policy of the Department has been that fluid milk products for beverage use, no matter how processed, are classified as Class I milk. Some exceptions have been infant and diet formulas and eggnog. Also, in 1974, the Department denied a proposal for a lower classification of sterilized milk for 32 milk orders, and it regards reconstituted nonfat dry milk as being a Class I fluid milk product.

5. The export market for fresh fluid milk is a growing one in the relatively nearby Caribbean area and in Mexico. Exported fresh fluid milk sold by Southland, Borden and other companies presently competes successfully with aseptically processed milk exported by DI from its plant at Savannah, Georgia, and with foreign competitors.

In 1981, 11.6 million pounds of fluid milk products were exported from the Upper Florida and Southeastern Florida milk order areas. In 1982, 15 million pounds were exported. For the first four months of 1983, 5.6 million pounds were exported. Most of the sales were fresh fluid milk.

Also, U.S. Census data indicate that exports of fresh fluid milk products increased to 36.9 million pounds in 1981 from 18.9 million pounds in 1978. Over 50 percent of the exports were to Mexico. Other countries receiving shipments of fluid milk were Venezuela, Bermuda, and virtually every island nation in the Caribbean area. Very little of the substantial increase in sales was aseptically processed milk.

6. Adoption of the DI proposal would reduce proponent's product cost substantially in exporting aseptically processed milk—from the present Class I price to the Class III price or lower. This could undermine fresh milk sales. The result would be to reduce Class I sales under the Georgia order and under other milk orders. The Department should make no distinction for exported aseptically processed milk.

7. Adopting the DI proposal is not necessary to increase the quantity of milk that is exported. The proposed exemption would be potentially harmful to the companies that have increased exports of fresh milk sales and to the dairy farmers who supply the milk.

8. If the proposal were adopted, administrative problems for the Department would include the verification that aseptically processed milk actually was exported. Also, there would be no controls to ensure that once it was exported the aseptically processed milk would not be returned to the U.S. to undermine sales of higher priced fresh milk and aseptically processed milk for U.S. disposition.

9. The DI proposal should not be adopted because it would permit dairy farmers to designate what milk is to be exempt and what milk is not. The term "use" relating to milk order sales has consistently been applied by the Department to mean the use of which the raw milk is put by the handler. No milk order presently provides for the classification of milk by producers, and such a proposal has the potential to disrupt normal economic decision making by handlers.

10. If the exemption were adopted for aseptically processed milk that is exported by DI, handlers' costs for fluid milk products would not be uniform as

required by the Agricultural Marketing Agreement Act of 1937, as amended.

D. The DI proposal was opposed by Kinnett Dairies on the following basis:

1. Fluid milk, regardless of processing techniques, is priced under milk orders as Class I milk with the point of sale having no bearing on the classification. This treatment does not give one handler a competitive advantage over another.

2. To exempt aseptically processed milk that is exported from pricing and pooling under the order would have a deleterious effect on the orderly marketing of milk.

3. DI, as a cooperative that is owned and operated by producer members, has the capability to be competitive in any export market as long as their producer members choose to do so. If DI chooses to export aseptically processed milk, its members should be willing to make whatever investment is necessary and should not expect other segments of the industry to subsidize their operation.

4. If Class I sales are removed from the Georgia order pool through the adoption of the proposed exemption, other producers would be subsidizing the export operation.

5. Kinnett Dairies supports the long-standing Department policy that all fluid milk products be treated alike under milk orders.

6. The Georgia market administrator probably could not track the disposition of exported milk unless it is kept in the Georgia pool as Class I milk.

E. The Milk Industry Foundation (MIF), a trade association of milk dealers, proposed that whatever classification and pooling is provided for exported aseptically processed milk should also be provided for all other exported fluid milk products. In support of this, the spokeman for MIF made the following points:

1. One of the main tenets of the Federal milk order program is to provide uniform raw milk costs to competing handlers. This is done by treating all competing fluid milk products alike, regardless of processing method or packaging. An exception to this has been milk packaged in hermetically sealed containers for infant and diet use. The main policy should be continued.

2. The Georgia order does not differentiate between dairy products sold domestically and those that are exported. In the domestic market, aseptically processed milk and other fluid milk products compete with each other and are classified and priced alike. The relationship between aseptically processed milk and other fluid milk products does not change simply because the consuming public lives inside or outside the U.S.

3. Handlers regulated by Federal milk orders other than the Georgia milk order sell fresh fluid milk products in the Caribbean area and Mexico. If the Department adopts the DI proposal, immediate competitive inequities would result between the DI pool plant regulated by the Georgia milk order and pool plants under some other milk orders.

4. Placing exports to the Caribbean area and Mexico in something other then Class I would facilitate the export of fluid milk products to those areas and back again to gain access to a lower cost milk supply. If that happened, the entire classified pricing system of the Federal milk order program would be in jeopardy.

5. If milk sold in the Caribbean and Mexico continued to be Class I, while exports to areas beyond those places were exempt from regulation, the possibility of fluid milk products reentering the U.S. after having been exported would be decreased.

6. A mechanism to insure the re-entry does not occur must be found if Federal milk order regulation of exports is changed. The market administrators of milk orders affected must be able to verify that what is claimed to be an exempt export actually leaves the U.S. and does not come back in later.

7. Removing exports from Class I will lower total Class I sales under a number of milk orders. This could lower blend prices somewhat in a number of milk orders.

8. Some members of the dairy industry question the advisability of encouraging export sales at other than Class I prices from the Georgia area and other milk order areas where milk supplies are relatively tight.

9. If the Department decides that export sales may be exempt from regulation, the choice of exempt status should be available to all handlers and not be dependent upon individual dairy farmers. The order should allow handlers to designate non-producer status for milk that is exported.

10. Handlers from various milk order areas are in direct competition for sales of milk in the Caribbean area. If the Department decides to exempt exported fluid milk from regulation by the Georgia milk order, the same status should be provided for handlers regulated under other milk orders, if requested.

Discussion of the Issue

The issue raised by this proceeding is whether the Dairymen, Inc., pool plant at Savannah, Georgia, should be provided with exemption from pricing and pooling under the Georgia milk order for export sales of aseptically processed fluid milk products in order to expand such export sales substantially. The proposed exemption for export sales could only apply to the DI pool plant becuase it is the only plant regulated by the Georgia milk order that packages aseptically processed fluid milk products.

Of the 30 export markets identified in the hearing record, European Economic Community (EEC) plants export aseptically processed milk to 25, Canada to 6, and DI to 9. The EEC, Canadian, and DI plants compete for aseptically processed milk sales in the Bahamas, Curacao, and Aruba. EEC plants and DI compete in Montserrat. The Canadian and DI plants compete in Puerto Rico and the Canadian and EEC plants compete in Antigua. The EEC plants distribute without competition from the Canadian and DI plants in 18 of the export markets identified in the hearing record. It would appear that DI could aim at expanding sales of aseptically processed milk sales in 21 of the export markets identified and increase its sales to the 8 export markets it serves now.

The DI witness said that the EEC plants have a 15-cent a quart advantage over DI in sales of aseptically processed fluid milk products in the export markets where they compete. The DI witness said that detailed price information to describe the competitive situation in export markets is extremely limited. He said that EEC plants' advantage consisted of an EEC "target price" of $11.92 a hundredweight for milk of 3.7 percent butterfat content and an export subsidy of $3.71 a hundredweight. He compared this with a Georgia milk order Class I price of $15.20 a hundredweight for milk of 3.7 percent butterfat content. The witness assumed that EEC processing and marketing costs are about the same as for the DI pool plant at Savannah, Georgia. However, there is no basis in the record for concluding that the assumptions made are valid. The witness also stated that the competitive disadvantage of the DI plant would be altered (improved) by the relative locations of the Savannah plant and EEC plants to the respective sales outlets. No transport costs from the EEC to the Caribbean area were entered in evidence. Also, concerning the EEC subsidy, the evidence is that EEC products with 3 percent or less fat by weight receive no export subsidy. Products with more than 3 percent fat but less than 8.9 percent fat received a subsidy in January 1983 of $3.71 a hundredweight. In selling aseptically processed lowfat milk of 2 percent

butterfat or less, DI would encounter no EEC subsidy, for counterpart products. It must be concluded that there is no definitive data in evidence concerning the cost of supplying aseptically processed fluid milk products from EEC plants to export markets in the Caribbean area. Consequently, no accurate judgment about such costs can be made on the basis of the record.

However, it is unlikely that the proposed exemption, if adopted, could provide DI with the means to expand export sales substantially in competition with EEC and Canadian plants, as intended. The testimony was that Canadian exporters have an advantage of 16 cents a quart in Puerto Rico and EEC plants have an advantage of 15 cents a quart where they compete with DI. The record established that the competitive cost of any dependable supply of nonpool milk for export at the DI pool plant likely would be the Georgia order weighted average price. The weighted average price for 1982 was $14.23 a hundredweight, which was 55 cents a hundredweight less than the Class I price. At 46.5 quarts a hundredweight, this translates to a reduction of 1.2 cents per quart. Thus, adoption of the proposed exemption could not provide DI with the means of expanding export sales of aseptically processed fluid milk products in the face of the competitive advantage claimed for Canadian and EEC exporters.

The DI witness said that an important beneficial result from adopting the proposed exemption for exported aseptically processed milk would be that a substantial portion of the Class III milk in the Georgia market would be reduced, since it would be exported as exempt milk. In 1982, the proportion of producer milk that was used in Class III was 18 percent. For the first 5 months of 1983, the Class III utilization percentage was down slightly from the same months of 1982. Other source milk, as a percentage of producer milk, increased slightly for the first 5 months of 1983 as compared to the same months of 1982. The combination of lower Class III use and an increase in the use of other source milk likely indicates a tightening of producer milk for the market. It could be argued that the Class III utilization under the Georgia milk order is no more than a sufficient reserve for Class I use and that to reduce it substantially, as intended by proponent, would endanger an adequate supply of milk for fluid use. That important consideration notwithstanding, if all the Class III utilization were transferred to export sales of aseptically processed milk, only a moderate increase would be noticeable in the weighted average price of the order.

The proponent also said that another benefit from adopting its proposal would be that the U.S. balance of trade would be improved and government purchases of dairy products under the price support program would be reduced. It is noted that the quantity of aseptically processed milk from the Savannah plant that could contribute to such an impact would be so minor as to have no measurable effect either in the balance of trade or in price support purchases.

Handlers presented a variety of reasons for not adopting the DI proposal. Chief among them was the view that aseptically processed milk is a fluid milk beverage and competes with fresh fluid milk in both U.S. and foreign markets. In their view, the Department should continue to apply the long-standing policy that milk processed into fluid milk products for beverage use is Class I milk. In this connection, it was indicated on the record that the Department had made some exceptions to this approach by providing a lower price than Class I for infant and diet formulas and eggnog. If marketing conditions justify such lower price for specific milk products, such accommodation can and has been made. However, such an exception for exported aseptically processed milk is not justified on the basis of this record.

Handlers also argued that no distinction should be made between the classification and pricing of aseptically processed milk that is disposed of in the U.S. and that which is disposed of for export. As indicated previously, the proponent did not establish on this record that adoption of its proposal could effectively expand export sales of aseptically processed milk. Accordingly, no basis was made for distinguishing between domestic and export sales by means of an exemption from pricing and pooling for export sales of aseptically processed milk.

There was some discussion on the record about whether aseptically processed milk sales and fresh milk sales compete for the same market in the U.S. and in foreign areas. Presumably, separate markets might provide the basis for different treatment concerning classification and pricing or an exemption from regulation. The proponent suggested that in the Caribbean area, fresh milk sales may supply a market with refrigeration capacity whereas aseptically processed milk sales may not. Also, the proponent commented on some studies of the domestic market which indicated that aseptically processed milk may not be competing for the same market as fresh milk. However, the information on these points was not definitive and it provided no basis in this record for making a distinction in the regulatory treatment of domestic and export sales of aseptically processed and fresh milk.

There is no valid reason in this record why export sales of aseptically processed fluid milk products should be priced lower than the Class I price which is applied to products that are fluid milk in both form and use. Producers should not be made to forfeit some of their returns from Class I milk to expand the sales of aseptically processed milk in foreign markets. This is especially true when the adoption of the exemption proposed by DI could not likely achieve the goal intended. Insofar as this record is concerned, returns to producers for milk disposed of in the form of fluid milk products should be the same whether such products are aseptically processed or not. Apparently, such products in either form are being marketed for the same beverage use. Accordingly, continuing to classify all such products as Class I milk will assure that the returns from producer milk used in aseptically processed fluid milk products will contribute on the same basis as returns from producer milk used in other fluid milk products for beverage use toward inducing an adequate supply of milk for beverage use.

Handlers also argued that adoption of the DI proposal would result in immediate and competitive inequities between the DI pool plant regulated by the Georgia milk order and pool plants under some other milk orders. It was argued that sales of fresh milk that is exported would be supplanted by aseptically processed milk exports. As a result, Class I sales in various orders would decline, blend prices to producers would drop and handlers would not be assured uniform pricing of milk for fluid use among competitors as is required by the Agricultural Marketing Agreement Act of 1937, as amended.

In this connection, handlers did not present any specific information in evidence concerning comparative costs and the actual economic impact that the DI proposal would have on export marketing conditions for fresh milk. In the absence of substantive data to elucidate marketing conditions concerning this, it cannot be concluded that immediate and competitive inequities among handlers actually would occur as handler witnesses claimed. There is specific information in the record that handlers exporting fresh milk are competing successfully with

aseptically processed milk exports from the U.S., Canada, and the European Economic Community.

Handlers argued that an exemption from regulation for all fluid milk exports would be needed if the DI proposal were adopted. It must be concluded that this record does not provide the basis for such action even if the DI proposal were adopted.

The witness for Atlanta Dairies testified that if the DI proposal were adopted, all the producers associated with the Georgia market, and specifically those who are not members of DI, would have to carry the reserve supplies of milk that necessarily would be associated with DI sales of exported milk. This is a valid concern, and the proponent described no benefits to the market as a whole, from the adoption of their proposal that would compensate independent producers for this outcome. Proponent argued that the blend price under the order would increase somewhat. However, it is not clear from record evidence that such increase would offset for individual producers the loss of Class I sales under the order and the financial burden of having to carry reserve supplies associated with DI sales of exported milk.

Another point made by a handler witness was to question the advisability of accommodating export sales of aseptically processed milk as proposed by DI when the Georgia market and other milk markets in the region have rather tight supplies of milk. This view parallels a finding made earlier in this decision that adoption of the DI proposal could jeopardize a continuing adequate supply of milk for Class I use in the Georgia market if the quantity of Class III milk in the pool is reduced substantially as intended by DI.

Hearing record data indicated that for the months of July through September 1982, Georgia Class III utilization averaged 11.4 percent of total utilization. With Class III utilization this low, during any year, an increase in exports during these months could deplete, at least temporily, the supply of reserve milk for the Georgia market. The proponent, having entered into contractual arrangements to serve the export market, might find it difficult to shift supplies back in time to serve the Georgia marketing area. In other months of the year, producers whose milk is priced under the order would be required to carry part of the reserve milk supply associated with the export of aseptically processed milk products.

A number of handler witnesses said that placing fluid milk exports to the Caribbean in something other than Class I could facilitate the shipment of fluid milk products to those areas and back again to gain access to a lower cost milk supply. Their view was that the entire classified pricing system could be in jeopardy. There is some doubt from record evidence that this could readily happen, especially where ocean freight costs and relatively long-distance voyages would be involved. Handler witnesses presented no analytical data to establish their point. However, the close proximity of extensive areas of Mexico to California, Arizona, New Mexico and Texas might result in the problem cited by the handler witnesses. The record evidence presented no effective controls to deal with this eventuality.

Proponent's proposal and the testimony relating to it, understandably, was focused on a method whereby DI as a cooperative would claim exemption from pricing and pooling for the milk of some of its producer members that it designated for export sales of aseptically processed milk. As indicated, Dairymen, Inc., presently operates the only pool plant packaging aseptically processed milk under the Georgia order. The cooperative's proposal, however, raised questions concerning the propriety, under milk orders, of having individual producers and cooperative associations designating the end-use of milk. One handler witness said that the exemption should not be adopted because it would permit dairy farmers to designate what milk is to be exempt and what milk is not. His view was that no milk order presently provides for the end-use classification of milk by producers, and that the proposal has the potential of disrupting normal economic decision making by handlers who operate milk plants. Another witness said that the order should allow handlers, and not producers and cooperatives, to decide whether to elect non-producer status for export milk.

In this connection, the Federal milk order program regulates handlers and pool plants. Regulatory status depends on where a handler sells milk, the quantity sold in Class I or the quantity delivered from supply plants to distributing plants during the month. If the handler's actions cause the plant not to be pooled, then the regulations do not apply to that milk supply. It is the handler's actions on which this determination is made. To allow individual dairy farmers to pick and choose which handlers have to pay Class I prices for raw milk used for export and which should receive exempt milk status on their raw milk supply would create severe competitive inequities. Two handlers competing for export sales, one with exempt milk and one with Class I milk, would not be competing on an equal basis. Any provision that established this type of situation would be inappropriate for a milk order. The record of this hearing does not deal effectively with this aspect of the proposal either in terms of specific testimony about the impacts on various persons encompassed by the regulation or in terms of appropriate amendatory provisions.

On the basis of the foregoing considerations, it is concluded that the proposal to exempt exported aseptically processed fluid milk products from pricing and pooling under the Georgia milk order should not be adopted. Accordingly, the proposal is denied.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the request to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

Determination

The findings and conclusions of this decision do not require any change in the regulatory provisions of the order regulating the handling of milk in the Georgia marketing area.

List of Subjects in 7 CFR Part 1007

Milk marketing orders, Milk, Dairy products.

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

Signed at Washington, D.C., on September 12, 1984.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 84-24552 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 420

[Docket No. CAS-RM-79-501]

State Energy Conservation Program

AGENCY: Department of Energy.

ACTION: Notice of inquiry.

SUMMARY: The Department of Energy is considering proposing modifications to the regulations for the operation of its State Energy Conservation Program. The objective of this notice of inquiry is to solicit ideas and suggestions concerning how the program can be made more efficient and productive through regulatory and not legislative means. In addition to the review of the general direction and scope of the program and its regulations, the Department is particularly interested in comments relating to modifying the energy savings component of the formula that determines the amount of funds allocated to each State.

DATES: Written comments (five copies) must be received on or before November 1, 1984. Four public hearings will be held on the dates and at the times following: Kansas City, Missouri on September 28, 1984 beginning at 9:30 a.m.; Salt Lake City, Utah on October 1, 1984 beginning at 9:30 a.m.; Atlanta, Georgia on September 26, 1984 beginning at 9:30 a.m.; and Philadelphia, Pennsylvania on September 24, 1984 beginning at 9:30 a.m.

ADDRESSES: (1) Public hearing locations: Kansas City Federal Building, 601 East 12th Street, Room 116, Kansas City, Missouri 64106; Salt Lake City Federal Building, 125 South State St., Room B-20 (Basement Level), Salt Lake City, Utah 84138; Richard Russell Federal Building, 75 Spring St., SW., Room 1278, Atlanta, Georgia 30303; and William J. Green Federal Building, 600 Arch Street, Room 10320 (10th Floor), Philadephia, Pennsylvania 19106. Send all written comments, oral statements and requests to speak at a hearing to Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets Unit, Room 6B-025, Docket Number CAS-RM-79-501, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-9319.

FOR FURTHER INFORMATION CONTACT:

Rick Klimkos, Energy Management and Extension Division, Conservation and Renewable Energy, Department of Energy, Mail Stop 6A-081, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-8287.

Edward H. Pulliam, Office of General Counsel, Department of Energy, Mail Stop 6B-144, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252-9507.

SUPPLEMENTARY INFORMATION: .

I. Introduction

The State Energy Conservation Program (SECP) was established by Part C of Title III of the Energy Policy and Conservation Act (EPCA), Pub. L. 94-163, 89 Stat. 932 (42 U.S.C. 6321 *et seq.*), to provide financial assistance to develop, modify or implement State energy conservation plans. Part C was subsequently amended by Part B of Title IV of the Energy Conservation and Production Act (ECPA) Pub. L. 94-385, 90 Stat. 1158 (42 U.S.C. 6326 and 6327), which provided financial assistance to develop, modify or implement supplemental State energy conservation plans. Together, the EPCA and ECPA provisions describe the SECP.

Regulations for the program appear in 10 CFR 420. The Department of Energy (DOE) most recently amended the regulations on August 30, 1983 (48 FR 39356) in order to make the program more flexible and responsive to the needs of the States.

Although DOE has not recommended that this program be funded for any subsequent fiscal years, the Department recognizes that continued funding is a possibility and would like to operate the program as efficiently as possible. Therefore, DOE is now interested in receiving general comments about the program, as well as suggestions about modifications to the energy savings component of the funding formula. The energy savings issue is more fully detailed in Section II below. The objective of this notice of inquiry is to receive from concerned members of the public ideas and suggestions which could be implemented to make the program more effective and productive without changing the enabling legislation of the SECP.

II. Issue and Questions for Public Comment

DOE is particularly interested in obtaining views on the issue and questions set forth below.

The program regulations require that financial assistance for the SECP be allocated to States based on a formula in which 40 percent of the funds are divided on the basis of population, 25 percent are shared equally, and 35 percent are based on estimated energy savings. This formula has been used since the program's beginning. On February 11, 1983, DOE proposed an amendment to the SECP regulations (48 FR 6492) which, if adopted, would have replaced estimated energy savings with actual energy savings reported by States at the end of each year as validated or calculated by DOE. In response to the many comments expressing reservations about this proposed change, DOE, in the final rule published August 30, 1983 (48 FR 39356), decided not to initiate the change but rather to design and conduct, with State assistance, a pilot test of an energy savings validation system in order to determine the workability and feasibility of the concept.

At the request of DOE, Oak Ridge National Laboratory (ORNL) undertook an analysis of the feasibility of validating energy savings attributable to the SECP. An Advisory Group made up of representatives from five States and one DOE Operations Office was established to assist ORNL in its effort.

ORNL concluded that the concept of a validation system for SECP energy savings is not feasible for a number of technical and institutional reasons. The technical limitations, which result in the general inability to measure SECP energy savings with any degree of confidence, were identified as follows:

- The inability to properly attribute energy savings to SECP activities can lead to an overstatement of those savings.
- Numerous factors which cannot be accurately measured, but which must be considered in standard methodologies used in the calculation of energy savings, may produce large error rates in these calculations.
- Energy savings produced by activities funded and completed in prior years can distort annual estimates and mask current programs performance.
- Inconsistencies among State estimates of energy savings result from some States using the standard methodologies and others using other procedures.
- Multi-year programs can produce savings of different amounts in different years, which makes it difficult for separate yearly evaluations to present an accurate appraisal of the value of a particular State energy savings project.

The institutional limitations identified were:

- The cost of implementing a validation system is prohibitive relative to the funds available for the SECP.
- Time constraints do not allow a validation system to be in place by FY 1985.

• Expertise to implement a validation system did not exist in the States or DOE.

• Uncertainty in yearly funding levels resulting from the validation system may cause instability in staffing levels and discourage multi-year programs.

• Small innovative programs may be replaced by easily verifiable programs thus changing the SECP philosophy.

• More Federal involvement in state decision-making will occur contrary to the objective of the August 30, 1983 final rule. An adversarial relationship between DOE and States may be promoted.

• Incentives for States to inflate energy savings may shift from estimates of projected savings to estimates of actual savings.

These conclusions raise questions about the current regulation and DOE is considering modifying the regulation. Among the questions raised and about which DOE would particularly like comments are the following:

1. Should DOE amend its regulations to change the energy savings component of the funding formula? The August 30, 1983 final rule does not require DOE to change the funding formula at the conclusion of the pilot test of an energy savings validation system. The existing formula will remain unless DOE initiates actions to change it. However, consistently reliable estimates of energy savings have not been produced under the current system. Inaccuracies in reporting are due in part to DOE's basing 35 percent of the funding formula on the projection with no rigorous verification system, the State's desire to avoid reporting a large shortfall against projected energy savings, and turnover and shortages in State technical staff capable of doing energy savings calculations.

2. If the energy component of the funding formula is modified, what changes should be made? A measure of energy savings is required in the funding formula in order to meet the requirements of the SECP legislation. However, DOE is not restricted to the existing method used to measure energy savings. In addition to adding factors to the funding formula, deleting existing ones, or changing the weight assigned to those factors, changes in the way energy savings are measured may be made. DOE is concerned that modifications to the energy savings component of the funding fomula support the following goals: (1) A defensible and as accurate as possible accounting of energy savings, (2) promotion of energy savings, (3) an equitable allocation system for SECP funds, (4) a cost-effective approach to program evaluation and validation, and (5) a stronger linkage between program evaluation and program management.

3. If modifications to the energy savings component of the funding formula are made, are changes to the regulations in other areas needed to support those changes? DOE is concerned that relability and validity of information other than energy savings also be assured. Techniques to imporve the reliability, validity, and accurate reporting of information such as the number of training sessions held, the number of people using carpool facilities, and other indicators of program progress might be used in conjunction with and support of modifications to the funding formula.

4. If modifications to the energy savings component of the funding formula are made, should some funds be set aside for performance-based funding either to reward States achieving program success or to direct additional funds to States lagging in program results? DOE is concerned with equitable distribution of program funds and not drastically altering traditional State allocation levels. At the same time, DOE is concerned with promoting and increasing energy savings.

In addition to the specific concern with the energy savings component of the formula, DOE also invites comments or suggestions about other aspects of the program which the public feel need to be addressed, and which could be changed through regulatory (rather than legislative) means.

III. Comment Procedures

All interested persons are invited to submit written comments to DOE by the date mentioned previously in the **DATE** section of this notice. Such correspondence should be mailed to: Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B–025, Docket Number CAS–RM–79–501, Forrestal Building, 1000 Independence Avenue, SW., Washington D.C. 20585. Five copies should be submitted.

All comments received will be available for publilc inspection in the DOE Reading Room 1E–090, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any information or data considered by the person furnishing it to be confidential and which may be exempt by law from public disclosure must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination, pursuant to DOE's regulations on confidentiality (10 CFR Part 1004).

DOE will hold several public hearings on this Notice of Inquiry. The hearings will be held in: Philadelphia, Pennsylvania, Atlanta, Georgia, Kansas City, Missouri and Salt Lake City, Utah on the dates and at the addresses stated in the **DATE** and **ADDRESSES** sections of the Notice of inquiry.

Any person who has an interest in the Notice of Inquiry, or who is a representative of a group or class of persons which has an interest in it, may make a written request for an opportunity to make an oral presentation. Such a request to speak at a hearing should be addressed to Department of Energy, Office of Conservation and Renewable Energy, Hearings and Dockets Unit, Room 6B–025, Docket Number CAS–RM–79–501, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9319, and must be received by 4:30 p.m., local time on September 13, 1984. A request may also be hand delivered between the hours or 8:30 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays. Requests should be marked the same as for written comments, with the additional notation, "With Request to Speak".

The person making the request should describe briefly his or her interest in the proceeding and, if appropriate, state why that person is a proper representative of a group. The person should also give a concise summary of the proposed oral presentation, and should provide a phone number where the person may be reached. Each person selected to be heard at a public hearing will be notified. Those persons selected to be heard should bring five copies of their statement to the hearing. If a person cannot provide five copies, alternative arrangements can be made in advance of the hearings. Requests for alternative arrangements should be made in the letter requesting to speak.

DOE reserves the right to select persons to speak at the hearings, to schedule their presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation will be limited to twenty minutes, based on the number of persons requesting to speak.

A DOE official will preside at each hearing. These will not be judicial or evidentiary-type hearings. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision

made by DOE with respect to the subject matter of the hearings will be based on all of the information available to DOE.

Any participant who wishes to ask a question at the hearing may submit the question in writing to the presiding officer. The presiding officer will determine whether the question is relevant and material, and whether the time limitations permit it to be presented for an answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made, and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Freedom of Information Office, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

If DOE must cancel a hearing, DOE will make every effort to notify potential interested parties. Hearing dates may be cancelled in the event no public testimony has been scheduled in advance.

List of Subjects in 10 CFR Part 420

Energy conservation, Grant programs/energy, reporting and recordkeeping requirements, technical assistance.

Issued in Washington, D.C., September 5, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 84-24464 Filed 9-14-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Parts 270, 271, 272, 273, and 274

[Docket No. RM84-14-000]

Deregulation and Other Pricing Changes on January 1, 1985, Under the Natural Gas Policy Act

Issued: September 13, 1984.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: On January 1, 1985, the Natural Gas Policy Act of 1978 (NGPA) will deregulate the prices for substantial amounts of interstate and intrastate gas. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to prepare for price deregulation under section 121 of the NGPA for certain types of natural gas subject to sections 102, 103, 105, and 106 and new maximum lawful prices under sections 103(b) and 105(b)(3).

DATES: An original and 14 copies of comments must be filed by October 17, 1984. A public hearing will be held on October 11, 1984. Requests to participate in the public hearing must be submitted by October 4, 1984.

ADDRESS: All filings should refer to Docket No. RM84-14-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Leslie Lawner, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8511.

Ken Malloy, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (202) 357-8033.

SUPPLEMENTARY INFORMATION: On January 1, 1985, the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432 (1982), will deregulate the prices for substantial amounts of interstate and intrastate gas. The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to prepare for price deregulation under section 121 of the NGPA for certain types of natural gas subject to sections 102, 103, 105, and 106 and new maximum lawful prices under sections 103(b) and 105(b)(3).

I. Background

At the time Congress was considering the NGPA, oil prices were rising and increasing demand and declining supplies of natural gas created severe shortages in many parts of the nation. Political concern about these market distortions, as well as concern about the nation's energy dependence, led Congress to enact legislation revamping the natural gas pricing structure that had existed under the Natural Gas Act (NGA) and eventually to phase in market forces as a substitute for that structure for a substantial amount of our nation's gas supplies. Thus, in 1978, Congress deregulated some gas shortly after the enactment of the NGPA, provided for deregulation of prices for other categories of gas over the next decade, and retained regulatory and pricing controls on other gas wells until these wells are depleted.

Title I of the NGPA created several categories of natural gas, the first sale of which is subject to maximum lawful prices (ceiling prices). Those categories are based on a variety of factors, such as the date the well was drilled, whether the gas was sold under intrastate contracts or committed or dedicated to interstate commerce (dedicated gas), and the need for incentives to produce gas that is otherwise difficult or uneconomical to produce. In contrast, the price of certain natural gas produced from completion locations deeper than 15,000 feet, geopressured brine, coal seams, or Devonian shale was deregulated in 1979, shortly after enactment of the NGPA. Moreover, under section 121, the price for some sections 102 and 103 gas and certain intrastate gas will be deregulated on January 1, 1985, while additional section 103 gas will be deregulated on July 1, 1987. In addition to price deregulation, Congress also mandated higher ceiling prices on January 1, 1985, for certain categories of gas under sections 103 and 105.

II. Discussion

This rulemaking generally concerns categories of natural gas that will be price deregulated under section 121. On January 1, 1985, section 121(a) eliminates price controls from "new natural gas" defined in section 102(c) [1] and certain gas produced from "new, onshore production wells" under section 103.[2] Subject to section 121(e), section 121 also deregulates the price of intrastate gas that is subject to section 105 or 106(b) if the price paid for the last deliveries of such natural gas occurring on December 31, 1984 (or the price that would have been paid if no deliveries

[1] "New natural gas" under section 102(c) covers three types of gas: (1) Gas produced from the Outer Continental Shelf under a lease entered into after April 20, 1977; (2) gas produced from an onshore well on which surface drilling began on or after February 19, 1977, or the depth was increased by 1,000 feet on or after that date, and which is at least 2.5 miles from the nearest marker well or which is 1,000 feet deeper than the deepest completion location of any marker well within 2.5 miles; and (3) gas produced from a reservoir from which natural gas was not produced in commercial quantities before April 20, 1977, subject to certain exclusions. Section 121 deregulates all three types of gas.

[2] "New, onshore production wells" under section 103(c) are onshore wells on which surface drilling began on or after February 19, 1977, and from which gas is produced from a proration unit that meets certain requirements. Section 121 deregulates on January 1, 1985, the price of section 103 wells that were not committed or dedicated to interstate commerce on April 20, 1977, and that produce gas from a completion location deeper than 5,000 feet.

occurred on that date) is higher than $1.00 per MMBtu.[3]

The Commission has two goals in this rulemaking. The first is to resolve those legal and policy issues that are presented by deregulation of certain categories of gas under section 121. The second is to make technical amendments to the Commission's NGPA regulations to conform them to the pricing changes that will take effect on January 1, 1985.

A. Jurisdictional Agency Determinations

Section 503 establishes procedures under which well category determinations are made by State or Federal jurisdictional agencies and then reviewed by this Commission. Since enactment of the NGPA, this section and the Commission's implementing regulations have been used primarily for determining whether gas qualifies under a particular NGPA pricing category. With deregulation occurring on January 1, 1985, it appears that determinations will still be required before production can qualify for deregulated prices. This is due to the criteria that must be met before production qualifies for a deregulated category. Thus, even though section 121 deregulates the price of certain categories of gas, it appears that first sellers must continue to file for determinations for certain categories of gas that will be price deregulated after the determination becomes final, where determinations previously have been required under Title I.

First, for sections 102 and 103 gas deregulated by section 121 and for which a producer has not filed for or obtained a determination prior to January 1, 1985, it appears that first sellers must continue to file applications for determinations with the appropriate jurisdictional agencies. The Commission is tentatively of the view that the NGPA requires a determination in this instance.

Under the determination process Congress established in section 503, jurisdictional agencies make certain factual findings about the well characteristics for certain categories of gas in Subtitle A of Title I of that Act. Subject to certain iterim collection procedures in section 503(e), an affirmative determination by the jurisdictional agency is a condition precedent to a first seller charging and collecting a specified price. Section 503 does not distinguish between gas that is regulated or deregulated, but attaches a substantive effect to a jurisdictional agency's application of the definitions in sections 102(c), 102(d), 103(c), 107(c) and 108(b). Nothing in section 503 or 121 indicates that Congress intended this substantive effect to be changed by deregulation on January 1, 1985. Thus, the Commission tentatively believes that the NGPA requires producers to obtain well category determinations, even for gas which will be price deregulated upon a final determination.

The Commission's approach to deregulation under section 107 followed this view. Under section 107(c), Congress deregulated the price of certain types of high-cost natural gas, *i.e.*, gas produced from completions below 15,000 feet, Devonian shale, geopressured brine, and occluded natural gas produced from coal seams. Section 503(a)(1) requires that a determination be made "applying the definition of high-cost natural gas under section 107(c)." Similarly, section 107(c) requires that gas must be "determined in accordance with section 503 to be" high-cost gas. Given this NGPA mandate, the Commission required that producers obtain a determination in order for gas to be deregulated under section 107(c). This rule would adopt similar requirements for gas under sections 102(c) and 103 that will be deregulated on January 1, 1985.

The Commission is also considering alternative methods for meeting this statutory obligation. For example, it may be possible to establish a notice procedure similar to that used for obtaining qualifying status under section 210 of PURPA.[4] Under the procedure in § 292.207(a)(2), a party seeking to have qualifying status under PURPA for a cogeneration or small power production facility, may certify to the Commission in an informational filing that the facility meets the criteria in the rule, some of which are statutory in nature. The Commission requests comments on whether it has the authority under the NGPA to establish a similar procedure for well category determinations for deregulated gas and, if it does, whether such a procedure should be established. Comments are also invited on alternative means for carrying out the Commission's obligations under the statute, as well as the degree of latitude permitted by the statute.

Second, where a producer has already obtained a determination prior to January 1, 1985, that the gas qualifies as section 102(c) or 103 gas, the Commission is not proposing to require any additional determination that the gas is deregulated. Hence, the price for all section 102(c) or 103 gas that otherwise meets the prerequisites for deregulation is deregulated on January 1, 1985. Under this proposal, the producer would determine whether the gas meets any additional criteria for a deregulation under section 121 of the NGPA. The Commission expects that pipelines will monitor a producer's decision as to whether or not the gas is deregulated. The Commission intends to review these decisions with audits and investigation of complaints.

Whether a section 103 application was filed before or after January 1, 1985, gas subject to that application must meet two criteria imposed by section 121 to be deregulated. It must not have been committed or dedicated to interstate commerce on April 20, 1977,[5] and it must be produced from a completion location deeper than 5,000 feet.[6] The Commission recognizes that it may have an obligation to review the deregulation criteria for section 103 gas before a first seller may charge and collect the deregulated price. Therefore, the Commission is considering requiring producers of such gas to file an affidavit, either separately or as part of a determination application, with the Commission and the purchasing pipeline that the section 103 gas meets these criteria. Alternatively, the Commission

[3] Section 121(e) provides that, if the price for section 105 gas is over $1.00 per MMBtu because of the operation of an indefinite price escalator clause, gas will not be deregulated, but is subject to the ceiling prices in section 105(b)(3).

[4] Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601, *et seq.*

[5] For purposes of determining whether the gas was committed or dedicated to interstate commerce on April 20, 1977, the Commission intends to apply the definition in secion 2(18) of the NGPA. Under the NGA, acreage subject to an interstate contract was not dedicated gas until gas actually commenced flowing in interstate commerce. Conversely, if no gas under the contract actually flowed in interstate commerce, then the gas was not dedicated gas under the NGA. Under secfion 2(18) of the NGPA, however, gas may be committed or dedicated to interstate commerce before flowing in interstate commerce, if, when sold, it "would be required to be sold in interstate commerce . . . under the terms of any contract, any certificate under the Natural Gas Act, or any provision of such Act." *See generally, Conoco, Inc.* v. *FERC*, 622 F.2d 796 (5th Cir. 1980); *Tenneco Exploration Ltd.* v. *FERC*, 649 F.2d 376 (5th Cir. 1981). Hence, gas which, if sold, would have been required to be sold in interstate commerce under the terms of any contract, Natural Gas Act (NGA) certificate, or provision of such Act would be deemed committed or dedicated to interstate commerce on April 20, 1977.

[6] For purposes of determining whether the completion location is located at a depth of more than 5,000 feet, the Commission proposes to amend § 272.104 to apply to section 103 gas. Section 272.104 currently applies to section 107(c) high-cost natural gas which must, among other things, be produced from a completion location deeper than 15,000 feet and requires that the measurement "shall be the true vertical depth from the surface location to the highest perforation point of the completion location." 18 CFR 272.104 (1983). The Commission believes it is appropriate to use the same measurement definition for section 103 gas as for section 107(c) gas because it would be consistent with our current practice.

could require a standard section 503 determination by jurisdictional agencies with review by this Commission prior to deregulation taking effect. While we recognize these options, especially the latter, would impose a significant burden on applicants, jurisdictional agencies, and this Commission, the Commission requests comments on all aspects of these options including its statutory responsibilities to require such review.

Third, where an application for a determination is pending before a jurisdictional agency or this Commission on January 1, 1985, and becomes final after January 1, 1985, the Commission is proposing that the determination must become final before the gas qualifies for deregulation. This follows from the first proposal that producers should be required to obtain a determination even for gas that will be price deregulated after January 1, 1985.

The fourth instance concerns "new tight formation gas" under section 107(c)(5). In order to qualify as new tight formation gas, a producer must file the same information, in addition to other information, that would be filed to qualify as a section 102 or 103 determination. 18 CFR 274.205(e)(1)(i)(A) or (B) (1983). Thus, a determination that gas qualifies as new tight formation gas is implicitly a determination that the gas meets the qualifications for either section 102(c) or 103. Accordingly, for new tight formation gas for which a producer has received a final determination prior to January 1, 1985, such gas would be deregulated under section 121 if the application contained the data and met the requirements for section 102(c) or 103 gas.

B. Interim Collection

The Commission's regulations state two different rules governing the price a first seller may collect while an application is pending before the Commission. The first rule applies to gas that is subject to a ceiling and for which a determination is required under the NGPA. In that situation, the Commission's current regulations allow producers, subject to contractual authorization, to collect the highest ceiling price for which they applied. 18 CFR 273.202(a)(1) and 273.203(a)(1) (1983). The second rule applies to gas that is deregulated under section 107 and for which a determination is required. In that situation, the Commission's regulations allow a producer, subject to contractual authorization, to collect only up to the section 102 price, not a higher deregulated contract price, while a determination is pending before a jurisdictional agency or this Commission. 18 CFR 273.202(a)(2) and 273.203(a)(2) (1983).

The Commission is proposing several changes to its interim collection regulations in light of deregulation on January 1, 1985. First, §§ 273.202(a)(2) and 273.203(a)(2) would be amended to apply not only to section 107 gas, but also to sections 102(c) and 103 deregulated gas. Secondly, and more importantly, the Commission is proposing to eliminate the section 102 price cap on interim collections and permit a producer to collect the deregulated price while an application for a determination for such gas is pending before a jurisdictional agency or this Commission. This rule would apply both for applications pending on January 1, 1985, and for those filed after January 1, 1985. The deregulated price should be the price that the producer and purchaser agree should be collected during the interim period.

The Commission's experience in reviewing over 165,000 determinations for sections 102, 103, and 107 gas indicates that producers file for the correct category of gas for these sections in over 96% of the cases. Thus, the Commission believes that in the vast majority of cases no refunds will be necessary under its proposed rule. However, if it is finally determined that the gas does not qualify under these sections, the producer will, of course, be required to refund the difference between the price collected and the otherwise applicable ceiling price, with interest. 18 CFR 154.102 (c) and (d) (1983). Moreover, all other aspects of the Commission's current interim collection regulations would remain in effect for such gas, such as the surety bond or escrow requirement options.

C. Gas Qualifying for Both a Regulated and a Deregulated Category

There may be instances where gas produced from a well qualifies for two NGPA categories, one regulated and one deregulated. For example, gas that may qualify as section 103 deregulated gas under section 121 might also qualify as stripper well gas, which remains regulated under section 108 of the NGPA. Depending upon a producer's contracts, there may be some instances where it is more advantageous to the producer to collect a regulated price rather than a deregulated price. For example, in the current gas market, a producer may claim a contractual right to receive a higher price if the gas can remain under a regulated category than if the gas is not subject to any applicable ceiling price by operation of section 121 of the NGPA. Therefore, the Commission may have to interpret the NGPA as to whether the ceiling price provisions of the NGPA apply to gas that meets the criteria for both a regulated and deregulated category of gas.

The Commission believes that Congress intended all price controls for gas specified in section 121 to terminate on January 1, 1985, whether or not the gas continued to qualify for a regulated price. This interpretation is consistent with the overall scheme envisioned by Congress when it enacted the NGPA—to provide incentive prices to encourage exploration and development of new reserves in the short-term, and to gradually substitute market forces for regulated prices by phasing in deregulation in 1985 and 1987.

Arguably, section 101(b)(5) provides producers a choice to remain regulated if the regulated price is higher than the deregulated price. That section provides that if natural gas "qualifies under more than one provision of this title providing for any maximum lawful price or any exemption from such a price . . ., the provision which could result in the highest price shall be applicable."

The Commission seeks comments on whether conflicts between regulated and deregulated gas prices are governed by this section, for example, on the theory that deregulation is not an "exemption for such price whth respect to any first sale." Under this approach, Congress may have intended the language regarding "exemption," rather than referring to deregulation, to refer to instances in which the otherwise applicable ceiling price would not apply, such as special relief under sections 104, 106, and 109. Congress foresaw the possibility that in administering the well category ceiling prices, it was conceivable that some gas would qualify for more than one ceiling price. Hence, it sought to clarify that the "provisions that permit the seller to obtain the highest price" would apply. Joint Explantory Statement of the Committee on Conference, H.R. Rep. No. 1752, 95th Cong., 2d Sess. 74 (1978). The issue is whether Congress intended this section to supersede the explicit statutory requirement of deregulation in section 121, when phased-in deregulation was one of its primary objectives in enacting the statute.

In any event, the Commission recognizes that there may be many instances in which there will be contract disputes regarding the appropriate deregulated price allowed by the contract. For example, if a contract merely states that a producer can collect the "highest regulated price" for

deregulated gas, the parties may disagree as to what that price is. These types of contract disputes should generally be resolved by the parties or the appropriate judicial forum. *See generally, Pennzoil Co.* v. *FERC*, 645 F.2d 360, 380–82 (5th Cir. 1981). The Commission nonetheless invites comments on whether this is the most appropriate procedure for resolving these disputes.

D. Contracts Under Section 105

1. Definition of Indefinite Price Escalator Clauses

As noted above, section 121 deregulates the price of intrastate contracts where the price paid on December 31, 1984, is higher than $1.00 per MMBtu provided that the price has not been established under an indefinite price escalator clause as defined in section 105(b)(3)(B). This, sales of gas under section 105 will be deregulated only if the price paid exceeds $1.00 on December 31, 1984, without the effect of an indefinite price escalator clause, but will not be deregulated if it exceeds $1.00 by virtue of the operation of an indefinite price escalator clause.

First, section 105(b)(3)(B) defines an indefinite price escalator clause as a clause

> which provides for the establishment or adjustment of the price for natural gas delivered under such contract by reference to other prices for natural gas, for crude oil, or for refined petroleum products; or . . . which allows for the establishment or adjustment of the price of natural gas delivered under such contract by negotiation between the parties.

In its Order No. 23 series,[7] the Commission found in general that for interstate contracts, most-favored-nations clauses, price-reference clauses, certain redetermination clauses, FPC clauses, area rate clauses, and other such clauses are indefinite price escalator clauses.[8] The Commission believes that these findings are consistent with the definition of indefinite price escalator clauses in section 105(b)(3)(B) and should be used in applying that definition to intrastate contracts.

Second, while the Commission could rely on State or Federal courts to resolve contractual disputes as to whether a contract clause should be treated as an indefinite price escalator clause under section 105(b)(3)(B), the Commission requests comments on whether to allow the use of declaratory orders or NGPA interpretations of the General Counsel (18 CFR 385.207 and 385.1901 (1983)), or procedures similar to the Order No. 23 procedures to resolve such disputes. Since declaratory orders offer the parties the opportunity to obtain a binding resolution before the Commission, the Commission is proposing to specifically provide in § 271.506(a) that a petition for declaratory order be filed in instances where there is a conflict as to whether a contract clause meets the definition in NGPA section 105(b)3)(B). While the Commission is inclined to exercise its own authority for purposes of determining what constitutes an indefinite price escalator clause and whether the gas subject to such a contract is deregulated, the Commission is inclined to leave other aspects of a contract's dispute (such as the price that can be charged under the contract) to be resolved by the parties or appropriate judicial forum.

2. Operation of the $1.00 per MMBtu Threshhold

Other problems arise in determining whether the gas is actually priced above $1.00 on December 31, 1984. For example, some contracts may contain a definite pricing term which sets the price above $1.00 per MMBtu, without resorting to any indefinite price escalator clause that may also be in the contract. Thus, if the contract includes a definite price term setting the price at $1.10 per MMBtu and also an indefinite price escalator clause, the question arises as to whether the gas is deregulated, especially if the producer has used the indefinite clause to collect the section 102 price under the authority of section 105(b)(1).

The Commission believes that section 105(b)(3)(A) requires that the operation of the indefinite price escalator clause be the only mechanism by which the price is raised above $1.00 per MMBtu on December 31, 1984. Thus, in the above example, the gas would be deregulated. If Congress intended otherwise, it could have stated that all intrastate contracts with indefinite price escalator clauses remain regulated; there would be no need to reference the $1.00 threshold. Thus, the Commission is proposing in new § 271.506(b) that a contract will be deregulated if the fixed price that was or would have been collected under the contract is more than $1.00 per MMTtu.

A related problem arises when the price paid under an intrastate contract is based on a percentage of the proceeds from a subsequent sale (percentage sale). Determining whether the percentage sale price is above $1.00 per MMBtu on December 31, 1984, obviously presents the problem of determining a specific price paid on December 31, 1984. If conceived of as a daily price, a percentage sale price can fluctuate on a daily basis. For example, under a percentage sale, the price of gas, if reported on a daily basis, may be above $1.00 on December 28, below a $1.00 on January 1, 1985, and above $1.00 again on January 3, 1985.

The Commission faced a similar problem in Order No. 68, [9] in which the Commission had to determine whether a percentage sale exceeded the section 105 and 106(b) ceiling price. The Commission noted that "the pricing mechanisms under sections 105 and 106(b) appear to assume a specific price stipulated by the terms of the contract." That order resolved this dilemma by reference to the subsequent resale between the percentage sale buyer and subsequent purchaser (resale contract). If the resale contract was within the ceiling price authorized by the NGPA, then the Commission assumed that the price paid under the percentage sale was within the ceilling price of the NGPA. The Commission noted that this was "the only practical course."

For purposes of determining whether section 105 gas subject to percentage sales contracts is priced above $1.00 per MMBtu and thereby deregulated, the Commission is proposing to follow the same rule established in Order No. 68. As proposed in § 271.506(c), if a resale contract that is the subject of a prior percentage sale is above $1.00 per MMBtu, the Commission will deem the percentage sale deregulated by operation of section 121. Conversely, if the price paid under the resale contract is below $1.00 per MMBtu on December 31, 1984, then the Commission will deem the percentage sale not deregulated by operation of section 121.

The Commission recognizes that under this proposal, there may be certain instances where the price paid under the resale contract is over $1.00 per MMBtu and the percentage given to the seller is less than $1.00 per MMBtu, and thus not technically eligible for price decontrol. The Commission

[7] Final Regulations Amending and Clarifying Regulations Under the Natural Gas Act and the Natural Gas Policy Act, 44 FR 16695 (Mar. 20, 1979) (Order No. 23); 44 FR 34472 (June 15, 1979) (Order No. 23–B) (codified at 18 CFR § 154.94 (h) through (j) (1983)).

[8] In Order No. 23, the Commission was concerned with the issue of whether various contractual clauses provided contractual authority to collect NGPA maximum lawful prices. Here, however, the Commission is concerned not so much with interpreting the intent of parties to contracts but with whether certain pricing clauses fall within the definition of "indefinite price escalator clause."

[9] Rules Generally Applicable to Regulated Sales of Natural Gas and Ceiling Prices, 45 FR 5678 (Jan. 24, 1980) (Order No. 68).

believes that this problem is *de minimis*. Under section 105, the ceiling price for a percentage sale that remains regulated is the section 102 price ($3.73—July 1984). The Commission believes that, given the current surplus market, there will be few instances in which the price collected for a percentage sale of deregulated gas would exceed or equal the section 102 price. Thus, it makes little practical difference whether the Commission considers these percentage sales regulated or deregulated sales. Also, a decision to deregulate the percentage sale contract will have no rate impact on consumers since the resale contract will qualify for a deregulated price. The Commission is, therefore, inclined to follow Order No. 68's resolution of the percentage sale problem.

Alternatively, the Commission recognizes that it could require parties to percentage sale contracts to determine as closely as possible whether the price actually paid on December 31, 1984, is above or below $1.00 per MMBtu. The Commission is concerned that this option would entail considerable accounting and administrative burden to the parties and this Commission. However, the Commission requests comments on the proposal and this alternative as well as other administratively feasible techniques for determining whether a percentage sale exceeds the $1.00 per MMBtu threshold mandated in section 105 of the NGPA.

E. Other issues and conforming amendments

The Commission has indicated above those issues that it must resolve that relate to deregulation or new ceiling prices of certain gas in 1985. The Commission, however, wishes to be apprised of any other issues that commenters are aware of that will be presented by pending deregulation.

Many technical, conforming amendments must be made to the Commission's regulations implementing the NGPA in light of the changes that will be made under the NGPA on January 1, 1985. For example, the Commission's regulations relating to deregulated gas are codified in Part 272 and the regulations relating to regulated gas in Part 271. Since the price of gas subject to sections 102 and 103 is currently regulated, the regulations for these sections are contained in Part 271. Since most of the gas subject to these sections will be deregulated in 1985, the Commission has the choice of either amending Part 271 to reflect deregulation changes, or including in Part 272 the regulations that will apply to the deregulated gas under sections 102 and 103.

The Commission also has included technical and conforming changes that must be made to its NGPA regulations in the regulatory text of this proposal. For example, the table of ceiling prices listed at the end of § 271.101 is amended to reflect the new ceiling prices for sections 103 and 105 gas that remains regulated. While the Commission believes it has covered substantially all changes that must be made, it encourages comments on additional issues, and technical and conforming amendments in light of the changes that will be made by the NGPA in January of 1985.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires certain statements, descriptions, and analyses of proposed rules that will have a "significant economic impact on a substantial number of small entities." [10] The Commission is not required to make such an analysis if it certifies that a proposed rule will not have a "significant economic impact on a substantial number of small entities." [11]

There are approximately 10,000 natural gas producers in the United States, many of which would be classified as small entities under the appropriate RFA definition.[12] This proposed rule might affect most of these entities by amending the filing requirements that must be followed for gas that will be deregulated on January 1, 1985. While these changes will be important in implementing deregulation under the Natural Gas Policy Act, the Commission does not believe that the burden imposed by these regulations will be significant. For the most part these regulations would merely make legal decisions and technical corrections necessary to implementing the statute. In those few instances were the Commission proposes to amend its regulations based on policy, the Commission believes that the economic impact, if any, will not be "significant." Accordingly, the Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

[10] 5 U.S.C. 603(a) (1982).

[11] *Id.* at section 605(b).

[12] *Id.* at section 601(3) *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines small business concern as a business which is independently owned and operated and which is not dominant in its field of operation.

IV. Comment Procedures

The Commission invites interested persons to submit written comments, data, views, and other information concerning the matters set out in this notice. An original and 14 copies of such comments should be filed with the Commission by October 17, 1984. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 and should refer to Docket No. RM84–14–000. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours.

In addition, pursuant to section 502(b) of the NGPA, the Commission will hold a public hearing on October 11, 1984, at 10:00 a.m. Requests for participation in this hearing must be submitted by October 4, 1984. Requests should indicate the amount of time required for the oral presentation. Persons participating should, if possible, bring 25 copies of their presentation to the hearing.

This hearing will not be of a judicial or evidentiary type. There will be no cross-examination of persons presenting statements. However, the panel may question such persons and any interested person may submit questions to the presiding officer to be asked or persons making statements. The presiding officer will determine whether the question is relevant and whether the time limitations permit it to be presented. Any further procedural rules will be announced by the presiding officer at the hearing. Transcripts of the hearing will be available in the public file for this proceeding, Docket No. RM84–14–000, in the Commission's Division of Public Information.

List of Subjects in 18 CFR Parts 270 through 274

Natural gas, Incentive prices.

In consideration of the foregoing, the Commission proposes to amend Parts 270 through 274, Subchapter H, Chapter 1, Title 18 Code of Federal Regulation.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 270—[AMENDED]

1. The authority citation for Part 270 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

2. Section 270.101(a) is amended by removing the words "high-cost" and inserting, in their place, the word "natural."

3. Section 270.101(c)(2) is revised to read as follows:

§ 270.101 Application of ceiling prices to first sales of natural gas.

* * * * *

(c) * * *

(2) The price of gas is deregulated only if such gas is deregulated natural gas as defined in § 272.103(a).

* * * * *

§ 270.102 [Amended]

4. Section 270.102(b)(14) is amended by removing the words "high-cost" and inserting, in their place, the word "natural."

5. A new § 270.208 is added to read as follows:

§ 270.208 Applicability of section 121.

Natural gas that is subject to section 121(a) of the NGPA shall be price deregulated and not subject to the maximum lawful prices of the NGPA, regardless of whether the gas also meets the criteria for some other category of gas subject to a maximum lawful price under Subtitle A of Title I of the NGPA.

PART 271—[AMENDED]

6. The authority citation for Part 271 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

7. Table I following § 271.101 is amended by adding a sentence at the end of footnote 1, adding footnotes 4, 5, and 6, adding a new designation E between designations C and F in the column reading "Subpart of Part 271" and revising designations B and C to read as follows:

§ 271.101 Ceiling prices for certain categories of natural gas.

* * * * *

TABLE I—NATURAL GAS CEILING PRICES (OTHER THAN NGPA §§ 104 AND 106(a))

Subpart of part 271	NGPA section	Category of gas	*Maximum lawful price per MMBtu for deliveries in*
B	102	New natural gas, certain OCS gas[4].	* * *
C	103	New, onshore production wells[5].	* * *
E	105(b)(3)	Existing intrastate contracts[6].	

* * * * *

[1] * * *. Commencing January 1, 1985, the price of some intrastate rollover gas is deregulated. (See Part 272 of the Commission's Regulations.)

* * * * *

[4] Commencing January 1, 1985, the price of natural gas finally determined to be eligible as new natural gas under section 102(c) is deregulated. (See Part 272 of the Commission's Regulations.)

[5] Commencing January 1, 1985, the price of some natural gas finally determined to be eligible as natural gas produced from a new, onshore production well under section 103 is deregulated. (See Part 272 of the Commission's Regulations.)

[6] Prior to January 1, 1985, the maximum lawful price was the price specified in Subpart B of Part 271.

8. Section 271.201(a) is revised and the introductory text of the section is reprinted for the convenience of the reader:

§ 271.201 Applicability.

This subpart implements section 102 of the NGPA and applies to the first sale of:

(a) new natural gas which is not deregulated natural gas (see § 272.103(a)); or

* * * * *

9. Section 271.301 is revised to read as follows:

§ 271.301 Applicability.

This subpart implements section 103 of the NGPA and applies to the first sale of natural gas produced from a new, onshore production well, if such gas is not deregulated natural gas (see § 272.103(a)).

10. Section 271.501 is amended by revising the first sentence to read as follows:

§ 271.501 Applicability.

This subpart implements section 105 of the NGPA and applies to the first sale of natural gas under an existing intrastate contract or under a successor to a intrastate contract, if such natural gas is not deregulated natural gas (see § 272.103(a)). * * *

11. Section 271.502(a) is amended by removing the heading "November 9, 1978, contract price at or below $2.06 per MMBtu."

12. Section 271.502 is amended by removing the heading for paragraph (b), revising the introductory text of paragraph (b) and paragraph (b)(1) to read as follows:

§ 271.502 Maximum lawful prices.

* * * * *

(b) In the case of a first sale of natural gas to which this subpart applies and for which the price paid exceeds $1.00 per MMBtu on December 31, 1984 (or would exceed $1.00 per MMBtu if sold on such date) solely by operation of an indefinite escalator clause, the maximum lawful price for natural gas delivered in any month shall be the higher of:

(1) the maximum lawful price per MMBtu for such month specified for Subpart E of Part 271 in Table I of § 271.101(a); or

* * * * *

13. A new § 271.506 is added to read as follows:

§ 271.506 Rules related to deregulation of intrastate gas.

(a) *Indefinite price escalator clauses.* In any case where there is a controversy over whether a particular contract clause is an indefinite price escalator clause under section 105(b)(3)(B), a petition for a declaratory order under § 385.207 of the Commission's regulations shall be filed.

(b) *Contracts over $1.00 by virtue of a definite price clause.* The price of natural gas subject to this subpart is deregulated if the price paid under a clause other than an indefinite price escalator clause is higher than $1.00 per MMBtu for the last deliveries of such gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price that would have been paid had deliveries occurred on such date.

(c) *Percentage-of-proceeds sales.* The price of natural gas sold under a percentage-of-proceeds contract subject to this subpart is deregulated if the price paid on the resale contract is deregulated under Part 272. (§ 270.202(b) states other rules for percentage-of-proceeds sales.)

14. Section 271.601 is revised to read as follows:

§ 271.601 Applicability.

This subpart implements section 106(b) of the NGPA and applies to the first sale of natural gas under an intrastate rollover contract, if such natural gas is not deregulated natural gas (see § 272.103(a)).

PART 272—[AMENDED]

15. The authority citation for Part 272 reads as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

§§ 272.101 and 272.102 [Amended]

16. Sections 272.101 and 272.102 are amended by removing the words "high-cost" and inserting, in their place, the word "natural."

17. In § 272.103, paragraph (a) is revised to read as follows:

§ 272.103 Definitions.

(a) "Deregulated natural gas" means:

(1) Natural gas for which a jurisdictional agency determination has become final under Parts 274 and 275 that the gas qualifies as:

(i) deep, high-cost natural gas;

(ii) gas produced from geopressured brine;

(iii) occluded natural gas produced from coal seams; or

(iv) gas produced from Devonian shale.

(2) Natural gas for which a jurisdictional agency determination becomes final under Parts 274 and 275 and which is sold in a first sale on or after January 1, 1985, and such gas qualifies as:

(i) new natural gas as defined in § 271.203;

(ii) natural gas produced from any new, onshore production well if such gas as defined in § 271.303:

(A) was not committed or dedicated to interstate commerce (as defined in NGPA section 2(18)) on April 20, 1977; and

(B) is produced from a completion location which is located at a depth of more than 5,000 feet.

(3) Natural gas sold under an existing intrastate contract, any successor to an existing contract or any rollover contract, if:

(i) such natural gas was not committed or dedicated to any interstate commerce on November 8, 1978; and

(ii) the price paid under a clause other than an indefinite price escalator clause for the last deliveries of such natural gas occurring on December 31, 1984, or, if no deliveries occurred on such date, the price that would have been paid had deliveries occurred on such date is higher than $1.00 per MMBtu.

* * * * *

18. Section 272.104 is revised to read as follows:

§ 272.104 Special rules for measuring the depth of deregulated natural gas.

For purposes of determining the depth of a completion location under §§ 272.103(a)(2)(ii)(B) and 272.103(b), measurement shall be the true vertical depth from the surface location to the highest perforation point in the completion location.

PART 273—[AMENDED]

19. The authority citation for Part 273 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432.

20. Section 273.202(a)(2) is revised to read as follows:

§273.202 Collection pending jurisdictional agency determination of eligibility.

(a) * * *

(2) If a application has been filed with the jurisdictional agency for a determination of eligibility under Part 272 (relating to deregulated natural gas), the deregulated price may be charged pending the jurisdictional agency determination.

* * * * *

21. Section 273.203(a)(2) is revised to read as follows:

§ 273.203 Collection pending review of jurisdictional agency determination.

(a) * * *

(2) If a jurisdictional agency has determined in accordance with Part 274 that natural gas qualifies under Part 272 (relating to deregulated natural gas), the seller may charge and collect the deregulated price during the period described in paragraph (b) of this section.

* * * * *

22. In § 273.204, a new paragraph (a)(1)(iv) ia added to read as follows:

§ 273.204 Retroactive collection after final determination.

(a) * * *

(1) * * *

(iv) in the case of a new natural gas (as defined in § 271.203) and natural gas produced from a new, onshore production well (as defined in § 271.303) which also satisfies the criteria of § 272.103(a)(3), if the application for determination was filed on or before January 1, 1985, then for first sales of such natural gas delivered on or after January 1, 1985, the seller may retroactively collect the amount by which the deregulated price exceeds the price collected during such period.

* * * * *

§ 273.204 [Amended]

23. Section 273.204(a)(2) ia amended by removing the words "Part 272" and inserting, in their place, the words "§ 272.103.103(a)(1)."

PART 274—[AMENDED]

24. The authority citation for Part 274 is revised to read as follows:

Authority: Natural Gas Policy Act of 1978, 15 U.S.C. 3301–34342; Department of Energy Organization Act, 42 U.S.C. 7101–7352.

25. Section 274.101 ia amended by revising the introductory language to read as follows:

§ 274.101 Applicability.

This part applies to determinations of jurisdictional agencies (as defined in § 274.501) made under § 272.103(a)(1) and the following subparts of Part 271:

* * * * *

[FR Doc. 84–24610 Filed 9–14–84; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 83N–0280]

Food Labeling; Nutrition Labeling of Food; Calorie Content; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that proposed to amend the food labeling regulations to provide for the exclusion of nondigestible dietary fiber when determining the calorie content of a food for nutrition labeling purposes (49 FR 32216; August 13, 1984). This document corrects a typographical error.

FOR FURTHER INFORMATION CONTACT: Elizabeth J. Campbell, Center for Food Safety and Applied Nutrition (HFF–312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–485–0177.

SUPPLEMENTARY INFORMATION:

§ 101.9 [Corrected].

In FR Doc. 84–21340, appearing on page 32216, in the issue of Monday, August 13, 1984, the following correction is made on page 32218: In the first column under § 101.9 *Nutrition labeling in food,* in paragraph (c)(3), in the seventh line, "January 25, 1982" is corrected to read "1984".

Dated: September 10, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–24518 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

National Forest Townsites

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: These revised regulations will provide standards to expedite processing of sales of certain National Forest System lands to governmental entities pursuant to the National Forest Townsite Act of July 31, 1958 (72 Stat. 438; 16 U.S.C. 478a) as amended by the Federal Land Policy and Management

Act of 1976 (90 Stat. 2743; 43 U.S.C. 1722). The revision of these regulations will clarify the existing process, provide for prior designation of potential townsites by the Secretary of Agriculture or the Secretary's designee, expedite case processing by reducing the number of decision levels, and reduce regulatory impact on nonfederal entities.

DATE: Comments must be received by November 16, 1984.

ADDRESS: Comments should be sent to: R. Max Peterson (5450), Chief, Forest Service, U.S. Department of Agriculture, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Paul Haarala, Lands Staff, Forest Service, (703) 235–2161.

SUPPLEMENTARY INFORMATION: The National Forest Townsite Act of 1958, as amended by the Federal Land Policy and Management Act of 1976 (90 Stat. 2743; 43 U.S.C. 1722), provides the Secretary of Agriculture with discretionary authority to set aside and designate certain tracts of National Forest System lands and to offer them for sale to a governmental subdivision for essential indigenous needs of an established community. The rule at 36 CFR Part 254, Subpart B sets forth the procedures for applying for, setting aside, designating, and conveying such land.

The Forest Service proposes to clarify the present regulations to expedite processing of applications and to replace mandatory land use standards with the flexibility to require zoning ordinances and/or covenants in the conveyance only when necessary.

The regulations would be revised to follow the procedural sequence set out by the Townsite Act, that is; receipt of the application, setting aside and designating the townsite, making the necessary studies to determine viability and extent of the lands to be transferred, submitting the package for review and approval, and final processing of conveyance documents by the designated official. In addition, the rule would clarify the temporary segregative effect of an order to designate a townsite and the meaning of community objectives. Delegations of authority would be deleted since this was done by **Federal Register** Notice of January 10, 1984, at 49 FR 1259.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12291 and has been determined not to be a major rule. Little or no effect on the economy will result from this regulation. Since the proposed rule provides steamlined procedures for processing townsite applications, time and costs to the Federal Government and to other units of government in handling these cases should be significantly reduced.

The Assistant Secretary of Agriculture for Natural Resources and the Environment has determined that this action will not have a significant economic impact on a substantial number of small entities. Furthermore, it would result in reducing procedures or paperwork.

The regulation does not significantly affect the environment; therefore, an environment impact statement is not required under the National Environmental Policy Act of 1969.

List of Subjects in 36 CFR Part 254

National Forests, Public lands—Acquisition and exchange Public lands—permit, Public lands—sales, community facilities.

Therefore, for the reasons set forth in the preamble, Subpart B of Part 254 of Title 36 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 254—LANDOWNERSHIP ADJUSTMENTS

* * * * *

Subpart B—National Forest Townsites

Sec.

Authority: Public Law 85–569; 72 Stat. 438; 16 U.S.C. 478a, as amended by sec. 213, Pub. L. 94–579; 90 Stat. 2743; 43 U.S.C. 1722.

* * * * *

Subpart B—National Forest Townsites

§ 254.20 Purpose and scope.

(a) A Forest Service official may upon application set aside and designate for townsite purposes up to 640 acres of National Forest System lands adjacent to or continguous to an established community in Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(b) National Forest System lands, needed by the community, may be sold under the Townsite Act, only if those lands would serve indigenous community objectives that outweigh the public objectives and values of retaining the lands in Federal ownership:

(1) Acceptable indigenous community objectives include, but are not limited to, space for housing and service industries, expansion of existing economic enterprises, new industries utilizing local resources and skills, public schools, public health facilities, community parks, and other intensive recreation areas for local citizens.

(2) Unacceptable objectives include, but are not limited to, intensive commercial enterprises or new industries that would change the character of the local community, and housing projects to attract seasonal or other outside occupants.

§ 254.21 Applications.

(a) An application to purchase National Forest System lands—

(1) Must be made by designated official(s) authorized to do business in the name of a county, city, or local governmental subdivision;

(2) May be in the form of a letter, ordinance, or resolution;

(3) Must be filed with the District Ranger or the Forest Supervisor for the National Forest area in which the lands are situated; and

(4) Must be limited to 640 acres or less adjacent to an established community.

(b) An application must be accompanied by—

(1) A description of the land desired; and

(2) A development plan, consisting of a narrative statement and map, which gives a detailed description of the intended use of the site and how essential community needs will be met by the purchase.

§ 254.22 Designation and public notice.

(a) A Forest Service official must—

(1) Ensure the application meets the requirements of §§ 254.20 and 254.21;

(2) Process an order to set aside and designate the lands for townsite purposes; and

(3) Transmit, where applicable, a copy of the designation order to the State Director, Bureau of Land Management.

(b) The designation order will segregate the lands from entry as long as the application remains in force.

(c) The designation order does not preclude other compatible land adjustments under the Secretary's authority within the area set aside.

(d) A Forest Service official must prepare a public notice of the proposed townsite sale to be inserted once a week for 4 consecutive weeks in a local newspaper:

(1) The notice shall include descriptive information on the proposed townsite sale and identify the applicant

and responsible Forest Service official; and

(2) A period of 45 days, from first date of publication, must be provided for accepting public comments.

§ 254.23 Studies, assessments, and approval.

(a) After initial public notice has been published, a Forest Service official must conduct the necessary studies and assessments to—

(1) Determine if the lands applied for are essential for community needs resulting from growth and from the need to improve and modernize community facilities and services;

(2) Determine if lands applied for would serve indigenous community objectives that outweigh other public objectives and values which would be served by maintaining such a tract in Federal ownership;

(3) Determine if the sale would substantially affect or impair important scenic, wildlife, environmental, historical, archeological, or cultural values;

(4) Evaluate the applicability of public comments;

(5) Identify the extent of valid existing rights and uses; and

(6) Determine if zoning ordinances, convenants, or standards are needed to protect adjacent National Forest land and to protect or mitigate valid existing rights and uses.

(b) Upon approval, the authorized Forest Service official shall process the conveyance pursuant to §§ 254.24, 254.25, and 254.26.

(c) Upon disapproval, a Forest Service official shall—

(1) Notify the applicant in writing of the reasons the proposal is not acceptable; and

(2) Inform the applicant of alternate proposals under other authorities and/or appeal rights.

§ 254.24 Conveyance.

(a) Conveyance of the approved tract(s) may be made by a single transaction or by multiple transactions spread over a period of time in accordance with a prearranged schedule.

(b) The authorized Forest Service official shall—

(1) Execute and convey title to the townsite tract(s) by quitclaim deed;

(2) Ensure deeds are free of terms and convenants, except those deemed necessary to ensure protection of adjacent National Forest System land and/or valid existing rights and uses; and

(3) Deliver executed deeds to the governmental body upon—

(i) Adoption of zoning ordinance and development plan if found necessary; and

(ii) Notice from the authorized Forest Service Fiscal Agent that payment of fair market value has been received.

§ 254.25 Survey.

The authorized Forest Service official shall conduct or provide for the necessary tract survey and boundary posting of National Forest System land.

§ 254.26. Appraisal.

Fair market value of townsite tracts shall be determined following Forest Service appraisal procedures and the Uniform Standards for Federal Acquisitions.

Dated: August 28, 1984.

Douglas W. MacCleery,

Deputy Assistant Secretary for Natural Resources and Environment.

[FR Doc. 84-24550 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A-5-FRL-2670-7]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: USEPA proposes to approve a revision to the Illinois State implementation Plan (SIP) for ozone. The revision, if finally approved, will provide for an extended compliance schedule for St. Charles Manufacturing Company (St. Charles) located in St. Charles, Kane County, Illinois. This SIP will allow St. Charles additional time to reformulate their high solids coatings. This action is taken in response to an August 15, 1983, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received by October 17, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353-0396 before visiting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

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 and Radiation Branch (5AR-26) USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine E. McMahan, (312) 353-0396.

SUPPLEMENTARY INFORMATION: On August 15, 1983, Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for St. Charles' three spray paint booths and two bake ovens which are located in the Chicago ozone demonstration area. This proposed revision is in the form of a June 16, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB) Number PCB 82-156. It grants a variance form the existing SIP requirement until October 31, 1983.

Under the existing federally approved SIP, each metal coating operation at St. Charles is subject to the emission control requirements contained in Rule 205 of Chapter 2 (Air Pollution) of the IPCB Rules and Regulations. IPCB Rule 205(n)(1)(G) limits volatile organic compound (VOC) emissions from metal furniture coating operations to 3.0 pounds per gallons of coating (excluding water). Rule 205(j) stipulates that final compliance is required by December 31, 1982

In lieu of the compliance date contained in the existing federally approved SIP, the State is proposing an extended compliance schedule for St. Charles. St. Charles is a metal coating facility that used approximately 26,760 gallons of coating in 1982 in their metal furniture operations. The average VOC content of these coatings was stated to be 3.48 pounds of VOC per gallon.

Therefore, the Board conditioned this variance such that during the period of the variance, the average yearly VOC content from metal furniture coating operations should not exceed 3.48 pounds per gallon (excluding water).

St. Charles claims it has been unable to comply with the December 31, 1982, compliance schedule because acceptable alternate high solids paints for its non-acid resistant paint lines has not been developed. The company has worked closely with its suppliers since June 1979, to develop the necessary reformulations. Although it was able to achieve compliance in its acid resistant paint line by June 1982, the company claims that unexpected technical problems delayed final compliance by

some of its non-acid resistant and custom color paints.

As of October 15, 1982, St. Charles was in the following position on its three paint lines:

Non-Acid

St. Charles has approved eight (of 18) non-acid colors from one of its coating suppliers. Together with that supplier, St. Charles expected to complete the development, testing and approval of the remaining ten colors by the end of January 1983.

Acid Resistant Paint Line

Since June of 1982, all acid resistant paint used in St. Charles production has been at 3.0 pounds VOC per gallon or lower.

Primer Higher Solids

There was sufficient progress from two of its coating suppliers that St. Charles was anticipating having acceptable primers with higher solids by January 1982.

Customer Colors

One of its suppliers is working on a higher solids paint line for special colors.

In the March 20, 1984 **Federal Register** (49 FR 10277), USEPA proposed to disapprove the SIP revision for St. Charles because the Illinois Ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was proposed for disapproval in the February 3, 1983, **Federal Register.**

During the 30-day comment period on this notice of proposed rulemaking, USEPA received one comment.

Comment: Submitted April 19, 1984, by the IEPA. IEPA believes that the reasons discussed by USEPA for disapproval of the proposed compliance schedule in the March 20, 1984, Notice of Proposed Rulemaking no longer exist because the State has submitted to USEPA an approvable ozone attainment demonstration for the Chicago area. USEPA should, therefore, approve the proposed changes. The State believes a reproposal of the rulemaking is not necessary. USEPA can and should finally approve the compliance schedule changes as proposed by IEPA. If, however, there are alternative grounds for disapproval not stated in the March 20, 1984 Notice, the State believes USEPA should supplement its proposed rulemaking and identify and addresses these grounds.

USEPA Response: The St. Charles proposed rulemaking is being supplemented because USEPA has reversed its March 20, 1984, proposed action and is based upon different issues. USEPA is today withdrawing the March 20, 1984, proposal as it applies to the St. Charles plant and is reproposing to approve the revision for this plant. USEPA agrees with the State that because the State has submitted an approvable ozone attainment demonstration for the Chicago area, this is no longer a basis for disapproving the compliance data extension for St. Charles.

St. Charles is located in a nonattainment area for ozone, which has received an extension through 1987 to comply with the ozone national ambient air quality standards. The VOC emissions from St. Charles will not interfere with reasonable further progress because Illinois' revised attainment demonstration has a growth margin well in excess of that required to accommodate this extension request.

USEPA has determined that St. Charles has provided substantial documentation demonstrating that they have been expeditiously pursuing reformulation to high solids coatings since June 1979. In addition, the company has achieved considerable success in its reformulation program and, based upon its submittal, it appears likely that the company's program will result in final compliance. USEPA proposes approval of the compliance date extension for the metal furniture coating operations at the St. Charles plant as a revision to the Illinois ozone SIP. USEPA will not take final action on this revision until it approves the State's ozone attainment demonstration for the Chicago area.

USEPA is providing a 30-day comment period on this notice of supplemental proposed rulemaking. Public comments received on or before (30–days from publication) will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office at the front of this notice.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals 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.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone Sulphur oxides Nitrogen dioxide, Lead Particulate matter, Carbon monoxide, Hydrocarbon.

(Sec. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C.) 7410, 7502, and 7601(a))

Dated: August 2, 1984

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84-24370 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 52

[A-5-FRL-2671-3]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Proposed rulemaking.

SUMMARY: USEPA is proposing to approve a revision to the Illinois State Implementation Plan (SIP) for ozone. The revision, if finally approved, will provide for an extended compliance schedule for Getty Synthetic Fuels, Incorporated (Getty) located in Cook County, Illinois. This revision will allow Getty additional time to modify and test their new methane recovery process unit. This action is taken in response to a March 14, 1983, request from the State of Illinois.

DATE: Comments on this revision and on the proposed USEPA action must be received by October 17, 1984.

ADDRESSES: Copies of the SIP revision are available at the following addresses for review. (It is recommended that you telephone Uylaine E. McMahan, at (312) 353–0396, before visting the Region V office).

Environmental Protection Agency, Region V, Air and Radiation Branch, 230 South Dearborn Street, Chicago, Illinois 60604

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706.

Comments on this proposed rule should be addressed to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), USEPA, Region V, 230 South Dearborn, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Uylaine McMahan (312) 353–0396.

SUPPLEMENTARY INFORMATION: On March 14, 1983, the Illinois Environmental Protection Agency (IEPA) submitted a proposed revision to its ozone SIP for Getty's methane recovery unit at the C.I.D. landfill in Calumet City, which is located in the Chicago ozone demonstration area. This proposed revision is in the form of a

February 10, 1983, Opinion and Order of the Illinois Pollution Control Board (IPCB) Number PCB 81–171. It grants a variance from the existing SIP requirements until October 1, 1983, and provides a legally enforceable compliance schedule.

Under the existing federally approved SIP, this methane recovery unit is subject to the emission controls requirements contained in Rule 205 of Chapter 2 (Air Pollution) of the IPCB Rules and Regulations. IPCB Rule 205(f) limits organic material emissions to 8 pounds per hour from any emission source. Rule 205(j) stipulates that final compliance with rule 205(f) was required by December 31, 1973, for existing sources. Compliance was, therefore, required by Getty upon start-up in 1981.

In lieu of immediate compliance, the State is proposing an extended compliance schedule for Getty's methane recovery unit. Getty had encountered several difficulties with their methane recovery process.

These start-up problems were believed to be caused by higher concentrations than anticipated of certain heavy hydrocarbons in the C.I.D. landfill gas and unexpected equipment limitations. Getty, therefore, required additional time to make necessary process modifications.

USEPA's review of a September, 1983, stack test revealed Getty's methane recovery process to be in compliance with Rule 205(f).

The May 11, 1984, and June 9, 1984, technical support document contains a detailed discussion of Getty's process difficulties and compliance plan.

In the March 20, 1984 **Federal Register** (49 FR 10277), USEPA proposed to disapprove the SIP revision for the Getty plant because the Illinois Ozone SIP lacked an approvable attainment demonstration for the Chicago nonattainment area. The attainment demonstration contained in the State's 1982 ozone SIP was proposed for disapproval in the February 3, 1983 **Federal Register**.

During the 30-day public comment period USEPA received one comment from IEPA in response to the March 20, 1984, **Federal Register**.

Comment: IEPA believes that the reasons discussed by USEPA for disapproval of the proposed compliance schedule in the March 20, 1984, Notice of Proposed Rulemaking no longer exist because the State has submitted to USEPA an approvable ozone attainment demonstration for the Chicago area. IEPA believes that USEPA should, therefore, approve the proposed changes. The State also believes a reproposal of the rulemaking is not necessary. USEPA can and should finally approve the compliance schedule changes as proposed by IEPA. If, however, there are alternative grounds for disapproval not stated in the March 20, 1984 Notice, the State believes USEPA should repropose rulemaking which identifies and addresses these grounds.

USEPA Response: USEPA is today withdrawing the March 20, 1984, proposal as it applies to the Getty plant and is reproposing to approve the revision for this plant. USEPA agrees that because the State has submitted an approvable ozone attainment demonstration for the Chicago area, this is no longer a basis for disapproving the compliance date extension.

Proposed Action: USEPA has determined that Getty proceeded expeditiously to comply with Rule 205(f). Therefore, USEPA is proposing approval of Getty's extended compliance schedule to October 1, 1983. USEPA will not take final action on this revision until it approves the State's ozone attainment demonstration for the Chicago area.

USEPA is providing a 30–day comment period on this notice of proposed rulemaking. Public comments received on or before October 17, 1984 will be considered in USEPA's final rulemaking. All comments will be available for inspection during normal business hours at the Region V office at the front of this notice.

Under 5 U.S.C. section 605(b), the administrator has certified that SIP approvals does not have a significant economic impact on a substantial number of small entities. (See (45 FR 8709)).

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

List of Subjects in 40 CFR Part 52

Air pollution control ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons.

(Secs. 110, 172 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7410, 7502, and 7601(a))).

Dated: August 2, 1984.

Alan Levin,

Acting Regional Administrator.

[FR Doc. 84–24493 Filed 9–14–84; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 52

[EPA Docket No. AM053MD; A–3–FRL–2671–4]

Proposed Approval of Revisions of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Maryland Air Management Administration (MAMA) has submitted amendments to its air pollution control regulations and has requested that they be reviewed and processed by EPA as revisions to the Maryland State Implementation Plan (SIP).

EPA is proposing approval of these revisions, which consist of amendments to the Code of Maryland Regulation (COMAR) under the "Administrative Provisions" and "Control of Iron and Steel Production Installations" Sections of COMAR 10.18.01 and 10.18.10, respectively. This decision is based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51.

DATE: EPA must receive any comments on or before October 17, 1984.

ADDRESSES: Copies of the proposed SIP revision, as well as accompanying support documentation submitted by the MAMA, are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Air Management Division, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106, Attn: James B. Topsale, P.E.

Maryland Department of Health & Mental Hygiene, Air Management Administration, 201 W. Preston Street, Baltimore, MD 21201, Attn: George P. Ferreri.

All comments should be submitted to James E. Sydnor at the EPA, Region III address listed above. Please reference the EPA Docket number found in the heading of this Notice in any correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. James B. Topsale, (3AM13), 215/597–4553 at the EPA, Region III address indicated above.

SUPPLEMENTARY INFORMATION: On February 13, 1984 EPA received COMAR amendments which change the State's stationary source stack testing procedures document and correct a procedural defect in the incorporation by reference of the procedures for

observing and evaluating visible emissions from iron and steel facilities.

The MAMA provided proof that, after adequate public notice, public hearings were held on October 3, 4, and 5, 1983 regarding the amendments. The MAMA is amending stack testing procedures referenced in COMAR 10.18.01.04 (Test Methods for Stationary Sources, Maryland State Bureau of Air Quality and Noise Control, March 1976) and in COMAR 10.18.10.07 (Stack Test Methods for Stationary Sources, TM No. 73–116, amended November 1980) to include additional tests and make certain wording and organizational changes. The two separate stack test method documents are now combined into one, Air Management Administration Technical Memorandum, AMA TM 83–05, "Stack Test Methods for Stationary Sources", revised June 1983. Additional test procedures are provided in AMA TM 83–05 for asphalt processing and roofing plants (Method 1005A), coke oven quench tower cooling water (Method 1013), and fluorides from aluminum production plants (Method 1014).[1] Also, several wording and format changes were made from the original documents to clarify certain measurements, eliminate confusion with comparable EPA test methods, and to provide a more efficient means of making future changes. Method 1013 was originally approved by EPA on June 18, 1982, when the Agency revised Maryland's SIP to include iron and steel industry regulations. Method 1013 was part of the AMA TM 81–04 which specified the testing and observation procedures to determine compliance with the regulations. For measuring the level of total dissolved solids in quench make-up water, Method 1013 references procedure No. 208B described in the fourteenth edition of *Standard Methods for Examination of Water and Wastewater*. This method requires that the filter used in the analysis be dried to 180 °C. The test procedure differs from that which EPA has more recently endorsed, i.e., State of Indiana Coke Battery Regulations approved on December 6, 1983 (48 FR 54612). EPA believes that ASTM D 1888, Method A, or its equivalent, *Standard Method* No. 208C, is generally a more appropriate test procedure because it requires that the filter be dried to 103–105 °C. At this lower temperature, some materials which are volatilized in Method No. 208B will remain on the filter. In this particular situation in Maryland, however, only one steel facility is affected. The make-up water used at that facility is not high in volatile matter content. Therefore, in this situation the reference to *Standard Method* No. 208B is acceptable.

Also, as part of this amendment, the MAMA is correcting a procedural defect in the incorporation by reference into COMAR 10.18.10.07 of the Air Management Administration Technical Memorandum, AMA TM 81–04, "Procedures for Observing and Evaluating Visible Emissions from Stationary Sources", dated May 1981. No changes are being made in this technical memorandum, except as noted above, and this action is only necessary to ensure that the document has been properly incorporated by reference into the Code of Maryland Regulations.

EPA Evaluation/Approval

The Regional Administrator's decision to propose approval of this SIP revision is based on a determination that the amendments meet the requirements of section 110(a)(2) of the Clean Air Act and 40 CFR Part 51 Requirements for Preparation, Adoption and Submittal of State Implementation Plans. The public is invited to submit to the address stated above, comments on whether the proposed amendment to the MAMA's air pollution control regulations should be approved as a revision to the Maryland SIP.

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

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 48 FR 9809).

List of Subjects in 40 CFR Part 52

Air pollution control, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

(42 U.S.C. 7401–7642)

Dated: September 5, 1984.

Stanley L. Laskowski,

Regional Administrator.

[FR Doc. 84–24496 Filed 9–14–84; 8:45 am]

BILLING CODE 6560–50–M

[1] The approvability of Method 1014 is addressed in a separate proposed Notice for a Maryland 111(d) Plan appearing in the **Federal Register** on August 27, 1984 (49 FR 33905).

40 CFR Part 60

[AD–FRL–2671–2]

Standards of Performance for New Stationary Sources; Opacity Provisions; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; correction.

SUMMARY: This document corrects typographical errors and errors in the amendatory language in the proposed opacity provisions in 40 CFR Part 60 that appeared at page 30676 in the **Federal Register** on Tuesday, July 31, 1984 (49 FR 30676).

FOR FURTHER INFORMATION CONTACT: Doug Bell, Standards Development Branch, Emission Standards and Engineering Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5624.

Dated: September 10, 1984.

Joseph A. Cannon,

Assistant Administrator.

The following corrections are made in the **Federal Register** document 84–20104 appearing at page 30676 in the issue of July 31, 1984:

1. On page 30676, third column, the 22nd line from the bottom, "The" should have read "the."

2. On page 30677, second column, the amendatory language is corrected to read as follows: "It is proposed that 40 CFR Part 60 be amended by adding paragraph (a)(6) to § 60.7; by adding a new sentence inserted after the current first two sentences in paragraph (b) to § 60.11; and also to § 60.11, by revising paragraph (e)(1) and by replacing the first sentence with two new sentences in paragraph (e)(2) to read as follows:"

§ 60.11 [Corrected]

3. On the same page, in the third column, § 60.11(b) is corrected by adding three asterisks immediately following the sentence.

4. In the same column, § 60.11(e)(1), in the 16th line, "as" should have read "at."

5. In the same column, § 60.11(e)(2) in the 16th line, "results. If" should have read "results, if"; and in the 19th line, three asterisks should be inserted at the end of the line.

[FR Doc. 84–24495 Filed 9–14–84; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 11

Settlement and Payment of Claims to Employees for Damage or Loss, Personal Property

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed regulation amends FEMA claims regulation by adding a new Subpart D which specifies the procedures by which the Director of FEMA will settle and pay claims of employees of FEMA amounting to not more than $25,000 for damage to or loss of personal property incident to their service in FEMA.

DATE: Comments should be submitted on or before November 16, 1984.

ADDRESS: Comments should be sent to Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, D.C. 20472.

FOR FURTHER INFORMATION CONTACT: Robert S. Brock, Office of General Counsel, at (202) 287–0378.

SUPPLEMENTARY INFORMATION: These regulations concerning personnel claims are similar to those of other federal agencies.

This regulation is not a major rule within the Term of Executive Order 12291, nor does it have a significant economic impact on a substantial number of small entities. Hence, no regulatory analyses have been prepared. It deals with administrative matters and has no impact on the environment, and is within categorical exemptions to the preparation of environmental documents required under 44 CFR Part 10.

The regulation contains informative collection requirements. These have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act. Comments are to be directed to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: FEMA Desk Officer, Room 3201, New Executive Office Building, Washington, D.C. 20503.

List of Subjects in 44 CFR Part 11

Administrative practices and procedures, Claims.

Accordingly, Chapter I, Subchapter A, Part 11 of Title 44, Code of Federal Regulations, is proposed to be amended:

1. By adding new Subpart D as follows:

PART 11—CLAIMS

Subpart D—Personnel Claims Regulations

Sec.

Authority: 31 U.S.C. 3721.

Subpart D—Personnel Claims Regulations

§ 11.70 Scope and purpose.

(a) The Director, Federal Emergency Management Agency (FEMA), is authorized by 31 U.S.C. 3721 to settle and pay (including replacement in kind) claims of officers and employees of FEMA, amounting to not more than $25,000 for damage to or loss of personal property incident to their service. Property may be replaced in-kind at the option of the Government. Claims are payable only for such types, quantities, or amounts of tangible personal property (including money) as the approving authority shall determine to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss. In determining what is reasonable, useful, or proper, the approving authority will consider the type and quantity of property involved, circumstances attending acquisition and use of the property, and whether possession or use by the claimant at the time of damage or loss was incident to service.

(b) The Government does not underwrite all personal property losses that a claimant may sustain and it does not underwrite individual tastes. While the Government does not attempt to limit possession of property by an individual, payment for damage or loss is made only to the extent that the possession of the property is determined to be reasonable, useful, or proper. If individuals possess excessive quantities of items, or expensive items, they should have such property privately insured. Failure of the claimant to comply with these procedures may reduce or preclude payment of the claim under this subpart.

§ 11.71 Claimants.

(a) A claim pursuant to this subpart may only be made by: (1) An employee of FEMA; (2) a former employee of FEMA whose claim arises out of an incident occurring before his/her separation from FEMA; (3) survivors of a person named in paragraph (a)(1) or (2) of this section, in the following order of precedence: (i) Spouse; (ii) children; (iii) father or mother, or both or (iv) brothers or sisters, or both; (4) the authorized agent or legal representative of a person named in paragraphs (a) (1), (2), and (3) of this section.

(b) A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

§ 11.72 Time limitations.

(a) A claim under this part may be allowed only if it is in writing, specifies a sum certain and is received in the Office of General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472: (1) Within 2 years after it accrues; (2) or if it cannot be filed within the time limits of paragraph (a)(1) of this section because it accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within 2 years after the claim accrues, when the claimant shows good cause, the claim may be filed within 2 years after the cause ceases to exist but not more than 2 years after termination of the war or armed conflict.

(b) For purposes of this subpart, a claim accrues at the time of the accident or incident causing the loss or damage, or at such time as the loss or damage should have been discovered by the claimant by the exercise of due diligence.

§ 11.73 Allowable claims.

(a) A claim may be allowed only if: (1) The damage or loss was not caused wholly or partly by the negligent or wrongful act of the claimant, his/her agent, the members of his/her family, or his/her private employee (the standard to be applied is that of reasonable care under the circumstances); and (2) the possession of the property lost or damaged and the quantity possessed is determined to have been reasonable, useful, or proper under the circumstances; and (3) the claim is substantiated by proper and convincing evidence.

(b) Claims which are otherwise allowable under this subpart shall not be disallowed solely because the property was not in the possession of the claimant at the time of the damage or loss, or solely because the claimant was not the legal owner of the property for which the claim is made. For example, borrowed property may be the subject of a claim.

(c) Subject to the conditions in paragraph (a) of this section, and the other provisions of this subpart, any claim for damage to, or loss of, personal property incident to service with FEMA may be considered and allowed. The following are examples of the principal types of claims which may be allowed, unless excluded by § 11.74.

(1) *Property loss or damage in quarters or other authorized places.* Claims may be allowed for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within the 50 states or the District of Columbia that were assigned to the claimant or otherwise provided in-kind by the United States; or

(ii) Any warehouse, office, working area, or other place (except quarters) authorized for the reception or storage of property.

(2) *Transportation or travel losses.* Claims may be allowed for damage to, or loss of, property incident to transportation or storage pursuant to orders, or in connection with travel under orders, including property in the custody of a carrier, an agent or agency of the Government, or the claimant.

(3) *Motor vehicles.* Claims may be allowed for automobiles and other motor vehicles damaged or lost by overseas shipments provided by the Government. "Shipments provided by the Government" means via Government vessels, charter of commercial vessels, or by Government bills of lading on commercial vessels, and includes storage, unloading, and offloading incident thereto. Other claims for damage to or loss of automobiles and other major vehicles may be allowed when use of the vehicles on a nonreimbursable basis was required by the claimant's supervisor, but these claims shall be limited to a maximum of $1,000.00.

(4) *Mobile homes.* Claims may be allowed for damage to or loss of mobile homes and their content under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes resulting from such structural damage must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to or loss of tires mounted on mobile homes may be allowed only in cases of collision, theft, or vandalism.

(5) *Money.* Claims for money in an amount that is determined to be reasonable for the claimant to possess at the time of the loss are payable:

(i) Where personal funds were accepted by responsible Government personnel with apparent authority to receive them for safekeeping, deposit, transmittal, or other authorized disposition, but were neither applied as directed by the owner nor returned;

(ii) When lost incident to a marine or aircraft disaster;

(iii) When lost by fire, flood, hurricane, or other natural disaster;

(iv) When stolen from the quarters of the claimant where it is conclusively shown that the money was in a locked container and that the quarters themselves were locked. Exceptions to the foregoing "double lock" rule are permitted when the adjudicating authority determines that the theft loss was not caused wholly or partly by the negligent or wrongful act of the claimant, their agent, or their employee. The adjudicating authority should use the test of whether the claimant did their best under the circumstances to protect the property; or

(v) When taken by force from the claimant's person.

(6) *Clothing.* Claims may be allowed for clothing and accessories customarily worn on the person which are damaged or lost:

(i) During the performance of official duties in an unusual or extraordinary-risk situation;

(ii) In cases involving emergency action required by natural disaster such as fire, flood, hurricane, or by enemy or other belligerent action;

(iii) In cases involving faulty equipment or defective furniture maintained by the Government and used by the claimant required by the job situation; or

(iv) When using a motor vehicle.

(7) *Property used for benefit of the Government.* Claims may be allowed for damage to or loss of property (except motor vehicles, see §§ 11.73(c)(3) and 11.74(b)(13)) used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority or by reason of necessity.

(8) *Enemy action or public service.* Claims may be allowed for damage to or loss of property as a direct consequence of:

(i) Enemy action or threat thereof, or combat, guerilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nation;

(ii) Action by the claimant to quiet a civil disturbance or to alleviate a public disaster; or

(iii) Efforts by the claimant to save human life or Government property.

(9) *Marine or aircraft disaster.* Claims may be allowed for personal property damaged or lost as a result of marine or aircraft disaster or accident.

(10) *Government property.* Claims may be allowed for property owned by the United States only when the claimant is financially responsible to an agency of the Government other than FEMA.

(11) *Borrowed property.* Claims may be allowed for borrowed property that has been damaged or lost.

(12) (i) A claim against the Government may be made for not more than $40,000 by an officer or employee of the agency for damage to, or loss of, personal property in a foreign country that was incurred incident to service, and—

(A) The officer, or employee was evacuated from the country on a recommendation or order of the Secretary of State or other competent authority that was made in responding to an incident of political unrest or hostile act by people in that country; and the damage or loss resulted from the evacuation, incident, or hostile act; or

(B) The damage or loss resulted from a hostile act directed against the Government or its officers, or employees.

(ii) On paying the claim under this subsection, the Government is subrogated for the amount of the payment to a right or claim that the claimant may have against the foreign country for the damage or less for which the Government made the payment.

(iii) Amounts may be obligated or expended for claims under this subsection only to the extent provided in advance in appropriation laws.

§11.74 Claims not allowed.

(a) A claim is not allowable if:

(1) The damage or loss was caused wholly or partly by the negligent or wrongful act of the claimant, claimant's agent, claimant's employee, or a member of claimant's family;

(2) The damage or loss occurred in quarters occupied by the claimant within the 50 states and the District of Columbia that were not assigned to the claimant or otherwise provided in-kind by the United States;

(3) Possession of the property lost or damaged was not incident to service or not reasonable or proper under the circumstances.

(b) In addition to claims falling within the categories of paragraph (a) of this section, the following are examples of claims which are not payable:

(1) *Claims not incident to service.* Claims which arose during the conduct of personal business are not payable.

(2) *Subrogation claims.* Claims based upon payment or other consideration to a proper claimant are not payable.

(3) *Assigned claims.* Claims based upon assignment of a claim by a proper claimant are not payable.

(4) *Conditional vendor claims.* Claims asserted by or on behalf of a conditional vendor are not payable.

(5) *Claims by improper claimants.* Claims by persons not designated in § 11.71 are not payable.

(6) *Articles of extraordinary value.* Claims are not payable for valuable or expensive articles, such as cameras, watches, jewelry, furs, or other articles of extraordinary value, when shipped with household goods or as unaccompanied baggage (shipment includes storage). This prohibition does not apply to articles in the personal custody of the claimant or articles properly checked, provided that reasonable protection or security measures have been taken, by the claimant.

(7) *Articles acquired for other persons.* Claims are not payable for articles intended directly or indirectly for persons other than the claimant or members of the claimants' immediate household. This prohibition includes articles acquired at the request of others and articles for sale.

(8) *Property used for business.* Claims are not payable for property normally used for business or profit.

(9) *Unserviceable property.* Claims are not payable for wornout or unserviceable property.

(10) *Violation of law or directive.* Claims are not payable for property acquired, possessed, or transported in violation of law, regulation, or other directive. This does not apply to limitation imposed on the weight of shipments of household goods.

(11) *Intangible property.* Claims are not payable for intangible property such as bank books, checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.

(12) *Government property.* Claims are not payable for property owned by the United States unless the claimant is financially responsible for the property to an agency of the Government other than FEMA.

(13) *Motor vehicles.* Claims for motor vehicles, except as provided for by § 11.73(c)(3), will ordinarily not be paid. However, in exceptional cases, meritorious claims for damage to or loss of motor vehicles, limited to a maximum of $1,000.00, may be recommended to the Office of General Counsel for consideration and approval for payment.

(14) *Enemy property.* Claims are not payable for enemy property, including war trophies.

(15) *Losses recoverable from carrier, insurer or contractor.* Claims are not payable for losses, or any portion thereof, which have been recovered or are recoverable from a carrier, insurer or under contract except as permitted under § 11.75.

(16) *Fees for estimates.* Claims are not normally payable for fees paid to obtain estimates of repair in conjunction with submitting a claim under this subpart. However, where, in the opinion of the adjudicating authority, the claimant could not obtain an estimate without paying a fee, such a claim may be considered in an amount reasonable in relation to the value for the cost of repairs of the articles involved, provided that the evidence furnished clearly indicates that the amount of the fee paid will not be deducted from the cost of repairs if the work is accomplished by the estimator.

(17) *Items fraudulently claimed.* Claims are not payable for items fraudulently claimed. When investigation discloses that a claimant, claimant's agent, claimant's employee, or member of claimant's family has intentionally misrepresented an item claimed as to cost, condition, costs to repair, etc., the item will be disallowed in its entirety even though some actual damage has been sustained. However, if the remainder of the claim is proper, it may be paid. This does not preclude appropriate disciplinary action if warranted.

(18) *Minimum amount.* Loss or damage amounting to less than $10.

§11.75 Claims involving carriers and insurers.

In the event the property which is the subject of a claim was lost or damaged while in the possession of a carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost, or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim against the Government under this subpart.

(1) If more than one bill of lading or contract was issued, a separate demand should be made against the last carrier on each such document.

(2) The demand should be made within the time limit provided in the policy and prior to the filing of a claim against the Government.

(3) If it is apparent that the damage or loss is attributable to packing, storage, or unpacking while in the custody of the Government, no demand need be made against the carrier.

(b) Whenever property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant must make demand in writing against the insurer for reimbursement under terms and conditions of the insurance coverage, prior to the filing of the concurrent claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer, had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of the claimant's service preclude reasonable filing of such a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) Following the submission of the claim against the carrier or insurer, the claimant may immediately submit a claim against the Government in accordance with the provisions of this subpart, without waiting until either final approval or denial of the claim is made by the carrier or insurer.

(1) Upon submission of a claim to the Government, the claimant must certify in the claim that no recovery (or the amount of recovery) has been gained from a carrier or insurer, and enclose all correspondence pertinent thereto.

(2) If the carrier or insurer has not taken final action on the claim against them, by the time the claimant submits a claim to the Government, the claimant will immediately notify them to address all correspondence in regard to the claim to him/her, in care of the General Counsel of FEMA.

(3) The claimant shall timely advise the General Counsel, in writing, of any action which is taken by the carrier or insurer on the claim. On request, the claimant also will furnish such evidence as may be required to enable the United States to enforce the claim.

(e) When a claim is paid by FEMA, the claimant will assign to the United States, to the extent of any payment on the claim accepted by claimant, all rights, title, and interest in any claim against the carrier, insurer, or other party arising out of the incident on which the claim against the Government is based. After payment of the claim by the Government, the claimant will, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment received by the claimant from the United States.

(f) When a claimant recovers for the loss from the carrier or insurer before the claim against the Government under this subpart is settled, the amount or recovery shall be applied to the claim as follows:

(1) When the amount recovered from a carrier, insurer, or other third party is greater than or equal to the claimant's total loss as determined under this subpart, no compensation is allowable under this subpart.

(2) When the amount recovered is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For the purpose of this paragraph (f) the claimant's total loss is to be determined without regard to the $25,000 maximum set forth above. However, if the resulting amount, after making this deduction, exceeds $25,000, the claimant will be allowed only $25,000.

§ 11.76 Claims procedures.

(a) *Filing a claim.* Applicants shall file claims in writing with the General Counsel, Federal Emergency Management Agency, Washington, D.C. 20472. Each written claim shall contain, as a minimum:

(1) Name, address, and place of employment of the claimant;

(2) Place and date of the damage or loss;

(3) A brief statement of the facts and circumstances surrounding the damage or loss;

(4) Cost, date, and place of acquisition of each price of property damaged or lost;

(5) Two itemized repair estimates, or value estimates, whichever is applicable;

(6) Copies of police reports, if applicable;

(7) A statement from the claimant's supervisor that the loss was incident to service;

(8) A statement that the property was or was not insured;

(9) With respect to claims involving thefts or losses in quarters or other places where the property was reasonably kept, a statement as to what security precautions were taken to protect the property involved;

(10) With respect to claims involving property being used for the benefit of the Government, a statement by the claimant's supervisor that the claimant was required to provide such property or that the claimant's providing it was in the interest of the Government; and

(11) Other evidence as may be required.

(b) *Single claim.* A single claim shall be presented for all lost or damaged property resulting from the same incident. If this procedure causes a hardship, the claimant may present an initial claim with notice that it is a partial claim, an explanation of the circumstances causing the hardship, and an estimate of the balance of the claim and the date it will be submitted. Payment may be made on a partial claim if the adjudicating authority determines that a genuine hardship exists.

(c) *Loss in quarters.* Claims for property loss in quarters or other authorized places should be accompanied by a statement indicating:

(1) Geographical location;

(2) Whether the quarters were assigned or provided in-kind by the Government;

(3) Whether the quarters are regularly occupied by the claimant;

(4) Name of the authority, if any, who designated the place of storage of the property if other than quarters;

(5) Measures taken to protect the property; and

(6) Whether the claimant is a local inhabitant.

(d) *Loss by theft or robbery.* Claims for property loss by theft or robbery should be accompanied by a statement indicating:

(1) Geographical location;

(2) Facts and circumstances surrrounding the loss, including evidence of the crime such as breaking and entering, capture of the thief or robber, or recovery of part of the stolen goods; and

(3) Evidence that the claimant exercised due care in protecting the property prior to the loss, including information as to the degree of care normally exercised in the locale of the loss due to any unusual risks involved.

(e) *Transportation losses.* Claims for transportation losses should be accompanied by the following:

(1) Copies of orders authorizing the travel, transportation, or shipment or a certificate explaining the absence of orders and stating their substance;

(2) Statement in cases where property was turned over to a shipping officer, supply officer, or contract packer indicating:

(i) Name (or designation) and address of the shipping officer, supply officer, or contract packer indicating;

(ii) Date the property was turned over;

(iii) Inventoried condition when the property was turned over;

(iv) When and where the property was packed and by whom;

(v) Date of shipment;

(vi) Copies of all bills of lading, inventories, and other applicable shipping documents;

(vii) Date and place of delivery to the claimant;

(viii) Date the property was unpacked by the carrier, claimant, or Government;

(ix) Statement of disinterested witnesses as to the condition of the property when received and delivered, or as to handling or storage;

(x) Whether the negligence of any Government employee acting within the scope of his/her employment caused the damage or loss;

(xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages;

(xii) Total gross, tare, and new weight of shipment;

(xiii) Insurance certificate or policy if losses are privately insured;

(xiv) Copy of the demand on carrier or insured, or both, when required, and the reply, if any;

(xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence.

(f) *Marine or aircraft disaster.* Claims for property losses due to marine or aircraft disaster should be accompanied by a copy of orders or other evidence to establish the claimant's right to be, or to have property on board.

(g) *Enemy action, public disaster, or public service.* Claims for property losses due to enemy action, public disaster, or public service should be accompanied by:

(1) Copies of orders or other evidence establishing the claimant's required presence in the area involved; and

(2) A detailed statement of facts and circumstances showing an applicable case enumerated in § 11.73(c)(8).

(h) *Money.* Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition should be accompanied by:

(1) Name, grade, and address of the person or persons who received money and any others involved;

(2) Name and designation of the authority who authorized such person or

persons to accept personal funds and the disposition required; and

(3) Receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(i) *Motor vehicles or mobile homes in transit.* Claims for damage to motor vehicles or mobile homes in transit should be accompanied by a copy of orders or other available evidence to establish the claimant's lawful right to have the property shipped and evidence to establish damage in transit.

§ 11.77 Settlement of claims.

(a) The General Counsel, FEMA, is authorized to settle (consider, ascertain, adjust, determine, and dispose of, whether by full or partial allowance or disallowance) any claim under this subpart.

(b) The General Counsel may formulate such procedures and make such redelegations as may be required to fulfill the objectives of this subpart.

(c) The General Counsel shall conduct or request the Office of Inspector General to conduct such investigation as may be appropriate in order to determine the validity of a claim.

(d) The General Counsel shall notify a claimant in writing of action taken on their claim, and if partial or full disallowance is made, the reasons therefor.

(e) In the event a claim submitted against a carrier under § 11.75 has not been settled, before settlement of the claim against the Government pursuant to this subpart, the General Counsel shall notify such carrier or insurer to pay the proceeds of the claim to FEMA to the extent FEMA has paid such to claimant in settlement.

(f) The settlement of a claim under this subpart, whether by full or partial allowance or disallowance, is final and conclusive.

§ 11.78 Computation of amount of award.

(a) The amount allowed for damage to or loss of any items of property may not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange), and there will be no allowance for replacement cost or for appreciation in the value of the property. Subject to these limitations, the amount allowable is either:

(1) The depreciated value, immediately prior to the loss or damage, of property lost or damaged beyond economical repair, less any salvage value; or

(2) The reasonable cost of repairs, when property is economically repairable, provided that the cost of repairs does not exceed the amount allowable under paragraph (a)(1) of this section.

(b) Depreciation in value is determined by considering the type of article involved, its costs, its conditions when damaged or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(c) Replacement of lost or damaged property may be made in-kind whenever appropriate.

§ 11.79 Attorney's fees.

No more than 10 per centum of the amount paid in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. A person violating this section shall be fined not more than $1,000.

Dated: September 10, 1984.

Louis O. Giuffrida.

Director.

[FR Doc. 84-24466 Filed 9-14-84; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 84-804; RM-4789]

TV Broadcast Station in Sheridan, WY; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: On August 29, 1984, the Commission published a Notice of Proposed Rule Making in this proceeding concerning the assignment of an FM Broadcast Station in Sheridan, Wyoming (49 FR 34257). Inadvertently, the assigned Docket number was referred to in the Preamble as MM Docket number 83-804. The correct Docket number is 84-804.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheurle, Mass Media Bureau, (202) 634-6530.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 84-24397 Filed 9-14-84; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-61; Notice 2]

Transportation of Natural and Other Gas by Pipeline; Maps and Records

AGENCY: Materials Transportation Bureau (MTB), DOT.

ACTION: Withdrawal of Advance Notice of Proposed Rule making (ANPRM).

SUMMARY: An ANPRM was published to generate information to be used in evaluating the need for requiring additional maps and records of gas pipeline systems as a means of improving pipeline safety. The information obtained showed that additional regulations would not result in net safety benefits.

FOR FURTHER INFORMATION CONTACT: Robert F. Langley, (202) 426-2082.

SUPPLEMENTARY INFORMATION: The National Transportation Safety Board (NTSB), in a published recommendation (P-78-50), recommended to MTB that "the Materials Transportation Bureau of the U.S. Department of Transportation: Revise 49 CFR Part 192 to require that gas company system maps and records be maintained accurately to identify the location, size, and operating pressure of all of their pipelines."

NTSB also made a recommendation to a gas pipeline operator (P-77-40) with regard to verifying the location and the mapping of all high pressure shut-off valves. Additional accident investigation reports, issued by NTSB and reported in Docket No. PS-61; Notice 1, indicated a lack of maps or records or a misreading of the available maps or records by the gas pipeline operator. According to NTSB, the operator's lack of proper records possibly increased the severity of the accidents recorded. Following these recommendations, MTB published an ANPRM (Docket No. PS-61; Notice 1, 44 FR 68493, November 29, 1979) to gain more information about the need for new or additional Federal regulations that would require operators to keep additional specific information on maps or records.

At the time that the ANPRM of Docket No. PS-61 was being written, the Congress enacted an amendment (Pub. L. 96-129) to the Natural Gas Pipeline Safety Act of 1968. In section 110(b)(1) of this amendment, the Secretary of Transportation was directed to conduct a study as to whether pipeline safety

could be significantly enhanced in a cost-effective manner by regulations requiring pipeline facility operator to prepare and maintain a general description of their pipeline facilities. Several of the questions in the ANPRM were asked to provide feedback from gas pipeline operators relative to the survey requested by the Congress. Notable among those questions were those suggesting that information be included on records with regard to climate, geology, seismology, and projected population for the area adjacent to the pipeline.

Notice 1 and Responses Received

Notice 1 of Docket No. PS–61 asked a total of 17 major questions with some of these containing other relevant questions. The 84 commenters to the ANPRM represented a cross section of industry trade associations, large and small gas operators, members of the public at large, and the Congress. Many of the State agencies commented also. The Technical Pipeline Safety Standards Committee (TPSSC) reviewed and commented on the docket at a public hearing held June 17, 1980. Two of the commenting trade associations had conducted a survey among their members on some of the items presented in the ANPRM, so their comments reflected the views of several hundred gas operators.

It was evident, after reviewing the comments that, as MTB has found during inspections, the majority of gas pipeline operators have a system of mapping and record keeping meeting or exceeding the suggested requirements of Docket No. PS–61. Most of the remainder of the commenters are, at present, keeping maps or other written records of satisfactory quality to meet the requirements of Part 192.

Two commenters could not see any reason to have requirements for records or mapkeeping in the regulations and preferred their own methods of maintaining records. These two commenters are probably typical of some of the operators encountered on inspections by representatives of MTB's Office of Operations and Enforcement (OOE). The inspectors have reported operators who kept records or maps on scraps of paper or by memory. For this type of operator, OOE has found that educating such an operator in proper record keeping methods is more effective than new or additional regulations.

Two State agencies and other commenters, amounting to 14 percent of the responses, stated that they could not see any justification for having additional requirements for records or mapkeeping in the regulations. Their reasons for this were that existing regulations are sufficient; a greater burden would be placed on the consumer since the additional costs of compliance would be passed on to the gas user, and maps would reveal the location of the gas facilities leaving the facilities prone to sabotage.

Another general comment, repeated by 49 percent of the commenters, had to do with making mapkeeping regulations apply retroactively to existing pipeline systems. These commenters pointed out that the NTSB recommendations quoted in the ANPRM discussed failures of operators to locate older buried facilities in a timely manner. The NTSB conclusion in their report was that, in some instances, locating facilities more quickly would have presented some injuries and damages. In discussing the question in relation to the points from the NTSB reports, these commenters then concluded that MTB would have to retroactively apply the requirements if they were to satisfy NTSB's concern. These commenters estimated that increased costs to the gas pipeline industry would be in excess of 100 million dollars if there were a requirement to map old gas pipeline systems not currently mapped or to update existing maps of these systems.

MTB's analysis supports the position of these commenters in regard to the high cost of searching for and mapping these portions of existing systems that are currently unmapped.

DOT Cost-Benefit Analysis

Section 110(a) of the 1979 amendment to the Natural Gas Pipeline Safety Act of 1968 directed the Secretary of Transportation to conduct and complete a cost-benefit analysis to determine whether additional legislation on pipeline safety is benefical. The report submitted to the Congress, "Cost Benefit Analysis of Increased Natural Gas Pipeline Safety Regulation"—April 1981, by MTB centered on regulations currently being proposed.

One of the proposals, for which a cost-benefit analysis was made, was the proposal made in Docket No. PS–61 to provide adequate maps and records of gas pipeline systems. This is discussed in Chapter 5 of the analysis. Chapter 5 contains several tables which had been developed from a survey conducted by the Transportation Systems Center in 1980 and from information in the comments to Docket No. PS–61. In assessing the potential benefits of additional maps and records, Table 5–3 of the analysis lists data items referenced by pipeline safety regulations. In order that an operator might fully comply with the sections of 49 CFR Part 192 listed, some sort of record, map, or other proof of compliance must be maintained.

TABLES 5.3.—DATA ITEMS REFERENCED BY REGULATIONS

Data item	Data included in regulations
A. Location of facilities:	
1. Pipelines (all sizes)	Services: §§ 192.353, 192.355.
2. Compressor/regulator stations.	§ 192.163.
3. Primary line valves	§ 192.181.
4. Vaults	§ 192.185.
5. Rectifiers	
6. Appurtenances	
B. Facility descriptions:	
1. Age	DOT F7100.1–1 Parts B&C; DOT F7100.2–1 Parts B&C.
2. Type of material	DOT F7100.1–1 Part G; DOT F7100.2–1 Part G.
3. Type of construction	
4. Pipe size	DOT F7100.1–1 Part G; DOT F7100.2–1 Part G.
5. Wall thickness	DOT F7100.1–8b; DOT F7100.2–8b, 192.109.
6. Coating	DOT F7100.1–1 Part B; DOT F7100.1 Part A.2; DOT F7100.2–1 Part B; DOT F7100.2 Part A.2, 192.461.
7. Cathodic protection	DOT F7100.1 Part A.4; DOT F7100.2; Part A.4, 192.455.
8. Design specification	DOT F7100.1–8c; DOT F7100.2–8c.
9. Manufacturer	
C. Operating conditions:	
1. Material transported	
2. Transport pressure	DOT F7100.1–2d; DOT F7100.2–9f.
3. MAOP	192.619, 192.623.
D. Ambient conditions:	
1. Climate	
2. Soil/geology	
3. Seismic	
4. Population (class location studies).	§§ 192.5, 192.607, 192.609, 192.613.
5. Demographic	

Opposite these suggested requirements in the table are shown the present regulations in 49 CFR Part 192 or reporting requirements in 49 CFR Part 191 for which, in order to fulfill the requirements of the regulation, an operator would have to maintain the suggested record. Sixty-two percent of the commenters to Docket No. PS–61 indicated that they were keeping records in a form or manner to show compliance with an existing regulation. As shown by Table 5.4 of the report, typical gas pipeline operators maintain more thorough records than NTSB suggests should be kept and more than are required by inference in the existing regulations.

As discussed in the analysis on pages 5–11 and 5–13 of the above report to Congress:

> The implementation of a regulation requiring pipeline operators to maintain a description of their facilities in sufficient detail for adequate field work (operations, maintenance, inspection) would require certain actions by both the Department and

industry. In order to determine whether operators has sufficient maps, information records and retrieval systems, MTB would have to establish operational guidelines for field inspectors to utilize in evaluating each operator's mapping and information system. Criteria developed in section 5.2 would be utilized as the basis for these inspections, with the field inspectors making a final determination as to sufficiency of the mapping and information system. MTB would identify the noncompliant operators, note deficiencies and establish a period of compliance.

Pipeline operators, without sufficient maps, records or retrieval systems would be required to develop this information in sufficient detail to satisfy the requirements imposed by regulation. In many cases, operators might only have to develop information on parts of their existing facilities, and the extent of this data assemblage would be based on the availability of existing information. Thus, most of the resultant actions and activities would be placed on pipeline operators.

The costs associated with a regulatory requirement for maintaining a description of pipeline facilities would impact both the Department and industry. In order to be consistent with information presented in Chapter 4, Department costs are termed *administrative costs* and industry costs are termed *compliance costs.*

Table 5.6 of the analysis enumerates some of these costs.

As discussed on page 5–14 of the analysis:

Administrative costs would be incurred due to the examination and evaluation of current mapping and recording of information on pipeline facilities. It is estimated that each system would require eight hours of inspection time for initial evaluation of maps and records and one hour per year for subsequent review. Over a twenty-year period this would require 27 hours of inspection time for each pipeline system. As there are approximately 7,000 gas pipeline systems which would be affected by mapping requirements, 189,000 inspection hours would be required. Using a burdened rate of $50 per hour, the administrative costs of mapping requirements can be estimated at $9,450,000.

TABLES 5.4. ADDITIONAL DATA REQUIREMENTS WHICH MIGHT HAVE TO BE MAINTAINED BY OPERATORS, AS A RESULT OF PIPELINE FACILITIES DESCRIPTION REQUIREMENTS OF SECTION 110(b)(1)

Data item	Currently maintained by typical operators	Included in current regulation	Additional data which might be required
A. Location of facilities:			
1. Pipline (all sizes)	X	X	
2. Compressor/regulator stations	X	X	
3. Primary line valves	X	X	
4. Vaults	X	X	
5. Rectifiers	X		X
6. Appurtenances	X		X
B. Facility descriptors:			
1. Age	X	X	
2. Type of material	X	X	
3. Type of construction	X		X
4. Pipe size	X	X	
5. Wall thickness	X	X	
6. Coating	X	X	
7. Type cathodic protection	X	X	
8. Design Specification	X	X	
9. Manufacturer			X
C. Operating Conditions:			
1. Material transported			X
2. Transport pressure		X	
3. MAOP	X	X	
D. Ambient conditions:			
1. Climate			[1] X
2. Soil/geology			[1] X
3. Sesmic			[1] X
4. Population (class location studies)		X	
5. Demographic			X

[1] These data would only be maintained if extraordinary conditions exist.

TABLE 5.6. ESTIMATED COST OF COMPLIANCE FOR MAINTAINING A DESCRIPTION OF PIPELINE FACILITIES—SMALL DISTRIBUTION SYSTEMS (1980 DOLLARS)

Total mileage		181,800
Cost of mapping ($100 to $200 per mile)	$18,180,000	$36,360,000
Cost of information record system ($25 to $50 per mile)	4,545,000	9,090,000
Cost of annual maintenance of records and maps ($1 to $2 per mile for 19 years)	3,454,200	6,908,400

TABLE 5.6. ESTIMATED COST OF COMPLIANCE FOR MAINTAINING A DESCRIPTION OF PIPELINE FACILITIES—SMALL DISTRIBUTION SYSTEMS (1980 DOLLARS)—Continued

Total cost	26,179,200	52,358,400

The benefits of instituting additional specific regulations for maps and records are discussed on page 5–25 of the analysis as follows:

Since a facilities description requirement would not substantially affect large distribution companies, any possible benefits in terms of reduced leaks would be minimal. Requiring such descriptions to be maintained by smaller operators, especially municipal and master meter operators, might produce more positive results with regard to leaks resulting from damage by outside forces. However, the diversion of operating funds into the development of maps and records could also result in a net reduction in safety due to overall system deterioration.

The commenters to Notice 1 also developed costs. Their costs were somewhat higher than those presented in the DOT cost-benefit analysis. The commenters averaged their costs for mapping both existing and new systems and arrived at a cost per customer of $20.00. The 22 commenters who presented costs represented 7,235,000 gas customers. The total cost would be $144,700,000. If this average cost is extended nationwide to all 48,717,100 [1] gas utility customers, the total projected cost for additional mapping of existing and new gas pipeline systems would be $974,342,000. At the December 17, 1980, TPSSC meeting in Washington, D.C., the American Gas Association made a report indicataing that costs to industry of converting to computerized records would be at least $500,000,000.

Conclusions

The MTB cannot present any substantial benefits to offset the costs presented to it, which are even higher than those presented in the cost-benefit analysis. Since the gas pipeline operators should now be keeping records, which could also include maps, to show complianace with many of the present regulations, it appears redundant to set forth additional specific regulations requiring the same records.

Because of high costs and the fact that gas pipeline safety would not be significantly enhanced, at this time, by further regulation dealing with maps and records, the proposals presented in Docket No. PS–61; Notice 1 are hereby withdrawn.

(49 U.S.C. 1672; 49 CFR 1.53; Appendix A of Part 1, and Appendix A of Part 106)

Issued in Washington, D.C., on September 11, 1984.

Richard L. Beam,

Associate Director for Pipeline Safety Regulation, Materials Transportation Bureau.

[FR Doc. 84–24465 Filed 9–14–84; 8:45 am]

BILLING CODE 4910–60–M

[1] American Gas Association Annual Report.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To List the Tar River Spiny Mussel (Elliptio (Canthyria) steinstansana) As an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Tar River spiny mussel *(Elliptio (Canthyria) steinstansana)* to be an endangered species. The species is currently known to be restricted to approximately 12 miles of the Tar River in Edgecombe County, North Carolina. Since the species has a restricted distribution, any factor that degrades water or substrate quality in this short river reach, such as land use changes, chemical spills, and increases in agricultural and urban runoff, could threaten the mussel's survival. This proposal, if made final, would implement Federal protection provided by the Endangered Species Act of 1973, as amended. The Service is requesting information on environmental and other impacts that would result from listing the Tar River spiny mussel as an endangered species.

DATES: Comments from all interested parties must be received by November 16, 1984. Public hearing requests must be received by November 1, 1984.

ADDRESSES: Interested persons, organizations, agencies, and governments are requested to submit comments to the Field Supervisor, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321). Comments and materials relating to this proposal will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Richard G. Biggins, Asheville Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 8/672–0321) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771 or FTS 8/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Tar River spiny mussel was first discovered in the Tar River, Edgecombe County, North Carolina, by Dr. Carol B. Stein in 1966. Subsequently, the species was recorded from the Tar River in Nash, Edgecombe, and Pitt Counties (Shelley, 1972; Johnson and Clarke, 1983). The species was described by Johnson and Clarke (1983) as *Elliptio (Canthyria) steinstansana.*

Historical distribution data on the Tar River spiny mussel are limited. However, it can be inferred from available records that the species inhabited the Tar River from Pitt County near Falkland, North Carolina, upstream through Edgecombe County to Spring Hope, Nash County, North Carolina as recently as 1966. According to a recent Service-funded survey of the Tar, Neuse, and Roanoke Rivers in North Carolina, the known Tar River spiny mussel population (estimated at 100 to 500 individuals) is restricted to about 12 miles of the Tar River in Edgecombe County, North Carolina.

Aside from the Tar River spiny mussel, only two other freshwater spined mussels are known to exist: a small-shelled and short-spined species, *Fusconaia collina,* found only in the James River in Virginia, and a large-shelled and long-spined species, *Elliptio (Canthyria) spinosa,* collected only from the Altamaha River in Georgia. The shell size and spine length of the Tar River species is intermediate between these two species.

Because of its rarity, little is known of the Tar River spiny mussel's biology. The species has been collected on sand and mud substrates, and it has been suggested that the mussel's spines help it maintain an upright position as it moves through the soft substrate. Like other freshwater mussels, it feeds by filtering food particles from the water. It has a complex reproductive cycle in which the mussel larvae attach for a short time to a fish species. The mussel's life span, time of spawning, fish species the larva parasitizes, and many other aspects of its life history are still unknown.

The Tar River spiny mussel may have always existed in low numbers. However, the apparent recent reduction in its distribution and the extremely small population size make it vulnerable to extinction from a single catastrophic event such as a tank truck accident involving a toxic chemical spill. The North Carolina Department of Natural Resources and Community Development (1983) reports of the Tar River that "Agricultural erosion rates are low, but loadings of nutrients and pesticides are above average." A hydroelectric project proposed for an upstream reservoir could also impact the species if the mussel's welfare is not considered during planning, construction, and operation of the facility.

On March 5, 1982, the Service published a notice in the **Federal Register** (47 FR 9483) that a status review was being conducted for the Tar River spiny mussel. The notice requested data on the species' status and solicited information on environmental and economic impacts, plus the effects on small businesses that could result if the species were listed and its critical habitat were designated. A total of 24 letters were received by the Service in response to the notice of review. Only two respondents totally opposed the listing of the species, while five respondents felt more information was needed before further decisions were made on listing. Three of the comments involved questions concerning potential economic impacts of designating critical habitat, but these letters provided no information that the Service could use in making economic projections. Four comments identified potential projects and ongoing activities that could impact the species; ten responses stated they were aware of no project that might impact the species.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 Amendments—see proposal at 48 FR 36062, August 8, 1983) set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Tar River spiny mussel *(Elliptio (Canthyria) steinstansana)* are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Results of a recent Service-funded survey of the Tar, Neuse, and Roanoke Rivers indicate that the Tar River spiny mussel (with an estimated total population size of 100 to 500 individuals) exists only in approximately 12 miles of the Tar River in Edgecombe County, North Carolina. This represents a significant reduction in known range as historic records show the species was once found both upstream (Nash County, North Carolina)

and downstream (Pitt County, North Carolina) of its present range.

The species' restricted range makes it vulnerable to toxic chemical spills, which could cause total extinction. The mussel is also threatened by other factors. Currently, a feasibility study is being conducted involving hydroelectric power production at an upstream dam in Rocky Mount, North Carolina. This study is considering restricting river flows on a daily basis to store water for peak power demands. Fluctuating river flows could impact the species by stranding individuals on sand bars and, if the river flows are reduced substantially, by affecting the species' water quality requirements.

In a report prepared by the North Carolina Department of Natural Resources and Community Development (1983), the Tar River was characterized as having low agricultural erosion rates, but loadings of nutrients and pesticides were about average. The North Carolina Wildlife Resources Commission, in response to the Service's notice of review, stated that pumping large volumes of water from the Tar River during drought periods could threaten the species by decreasing water quality.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The species has recently been described and its approximate range delineated (Johnson and Clarke, 1983). This notoriety for such a unique and rare mussel can be expected to increase collection pressure from shell dealers and collectors. As the population is small, the removal of any individuals could serously impact the species' survival.

C. *Disease or predation.* There is no evidence of threats from disease or predation.

D. *The inadequacy of existing regulatory mechanisms.* North Carolina State law (subsection 113–272.4) prohibits collecting wildlife, which includes freshwater mussels, without a State permit. However, this State law does not protect the species' habitat from the potential impacts of Federal projects. Federal listing would provide protection for the species under the Endangered Species Act by requiring a Federal permit to take the species and requiring Federal agencies to consult with the Service when projects they fund, authorize, or carry out may affect the species.

E. *Other natural or manmade factors affecting its continued existence.* The Tar River has become infested by the Asiatic clam (*Corbicula fluminea*)—a species introduced accidentally from Asia. This non-native species may have an adverse effect on the Tar River spiny mussel's survival. The feeding activity of the Asiatic clam (estimated at 1,000 individuals per square meter) could reduce the availability of phytoplankton needed as a food source for the Tar River spiny mussel.

The Service has carefully assessed the best scientific information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Tar River spiny mussel as endangered. The mussel's small populaton and presented restricted range (12 river miles) makes it extremely vulnerable to a single catastrophic event; its range has greatly narrowed with the immediate past; therefore, threatened status would not be appropriate. Critical habitat designation (see Critical Habitat section of this proposal) would not be prudent for the Tar River spiny mussel, as defining its exact range and specific habitat could threaten the species by increasing the risk of illegal taking of this unqiue spiny mussel. A decision to take no action would exclude the Tar River spiny mussel from needed protection available under the Endangered Species Act. Therefore, no action or listing as threatened would be contrary to the Act's intent.

Critical Habitat

Section 4(a)(3) of the Act, as Amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designtion of critical habitat is not prudent for the Tar River spiny mussel at this time. This rare mussel is unique, being one of only three known species of spined freshwater mussels. Because of this, the Service believes a detailed descriptive of the species' habitat, required as part of any critical habitat designation, could increase the species' vulnerability to illegal taking and increase the law enforcement problem. Therefore, it would not be prudent to designate critical habitat for this species. Doing so would draw attention to the Tar River spiny mussel and risk depletion of an already limited population.

Available Conservation Measures

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

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

Federal activities that could impact the species and its habitat include, but are not limited to, the following: Issuance of permits for hydroelectric facilities, stream alterations, reservoir construction, wastewater facility development, and road and bridge construction on the Tar River. The construction of a planned hydroelectric facility at Rocky Mount, North Carolina, could likewise impact the species, as discussed above. It has been the experience of the Service that nearly all Section 7 consultations are resolved so that the species is protected and the project objectives are met.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship on interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce listed species. It also would be illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that was illegally taken. Certain exceptions would apply

to agents of the Service and State conservation agencies.

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

Public Comments Solicited

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

(1) Biological, commerical trade, or other relevant data concerning any threat (or lack thereof) to the Tar River spiny mussel;

(2) The location of any additional populations of the Tar River spiny mussel and the reasons why any habitat of this species should or should not be determined to be critical habitat as provided by Section 4 of the Act;

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

(4) Current or planned activities in the subject area and their possible impacts on the Tar River spiny mussel.

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

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to Warren T. Parker, Field Supervisor, Endangered Species Field Station, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

National Environmental Policy Act

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

Literature Cited

Johnson, R.I. and A.H. Clarke. 1983. A new spiny mussel, *(Elliptio (Canthyria) steinstansana)* (Bivalvia: Unionidae), from the Tar River, North Carolina. Occasional Papers on Mollusks, 4(6):289–298.

North Carolina Department of Natural Resources and Community Development, Division of Environmental Management. 1983. Biological classification of streams and ponds in North Carolina—Documentation of impaired water use. July 1983, 335 pp.

Shelley, R.M. 1972. In defense of naiades. Wildlife in North Carolina, 36:4–8, 26–27.

Author

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

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

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

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

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

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
CLAMS							
Mussel, Tar River spiny	*Elliptio (Canthyria) steinstansana*	U.S.A. (NC)	NA	E		NA	NA

Dated: August 15, 1984.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 84-24301 Filed 9-14-84; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 49, No. 181
Monday, September 17, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 84-346]

Citrus Canker; Declaration of Emergency Because of Citrus Canker

Whereas, a serious infestation of citrus canker exists in parts of Folorida, and.

Whereas, citrus canker is a devastating bacterial disease which rapidly and aggressively infects citrus and which can be spread easily causing catastrophic damage to entire citrus growing areas;

Now therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency which threatens the citrus growing industries of this country and I authorize the transfer and use of such sums as may be necessary from appropriations or other funds available to the agencies or corporations of the Department of Agriculture for the conduct of a program to detect and identify citrus canker infested areas, to control and prevent the dissemination of citrus canker to noninfested areas in the United States, and to eradicate citrus canker wherever it may be found.

EFFECTIVE DATE: This declaration of emergency shall become effective September 11, 1984.

John R. Block,

Secretary of Agriculture.

[FR Doc. 84-24558 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

Tobacco Inspection; George H. Stalvey et al.; Public Hearing Regarding Application

Notice is hereby given of a public hearing to be held in the auditorium of the Lowndes County Civic Center, 1202 East Hill Avenue, Valdosta, Georgia, beginning at 9:30 a.m., e.s.t. on October 3, 1984, upon the application of Mr. George H. Stalvey and Mr. Melvin Parker of Hahire, George; Mr. Roy A. Pierce, Jr., Mr. Santa Deas, Mr. Joe Parker of Hahira, Georgia; Mr. Roy A. Lastinger of Valdosta, Georgia, for tobacco inspection and price support services to a new market which would be a consolidation of the currently designated markets of Hahira and Valdosta, Georgia. Such public hearing will be conducted and evidence received pursuant to the joint policy statement and regulations governing the extension to tobacco inspection and price support services to new markets and to additional sales on designated markets (7 CFR Part 29, Subpart A, Sec. 29.1–29.3)

Date: September 12, 1984.

C.W. McMillan,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 84-24559 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Special Uses; Electronic Communication Sites

AGENCY: Forest Service, USDA.

ACTION: Extension of public comment period.

SUMMARY: On July 6, 1984, at 49 FR 27801, the Forest Service published a notice of proposed policy for communication sites on National Forest System lands authorized under special-use permits. The public comment period was to expire on September 4. A number of special-use holders have requested a 30-day extension to ensure that they have sufficient time to adequately review and comment on this matter. In response, the Forest Service is extending the public comment period until October 4.

DATE: Public comments must be received on or before October 4, 1984.

ADDRESS: Comments may be mailed to R. Max Peterson, Chief (2720) Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Paul M. Stockinger, Forest Service, Lands Staff, (703) 235–8107.

Dated: September 10, 1984.

R. Max Peterson,

Chief.

[FR Doc. 84-24551 Filed 9-14-84; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Order 84-9-24, Dockets 42181 and 42182]

Certificate Application of Pacific Freight Airlines, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Board is proposing to issue certificates of public convenience and necessity under section 401 of the Federal Aviation Act to Pacific Freight Airlines, Inc. to engage in scheduled interstate, overseas, and foreign air transportation of property and mail. The Board has tentatively found that issuance of the certificates is consistent with the public convenience and necessity and that Pacific Freight is fit to provide its proposed service.

DATES: Objections: All interested persons having objections to the Board's tentative fitness determination shall file, and serve upon all persons listed below, no later than October 4, 1984, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support objections.

ADDRESS: Responses shall be filed in Dockets 42181 and 42182, and should be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428, and should be served on the persons listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Nicholas Lowry, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673–5345.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-24 is available from our Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-24 to that address.

By the Civil Aeronautics Board: September 10, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-24567 Filed 9-14-84; 8:45 am]

BILLING CODE 6320-01-M

[Order 84-9-14, Docket 42262]

Fitness Investigation of Westates Airlines

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order Instituting the *Westates Airlines Fitness Investigation.*

SUMMARY: The Board is instituting an investigation to determine the fitness of Westates Airlines to engage in interstate and overseas scheduled air transportation.

DATES: Persons wishing to intervene or proposing to request additional evidence in the *Westates Airlines Fitness Investigation* shall file their petitions in Docket 42262 by September 21, 1984.

ADDRESSES: Petitions to intervene and requests for additional evidence should be filed in Docket 42262 and addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: John F. Brennan, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428 (202) 673-5340.

SUPPLEMENTARY INFORMATION: The complete text of Order 84-9-14 is available from the Distribution Section, Room 100, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 84-9-14 to that address.

By the Bureau of Domestic Aviation: September 14, 1984.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 84-24566 Filed 9-14-84; 8:45 am]

BILLING CODE 6320-01-M

CIVIL RIGHTS COMMISSION

Illinois Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 11:00 a.m. and will end at 2:00 p.m., on October 5, 1984, at the U.S. Commission on Civil Rights, Room 3290, 230 South Dearborn Street, Chicago, Illinois 60604. The purpose of the meeting is to discuss program plans for Fiscal Year '85.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24502 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

Kansas Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Kansas Advisory Committee to the Commission will convene at 6:00 p.m. on October 5, 1984 and will end at 1:00 p.m on October 26, 1984, at the Holiday Inn, Reunion Room, 1000 N. Broadway, Wichita, Kansas 67214. The purpose of the meeting is to engage in program planning and to conduct a community forum on the status of civil rights in Wichita.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Central States Regional Office at (816) 354-5253.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24500 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that a meeting of the Advisory Committee to the Commission originally scheduled for September 19, 1984, at Lexington, Kentucky (FR Doc 84-22714 on page 33912) has a new meeting date.

The meeting will be held on September 20, 1984. The address and time will remain the same.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24501 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Advisory Committee to the Commission originally scheduled for October 9, 1984, at Rockville, Maryland, (FR Doc 84-23637 on page 35394) has a new meeting date.

The meeting will be held on October 10, 1984. The address and time will remain the same.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24503 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

Minnesota Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene at 6:00 p.m. and will end at 9:00 p.m., on October 1, 1984, at the YWCA, Member Lounge, 65 East Kellogg Boulevard, St. Paul, Minnesota 55101. The purpose of the meeting is to discuss the status of the Minnesota Human Rights Commission and the project on mental health.

Persons desiring additional information, or planning a presentation to the Committee, should contact the Midwestern Regional Office at (312) 353-7479.

The meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., September 11, 1984.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 84-24504 Filed 9-14-84; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

President's Commission on Industrial Competitiveness; Rescheduled Meeting

AGENCY: Office of Economic Affairs, Commerce.

ACTION: Notice of change of meeting.

SUMMARY: This notice announces the rescheduling of the meeting of the International Trade Committee a subcommittee of the President's Commission on Industrial Competitiveness. On September 6, 1984 a notice appeared at 49 FR 35165 announcing a September 18 meeting of the International Trade Committee to be held from 9:00–5:00 at the Sheraton International in Rosemont, Illinois. This meeting has been rescheduled for September 26, from 10:00–5:00 at the Essex House Hotel, Suite 455, 160 Central Park South, New York, New York 10019. The agenda will include discussion of recommendations concerning export control, antitrust and the trading environment.

Public Participation

The meeting will be open to public attendance. A limited number of seats will be available for the public on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: J. Paul Royston, President's Commission on Industrial Competitiveness, 736 Jackson Place, NW., Washington, DC 20503, telephone: 202–395–4527.

Dated: September 12, 1984.

Egils Milbergs,

Executive Director, President's Commission on Industrial Competitiveness.

[FR Doc. 84–24474 Filed 9–12–84; 2:42 pm]

BILLING CODE 3510–18–M

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Leisure Activities Survey
Form Numbers: Agency—LAS–1, 2, 3, 4, 5, 6, and 13, OMB—None
Type of Request: New Collection
Burden: 17,280 respondents; 1,434 reporting hours

Needs and Uses: This survey provides annual measures of participation in selected leisure activities and measures changes in the participation. Planners use this information to study patterns of participation across various population subgroups and to look for correlates to arts and other cultural activities. The research will better enable arts organizations to make policy decisions based on such things as current demand, potential audience, and how to best serve the needs of their constituent population.

Affected public: Individuals or households
Frequency: Monthly
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe 395–4814

Agency: Bureau of the Census
Title: Forward Trace Study
Form Numbers: Agency—D–8111, D–8115, OMB—None
Type of Request: New Collection
Burden: 13,500 respondents; 5,040 reporting hours

Needs and Uses: This study is being used to improve the Bureau's ability to evaluate coverage for the 1990 Decennial Census. The project duplicates the activities needed to carry out a national reverse record check (RRC). The RRC is an evaluation program in which a sample of the population is drawn from a frame created before the census. The sample individuals are traced to the time of the census and matched to the census. The proportion of the sample determined not to have been counted in the census provides an estimate of the population that was missed in the census.

Affected Public: Individuals or households
Frequency: Nonrecurring
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe 395–4814.

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 7, 1984.

Edward Michals,

Department Clearance Officer.

[FR Doc. 84–24555 Filed 9–14–84; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—1984 Panel Wave 5
Form Numbers: Agency—SIPP–4500 Wave 5 Questionnaire—SIPP–4505—Introductory Letter, OMB—0607–0425
Type of Request: Revision of a currently approved collection
Burden: 42,000 respondents; 21,000 reporting hours

Needs and Uses: The Survey of Income and Program Participation (SIPP) is a source of information for a wide variety of topics and allows information for separate topics to be integrated to form a single, unified data base so that the interaction between tax, transfer, and other government and private policies can be examined. The data will provide the executive and legislative branches improved statistics on income distribution and data not previously available on eligibility for and participation in government programs. Changes in status and participation will be measured over time. The data will support policy and program planning.

Affected Public: Individuals or households
Frequency: Three times a year
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe 395–4814.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the respective OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 7, 1984.

Edward Michals,

Department Clearance Officer.

[FR Doc. 84–24556 Filed 9–14–84; 8:45 am]

BILLING CODE 3510–CW–M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration
Title: General License (GIT) Shipments Originating in Canada
Form Numbers: Agency—EAR–371.4(c)); OMB—0625–0137
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 15,000 respondents; 1,250 reporting hours

Needs and Use: For each shipment from Canada moving in transit through the United States to a foreign destination, a copy of the Form B–13, Canadian Customs Entry, must be presented to the Customs Office at the U.S. port of export rather than at the port of entry. The information is used to verify the information on the Shipper's Export Declaration.

Affected Public: Businesses or other for-profit organizations, small businesses or organizations
Frequency: On occasion
Respondent's Obligation: Required to obtain or retain a benefit
OMB Desk Officer: Sheri Fox 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to the OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20203.

Dated: September 7, 1984.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 84–24557 Filed 9–14–84; 8:45 am]

BILLING CODE 3510–CW–M

International Trade Administration

[C–469–403]

Potassium Chloride From Spain; Final Affirmative Countervailing Duty Determination

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice of final affirmative countervailing duty determination.

SUMMARY: We determine that certain benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Spain of potassium chloride. The estimated net subsidy is 7.88 percent *ad valorem* on exports prior to July 11, 1984, and 6.90 percent *ad valorem* on exports on or after July 11, 1984. Therefore, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of potassium chloride from Spain which are entered, or withdrawn from warehouse, for consumption on or after June 29, 1984. The Customs Service shall require a cash deposit or bond on this product in the amount equal to the estimated net subsidy.

EFFECTIVE DATE: September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Terry Link, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230; telephone: (202) 377–0189.

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that certain benefits constituting subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Spain of potassium chloride. The following programs are found to confer subsidies:

- Short-term preferential loans (provided under the Privileged Circuit Exporter Credits Program as working-capital loans and export credits).
- Excessive rebates of indirect taxes on exports under the Desgravacion Fiscal a la Exportacion (DFE).

We determine the net subsidy to be 7.88 percent *ad valorem* on exports prior to July 11, 1984, and 6.90 percent *ad valorem* on exports on or after July 11, 1984.

Case History

On March 30, 1984, we received a petition from Amax Chemical, Inc. and Kerr-McGee Chemical Corporation filed on behalf of the U.S. industry producing potassium chloride. In compliance with the filing requirements of § 355.26 of the Commerce Regulations (19 CFR 355.26), petitioners alleged that manufacturers, producers, or exporters in Spain of potassium chloride receive, directly or indirectly, benefits which constitute subsidies within the meaning of section 701 of the Act, and that these imports materially injure, or threaten to materially injure, a U.S. industry.

We found that the petition contained sufficient grounds upon which to initiate a countervailing duty investigation, and on April 19, 1984, we initiated an investigation (49 FR 18149).

Since Spain is a "country under the Agreement" within the meaning of section 701(b) of the Act, an injury determination is required for this investigation. On May 14, 1984, the U.S. International Trade Commission (ITC) determined that there is a reasonable indication that these imports materially injure, or threaten to materially injure, a U.S. industry (49 FR 21813).

We presented questionnaires concerning the allegations to the government of Spain at its embassy in Washington, D.C., on April 23, 1984. On June 4, 1984, we received a response to the questionnaire from Minas de Potasa de Suria, S.A., (Suria) and on June 22, 1984, we received a response from the related exporter, Comercial de Potasas, S.A. (Copsa). The government of Spain replied to our questionnaire on July 3, 1984. On June 29, 1984, we published an affirmative preliminary countervailing duty determination (49 FR 26784).

During the week of July 8, 1984, we conducted a verification of the responses in Spain.

In response to a request from petitioners, a public hearing was held on August 9, 1984. We received briefs from the parties to the proceeding on August 3, 1984, and August 16, 1984.

Scope of Investigation

The product covered by this investigation is potassium chloride. For the purposes of this investigation, the term "potassium chloride" covers potassium chloride, otherwise known as muriate of potash, as currently provided for in item 480.50 of the *Tariff Schedules of the United States*

There is one known firm in Spain which produces potassium chloride for export to the United States. We have received information from Suria, which produced 100 percent of the potassium chloride exported to the United States during the period of investigation, calendar year 1983, and from Suria's related exporter, Copsa.

Analysis of Programs

Based upon our analysis of the petition, the responses to our questionnaires, and our verification, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Spain of potassium chloride under the programs discussed below:

A. Privileged Circuit Exporter Credits Program

Petitioners alleged benefits which constitute subsidies in the form of short-term preferential loans. We requested information on all short-term loans outstanding during the period for which we are measuring subsidization. The only preferential short-term borrowing received by Suria was that obtained under the Privileged Circuit Exporter Credits Program.

The government of Spain requires all Spanish commercial banks to maintain a specific percentage of their lendable funds in privileged circuit accounts. These funds are made available to exporters at preferential interest rates though a variety of credit programs. While there is no direct outlay of government funds, the benefits conferred on the companies are the result of a government-mandated program to promote exports. Of the four privileged circuit programs available to companies, we determine that the respondent potassium chloride producer benefited from two programs, the working-capital loan and the short-term export credit programs.

1. *Working Capital Loans.* Under the privileged circuit program, firms may obtain working-capital loans for one year, the total of which is not to exceed a specified percentage of their previous year's exports. During the period of investigation, Suria received three working-capital loans under this program.

For our preliminary countervailing duty determination on potassium chloride from Spain, we used the average prime interest rate for one year as the basis for our benchmark interest rate. We added two percentage points to the average prime rate to arrive at the interest rate faced by average borrowers. To this we then added a legally established 0.5 percent commission.

During our verification of the responses, we met with the director of a bank in Madrid. From the director we learned that our benchmark is a nominal interest rate. We also found that the Bank of Spain which publishes the average prime interest rate also publishes weighted-average lending rates on all loans by length and type of loan. Since the weighted-average lending rate reflects average borrowing in Spain, it is a more accurate source for a benchmark than the prime rate to which we have been adding an estimate of the percent over prime which average borrowers would pay.

Consequently, for this final determination, we chose as our 1983 benchmark for short-term operating capital loans, the 1983 weighted-average lending rate for loans of one to three years. Since this is a nominal rate, we found the effective rate by quarterly compounding, and then adding the 0.5 percent commission. In addition, an ITE tax of four percent is charged by the government on all interest payments, both commercial and preferential. We added this tax to the benchmark. Based on these data, we determine the national average commercial interest rate to be 20.09 percent for one-year working capital loans given in 1983.

Although in the past we have relied upon comparisons between nominal interest rates, we prefer to compare effective interest rates as stated in the Subsidies Appendix (49 FR at 18022). At verification we received information with which to calculate an effective benchmark interest rate. Given our preference for effective interest rates, we are changing Suria's nominal interest rates to effective rates and calculating the benefit based on a comparison of effective rates.

To determine the benefit, we compared the effective preferential interest rate (including tax and commission) with the effective national average commercial interest rate of 20.09 percent. We multiplied this interest differential by the total amount of Suria's privileged circuit working-capital loans.

We allocated the resulting product over the total sales value of all exports of Suria in 1983. On this basis we determine that the *ad valorem* subsidy for short-term working capital loans to Suria is 0.48 percent.

2. *Short-Term Export Credit.* The short-term export credit program provides loans for up to 90 percent of the value of a company's export shipments at a 10 percent nominal interest rate for a maximum of one year. Suria obtained four 90-day loans under this program during 1983 to finance exports of potassium chloride to the United States.

For our preliminary countervailing duty determination on potassium chloride from Spain, we used as a benchmark the average prime interest rate for loans of 90 days. We added two percentage points to the average prime rate to arrive at the interest rate faced by average borrowers. To this we then added a legally established 0.5 percent commission.

As with working capital loans, we learned during verification that the average prime rate for 90-day loans is a nominal rate and that the Bank of Spain publishes weighted-average lending rates which more closely approximate the rates afforded the average borrowers.

Consequently, for this final determination, we chose as our 1983 benchmark for short-term export credit loans, the 1983 weighted-average lending rate for trade discount loans of three months. Since this a nominal rate, we found the effective rate by quarterly compounding. in addition, an ITE tax of four percent is charged by the government on all interest payments, both commercial and preferential. We added this tax to the benchmark. Based on these data, we determine the national average commercial interest rate to be 18.35 percent for 90-day export credit loans given in 1983.

As explained in the section of this notice on working capital loans, we prefer to compare effective interest rates to evaluate the benefit from preferential financing.

To determine the benefit, we compared the effective preferential interest rate (including tax) with the effective national average commercial interest rate of 18.35 percent. We multiplied this interest differential by the amount of Suria's privileged circuit export credit loans. We allocated the interest benefit over the total sales value of Suria's exports to the United States during 1983. We determine that the *ad valorem* subsidy for short-term export credits to Suria is 1.56 percent.

B. Desgravacion Fiscal a la Exportacion (DFE)

Spain employs a cascading tax system. Under this system, the government levies a turnover tax ("IGTE") on each sale of a product through its various stages of production, up to (but not including) the final sale in Spain. Upon exportation of the product, the government, under the DFE, rebates both these accumulated IGTE indirect taxes and certain final stage taxes.

Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the export product (see Annex 1.1 of Part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2

of part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes and, therefore, a subsidy.

In this case, we determine that Suria does not purchase from other sources any inputs that are physically incorporated into the final product. Thus, there are no turnover taxes paid on these inputs. The rebate of a final stage tax, the tax on freight, is, however, allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE. Based on our analysis, the amount of the subsidy if the DFE rebate less the amount of the final stage freight tax.

During our verification, we learned that the DFE rebate was reduced from 6.5 percent on potassium chloride exports to 5.525 percent effective July 11, 1984. Since the decree was signed on June 20, 1984, prior to our preliminary determination, we have included this information in our final determination. Therefore, any exports of the merchandise under investigation on or after July 11, 1984, are subject to the lower DFE rebate.

On this basis, we determine that the DFE rebate, less the final stage tax, confers an *ad valorem* subsidy of 5.84 percent on exports prior to July 11, 984, and 4.86 percent *ad valorem* on exports on or after July 11, 1984.

II. Program Determined Not to Confer Subsidies

We determine that subsidies are not being provided to manufacturers, producers, or exporters, in Spain of potassium chloride under the following program:

Government Equity Purchases

Petitioners alleged that producers of potassium chloride benefited from government of Spain purchases of equity on terms inconsistent with commercial considerations.

During verification we found that prior to 1982, a Belgian company held 100 percent of Suria's stock. In 1982, this Belgian company sold 51 percent of its shares in Suria to Fodina, a holding company owned by the government of Spain. Consistent with the Subsidies Appendix (49 FR 18006), we determine that since Fodina purchased previously issued shares from the Belgian company, there is no subsidy to Suria. This is true no matter what price the government pays, since any overpayment benefits only the prior shareholders and not Suria.

III. Programs Determined Not To Be Used

We have determined that potassium chloride manufacturers, producers, or exporters in Spain do not use the following programs identified in the notice of "Initiation of Countervailing Duty Investigation of Potassium Chloride from Spain."

A. Certain Benefits Under the Privileged Circuit Export Credits Program

In our analysis of the Privileged Circuit Export Credits Program earlier in this notice, we found that two programs, short-term working capital loans and short-term export credits, did provide subsidies to the respondent. We determine that the two remaining programs identified in our notice of initiation are not used. They are: (1) Commercial services loans, and (2) Prefinancing exports.

B. Medium- and Long-Term Preferential Loans

Petitioners alleged that producers of potassium chloride are receiving medium- and long-term preferential financing either directly from the government of Spain or from banks instructed by the government of Spain. We verified that Suria had no outstanding medium- or long-term loans during the period in which we are measuring subsidization.

Petitioners' Comments

Comment 1. Petitioners argue that the entire rebate of the DFE is a subsidy to the producer of potassium chloride, since there are no physically incorporated imputs on which indirect taxes are paid.

DOC Position. Although the Spanish government rebates upon exportation all indirect taxes paid under the cascading tax system, the Act and the Commerce Regulations allow the rebate of only the following: (1) Indirect taxes borne by inputs which are physically incorporated in the exported product (see Annex 1.1 of Part 355 of the Commerce Regulations); and (2) indirect taxes levied at the final stage (see Annex 1.2 of Part 355 of the Commerce Regulations). If the payment upon export exceeds the total amount of allowable indirect taxes described above, the Department considers the difference to be an overrebate of indirect taxes, and therefore, a subsidy.

In this case, we determine that Suria does not purchase from other sources any imputs that are physically incorporated into the final product. Thus, there are no turnover taxes paid on these inputs. Consequently, the subsidy is equal to the DFE rebate less final stage taxes.

Comment 2. Petitioners state that the Department incorrectly characterized the IGTE on rail transportation to the port as a final stage indirect tax that may be properly offset against the DFE. Petitioners take the position that such export freight is a tax on transport categorized under present GATT rules as a *tax occulte*, i.e., a tax that may not be rebated.

DOC Position. The freight charges in question are established for exporting the merchandise and are treated as a tax on the exported product. We view this as a final stage tax, and have consistently held that this freight tax is an allowable final stage tax. See, for example, Non-Rubber Footwear from Spain (49 FR 19378) and Amoxicillin Trihydrate and Its Salts from Spain (49 FR 12730). Consequently, the rebate of this tax is allowable when calculating whether or not there is an overrebate of indirect taxes under the DFE.

Comment 3. Petitioners argue that the Department should not offset the Impuesto de Muellaje, a port charge, against the DFE. They state that the port charge does not appear to be an indirect tax, but a utilization fee.

DOC Position. We agree that the Impuesto de Muellaje is a utilization fee rather than a tax and, therefore, we are not allowing this as a deduction from the DFE.

Comment 4. Petitioners express concern that if the Department calculates interest rate differentials based on effective interest rates, rather than nominal interest rates, the prepayment of interest on subsidized loans might cause an adjustment to be made mitigating the benefit from the lower (nominal) rate.

DOC Position. Although in the past we have relied upon comparisons between nominal interest rates, we prefer to compare effective interest rates as stated in the Subsidies Appendix (49 FR at 18022) as follows: "The magnitude of the benefit from loans is a function of the difference between the cost of the loan under examination and the cost of the benchmark loan. Ideally, we attempt to quantify the total effective cost of each type of loan in our comparisons. However, the charges added on to the nominal interest rates for each loan cannot always be quantified. In these cases, we base our calculations on the difference between the quantifiable equivalent terms of both loans." For our final determination we calculated the benefit from these preferential loans as the difference between the effective cost

of the loans under examination and the effective cost of the benchmark loans.

Respondent's Comments

Comment 1. Respondent states that its effective average interest rate on short-term export credits is higher than the Department's preliminary calculations show.

DOC Position. We agree. For our preliminary determination we did not have sufficiently detailed information to calculate the effective interest rates on the short-term export credit loans. During our verification, we gathered sufficient information to calculate effective interest rates for short-term export credits which are higher interest rates than the nominal interest rates in our preliminary calculations. See the section on the Privileged Circuit Exporter Credits Program.

Comment 2. Respondent states that since 54.2 percent of the cost of its inputs for the production of potassium chloride are effected by the ICTE at the rate of 4 percent during 1983, the rebate of 6.5 percent under the DFE is clearly justified. Consequently, respondent argues that the DFE represents only a reimbursement of the indirect taxes affecting production and that there is no subsidy from the DFE program.

DOC Position. We disagree. See DOC Position to Petitioners' Comment 1.

Verification

In accordance with section 776(a) of the Act, we verified all information used in making our final determination.

Suspension of Liquidation

In accordance with section 703 of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all unliquidated entries of potassium chloride from Spain which are entered, or withdrawn from warehouse, or consumption, on or after June 29, 1984. The Customs Service shall require a cash deposit or the posting of a bond for each such entry of this merchandise in the amount of 7.88 percent *ad valorem* on exports prior to July 11, 1984, and 6.90 percent *ad valorem* on exports on or after July 11, 1984. This suspension will remain in effect until further notice.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

The ITC will make its determination of whether these imports are materially injuring, or threatening to materially injure, a U.S. industry within 45 days of the publication of this notice.

If the ITC determines that material injury or the threat of material injury does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countervailing duty order, directing the Customs Service to assess countervailing duties on all entries of potassium chloride from Spain entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation date, and to require a cash deposit or bond for an amount equal to the net subsidy amount indicated in the "Suspension of Liquidation" section of this notice.

This notice is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

William T. Archey,

Acting Assistant Secretary for Trade Administration.

[FR Doc. 84-24560 Filed 9-14-84; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

Selling Price Increase

Effective January 1, 1985, NTIS will increase the selling price of its Published Search product in both paper copy and microfiche. The cost to North American Continent customers will go from $35 to $40 and for all others from $60 to $70 per search.

Thomas P. Bold, Jr.,

Director, Office of Administrative Management.

[FR Doc. 84-24505 Filed 9-14-84; 8:45 am]

BILLING CODE 3510-04-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange: Proposed Recommencement of Trading in the One-Year U.S. Treasury Bill Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule change.

SUMMARY: The Chicago Mercantile Exchange has submitted a proposal to recommence trading in the one-year U.S. Treasury bill contract. The Commodity Futures Trading Commission ("Commission") has determined that the proposal is of major economic significance and that, accordingly, publication of that proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments should be received on or before October 17, 1984.

ADDRESS: Interested persons should submit their views and comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the CME one-year U.S. Treasury bill futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., (202) 254-7227.

SUPPLEMENTARY INFORMATION: Since the CME one-year U.S. Treasury bill contract is now dormant within the meaning of Commission Rule 5.2 (47 FR 29515 (July 7, 1982)), the Exchange has submitted a proposal to recommence trading in the contract pursuant to the requirements of Rule 5.2. The Exchange states that during this dormant period three developments have increased the potential hedging demand for a futures contract based on one-year U.S. Treasury bills: (1) The delivery cycle for the futures contract on three-month U.S. Treasury bills has been modified in a way that would improve intermediate-term hedges involving the two contracts; (2) the absolute exposure to interest-rate risk in the maturity range that would be served by the one-year U.S. Treasury bill contract has been increased substantially; and (3) businesses exposed to interest-rate risk are better equipped and more willing to manage such risk with futures.

The Commission believes the CME's proposal to recommence trading in the one-year U.S. Treasury bill contract pursuant to the requirements of Commission Rule 5.2 is of major economic significance in accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982). The Exchange ceased to list trading months in December 1980. Accordingly,

the Commission believes that the resumption of trading in the contract may raise questions concerning its overall conformity with cash market practices and its economic purpose. The CME's proposal will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CME in support of its proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1983)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jane K. Stuckey, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by October 17, 1984. Such comment letters will be publicly available except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9.

Issued in Washington, D.C. on September 11, 1984.

Jean A. Webb,

Deputy Secretary of the Commission.

[FR Doc. 84-24528 Filed 9-14-84; 8:45 am]

BILLING CODE 6351-01-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Proposed Collection of Information

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. 3501 *et seq.*), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of a consumer survey to determine the number of fireplace inserts and wood- or coal-burning stoves owned by consumers.

The purpose of this project is to resolve differences in previous estimates the Commission has obtained from different sources. Accurate figures for the number of these appliances that are used by consumers are needed to assess the risks associated with the devices. The results of this survey also may help to explain differences in previous estimates based on consumer surveys and estimates provided by manufacturers of the devices.

The survey is to be a "caravan" survey which is conducted by a contractor every two weeks and involves a national probability sample of 1,000 households. In order to conduct the Commission's survey, the contractor would ask each respondent 2–10 questions (depending on whether and how many of the devices are possessed by the respondent) as part of one edition of the caravan survey.

Agency address: Consumer Product Safety Commission, 1111 18th Street, NW., Washington, DC 20207.

Title of information collection: Consumer survey to determine the number of fireplace inserts and coal- or wood-burning stoves possessed by consumers.

Type of request: Approval of new plan.

Frequency of collection: One time.

General description of respondents: Random sample of consumers.

Estimated number of respondents: 1000

Estimated average number of hours per response: 0.05

Comments: Comments on this proposed collection of information should be addressed to Andy Valez-Rivera, Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395–7313. Copies of the proposed collection of information requirement are available from Francine Shacter, Office of Budget and Program Implementation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: September 11, 1984.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 84-24490 Filed 9-14-84; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF EDUCATION

Meeting; National Advisory Council on Bilingual Education

AGENCY: National Advisory Council on Bilingual Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Advisory Council on Bilingual Education. Notice of this meeting is required under section 10(1)(2) of the Federal Advisory Committee Act. This document is to notify the general public of their opportunity to attend.

DATES: October 10, 1984 Orientation for New Council Members by Departmental Staff from 8:30 a.m.–noon and a business Meeting 1:00 p.m.–4:30 p.m. Also on October 11–12, 1984 from 9:00 a.m.–4:30 p.m. a Business Meeting will be held at: The U.S. Department of Education, Regional Office Building Number (3), Room 3652 (Gold Room), 400 Maryland Avenue, SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Paul Balach, Designated Federal Official, Room 421, Reporter's Building, 400 Maryland Avenue, SW., Washington, D.C. 20202 (202–245–2600).

SUPPLEMENTARY INFORMATION: The National Advisory Council on Bilingual Education is established to advise the Secretary of the Department of Education concerning matters arising in the administration of the Bilingual Education Act and other laws affecting the education of limited English proficient populations.

The meeting of the Council is open to the public. The proposed agenda includes the following:

October 10, 1984

I. Orientation

A. Welcoming Remarks by the Director of the Office of Bilingual Education and Minority Languages Affairs
B. Swearing In Ceremony for new Council Members
C. Required Orientation for Council Members by Designated Department of Education Staff

II. Business Meeting

A. Introduction of Policies and Procedures Handbook

October 11, 1984

I. Business Meeting

A. Policies and Procedures Handbook
B. Election of Officers, Selection of Subcommittees and Members
C. Preparation of Council Calendar for Fiscal Year 1985
D. Subcommittee meetings

October 12, 1984

I. Business Meeting

A. Reconvene

B. Subcommittee Reports
C. Update of Annual Report
D. Old Business
E. New Business
F. Steering Committee Prepares Business agenda for next Council Meeting.

Dated: September 12, 1984.

Jesse M. Soriano,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 84-24485 Filed 9-14-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Energy Research

Magnetic Fusion Advisory Committee; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Magnetic Fusion advisory Committee.

Date and Time: October 4-5, 1984—9:00 a.m. until 5:00 p.m.

Location: U.S. Department of Energy, Forrestal Building, Room IE-245, Washington, D.C. 20585.

Contact: Rosalie Weller, Office of Fusion Energy, ER-50, U.S. Department of Energy, Mail Stop G-226, Washington, D.C. 20545, Phone: (301)-353-3347.

Purpose of the Committee: To provide advice to the Secretary of Energy on the Department's Magnetic Fusion Energy Program, including periodic reviews of elements of the program and recommendations of changes based on scientific and technological advances or other factors; advice on long-range plans, priorities, and strategies to demonstrate the scientific and engineering feasibility of fusion; advice on recommended appropriate levels of funding to develop those strategies and to help maintain appropriate balance between competing elements of the program.

Tentative Agenda Outline

NAS/NRC Study of International Cooperation in Magnetic Fusion Energy—L. Manning Muntzing
Comparative Assessment of Energy Options—John Sheffield
ERAB Study of Long-Range Energy R & D Needs—R. Williamson
MFAC Discussion
Public Discussion

Evaluation of DOE Fusion Program Plan and Strategy

Review of Charge of MFAC—Ron Davidson
Fusion Program Plan and Strategy—John Clarke, et al.
MFAC Discussion
Formulation of MFAC Findings and Recommendations
Public Input and Discussion

New Charge Areas

New Charges to MFAC
Discussion
Other Business

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Rosalie Weller at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes

Available approximately 30 days following the meeting.

Issued at Washington, D.C., on September 11, 1984.

Howard H. Raiken,

Deputy Advisory Committee Management Officer.

[FR Doc. 84-24483 Filed 9-14-84; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. RP83-140-001, et al.]

ANR Pipeline Company, et al.; Filing of Pipeline Refund Reports and Refund Plans

September 12, 1984.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, on or before September 20, 1984. Copies of the respective filings are on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

Appendix

Filing date	Company	Docket No.	Type filing
8/ 6/84	ANR Pipeline Co.	RP83-140-001	Report.
8/ 9/84	Mississippi River Transmission Corp.	RP70-1-000	Do.
8/ 9/84	Southern Natural Gas Co.	RP83-58-012	Do.
8/20/84	Valley Gas Transmission, Inc.	RP83-82-004	Do.
8/23/84	Consolidated Gas Supply Corp.	RP72-157-070	Do.
8/24/84	Transwestern Pipeline Co.	RP83-25-013	Do.
8/27/84	East Tennessee Natural Gas Co.	RP71-15-017	Do.
8/27/84	Alabama-Tennessee Natural Gas Co.	RP73-77-026	Do.
8/31/84	East Tennessee Natural Gas Co.	RP78-65-018	Do.
8/31/84	National Fuel Gas Supply Corp.	RP80-135-043	Do.

[FR Doc. 84-24534 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-637-000]

Central Vermont Public Service Corp.; Filing

September 12, 1984.

The filing company submits the following:

Take notice that on August 30, 1984, Central Vermont Public Service Corporation (CVPS) tendered for filing as an initial rate schedule a System Sales and Exchange Agreement (the Agreement) between the Central Maine Power Company (CMP) and CVPS. The Agreement, dated April 1, 1984, provides for the exchange of a portion of the CVPS system capacity and associated energy for an equal entitlement in capacity from the CMP system (an Exchange).

CVPS states that the Agreement provides that the parties will determine not less than twelve (12) hours prior to such Exchange whether it is economically advantageous to the parties that an exchange, pursuant to the Agreement, take place during that day or week.

CMP shall pay CVPS monthly an amount determined by multiplying the megawatt hours delivered by CVPS and received by CMP for the preceding month by the energy reservation charge in dollars/MWH for each transaction occurring in that month plus an energy charge. The energy charge shall be determined by multiplying the megawatt hours delivered by CVPS for the preceding month by the energy rate for each transaction occurring in that month. The energy charge shall be based upon the forecasted incremental system energy cost adjusted for transmission losses to the delivery point.

CVPS shall pay CMP for each month an Exchange occurs, an energy charge which shall be the sum of each of the hourly energy charges for each of the hours of exchange in such month. The hourly energy charge shall be the

product of (1) the NEPEX Replacement Fuel Price for the Exchange Units; (2) the full load average heat rate of the Exchange Units as recorded to NEPEX on Form NX12 (expressed in BTU/MWH or, for steam fossil fired exchange units, the experienced average monthly heat rate of each such unit expressed in BTU/MWH; (3) the net energy output in MWH from the Exchange Units for such hour; and (4) the CVPS Entitlement Fraction in the Exchange Units for such hour.

CVPS requests an effective date of April 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon the respective jurisdictional customers of the parties hereto, as well as their respective Public Service Boards.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24535 Filed 9-14-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-68-000]

El Paso Electric Co.; Application

September 12, 1984.

Take notice that on September 4, 1984, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to section 204 of the Federal Power Act to issue and sell up to an additional 500,000 shares of Common Stock, no par value, pursuant to the Applicant's Customer Stock Purchase Plan and applying for an exemption of such transaction from the competitive bidding requirements of the Commission.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before October 4, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24536 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES84-69-000]

El Paso Electric Co.; Application

September 12, 1984.

Take notice that on September 4, 1984, El Paso Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission (Commission) seeking authority pursuant to section 204 of the Federal Power Act to issue and sell up to an additional 1,500,000 shares of Common Stock, no par value, pursuant to the Applicant's Dividend Reinvestment and Stock Purchase Plan and applying for an exemption of such transaction from the competitive bidding requirements of the Commission.

Any person desiring to be heard or to make any protest with reference to the application should file a motion to intervene or protest on or before October 4, 1984, with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24537 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-617-000]

Florida Power and Light Co.; Filing

September 12, 1984.

The filing Company submits the following:

Take notice that on August 23, 1984, Florida Power and Light Company (FP&L) tendered for filing a document entitled "Amendment Number Two to Contract for Interchange Service between FP&L and Jacksonville Electric Authority (JEA)."

FP&L states that this Amendment was entered into in accordance with the provisions of the existing Contract for Interchange Service between FP&L and JEA which contemplates that the parties may mutually agree to establish additional service schedules. FP&L states that Service Schedule X provides the parties with the necessary vehicle to better maximize the overall economy of power production in the State of Florida.

FP&L requests that the proposed Amendment be made effective no later than 60 days from the date of filing. According to FP&L, a copy of this filing was served upon the Jacksonville Electric Authority.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol, Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before September 21, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24538 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER84-541-000]

Oklahoma Gas & Electric Co.; Electric Rates; Order Accepting for Filing and Suspending Rates, Granting Intervention, Ordering Summary Disposition, Granting Waiver of Notice, and Establishing Hearing and Price Squeeze Procedures

Issued September 10, 1984.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A. G. Sousa, Oliver G. Richard III and Charles G. Stalon.

On July 12, 1984, Oklahoma Gas and Electric Company (OGE) tendered for filing a proposed two-step increase in its rates for: (1) Firm power and supplemental service to 23 municipal and three cooperative wholesale customers; (2) transmission service and thermal energy provided to the Southwestern Power Administration (SWPA); and (3) transmission service to Western Farmers Electric Cooperative (WFEC).[1] The proposed Phase One rates

[1] *See* Attachment for rate schedule designations and affected customers.

would increase overall revenues by approximately $10.5 million (12.3%) and the Phase Two rates would increase revenues by an additional $4.3 million (5.1%), representing a total increase of approximately $14.8 million, or 17.4%. OGE requests effective dates of September 10 and September 11, 1984, for the Phase One and Phase Two rates, respectively, but also requests that the Phase One rates be deemed withdrawn in the event that the same suspension period is ordered for both phases.

OGE has also proposed increased rates for firm power service to the Town of Mannford and the City of Perry, Oklahoma, which are served under separate contracts that permit rate changes to become effective prospectively only after a final Commission order. Finally, OGE filed a number of revised tariff sheets and service agreements for individual customers, for which it seeks various effective dates and waiver of § 35.3 of the Commission's regulations where necessary.[2] These latter filings amend various terms and conditions, but do not in themselves involve the change in rates proposed by OGE in this docket.

Notice of OGE's filing was published in the **Federal Register**,[3] with comments due on or before August 6, 1984. Timely motions to intervene were filed by SWPA and jointly by the Municipal Electric Systems of Oklahoma, the municipal customers of OGE, and OGE's three wholesale rural electric cooperative customers (collectively referred to as MESO).[4] WFEC also filed a timely motion to intervene, but suplemented its pleading on August 13, 1984.[5] On August 9, 1984, Great Lakes Carbon Corporation (Great Lakes) filed a motion to intervene out of time, asserting that it had insufficient notice to file its pleading in a timely manner. Great Lakes states that, as a retail customer of one of OGE's cooperative customers, it has a significant interest in this proceeding.

SWPA raises various cost of service issues, including: (1) The rate of return on equity requested by OGE; (2) the justification for the demand portion of the transmission cost of service; (3) the justification for any increase in the energy component of the transmission service charge; and (4) the allocation of production related costs to transmission service.

MESO requests a five month suspension for each phase of the proposed increase and alleges price squeeze. In support of its motion for a maximum suspension, MESO identifies numerous cost of service issues, including: (1) Rate of return on equity; (2) the stated equity ratio; (3) the claimed cash working capital allowance and the inclusion in working capital of prepayments for natural gas; (4) OGE's reserve margins for generating capacity; (5) OGE's computation of the interest expense used in calculating its income tax allowance; (6) certain dues and other expense items included in miscellaneous general expenses; (7) revenue credits for off-system gas sales; (8) allocation of general plant, intangible plant, and a portion of administrative and general expenses; (9) allocation of demand costs to the municipal partial requirements service; and (10) OGE's forecasts of coincident and non-coincident peak demands.

WFEC protests the proposed increase, raising issues with regard to OGE's claimed return on equity, equity ratio, and claimed cash working capital allowance. WFEC requests that the Commission suspend the proposed transmission rates for five months, based on the relevant cost of service issues raised in MESO's pleading.

OGE separately responded to the pleadings of SWPA, MESO, and WFEC. While not objecting to the interventions, OGE opposes WFEC's request for permission to file a supplemental protest. In addition, the company denies the allegations that its proposed rates are excessive or will result in a price squeeze.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed motions to intervene serve to make SWPA, MESO, and WFEC parties to this proceeding. Concerning WFEC's late-filed supplemental protest, we note that the specific issues raised by WFEC had already been raised by MESO in a timely pleading. Therefore, OGE has had ample opportunity to respond to those points and we perceive no prejudice in permitting WFEC to express its position more fully. Accordingly, we decline to strike WFEC's supplemental pleading.

Based on the relationship of Great Lakes' retail rates to OGE's wholesale rates, it appears that Great Lakes may have an interest in this proceeding and that its intervention is in the public interest. Moreover, because this proceeding is not at an advanced stage and the intervention was only three days out of time, granting the late intervention should cause no undue prejudice or delay. Therefore, we shall grant Great Lakes' request to intervene out of time.

We note that OGE has subtracted accumulated deferred investment tax credits (ADITC) from rate base in computing its interest expense for tax allowance purposes. This adjustment contravenes established Commission precedent.[6] Accordingly, we shall order summary disposition as to this matter and direct OGE to file revised rates and supporting cost statements reflecting this decision.

Our preliminary review of OGE's filing indicates that OGE's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept OGE's submittal for filing, as modified by summary disposition, and we shall suspend the proposed rate as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we explained the Commission's suspension policy, noting that rate rilings would ordinarily be suspended for one day where preliminary review indicates that the proposed increase may be unjust and unreasonable but may not generate substantially excessive revenues, as defined in *West Texas*. Our review of OGE's rates suggests that the Phase One and Phase Two rates for firm service to the municipal customers (the WM-1 rate) and the Phase One rate for the wholesale rural electric cooperatives (the WC-1 rate) may not yield substantially excessive revenues. However, our examination also suggests that the Phase Two rates for the cooperative customers (WC-1 rate), as well as the Phase One and Phase Two rates for supplemental service to municipal customers (the WM-2 rate) and for service to SWPA and WFEC, may result in substantially excessive revenues. Since the same suspension period would therefore be ordered for both phases of the WM-1, the WM-2, the SWPA, and the WFEC rates, we shall deem the Phase One rates to be withdrawn with respect to those rates,

[2] *See* Attachment for description of proposed revisions and effective dates agreed to by the parties pursuant to the executed agreements.

[3] 49 FR 30357 (1984).

[4] The municipal customers represented by MESO include Blackwell, Edward, Geary, Goltry, Kingfisher, Mannford, Newkirk, Okeene, Perry, Ponca City, Pond Creek, Prague, Stillwater, Stroud, Tecumseh, Tonkawa, Waynoka, and Wynnewood, Oklahoma, and Clarksville and Paris, Arkansas. The cooperative customers are Arkansas Valley Electric Cooperative, Inc., Cimarron Electric Cooperative, Inc., and KAMO Electric Cooperative, Inc.

[5] In support of its request for permission to file a later suplemental protest, WFEC cited a need to retain new counsel just prior to the commeht deadline.

[6] *See Alabama Power Company*, Opinion No. 54, 8 FERC ¶ 61,083 at 61,326 (1979); *Central Telephone & Utilities Corp.*, 14 FERC ¶ 61,186 at 61,352 (1981).

as requested by OGE. Accordingly, we shall suspend the Phase Two WM–1 rate (except with respect to Mannford and Perry) and the Phase One WC–1 rate for one day from 60 days after filing, to become effective on September 12, 1984, subject to refund.[7] We shall suspend the proposed Phase Two WC–1, WM–2, SWPA, and WFEC rates for five months, to become effective on February 11, 1985, subject to refund.[8] In addition, we shall accept for filing and set for hearing OGE's proposed WM–1 rates for Mannford and Perry, to become effective prospectively only after a final Commission order regarding those rates.

With respect to the company's request for waiver of the notice requirements for the revised tariff sheets and service agreements for individual customers, we find that good cause exists to grant the request, in light of the affected parties' agreement. Therefore, we shall accept these modifications for filing, to become effective, without suspension, on the dates specified by the parties.

In light of the price squeeze allegation raised by MESO, we shall institute price squeeze proceedings and phase them in accordance with our policy and practice established in *Arkansas Power and Light Company*, Docket No. ER79–339, 8 FERC ¶61,131 (1979).

The Commission order:

(A) The intervention of Great Lakes is hereby granted, subject to the Commission's Rules of Practice and Procedure.

(B) WFEC's request to file its August 13, 1984 supplemental protest is hereby granted.

(C) Summary disposition is hereby ordered with respect to OGE's subtraction of ADITC from rate base in computing the interest expense in the income tax calculation. Within thirty (30) days of the date of this order, OGE shall file a revised cost of service as well as revised Phase One and Phase Two rates, except for those rates deemed to have been withdrawn.

(D) The requested waivers of § 35.3 of the Commission's regulations are hereby granted and the revised tariff sheets and service agreements submitted by OGE are hereby accepted for filing, to became effective on the dates set forth in item numbers (1) through (4) and (15) through (20) of the Attachment to this order.

(E) OGE's proposed rates are hereby accepted for filing, as modified by Paragraph (C) above, and are suspended, to become effective, subject to refund, as follows: The Phase Two tariff rates for firm service to the municipal customers (except for Mannford and Perry) (the WM–1 rate) and the Phase One tariff rate for firm service to the rural electric cooperatives (the WC–1 rate) are suspended for one day, to become effective on September 12, 1984; the Phase Two WC–1 rate and the Phase Two rates for supplemental municipal service (the WM–2 rate) and for SWPA and WFEC are suspended for five months, to become effective of February 11, 1985. The Phase One tariff rates for firm and supplemental service to municipal customers (the WM–1 and WM–2 rates) and the Phase One rates for SWPA and WFEC are deemed withdrawn. After a final Commission order approving a WM–1 rate has been issued in this proceeding, the approving WM–1 rate shall take effect for Mannford and Perry.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of OGE's rates.

(G) The Commission staff shall serve top sheets in this proceeding on or before September 21, 1984.

(H) A presiding administrative law judge, to be designated by the Chief Adminsitrative Law Judge, shall convene a conference in this proceeding, to be held within approximately fifteen (15) days after service of top sheets, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure (18 CFR, Part 385).

(I) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just are reasonable. The presiding judge may modify this schedue for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(J) The Secretary shall promptly publish this order in the **Federal Register**.

By the Commission.

Kenneth F. Plumb.

Secretary.

[7] Where our analysis indicates significant differences in excess revenues, we consider the classes independently for suspension purposes. *See West Texas Utilities Company*, 26 FERC ¶ 61,041 at 61,138 (1984).

[8] We note that OGE's proposed effective date for the Phase One rates falls one day short of the statutory 60 day notice period. The suspension periods ordered here have been measured from September 11, 1984, 60 days after filing.

Oklahoma Gas and Electric Company

[Docket No. ER84–541–000]

Rate Schedule Designations

Designation		Description	Effective date
I. FERC Electric Tariff First Revised Volume No. 1			
Sheet No.	*Supersedes Sheet No.*		
(1) 1st revised sheet No. 1	Original sheet No. 1	Table of contents	September 10, 1984.
(2) 1st revised sheet No. 2	Original sheet No. 2	Preliminary statement	Do.
(3) 1st revised sheet No. 2	Original sheet No. 17	Terms and conditions	Do.
(4) Original sheet No. 17A		do	Do.
(5) 5th revised sheet Nos. 7, 8, 9	4th revised sheet Nos. 7, 8, 9	Rate WC–1, phase 1	September 12, 1984, subject to refund.
(6) 6th revised sheet No. 28	5th revised sheet No. 28	Index, phase I	Do.
(7) 5th revised sheet No. 29	4th revised sheet No. 29	Index, phase I	Do.
(8) 6th revised sheet Nos. 4, 5, 6	5th revised sheet Nos. 4, 5, 6	Rate WM–1, phase 2	Do.
(9) 6th revised sheet Nos. 7, 8, 9	5th revised sheet Nos. 7, 8, 9	Rate WC–1, phase 2	February 11, 1985, subject to refund.
(10) 4th revised sheet Nos. 10, 11, 12	3rd revised sheet Nos. 10, 11, 12	Rate WM–2, phase 2	September 12, 1984, subject to refund.
(11) 7th revised sheet No. 28	6th revised sheet No. 28	Index, phase 2	Do.
(12) 6th revised sheet No. 29	5th revised sheet No. 29	Index, phase 2	Do.
(13) Supplement No. 4 to rate schedule FERC No. 106 (supersedes supplement No. 3).		SWPA, revised page Nos. 20, 22, 23, phase 2.	February 11, 1985, subject to refund.
(14) Supplement No. 5 to rate schedule FERC No. 103 (supersedes supplement No. 4).		WFEC, revised page No. 16, phase 2	Do.

Service Agreements under FERC Electric Tariff First Revised Volume No. 1

	Service agreement No.	Other party	Description	Effective date
(15)	65	City of Clarksville	Additional delivery	February 15, 1985.
(16)	66	City of Stillwater	do	Initiation of service.
(17)	67	Cimarron Electric Cooperative, Inc	do	September 20, 1984.
(18)	Supplement No. 1 to (15)	City of Clarksville	Supplemental power contract	July 1, 1981.
(19)	Service agreement No. 68	Town of Goltry	do	August 1, 1983.
(20)	Supplement No. 2 to service agreement No. 40.	City of Paris	do	July 1, 1985.

[FR Doc. 84-24539 Filed 9-14-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES84-66-000]

PacifiCorp, Doing Business as Pacific Power & Light Co.; Application

September 12, 1984.

Take notice that on August 31, 1984, PacifiCorp, d.b.a. Pacific Power and Light Company (Pacific), filed an application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order authorizing it (1) to borrow the proceeds of not more than $90,000,000 in aggregate principal amount of Pollution Control Revenue Bonds to be issued by the Sweetwater and Converse Counties, Wyoming (Counties), and (2) to enter into such agreements or arrangements with the Counties and other entities as may be reasonably necessary to effect the borrowings. These agreements or arrangements may include guarantees, pledges, sale and leasebacks, lease and leasebacks, collateralized security issuances, and reimbursement agreements. The financing is related to certain air and water pollution abatement facilities located at Pacific's Jim Bridger and Dave Johnston Generating Plants.

Any person desiring to be heard or to make any protest with reference to the application should, on or before September 28, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with 18 CFR 385.211 or 385.214, respectively. The application is on file with the Commission and available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24540 Filed 9-14-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP84-653-000]

Panhandle Eastern Pipe Line Co.; Request Under Blanket Certificate

September 12, 1984.

Take notice that on August 16, 1984, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642 Houston, Texas 77001, filed in Docket No. CP84-653-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) that Panhandle proposes to transport natural gas on behalf of PPG Industries, Inc. (Shipper), under authorization issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle proposes to transport up to 4,400 Mcf of natural gas per day and up to 1,606,000 Mcf of natural gas per year on behalf of Shipper. It is asserted that Panhandle would receive the gas at an existing point of interconnection with Union Texas Products Corporation, the seller, in Major County, Oklahoma, and deliver equivalent volumes (less four percent reduction for fuel) to Illinois Power Company in Macon County, Illinois, which in turn would make the ultimate delivery to Shipper in Mt. Zion, Illinois. In addition, Panhandle requests "flexible authority" to add and delete sources of supply or receipt/delivery points. It is asserted that Panhandle would file additional information to insure that any changes in sources or receipt/delivery points would be on behalf of the same end-user at the same location and under the same terms and conditions as would be authorized in Docket No. CP84-653-000. It is further asserted that Panhandle's transportation charge would be based upon Panhandle's Rate Schedule OST and that there is no 5-cent added incentive charge proposed.

Shipper would utilize the gas transported for boiler and process heating, it is stated. Panhandle further states that it would not construct or add to its existng facilities to provide this transportation service. The term of this proposed serivce would be from the date automatic authorization expires until the earlier of (1) eighteen months form the July 9, 1984, date of the transportation agreement, (2) termination of the authorization as provided by Subpart F of Part 157, of the Commission's Regulations, or (3) termination of the service by any of the parties, it is explained.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24541 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-7004-028]

Pennzoil Co.; Fourteenth Amendment to Application for Immediate Clarification or Abandonment Authorization

September 11, 1984.

Take notice that on September 7, 1984, Pennzoil Company (Pennzoil), P.O. Box 2967, Houston, Texas 77001, filed in Docket No. G-7004-028 an application for immediate clarification of Order dated November 24, 1980 in the above-referenced docket or abandonment authorization for as much gas as is required to allow sales of gas to eleven new applicants for residential service in West Virginia in addition to those applicants specified in Pennzoil's original application filed on October 25, 1982. In filing this Fourteenth Amendment to its original application, Pennzoil incorporates herein and renews each of the requests for clarification or abandonment authorization set forth in that application. Service to these applicants and existing customers would be provided from gas supplies that would otherwise be sold to Consolidated Gas Supply Corporation (Consolidated), an interstate pipeline.

Pennzoil states that immediate action is necessary to protect the health, welfare and property of the applicants and customers in West Virginia who depend upon Pennzoil for their gas supply needs. Pennzoil also states that immediate action also is required because, by order dated October 21, 1982, the Public Service Commission of West Virginia directed Pennzoil "to show cause," if any it can, why it should not be found to be in violation of its duty * * * to provide adequate gas service to all applicants * * * and why it should not be required to provide service to domestic customers in West Virginia when requests are received for same.

Consolidated has indicated that it has no objection to the requested authorization.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than normal for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said amendment to the original application should on or before, September 19, 1984, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 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 parties to the proceeding. Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules. Any person previously granted intervention in connection with Pennzoil's original application in Docket No. G-7004-006 need not seek intervention herein. Each such person will be treated as having also intervened in Docket No. G-7004-028.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24542 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EC84-19-000]

South Carolina Electric & Gas Co.; Application and Petition for Order Disclaiming Jurisdiction

September 12, 1984.

Take notice that on August 28, 1984, South Carolina Electric and Gas Company (SCE&G or Company) submitted for filing its application for approval of transfer of facilities pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.

SCE&G requests that the Commission issue an order disclaiming jurisdiction over the Williams Station one of its (SCE&G) generating facilities because SCE&G proposes to transfer ownership of the plant to South Carolina Generating Company, Inc. (GENCO), which is to be a wholly-owned subsidiary of SCE&G. Therefore, SCE&G states that the Public Service Commission of South Carolina has jurisdiction to approve the transfer of Williams Station from SCE&G to GENCO and the transfer is not subject to the requirements of section 203.

SCE&G states that alternatively, in the event the Commission determines that it has jurisdiction over the transfer, SCE&G requests that the Commission issue an order granting such tranfser and to that end, SCE&G also filed an application to transfer the Willians Station to GENCO in accordance with the requirements of Part 33 of the Commission's Regulations under the Federal Power Act.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 4, 1984. Protests will be considered by the Commission in determining the appropriate actiion to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party muat file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-24545 Filed 9-14-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EF84-5051-000]

Western Area Power Administration; Filing

September 12, 1984.

The filing Company submits the following:

Take notice that on August 28, 1984, the Deputy Secretary of the Department of Energy, by Rate Order No. WAPA-25, did confirm and approve, on an interim basis, to be effective on the first day of the October 1984 billing period, Western Area Power Administration's (Western) new Rate Schedules RGP-F2 and RGP-EE1 for the Rio Grande Project.

The revised FY 1983 power repayment study dated January 5, 1984, on which the power rates are based, indicates that a composite rate of 30.85 mills per kWh for firm capacity and energy, and a rate of 22.0 mills per kWh for excess nonfirm winter season energy are needed to meet project repayment requirements. This represents an increase of 3.85 mills per kWh (14.3 percent) for firm power over the existing composite rate of 27.00 mills per kWh. The excess nonfirm winter season energy rate remains the same as was charged during the past two winters. The increased firm rate is expected to increase the annual revenues through 1990 by $235,620 per year, which is required to meet increased costs in operations and

maintenance, additions and replacements, and for repayment of the project investment. The 5-percent voltage discount under Rate Schedule RGP–F1 was eliminated since both customers were receiving the same discount.

These rates will be in effect pending the Commission's approval of them, or substitute rates, on a final basis, or until superseded.

The Administrator of Western certifies that the rates are consistent with applicable laws and that they are the lowest possible rates consistent with sound business principles. The Deputy Secretary states that the rate schedules are submitted for confirmation and approval on a final basis for a 5-year period pursuant to authority vested in the Commission by Delegation Order No. 0204–108.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before October 4, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24546 Filed 9–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–454–000]

Penobscot Energy Recovery Company Portland, ME; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

September 12, 1984.

On August 20, 1984, Penobscot Energy Recovery Company, (Applicant), of One Monument Square, Portland, Maine 04101, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The proposed small power production facility will be located in Orrington, Maine. It will have a power production capacity of 20,000 kilowatts and will use biomass in the form of Municipal solid waste as its primary energy source. No electric utility company or electric utility holding company will have any ownership interest in the facility. Construction of the proposed facility is expected to commence on or about May 1985.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24543 Filed 9–14–84; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. QF84–476–000]

San Diego Solar Concepts III, Ltd.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

September 12, 1984.

On August 29, 1984, San Diego Solar Concepts III, Ltd., P.O. Box 20173, San Jose, California, 95160, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Borrego Springs, San Diego County, California. The proposed facility will consist of a maximum of 400 solar modules floating on four cooling ponds. No oil or gas will be used in the proposed facility. The maximum annual electric power production of the facility will be approximately 2,920,000 kilowatt hours. The maximum annual thermal energy production capacity of the facility will be approximately 467,200 therms of hot water energy. The hot water produced in the cooling process will be sold for process use in a nearby alcohol distillery. The facility will be completed for use no later than December 31, 1984.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84–24544 Filed 9–14–84; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPE–FRL–2670–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests (ICRs) that have been forwarded to the Office of Management and Budget for review. The ICR describes the nature of the solicitation and the expected impact, and, where appropriate, includes the actual data collection instrument. The following ICRs are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: Nanette Liepman (PM–223); Office of Standards and Regulations; Regulation and Information Management Division; U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, D.C. 20460; telephone (202) 382–2742 or FTS 382–2742.

SUPPLEMENTARY INFORMATION:

Research Program

- *Title:* Survey of State Environmental Officials to Determine

Research Needs for ORD Planning (EPA #1229).

Abstract: EPA's Office of Research and Development proposes to survey state enviromental officials annually to determine their research needs. The Agency will use this information the increase consideration of state research needs in Agency planning.

Respondents: State environmental officials.

Comments on all parts of this notice should be sent to:

Nanette Liepman (PM-223), U.S. Environmental Protection Agency, Office of Standards and Regulations, Regulation and Information Management Division, 401 M Street, SW., Washington, D.C. 20460; and

Wayne Leiss, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, NW., Washington, D.C. 20503

Dated: September 11, 1984.

Daniel J. Fiorino,

Acting Director, Regulation and Information Management Division.

[FR Doc. 84-24374 Filed 9-14-84; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 84-499]

Location of District Offices

Dated: September 11, 1984.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of administrative policy.

SUMMARY: The Board is notifying the public that it has determined as a general policy to ensure that its district examination offices are within or near the corresponding district Federal Home Loan Banks. This policy is intended to improve the flow of information between the respective offices and to enhance the Board's ability to effectively examine, monitor and supervise the thrift industry.

DATE: August 10, 1984.

ADDRESS: Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

FOR FURTHER INFORMATION CONTACT: James Kristufek (202-377-6290), Special Assistant to the Director, Office of Examinations and Supervision, Federal Home Loan Bank Board, at the above address.

SUPPLEMENTARY INFORMATION: On August 10, 1984, the Federal Home Loan Bank Board adopted the following administrative policy:

Statement of Policy

It is of the utmost importance that the Office of Examinations and Supervision district offices be located within immediate or close proximity to, and preferably "under the same roof" as, the corresponding Federal Home Loan Banks. To do otherwise would hinder the free flow of information between the respective offices which would adversely affect our ability to effectively examine, monitor and supervise the industry.

In instances where an OES District office is requested by the District Bank to relocate from their existing space, the following principles will apply:

1. The District Bank will pay for all moving expenses of the OES district office;

2. Leasehold improvements, if necessary to put the space in a useable condition, will be paid for by the District Bank with the exception of special or unusual items requested by the District Director;

3. The square foot lease cost charged the district office will be determined by application of a "blended rate" determined as follows: The total rental cost of all space leased by the Bank, including the OES space and all maintenance costs, will be divided by the total square footage leased to arrive at the "blended rate" to be charged the district office.

In instances where a District Bank relocated to a new building, OES will also relocate to the new building and the principles stated in 2. and 3. above will apply. The moving expenses of the OES district office will be paid for by OES, however.

The Chairman may appoint a Board Member to serve as arbitrator to resolve any disputes that might arise as to implementation of the above guidelines.

Multi-year leases should be used, where possible, but of course such leases would be subject to the annual appropriations process.

By the Federal Home Loan Bank Board.

J.J. Finn,

Secretary.

[FR Doc. 84-24472 Filed 9-14-84; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Northwestern Financial Corp., et al.; Applications to Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweight possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1984.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Northwestern Financial Corporation*, North Wilkesboro, North Carolina; to engage *de novo*, through its subsidiary, Northwestern Equity Mortgage Corp., Wilkesboro, North Carolina, in soliciting, closing, making, negotiating, acquiring and/or selling consumer or commercial mortgage loans (including conventional and alternative mortgage transactions) for its own account and, or the account of others and/or otherwise acting as mortgage broker or mortgage banker; and acting as agent for the sale of credit life, health and accident and other credit-related insurance.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoening, Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Continental Financial, Inc.*, Omaha, Nebraska; to engage *de novo*, through its subsidiary, River City Insurance Company, Inc., Omaha, Nebraska, in underwriting life, accident and health insurance directly related to extensions of credit by its subsidiary bank.

C. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Mercantile Texas Corporation*, Dallas, Texas; to engage *de novo*, through it subsidiaries, MCorp Management, Dallas, Texas, and MCorp Properties, Dallas Texas, in making or acquiring for their own account or for the account of others, loans and other extensions of credit. Lending activities will principally involve participation in commercial loans made by Mercantile Texas Corporation and its subsidiaries but may from time to time include credit card loans, consumer loans, mortgage loans and factoring.

Board of Governors of the Federal Reserve System, September 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24470 Filed 9-14-84; 8:45 am]

BILLING CODE 6210-01-M

Rigler Investment Co., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 18442(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 8, 1984.

A. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Rigler Investment Co.*, New Hampton, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Security State Bank, New Hampton, Iowa.

B. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Fort Knox Bancshares, Inc.*, Chillicothe, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Investors Services, Inc., Fort Knox, Kentucky, thereby indirectly acquiring Fort Knox National Bank, Fort Knox, Kentucky.

2. *McIlroy Investment Co., Inc.*, Fayetteville, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of Industrial Finance Company, Fayetteville, Arkansas, thereby indirectly acquiring 82.5 percent of the voting shares of McIlroy Bank & Trust, Fayetteville, Arkansas.

3. *TPB Bancorp*, Brownston, Indiana; to become a bank holding company by acquiring 80 percent of the voting shares of The Peoples Bank, Brownston, Indiana.

Board of Governors of the Federal Reserve System, September 11, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-24471 Filed 9-14-84; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces renewal of the Cardiovascular and Renal Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act.

DATE: Authority for this committee will expire on August 27, 1986, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: September 10, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24517 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

Endocrinologic and Metabolic Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces renewal of the Endocrinologic and Metabolic Drugs Advisory Committee by the Secretary of Health and Human Services. This notice is issued under the Federal Advisory Committee Act.

DATE: Authority for this committee will expire on August 27, 1986, unless the Secretary formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Richard L. Schmidt, Committee Management Office (HFA-306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2765.

Dated: September 10, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84-24520 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0276; DESI 7630]

Drugs for Human Use; Drug Efficacy Implementation; Upgrading Notice and Withdrawal of Approval of Pertinent Parts of New Drug Application for Winstrol Tablets

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the conditions for marketing stanozolol tablets for the indication for which it is evaluated as effective, for the treatment of hereditary angioedema, and is withdrawing approval of parts of the new drug application pertaining to the less-than-effective indications.

DATE: Revised labeling shall be put into use by October 17, 1984.

ADDRESS: Communications in response to this notice should be identified with the reference number DESI 7630, and directed to the attention of the appropriate office named below.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drugs (HFN–230), Center for Drugs and Biologics, 5600 Fishers Lane, Rockville, MD 20856.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HEN–310), Rm. 216 Center for Drugs and Biologics, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Judy O'Neal, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION:

Background

In a notice published in the Federal Register of April 23, 1984 (49 FR 17094), FDA reclassified stanozolol to lacking substantial evidence of effectiveness for its labeled indications and offered an opportunity for a hearing on the proposal to withdraw approval of the following new drug applicaton (NDA):

NDA 12.885; Winstrol Tablets containing stanozolol 2 milligrams (mg); Sterling Drug Inc., 90 Park Ave., New York, NY 10016.

In response to the notice, Sterling Drug requested a hearing on the indications evaluated as lacking substantial evidence of effectiveness. Previously Sterling had submitted data for literature references in support of the use of stanozolol in the treatment of hereditary angioedema. These data were evaluated and determined by the agency to provide substantial evidence of effectiveness for that indication. Sterling later withdrew its hearing request.

Effectiveness Conclusions

On the basis of the data and information submitted and reviewed, the Director of the Center for Drugs and Biologics has determined that stanozolol is effective for the treatment of hereditary angiodema. In addition, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), the Director also finds that, on the basis of new information before him with respect to the drug product's previously labeled indications, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that stanozolol will have the effects it is represented to have under the conditions of use prescribed, recommended, or suggested for those indications. Therefore, pursuant to the foregoing findings, approval of pertinent parts of NDA 12–885 pertaining to those indications is withdrawn effective October 17, 1984. Shipment in interstate commerce of the product above, or any identical, related, or similar product with indications for which approval is withdrawn, will be unlawful after October 17, 1984.

This drug product is regarded as a new drug (21 U.S.C. 321(p)) and an approved new drug application is required for marketing.

In addition to the holder of the new drug application specifically named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to the drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

Conditions for Approval and Marketing

FDA has reviewed all available evidence and concludes that stanozolol is effective for the indication listed in the labeling conditions below. The agency is prepared to approve abbreviated new drug applications under conditions described herein.

1. *Form of drug.* The drug is in tablet form suitable for oral administration

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the Federal Food, Drug, and Cosmetic Act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows: For the treatment of hereditary angioedema.

3. *Marketing status.* a. Marketing of the drug product that is now the subject of an approved or effective new drug application may be continued provided that, on or before October 17, 1984, the holder of the application has put into use revised labeling in accord with the labeling conditions described above.

b. Approval of an abbreviated new drug application (21 CFR 314.2) must be obtained before marketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting a full or abbreviated new drug application after July 7, 1977, to include either evidence demonstrating in vivo bioavailability of the drug or information to permit waiver of the requirement. Marketing drug products before approval of a new drug application will subject those products, and those persons who caused the products to be marketed, to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: September 11, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–24514 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 75N–0184; DESI 597]

Drugs for Human Use; Drug Efficacy Study Implementation; Cantil With Phenobarbital Tablets; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those parts of a new drug application pertaining to Cantil with Phenobarbital Tablets ("Cantil PB"). The basis of the withdrawal is that there is a lack of substantial evidence that the drug is effective in the adjunctive therapy of peptic ulcer. This notice does not affect single entity Cantil products, which are effective for the adjunctive therapy of peptic ulcer.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 597 and directed to the Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Center for Drugs and Biologics (HFN–366), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 16, 1981 (46 FR 3977), FDA proposed to withdraw approval of the new drug applications for certain anticholinergic/sedative combinations used for the treatment of various gastrointestinal disorders. The notice also offered an opportunity for a hearing on the proposal. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), 21 CFR 314.111(a)(5), and 21 CFR 300.50.

In response to that notice, Merrell Dow Pharmaceuticals, Inc., requested a hearing on Cantil PB. Subsequently, Merrell Dow withdrew its hearing request. Accordingly, FDA is now withdrawing approval of the appropriate parts of the following new drug application (NDA) that provide for Cantil PB.

NDA 10–679; those parts that provide for Cantil with Phenobarbital Tablets containing 25 milligrams (mg) mepenzolate bromide and 16 mg phenobarbital; Merrell Dow Pharmaceuticals, Inc., a subsidiary of the Dow Chemical Co., 2110 East Halbraith Rd., Cincinnati, OH 45215.

This notice does not apply to Cantil Tablets and Liquid (NDA 10–679) containing single entity mepenzolate bromide, which are effective for the adjunctive therapy of peptic ulcer. See **Federal Registers** of June 18, 1971 (36 FR 11754) and May 25, 1979 (44 FR 30439).

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the combination product Cantil with Phenobarbital Tablets will have the effects its purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA 10–679 that provide for Cantil with Phenobarbital Tablets and all amendments and supplements thereto is withdrawn effective October 17, 1984.

Shipment in interstate commerce of the product above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: September 11, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–24515 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84N–0067 (DESI No. 10826); Formerly Docket No. 80N–0012]

E.R. Squibb & Sons, Inc.; Certain Drugs Containing Antibiotic, Corticosteriod, and Antifungal Components; Notice of Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is granting a hearing on the proposal to withdraw approval of the new drug applications (NDA's) for Mycolog Cream and Ointment. The drugs are intended for treatment of various dermatologic conditions.

DATES: Notices of participation shall be filed with the Dockets Management Branch no later than October 17, 1984. Disclosure of data and information and submission of narrative statements by November 16, 1984. Prehearing conference on December 12, 1984, at 10 a.m.

ADDRESSES: Written notices of participation, disclosures, and statements to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Submissions should be identified with docket number 84N–0067 and clearly labeled "Mycolog Hearing.") Prehearing conference in the FDA Hearing, Room Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Regulations Policy Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION: In a notice (DESI 10826) published in the **Federal Register** of June 29, 1972 (37 FR 12856), the Food and Drug Administration (FDA) evaluated the effectiveness of certain prescription drug products for topical use. These products included Mycolog Cream and Ointment, which are approved under NDA's 60–576 and 60–572, respectively, held by E.R. Squibb & Sons, Inc., New Brunswick, NJ (hereinafter Squibb). Both products are composed of triamcinolone acetonide (1.0 milligram/gram (mg/g)), nystatin (100,000 units/g), neomycin sulfate (2.5 mg/g), and gramicidin (0.25 mg/g).

The 1972 notice, part of the Drug Efficacy Study Implementation (DESI) program, stated that FDA had evaluated reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, together with other available evidence, and had concluded that the reviewed product including Mycolog Cream and Ointment, were possibly effective for all of their labeled indications relating to use in various dermatoses and as inti-enfective agents.

Subsequently, in a notice published in the **Federal Register** of October 9, 1974 (39 FR 36365), the Commissioner of Food and Drugs announced that certain anti-infective/corticosteroid drugs, including Mycolog Cream and Ointment, would be permitted to remain on the market beyond the time limits prescribed for implementation of the DESI program. This continued marketing was contingent upon the fulfillment of certain conditions set forth in the notice. With respect to the antibiotic/corticosteriod products, these conditions were (1) that the corticosteriod in the product be present in an amount not less than the equivalent of 0.5 percent hydrocortisone; (2) that the product be appropriately labeled, as set forth in the notice; (3) that, within 90 days of the date of the notice, the drug's manufacturer or distributor submit to FDA for approval protocols for two single investigator studies (or one multicenter study) designed to show that the product is effective for its claimed indications and that it satisfies FDA's policy for fixed combination prescription drugs (21 CFR 300.50); (4) that the effectiveness studies begin within 6 months of the agency's approval of the protocols; (5) that the manufacturer or distributor submit progress reports to FDA at 6-month intervals; and (6) that the manufacturer or distributor submit data from the studies to FDA within 18 months of FDA's approval of the protocols.

Following publication of the 1974 notice, Squibb conducted and submitted the results of a clinical study to support the possibly effective indication for cutaneous candidiasis of its products Mycolog Cream and Ointment. No other

indication was addressed in the study. Squibb also submitted nine references and articles in support of its products. Upon review of these data and other available information, the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) concluded that there is a lack of substantial evidence that either Mycolog Cream or Ointment is effective for its labeled indications (21 U.S.C. 355(d), 21 CFR 314.111(a)(5)), and, further, that the submitted data do not demonstrate that each component of the two products makes a significant contribution to the claimed effects of each drug (21 CFR 300.50(a)). Accordingly, by notice in the Federal Register of September 25, 1981 (46 FR 47408), the Director announced his conclusions concerning the effectiveness data for Mycolog Cream and Ointment, revoked the temporary exemption for continued marketing of the drugs, reclassified the drugs as lacking substantial evidence of effectiveness, proposed to withdraw approval of the NDA's for the products, and offered an opportunity for a hearing on the proposed withdrawal.

On October 20, 1981, Squibb requested a hearing, and, on November 24, 1981, filed data and other information in support of its hearing request.

In addition to Squibb, the following drug manufacturers and organizations filed hearing requests in response to the Director's 1981 proposal:

1. Byk-Gulden, Inc., 60 Baylis Rd., Melville, NY 11747: NDA 62-135; Nystatin-Neomycin Sulfate-Gramicidin-Triamcinolone Acetonide Ointment.

NDA 62-136; Nystatin-Neomycin Sulfate-Gramicidin-Triamcinolone Acetonide Cream.

2. Clay Park Laboratories, 3339, Park Ave., Bronx, NY 10456:

NDA 62-186; Nystatin-Neomycin Sulfate-Gamicidin-Triamcinolone Acetonide Cream.

NDA 62-280; Nystatin-Neomycin Sulfate-Gramicidin-Triamcinolone Acetonide Ointment.

3. K-Line Pharmaceuticals, Ltd., Downsview, Ontario, Canada.

4. Lemmon Co. (formerly Premo Pharmaceutical Laboratories), Sellersville, PA 18960:

NDA 61-954; Myco Triacet Cream containing Nystatin, Neomycin Sulfate, Gramicidin, and Triamcinolone Acetonide.

NDA 62-045; Myco Triacet Ointment containing Nystatin, Neomycin Sulfate, Gramicidin, and Triamcinolone Acetonide.

5. NMC Laboratories, 70-32 83d St., Glendale, NY 11385.

6. National Pharmaceutical Alliance, Suite 800, 2550 M St. NW., Washington, DC 20037.

7. American Academy of Dermatology, Council on Government Liaison, University of Virginia School of Medicine, Charlottesville, VA 22901.

The Commissioner is now granting the hearing request of Squibb on the proposal to withdraw approval of the NDA's for Mycolog Cream and Ointment. Approval of these NDA's will be withdrawn unless there exists substantial evidence (21 U.S.C. 355(d), 21 CFR 314.111(a)(5)) that the products have the clinicial effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(d)). In addition, because the Mycolog products are fixed combination prescription drugs, such evidence exists for them only if "each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug" (21 CFR 300.50(a)).

In its submission requesting a hearing, Squibb also requested that the agency reinstate the temporary exemption for continued marketing, known as the "paragraph XIV" exemption, of Mycolog Cream and Ointment, which was revoked on September 25, 1981 (46 FR 47408). Paragraph XIV of the court's order implementing its decision in *American Public Health Ass'n* v. *Veneman*, 349 F. Supp. 1311 (D.D.C. 1972), allowed FDA administrative enforcement discretion, pending completion of scientific studies, with respect to continued marketing of less-than-effective drugs that were part of the DESI program. See 37 FR 26623. Squibb argued that the agency's revocation of the exemption for Mycolog without notice and comment violated the procedural requirements for rulemaking under the Administrative Procedure Act (5 U.S.C. 553).

The revocation of paragraph XIV status is not the promulgation of a rule within the meaning of the Administrative Procedure Act (5 U.S.C. 551(4)). The Supreme Court has distinguished "substantive rules" from other agency decisions, describing substantive rules as "binding" and as "affecting individual rights and obligations." *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 301-302 (1979). Paragraph XIV, however, conferred no new rights on the products affected by it, but merely preserved FDA's flexibility and discretion in implementing the court's order. A "paragraph XIV" exemption grants no right to market a drug product, and its revocation does not remove a drug product from the market. Exemptions and revocations under paragraph XIV are not substantive norms enforeable in court, but are expressions of agency enforcement discretion. Thus, as neither the exemption nor the revocation affecting Mycolog was a rulemaking in violation of the Administrative Procedure Act, the Commissioner rejects both Squibb's argument and, for the reasons stated in the 1981 notice, its request to reinstate the exemption.

Squibb has submitted one multicenter study, as well as other studies and information, to establish that the effectiveness criteria of the statute and regulations are satisfied for Mycolog Cream and Ointment. Several other drug manufacturers, which manufacture generic versions of Mycolog Cream and Ointment, have filed notices of their intent to rely on and incorporate by reference all data submitted by Squibb for its Mycolog products. Accordingly, there are two questions to be addressed in this proceeding with respect to the Mycolog products and their generic versions:

1. Whether there is evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug; and

2. Whether, on the basis of any such adequate and well-controlled investigations that exist, it could fairly and responsibly be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of drugs that the drug products in question satisfy the combination policy found in 21 CFR 300.50 and will have the effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof (21 U.S.C. 355(d)).

The parties to the hearing will be FDA's Center for Drugs and Biologics, E.R. Squibb & Sons, Inc., and the aforementioned manufacturers of products identical, similar, or related to Mycolog Cream or Ointment. The presiding officer will be Administrative Law Judge Daniel J. Davidson. In addition to the manufacturer parties, the trade association and the professional medical group that requested a hearing,

and any other interested person, shall be permitted to participate as nonparty participants (see 21 CFR 12.89), provided that they file a notice of participation pursuant to 21 CFR 12.45(a).

In accordance with 21 CFR 12.85(a)(4), the Center for Drugs and Biologics has filed with the Dockets Management Branch a narrative statement setting forth its position on the issues of the hearing and a summary of the types of evidence to be introduced in support of its position in the hearing, together with copies of data contained in the Center's files that relate to the issues raised herein. Interested persons may obtain a copy of the Center's narrative statement from the Dockets Management Branch (address above). Such persons may also examine the data on the drugs subject to this hearing notice (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch from 9 a.m. to 4 p.m., Monday through Friday.

The prehearing conference will be held on December 12, 1984, at 10 a.m., in the FDA Hearing Room, Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857. The hearing will be held in the FDA Hearing Room on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Branch no later than October 17, 1984. Participants other than the Center for Drugs and Biologics shall disclose data and information and submit their narrative statements pursuant to 21 CFR 12.85 on or before November 16, 1984. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92.

The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on matters relevant to the issues under consideration.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings. This guideline was published in the Federal Register of April 13, 1984 (49 FR 14723). These procedures are primarily intended to expedite media access to FDA's public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well as the Federal Register notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052 as amended (21 U.S.C. 355)) and under authority delegated to me (21 CFR 5.10), I order that a public hearing be held on the issues set forth in this notice.

Dated: September 11, 1984.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 84-24524 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 80N-0012; DESI 8884]

Erythromycin Ointment; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is withdrawing approval of the new drug application (NDA) for Ilotycin No. 90 Ointment, held by Eli Lilly & Co., on the ground that there is a lack of substantial evidence of the product's effectiveness in the treatment of the various dermatologic disorders for which it is labeled.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 8884 and directed to the Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, Rm. 216, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice of opportunity for hearing published in the Federal Register of September 25, 1981 (46 FR 47406), the Director of the Bureau of Drugs proposed to issue an order withdrawing approval of the new drug applications for certain topical anti-inefective drug products. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5). In response to that notice, Eli Lilly & Co., filed a hearing request for Ilotycin No. 90 Ointment and submitted data, information, and analyses in support of its request. Because Eli Lilly & Co., subsequently withdrew its hearing request, approval of the new drug application for this product is now withdrawn.

NDA 60–646; Ilotycin No. 90 Ointment containing erythromycin, Eli Lilly & Co., P.O. Box 618, Indianapolis, IN 46206.

Any drug product that is identical, related, or similar to this product and is not the subject of an approved new drug application is covered by NDA 60–646 and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance at the address given above.

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under the authority delegated to him (21 CFR 5.82 and 47 FR 26913 published in the Federal Register of June 22, 1982) finds that, on the basis of new information before him with respect to the product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the product will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 60–646 and all its amendments and supplements is withdrawn effective October 17, 1984.

Shipment in interstate commerce of the above product or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: August 29, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24523 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 84N-0632]

Lemmon Co.; New Drug Applications; Withdrawal of Approval

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two new drug applications (NDA's) for methaqualone. These withdrawals are based upon a statutory

directive that such approval be withdrawn and upon a written request from the holder of the NDA's. The intended effect of this action is to comply with the statutory directive and the written request of the holder of the NDA's.

EFFECTIVE DATE: September 26, 1984.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Center for Drugs and Biologics (HFN–364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6490.

SUPPLEMENTARY INFORMATION: Pursuant to Pub. L. 98–329 (98 Stat. 280), the Attorney General transferred methaqualone from Schedule II to Schedule I of the Controlled Substances Act (CSA) (49 FR 33870; August 27, 1984). Pub. L. 98–329 also directs that, effective 30 days after the date methaqualone is transferred to Schedule I of the CSA, the approval of the NDA's for methaqualone shall be withdrawn under the Federal Food, Drug, and Cosmetic Act.

Also, on August 31, 1984, the holder of the only two NDA's for methaqualone (the Lemmon Co.) requested that FDA withdraw approval of the applications. The applicant also, by written request, waived its opportunity for hearing.

Therefore, pursuant to the foregoing, approval of the NDA's for methaqualone (NDA's 14–166 and 17–051) is withdrawn effective September 26, 1984.

Dated: September 11, 1984.

Paul Parkman,

Acting Director, Center for Drugs and Biologics.

[FR Doc. 84–24522 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 80N–0012; DESI 9405]

Terra-Cortril Topical Ointment; Drugs for Human Use; Drug Efficacy Study Implementation; Withdrawal of Approval of New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug application (NDA) for Terra-Cortril Topical Ointment. FDA is withdrawing approval because the combination drug product lacks substantial evidence of effectiveness. The product is labeled for the treatment of various dermatologic conditions.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 9405 and directed to the Division of Drug Labeling Compliance (HFN–310), Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Center for Drugs and Biologics (HFN–366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3650.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 25, 1981 (46 FR 47408), FDA offered an opportunity for a hearing on a proposal to withdraw approval of the following NDA:

NDA 61–011; Terra-Cortril Topical Ointment containing oxytetracycline hydrochloride 30 milligrams (mg) and hydrocortisone 10 mg; Pfizer Inc., 235 East 42d St., New York, NY 10017.

The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), 21 CFR 314.111(a)(5), and 21 CFR 300.50. In response to the notice, Pfizer requested a hearing, but subsequently withdrew its hearing request. Accordingly, FDA is now withdrawing approval of the NDA.

Any drug product that is identical, related, or similar to the drug product named above and is not the subject of an approved new drug application is covered by the new drug application reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drugs and Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052–1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug product, evaluated together with the evidence available to him when the application was approved, there is a lack of substantial evidence that the combination product Terra-Cortril Topical Ointment will have the effects it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in its labeling.

Therefore, pursuant to the foregoing finding, approval of NDA 61–011 and all its amendments and supplments is withdrawn effective October 17, 1984. Shipment in interstate commerce of this product or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated: September 7, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–24521 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 84M–0288]

Vistakon, Inc.; Premarket Approval of the VISTAMARC ™ (Etafilcon A) Hydrophilic Contact Lens For Not-Aphakic Extended Wear

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the supplemental application for premarket approval under the Medical Device Amendments of 1976 of the VISTAMARC ™ (etafilcon A) Hydrophilic Contact Lens for Not-aphakic Extended Wear, sponsored by Vistakon, Inc., Jacksonville, FL. After reviewing the recommendation of the Ophthalmic Devices Panel (formerly the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel), FDA notified the sponsor that the supplemental application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by October 17, 1984.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review are to be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7445.

SUPPLEMENTARY INFORMATION: On December 27, 1982, Vistakon, Inc., Jacksonville, FL 32207, submitted to FDA a supplemental application for premarket approval of the VISTAMARC ™ (etafilcon A) Hydrophilic Contact Lens for Not-aphakic Extended Wear. The lens is spherical and ranges in powers from −20.00 to +14.00 diopters (D). The lens is indicated for extended wear from 1 to 30 days between each cleaning and heat or chemical disinfection. The lens is indicated for the correction of visual

acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic and that may have 1.00 D or less of astigmatism. The supplemental application was reviewed on May 20, 1983, by the then Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. (On April 14, 1984, the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel was terminated. Concurrently, FDA established the Ophthalmic Devices Panel (see 49 FR 17446; April 24, 1984).) On August 10, 1984, FDA approved the supplemental application by letter to the sponsor from the Director, Office of Device Evaluation of the Center for Devices and Radiological Health.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295, 90 Stat. 539–583), contact lenses made of polymers other than polymethylmethacrylate (PMMA) and solutions for use with such contact lenses were regulated as new drugs. Because the amendments broadend the definition of the term "device" in section 201 (h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), contact lenses made of polymers other than PMMA and solutions for use with such lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of contact lenses made of polymers other than PMMA or solutions for use with such lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch (address above) and is available upon request from the office. A copy of all approved final labeling is available for public inspection at the Center for Devices and Radiological Health—contact Charles H. Kyper (HFZ–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The labeling of the VISTAMARC™ (etafilcon A) Hydrophilic Contact Lens for Not-aphakic Extended Wear states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that FDA approved for use with approved contact lenses made from polymers other than PMMA. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribes by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this supplemental application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the supplemental application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 17, 1984, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 10, 1984.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 84–24519 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 78N–0070; DESI No. 1626]

Combination Drugs Containing Theophylline, Ephedrine Sulfate, and Hydroxyzine Hydrochloride; Notice of Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is granting a hearing on the proposal to withdraw approval of the new drug applications for Marax Tablets and Marax Syrup, containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. The drugs are intended for the treatment of bronchial asthma. Products that do not contain the triple combination of theophylline, ephedrine sulfate, and hydroxyzine hydrochloride will not be included in the hearing.

DATES: Notices of participation shall be filed with the Dockets Management Branch no later than October 17, 1984. Disclosure of data and information and submission of narrative statement by FDA's Center for Drugs and Biologics by December 17, 1984. And by other participants by January 15, 1985. Prehearing conference on February 14, 1985, beginning at 10 a.m..

ADDRESSES: Written notices of participation, disclosures, and statements to the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Submissions should be identified with Docket No. 78N–0070 and clearly labeled "Marax Hearing.") Prehearing conference in the FDA Hearing Room, Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Rice, Jr., Regulations Policy

Staff (HFC–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION:

Background of This Proceeding

In a notice (DESI 1626) published in the **Federal Register** of July 26, 1972 (37 FR 14895), the Food and Drug Administration (FDA) evalutated the effectiveness of certain prescription combination drug products containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride, including Marax Tablets (NDA 11–768) and Marax Syrup (NDA 12–879), used primarily for treating bronchial asthma. Marax is approved under new drug applications held by J.B. Roerig Division, Pfizer Pharmaceuticals ("Roerig"), 235 East 42nd St., New York, NY 10017.

The 1972 notice, part of the Drug Efficacy Study Implementation (DESI) program, stated that FDA had evalauted the reports of the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, together with other evidence, and had concluded that the products lacked substantial evidence of effectiveness for the following indications: pulmonary infections associated with bronchospasm, dyspnea induced by exertion and cough, Cheyne-Stokes repiration, status asthmaticus, bronchospastic type of chronic hypertrophic pulmonary emphysema, other pulmonary disorders, or as a sedative. FDA concluded that the drugs were possibly effective as labeled for the following indications: bronchial asthma and other related claims.

Pursuant to the 1972 notice, Roerig revised the labeling for the drug products to include only the indication "for controlling bronchospastic disorders" and qualified that claim in the labeling as "possibly effective." In support of that indication, Roerig submitted data and other information to FDA.

In a notice of opportunity for hearing published in the **Federal Register** of March 24, 1978 (43 FR 12380), the Director of the Bureau of Drugs (now the Center for Drugs and Biologics) reviewed the data and information submitted by Roerig. The Director concluded that the material failed to provide substantial evidence of the effectiveness of Marax in controlling bronchial asthma because the contribution of hydroxyzine to the claimed indication had not been demonstrated. *Id.* at 12382. The Director stated that the notice did not discuss the contribution of ephedrine/theophylline to the effectiveness of the combination product because the ephedrine/theophylline combination was then being reviewed by FDA.

In the 1978 notice, the Director also stated that no data had been submitted on any of the other indications classified in 1972 as possibly effective. He, therefore, reclassified those indications to lacking substantial evidence of effectiveness. No data was submitted in support of any of the indications classified as lacking substantial evidence of effectiveness in the 1972 notice.

The Director concluded in the 1978 notice that on the basis of all the data and information available to him that he was unware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 300.50 and 314.111(a)(5), demonstrating the effectiveness of the triple combination.

The 1978 notice advised the holder of the new drug application and other interested parties that the Director proposed to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) withdrawing approval of the new drug applications for the triple combination product, and all amendments and supplements thereto, on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him at the time of approval of the applications, showed that there was a lack of substantial evidence that the drug products containing the triple combination will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

The 1978 notice was amended on February 20, 1984 (49 FR 7454) to reflect new information on the safety and effectiveness of these drugs. On the basis of FDA's review of theophylline and ephedrine, the Director concluded that there was a lack of substantial evidence that each ingredient in the combination, theophylline and ephedrine in addition to hydroxyzine, made a contribution to the claimed effects and that the dosage of each component (amount, frequency, duration) was such that the combination was safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drugs (21 CFR 300.50).

Requests for Hearing

In response to the 1978 and 1984 notices, Roerig submitted hearing requests and data and the other information in support of its requests. In addition to Roerig, the following firms requested a hearing:

Barre-National, Inc., 4128 Haywood Ave., Baltimore, MD 21215 ("Barre"); Hydroxyzine Compound Syrup (no NDA) containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. Barre submitted hearing requests in response to both notices. In response to the 1984 notice, Barre expanded its hearing request to include seven additional drug products, none of which contain the triple combination of ingredients included in this notice of hearing.

Barrows Research Group, Inc., 99 West Hawthorne Ave., Valley Stream, NY 11580 ("Barrows"); unnamed drug product containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. Barrows submitted a hearing request only in response to the 1984 notice.

Cord Laboratories, Inc., 2555 W. Midway Blvd., Broomfield, CO 80020 ("Cord"); Brofed Tablets (no NDA) containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. Cord requested a hearing and submitted data and other information to support its request in response both to the original and amended notices.

Parke-Davis, Division of Warner-Lambert Co., ("Parke-Davis"), 201 Tabor Rd., Morris Plains, NJ 07950; Tedral SA (no NDA) containing theophylline, ephedrine hydrochloride, and phenobarbital. Parke-Davis requested a hearing in response to the 1984 notice only. It also submitted data and information in support of its request.

Premo Pharmaceutical Laboratories, Inc. (now Lemmon Co.), 111 Leuning St., South Hackensack, NJ 07606; unnamed drug product containing theophylline, ephedrine sulfate, and hydroxyzine hydrochloride. The Lemmon Co. subsequently withdrew its hearing request.

American Home Products Corporation, 685 Third Ave., New York, NY 10017, submitted comments to the docket.

Review of the Hearing Requests by the Director of the Center for Drugs and Biologics

The Director of the Center for Drugs and Biologics evaluated the requests for a hearing on the issue whether there is substantial evidence (21 U.S.C. 355(d)) of the effectiveness of Marax and its

various generic copies, and recommended that a hearing be held on this issue.

The Director considered the requests from Barre and Parke-Davis to expand the hearing to include various additional drug products that do not contain the fixed triple combination of ingredients theophylline, ephedrine, and hydroxyzine and recommended that issues relating to these additional drug products not be included in this hearing. The basis of such recommendation is set out below.

The Director's Recommendation Concerning the Additional Drug Products

For the following reasons, the Director concluded that products which do not contain the triple combination of ingredients present in Marax should not be included in the hearing.

The additional products described by Barre and Parke-Davis are being evaluated by the agency in separate dockets (Docket Nos. 76N–0056 and 76N–0057) and may be the subject of future **Federal Register** notices. Because the additional products manufactured by Barre and Parke-Davis do not contain the same three ingredients as the products that are the subject of this hearing (e.g., Parke-Davis' product, Tedral SA, differs from the products covered by this notice in that, among other things, it is in a sustained release form and does not contain hydroxyzine but a different active ingredient, phenobarbital), they are not properly included in this hearing.

The Commissioner's Ruling on the Hearing Requests

The Commissoner is now granting the hearing request of Roerig on the proposal to withdraw approval of the NDAs for Marax. Approval will be withdrawn unless there exists substantial evidence (21 U.S.C. 355(d), 21 CFR 314.111(a)(5)) that the products have the clinical effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling (21 U.S.C. 355(d)). In addition, because the Marax products are fixed combination prescription drugs, such evidence exists for them only if "each component makes a contribution to the claimed effects and the dosage of each component (amount, frequency, duration) is such that the combination is safe and effective for a significant patient population requiring such concurrent therapy as defined in the labeling for the drug" (21 CFR 300.50).

Under 21 CFR 314.200(f), the Commissioner will not evaluate or rule upon the Director's recommendation that a hearing be denied as to some (but not all) issues. Further, the regulation provides that those issues as to which the Director has recommended a denial not be included in the notice of hearing. Accordingly, the additional products described by Barre and Parke-Davis, that do not contain the triple combination theophylline, ephedrine, and hydroxyzine, are not included in this notice.

Issues in this Proceeding

In light of the Director's recommendation and the requirements of 21 CFR 314.200, two questions will be addressed in this proceeding with respect to Marax Tablets, Marax Syrup, or any other drug product with the same fixed combination of theophylline, ephedrine, and hydroxyzine and the same labeling:

1. Whether there is evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug products; and

2. Whether, on the basis of any such adequate and well-controlled investigations that exist, it could fairly and responsibly be concluded by experts qualified by scientific training and experience to evaluate the effectiveness of drugs that the drug products in question satisfy the combination policy set out in 21 CFR 300.50 and will have the effect that they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in the labeling thereof (21 U.S.C. 355(d)).

Parties to the Hearing

The parties to the hearing will be FDA's Center for Drugs and Biologics, Roerig, Cord, Barre, and Barrows. The presiding officer will be Administrative Law Judge Daniel J. Davidson. In addition to the parties named above, Parke-Davis, American Home Products Corporation, and any other interested person may participate in the hearing as nonparty participants (see 21 CFR 12.89) provided that they file a notice of participation pursuant to 21 CFR 12.45(a).

Disclosure of Information by the Center and Hearing Participants

Under 21 CFR 12.85, FDA's Center for Drugs and Biologics would normally file with the Dockets Management Branch a narrative statement setting forth its position on the issues for hearing and a summary of the types of evidence to be introduced in support of its position in the hearing, together with copies of data within the Center's files relating to the issues raised herein, at the time when this notice issues. I am, under 21 CFR 10.19, modifying that requirement to the extent that the Center will be granted until December 17, 1984 to make those submissions. I have concluded that this modification of this regulation in the context of this proceeding does not prejudice any participant in the hearing, serves the ends of justice, is in accordance with law, and thus is authorized by section 10.19. The modification allows the FDA to advise the parties that a hearing is pending on this matter prior to the completion by the Center of the sometimes lengthy process of complying with the requirements of section 12.85.

Interested persons may obtain a copy of the narrative statement, after it is filed, from the Dockets Management Branch, at the address given above. Such persons may also examine the data on the drugs subject to this hearing notice (with the exception of any data identified as confidential pursuant to the provisions of 21 CFR 10.20(j)) at the Dockets Management Branch from 9:00 a.m. to 4:00 p.m., Monday through Friday. Parties and participants, other than the Center for Drugs and Biologics, shall disclose data and information and submit narrative statements pursuant to 21 CFR 12.85 on or before January 15, 1985.

Prehearing Conference

The prehearing conference will be held on February 14, 1985, in the FDA Hearing Room, Rm. 4A–35, 5600 Fishers Lane, Rockville, MD 20857. The hearing will be held in the FDA Hearing Room on a date to be set at the prehearing conference. Written notices of participation shall be filed with the Dockets Management Branch no later than October 17, 1985. All participants are required both to attend the prehearing conference and to be prepared to comply with the provisions of 21 CFR 12.92.

Media Coverage of the Hearing

The hearing will be open to the public. Any participant may appear in person, or by or with counsel, or with other qualified representatives, and may be heard on matters relevant to the issues under consideration.

Because this is a public hearing, it is subject to FDA's guideline concerning the policy and procedures for electronic media coverage of public agency administrative proceedings. This guideline was published in the **Federal Register** of April 13, 1984 (49 FR 14723).

These procedures are primarily intended to expedite media access to FDA public proceedings, including formal evidentiary hearings conducted pursuant to Part 12 of the agency's regulations. Under this guideline, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including the testimony of witnesses in the proceeding. Accordingly, the parties and nonparty participants to this hearing, and all other interested persons, are directed to the guideline, as well at the **Federal Register** notice announcing issuance of the guideline, for a more complete explanation of the guideline's effect on this hearing.

Therefore, under the Federal Food, Drug, and Cosmetic Act (section 505, 52 Stat. 1052 as amended (21 U.S.C. 355)), and under authority delegated to me (21 CFR 5.10), I order that a public hearing be held on the issues set out in this notice.

Dated: September 12, 1984.

Mark Novitch,

Deputy Commissioner of Food and Drugs.

[FR Doc. 84-24578 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 79N-0113; DESI 2847]

Drugs for Human Use; Drug, Efficacy Study Implementation; Parenteral Multivitamin Products; Revocation of Exemption ("Paragraph XIV/Category 11"); Announcement of Effective Formulations; Followup Notice and Opportunity for Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) revokes the temporary exemption for certain parenteral multivitamin drug products. The exemption has permitted the drug products to remain on the market beyond the time limit scheduled for implementation of the Drug Efficacy Study. The agency also announces those parenteral multivitamin formulations that are effective and the conditions under which they may be marketed. In addition, this notice classifies other formulations as lacking substantial evidence of effectiveness, proposes to withdraw approval of those parts of new drug applications that provide for these formulations, and offers an opportunity for a hearing on the proposal.

DATES: Revocation of exemption effective September 17, 1984; supplements to conditionally approved new drug applications due on or before November 16, 1984; hearing requests due on or before October 17, 1984; data in support of hearing requests due on or before November 16, 1984.

ADDRESS: Communications in response to this notice should be identified with Docket No. 79N-0113 (DESI 2847), directed to the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, except requests for opinion of applicability are to be sent to the address listed below.

Supplements to the conditionally approved new drug applications (identify with NDA number): Division of Endocrine and Metabolic Drug Products (HFN-810), Rm. 14B-05, Center for Drugs and Biologics.

Original abbreviated new drug applications: Division of Generic Drug Monographs (HFN-230), Center for Drugs and Biologics.

Request for hearing, supporting data, and other comments: Dockets Management Branch (HFA-305), Rm. 4-62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFN-310), Rm. 216, Center for Drugs and Biologics, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

Background

In a notice published in the **Federal Register** of July 27, 1972 (37 FR 15027), FDA announced its evaluations of reports received from the National Academy of Sciences/National Research Council, Drug Efficacy Study Group, on certain parenteral multivitamin drug products. The agency stated that the products, as then formulated, lacked substantial evidence of effectiveness for their claimed indications. This conclusion was not based upon any lack of effectiveness for the individual vitamins in the formulations, but because the available formulations lacked certain essential vitamins, or contained too much or too little of other vitamins, or both.

In a followup notice published in the **Federal Register** of December 14, 1972 (37 FR 26623), parenternal multivitamin products were granted a temporary exemption from the time limits imposed for the implementation of the Drug Efficacy Study. The temporary exemption was based on the recognized critical medical importance of parenteral multivitamin therapy and the lack of alternative drugs. The exemption allowed the products to remain on the market as then formulated, while complex technical and medical problems were resolved and rational formulations were developed and tested.

To facilitate the determination and evaluation of rational multivitamin formulations, FDA accepted the assistance offered by the American Medical Association (AMA). In December 1975, the AMA submitted its "Guidelines for Multivitamin Preparations for Parenteral Use," which recommended specific amounts of individual vitamins as well as detailed procedures for evaluating the stability, safety, and effectiveness of the formulations.

The AMA report stressed that the guideline formulations were estimated from the existing Recommended Daily Allowance (RDA), which in turn is based on dietary population surveys. The assumptions, applied by the AMA to correlate the established dietary allowances of the essential vitamins to the parenteral administration of vitamins to patients in various disease states, required that clinical trials be conducted to evaluate the guideline formulations.

FDA accepted the AMA guidelines with minor reservations and subsequently in a **Federal Register** notice published July 13, 1979 (44 FR 40933) amended the terms of the December 1972 temporary exemption to require conditional approval of a new drug application or a supplemental new drug application within specific time frames as a condition for the continued marketing of a parenteral multivitamin drug product. The agency granted conditional approval of applications based on the following criteria: (1) reformation in accord with the AMA guidelines as to the number and quantities of vitamins in the formulation; (2) an outline of studies to evaluate the stability and biological availability of the reformulated preparations, along the lines set forth in the AMA report; and (3) a plan or protocol for clinical effectiveness studies, also in accord with the AMA guidelines. The reformulated products could be marketed in place of the previous formulations after agency review and "conditional" approval of the submissions. This procedure allowed continued marketing of parenteral multivitamins while clinical testing and evaluation of the AMA guidelines formulations were carried out.

Conditionally Approved Products (AMA Guideline Formulations)

The products listed below have received conditional approval under the terms of the July 13, 1979 notice.

1. NDA 6–071; Berocca PN containing vitamin A (palmitate) 3,300 International Units (I.U.)/vial, vitamin D (ergocalciferol) 200 U.S.P. units/milliliter (mL), vitamin E (dl-alpha tocopherol) 10 U.S.P. units/mL, vitamin C (ascorbic acid) 100 milligrams (mg)/mL, folic acid 400 micrograms (mcg)/mL, niacin (niacinamide) 40 mg/mL, vitamin B_2 (riboflavin 5'-phosphate sodium) 3.6 mg/mL, vitamin B_1 (thiamine hydrochloride) 3 mg/mL, vitamin B_6 (pyridoxine hydrochloride) 4 mg/mL, vitamin B_{12} (cyanocobalamin) 5 mcg/mL, pantothenic acid (dexpanthenol) 15 mg/mL, and d-biotin 60 mcg/mL; Roche Laboratories, Division of Hoffmann La-Roche Inc., Roche Park, Nutley, NJ 07110.

2. NDA 6–071; Berocca-WS containing vitamin C (ascorbic acid) 100 mg/mL, folic acid 400 mcg/mL, niacin (niacinamide) 40 mg/mL, vitamin B_2 (riboflavin 5'-phosphate sodium) 3.6 mg/mL, vitamin B_1 (thiamine hydrochloride) 3 mg/mL, vitamin B_6 (pyridoxine hydrochloride) 4.0 mg/mL, vitamin B_{12} (cyanocobalamin) 5 mcg/mL, pantothenic acid (d-panthenol) 15 mg/mL, and d-biotin 60 mcg/mL; Roche Laboratories, Inc.

3. NDA 8–809; MVI–12 containing vitamin A (retinol) 3,300 I.U./vial, vitamin D (ergocalciferol) 200 I.U./vial, vitamin E (dl-alpha tocopherol acetate) 10 I.U./vial, vitamin C (ascorbic acid) 100 mg/vial, folic acid 400 mcg/vial, niacin (niacinamide) 40 mg/vial, vitamin B_2 (riboflavin 5'-phosphate sodium) 3.6 mg/vial, vitamin B_1 (thiamine hydrochloride) 3.0 mg/vial, vitamin B_6 (pyridoxine hydrochloride) 4.0 mg/vial, vitamin B_{12} (cyanocobalamin) 5 mcg/vial, pantothenic acid (d-panthenolalcohol) 15 mg/vial, biotin 60 mcg/vial; USV Laboratories Division, USV Pharmaceuticals, Tuckahoe, NY 10707.

4. NDA 18–223; Multivitamin Additive containing vitamin A 3,300 I.U./5 mL, vitamin D 200 I.U./5 mL, vitamin E 10 I.U./5 mL, vitamin C (ascorbic acid) 100 mg/5 mL, folic acid 400 mcg/5 mL, niacin (niacinamide) 40 mg/5 mL, vitamin B_2 (riboflavin 5'-phosphate sodium) 3.6 mg/5 mL, vitamin B_1 (thiamine hydrochloride) 3.0 mg/5 mL, vitamin B_6 (pyridoxine hydrochloride) 4.0 mg/5 mL, vitamin B_{12} (cyanocobalamin) 5 mcg/5 mL, pantothenic acid (pantothenyl alcohol) 15 mg/5 mL, d-biotin 60 mcg/5 mL; Abbott Labs, North Chicago, IL 60064.

5. NDA 18–439; MVC Plus containing vitamin A (retinol) 3,300 I.U./10 mL, vitamin D (ergocalciferol) 200 I.U./10 mL, vitamin E (dl-alpha tocopherol acetate) 10 I.U./10 mL, vitamin C (ascorbic acid) 100 mg/10 mL, folic acid 400 mcg/10 mL, niacin (niacinamide) 40 mg/10 mL, vitamin B_2 (riboflavin 5' phosphate sodium) 3.6 mg/10 mL, vitamin B_1 (thiamine hydrochloride) 3 mg/10 mL, vitamin B_6 (pyridoxine hydrochloride) 4 mg/10 mL, vitamin B_{12} 5 mcg/10 mL, pantothenic acid (dexpanthenol) 15 mg/10 mL, biotin 60 mcg/10 mL; Ascot Hospital Pharmaceuticals, Inc., Skokie, IL 60076.

6. NDA 18–440; M.V.C. 9+3 containing vitamin A (retinol) 3,300 I.U./5 mL, vitamin D (ergocalciferol) 200 I.U./5 mL, vitamin E (dl-alpha tocopherol acetate) 10 I.U./5 mL, vitamin C (ascorbic acid) 100 mg/5 mL, folic acid 400 mcg/5 mL, niacin (niacinamide) 40.0 mg/5 mL, vitamin B_2 (riboflavin-5'-phosphate) 3.6 mg/5 mL, vitamin B_1 (thiamine hydrochloride) 3.0 mg/5 mL, vitamin B_6 (pyridoxine hydrochloride) 4.0 mg/5 mL, vitamin B_{12} (cyanocobalamin) 5 mcg/5 mL, pantothenic acid (dexpanthenol) 15.0 mg/5 mL, and biotin 60 mcg/5 mL; Lypho Med. Inc., Chicago, IL 60651.

7. NDA 18–920; M.V.I. Pediatric (lyophilized) each vial containing vitamin A (retinol) 2,300 U.S.P. units/vial, vitamin D (ergocalciferol) 400 U.S.P. units/vial, vitamin E (dl-alpha tocopherol acetate) 7 U.S.P. units/vial, vitamin C (ascorbic acid) 80 mg/vial, folic acid 140 mcg/vial, niacin (niacinamide) 17.0 mg/vial, vitamin B_2 (riboflavin-5'-phosphate sodium) 1.4 mg/vial, vitamin B_1 (thiamine hydrochloride) 1.2 mg/vial, vitamin B_6 (pyridoxine hydrochloride) 1.0 mg/vial, vitamin B_{12} (cyanocobalamin) 1 mcg/vial, dexpanthenol (d-pantothenyl alcohol) 5.0 mg/vial, biotin 20 mcg/vial, vitamin K_1 (phytonadione) 200 mcg/vial; Armour Pharmaceutical Co., P.O. Box 511, Kankakee, IL 60901.

8. NDA 18–933; M.V.I.–12 Lyophilized each vial containing vitamin A (retinol) 3,300 U.S.P. units, vitamin D (ergocalciferol) 200 units, vitamin E (dl-alpha tocopherol acetate) 10 U.S.P. units, vitamin C (ascorbic acid) 100 mg, folic acid 400 mcg, niacin (niacinamide) 40 mg, vitamin B_2 (riboflavin-5'-phosphate sodium) 3.6 mg, vitamin B_1 (thiamine) 3.0 mg, vitamin B_6 (pyridoxine) 4.0 mg, vitamin B_{12} (cyanocobalamin) 5 mcg, dexpanthenol (d-pantothenyl alcohol) 15.0 mg, biotin 60 mcg; Armour Pharmaceutical Co.

The Director of the Center for Drugs and Biologics has considered the results from the clinical trials on the recommended AMA formulations, and other available material, and has determined that except for the pediatric parenteral formulation, the 1975 AMA guideline formulations are effective multivitamin preparations. However, the Director recognizes that as these products are used and evaluated in an ever increasing number of patients with a variety of disease conditions, future adjustments to the formulations may be necessary.

The temporary exemption announced in the December 14, 1972 notice as it pertains to any drug product of composition given above is hereby revoked. The drugs listed above are regarded as new drugs (21 U.S.C. 321(p)). A fully approved new drug application is now required for marketing them (except for M.V.I. Pediatric, as explained below). A supplemental new drug application is required for the products listed above (except for M.V.I. Pediatric) to revise their labeling to update the previous "conditionally approved" new drug applications providing for them.

In light of recent events involving reports of adverse effects associated with the use of a particular single entity parenteral vitamin E product in premature and low-birth-weight infants, the Director has determined that further evaluation of pediatric parenteral multivitamin formulations which contain vitamin E is required. (At the current time, it is unknown whether the adverse effects associated with the single entity product are related to the relatively large dosage of vitamin E administered, to the solubilizer in the product formulation, or to some other factor.) A future **Federal Register** notice will address the agency's conclusions on these products. Until that time, pediatric multivitamin products may be marketed only under the terms and conditions of the July 13, 1979 **Federal Register** notice (41 FR 40933).

Products Lacking Substantial Evidence of Effectiveness

The three products listed below were included in the initial DESI notice of July 27, 1972 (37 FR 15027). The sponsors of these products provided for a reformulated preparation in accord with the AMA guidelines as stated in the July 13, 1979 notice (44 FR 40933), and received conditional approval. Under the terms of that notice, the original products could remain on the market pending evaluation of the AMA guideline formulations. Insofar as the guildeline formulations have now been found to be effective, the original formulations are now classified as lacking substantial evidence of effectiveness, their paragraph XIV

exemption is hereby revoked, and the Director proposes to withdraw approval of the following parts of the new drug applications, that provide for them:

1. NDA 6–071; those parts that provide for Berocca C and Berocca C–500 Injectable both containing thiamine hydrochloride, riboflavin, niacinamide, pyridoxine hydrochloride, dexpanthenol, d-biotin, and ascorbic acid; Roche Laboratories, Inc.

2. NDA 8–809; those parts that provide for M.V.I. Injectable containing ascorbic acid, vitamin A, ergocalciferol, thiamine hydrochloride, riboflavin, niacinamide, pyridoxine hydrochloride, dexpanthenol, and dl-alpha tocopherol acetate; USV Pharmaceuticals.

In addition to the holder of the new drug applications named above, this notice applies to any person who manufactures or distributes a drug product that is not the subject of an approved new drug application and that is identical to a drug product named above. It may also be applicable, under 21 CFR 310.6, to a related or similar drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Any person may request an opinion of the applicability of this notice to a specifc drug product by writing to the Division of Drug Labeling Compliance (address given above).

Conditions for Approval and Continued Marketing of Formulations Evaluated as Effective

FDA has reviewed all available evidence and concludes that the parenteral multivitamin drug products formulated as listed below are effective for the applicable indication listed in the labeling conditions below.

Conditions for Approval and Marketing. FDA is prepared to approve abbreviated new drug applications and supplements to the conditionally approved new drug applications listed above (except for M.V.I. Pediatric) under conditions described herein.

1. *Form of drug.*

(a) *Intravenous Multivitamin Preparations.* The preparation is an aqueous solution or lyophilized powder suitable for reconstitution and/or secondary dilution prior to intravenous infusion, and contains the specified amounts of the following individual vitamins, either as the moiety listed below or as the chemically equivalent salt or ester.

(i) *Adult formulation* (intended for ages 11 and older)

Ingredient	Amount per unit dose
Fat soluble vitamins	
A (retinol)	3300 I.U.
D (ergocalciferol or cholecalciferol)	200 I.U.
E (alpha-tocopherol)	10 I.U.
Water soluble vitamins	
C (ascorbic acid)	100 mg.
Folic acid	400 mcg.
Niacin	40 mg.
B_2 (riboflavin)	3.6 mg.
B_1 (thiamine)	3.0 mg.
B_6 (pyridoxine)	4.0 mg.
B_{12} (cyanocobalamin)	5.0 mcg.
Pantothenic acid	15.0 mg.
Biotin	60.0 mcg.

(b) *Intramuscular Multivitamin Preparations.* The preparation is a sterile solution suitable for intramuscular injection.

(i) *Adult formulation.* The vitamin composition of the adult intramuscular formulation shall be that of the adult preparation (listed above) *without* the fat soluble vitamins.

2. *Labeling Conditions.*

(a) The label bears the statement "Caution: Federal Law prohibits dispensing without prescription."

(b) The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indication is as follows:

(i) *Intravenous Multivitamin Preparations.*

(a) *Adult.* This formulation is indicated as daily multivitamin maintenance dosage for adults and children age 11 and above receiving parenteral nutrition. It is also indicated in other situations where administration by the intravenous route is required. Such situations include surgery, excessive burns, fractures and other trauma, severe infectious diseases, and comatose states, which may provoke a "stress" situation with profound alterations in the body's metabolic demands and consequent tissue depletion of nutrients.

The physician should not await the development of clinical signs of vitamin deficiency before initiating vitamin therapy. The use of a multivitamin product obviates the need to speculate on the status of individual vitamin nutriture.

This product (administered in intravenous fluids under proper dilution) contributes intake of these necessary vitamins, except vitamin K, toward maintaining the body's normal resistance and repair processes.

Patients with multiple vitamin deficiencies or with markedly increased requirements may be given multiples of the daily dosage for two or more days as indicated by the clinical status. This product does not contain vitamin K, which may have to be administered separately. Clinical testing indicates that some patients do not maintain adequate levels of certain vitamins when this formulation in recommended amounts is the sole source of vitamins. No vitamin deficiencies were clinically evident, but blood levels of vitamin A, C, D, and folic acid declined in a number of subjects who received this formulation as the only vitamin source for 4 to 6 months. Therefore, in patients for whom total parenteral nutrition will be continued for long periods of time, these vitamins should be monitored. If deficiencies appear to be developing, multiples of the formulation (1.5 to 3 times) may be needed for a period of time. When multiples of the formulation are used for more than a few weeks, vitamins A and D should be monitored occasionally to be certain that an excess accumulation of these vitamins is not occurring.

(ii) *Intramuscular Multivitamin Preparations.*

(a) *Adult.* This product is indicated for adults and children 11 years of age or older for conditions in which (1) intake or absorption of the water-soluble vitamins is inadequate and oral intake must be supplemented; or (2) there is a known or suspected serious depletion of the water-soluble vitamins and immediate treatment by the intramuscular route is advisable.

Conditions which may require parenteral administration of water-soluble vitamins may include disorders which can affect oral intake, gastrointestinal absorption, or utilization, such as: comatose states, persistent vomiting, prolonged fever, severe infectious diseases, major surgery, extensive burns, fractures and other traumas, chronic alcoholism, diarrhea, achlorhydria, or liver disease.

The physician should not await the development of clinical signs of vitamin deficiency before initiating therapy as there are few specific or pathognomonic signs of early vitamin deficiencies.

(c) CONTRAINDICATIONS: Known hypersensitivity to any of the vitamins in this product or a pre-existing hypervitaminosis.

3. *Marketing Status.* (a) Marketing of the drug products that are now the subjects of conditionally approved new drug applications (except for M.V.I. Pediatric) may be continued provided that on or before November 16, 1984 the holder of the application submits (i) a supplement for revised labeling as needed to be in accord with the labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD–356H (21 CFR 314.1(c)). FDA will evaluate the submitted material and, if adequate, will grant full approval to the conditionally approved new drug applications.

(b) Approval of an abbreviated new drug application (21 CFR 314.2) containing full information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities,

and controls) of new drug application form FD–356H (21 CFR 314.1(c)) must be obtained before marketing such products. The bioavailability regulations (21 CFR 320.21) require any person submitting a full or abbreviated new drug application after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the formulation or information to permit waiver of the requirement. The bioavailability requirements are waived under 21 CFR 320.22(b)(1) for intravenous products formulated described in this notice (see section 1(a) *Form of Drug*). Marketing the drug products before approval of a new drug application will subject the products, and those persons who caused the products to be marketed, to regulatory action.

(c) Marketing of M.V.I. Pediatric may be continued under the terms and conditions of the July 13, 1979 **Federal Register** notice (41 FR 40933).

Notice of Opportunity for Hearing

On the basis of all the data and information available to him, the Director of the Center for Drugs and Biologics is unaware of any adequate and well-controlled clinical investigation, conducted by experts qualified by scientific training and experience, meeting the requirements of section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and 21 CFR 314.111(a)(5) and 300.50, and demonstrating the effectiveness of the parenteral multivitamin formulations listed above under *"Products Lacking Substantial Evidence of Effectiveness."*

Therefore, notice is given to the holders of the new drug applications and to all other interested persons, that the Director of the Center for Drugs and Biologics proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)), withdrawing approval of those parts of the new drug applications and all amendments and supplements thereto providing for the formulations classified as lacking substantial evidence of effectiveness on the ground that new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, shows there is a lack of substantial evidence that these formulations will have the effects they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling. If no hearing is requested, then those parts of the new drug applications that pertain to the formulations evaluated as lacking substantial evidence of effectiveness (part of NDA 6–071 providing for Berocca C and Berocca C–500; part of NDA 8–809 providing for M.V.I. Injectable) will be considered withdrawn and no further order will issue.

This notice of opportunity for hearing encompasses all issues relating to the legal status of the drug products subject to it (including identical, related, or similar drug products as defined in 21 CFR 310.6), e.g., any contention that any such product is not a new drug because it is generally recognized as safe and effective within the meaning of section 201(p) of the act (21 U.S.C. 321(p)) or because it is exempt from part or all of the new drug provisions of the act under the exemption for products marketed before June 25, 1938, in section 201(p) of the act, or under section 107(c) of the Drug Amendments of 1962, or for any other reason.

In accordance with section 505 of the act (21 U.S.C. 355) and the regulations promulgated under it (21 CFR Parts 310 and 314), the applicants and all other persons who manufacture or distribute a drug product that is identical, related, or similar to the drug products named above (21 CFR 310.6), and not the subject of an approved new drug application, are hereby given an opportunity for a hearing to show why approval of those parts of the new drug applications providing for the formulations evaluated as lacking substantial evidence of effectiveness should not be withdrawn, and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products named above and of all identical, related, or similar drug products not the subject of an approved new drug application.

The applicant or any other person subject to this notice under 21 CFR 310.6 who decide to seek a hearing, shall file (1) on or before December 17, 1984 a written notice of appearance and request for hearing, and (2) on or before November 16, 1984 the data, information, and analyses relied on to justify a hearing, as specified in 21 CFR 314.200. Any other interested person may also submit comments on this proposal to withdraw approval. The procedures and requirements governing this notice of opportunity for hearing, a notice of appearance and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and a granting or denial of a hearing are contained in 21 CFR 314.200.

The failure of the applicants or any other person subject to this notice under 21 CFR 310.6 to file a timely written notice of appearance and request for hearing as required by 21 CFR 314.200 constitutes an election by the person not to make use of the opportunity for a hearing concerning the action proposed, and a waiver of any contentions concerning the legal status of the relevant drug product. Any such drug product, the composition of which has been evaluated in this notice as lacking substantial evidence of effectiveness, may not thereafter lawfully be marketed, and the Food and Drug Administration will initiate appropriate regulatory action to remove such a drug product from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the withdrawal of approval of the affected parts of the applications, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions pursuant to this notice are to be filed in four copies. Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053 as amended (21 U.S.C. 352, 355)), and under the authority delegated to the Director of the Center for Drugs and Biologics (21 CFR 5.70 and 5.82).

Dated: September 12, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84–24580 Filed 9–14–84; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 75N-0184; DESI 597]

Drugs for Human Use; Drug Efficacy Study Implementation; Bentyl With Phenobarbital Capsules, Tablets, and Syrup; Withdrawal of Approval of Parts of New Drug Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of those parts of the new drug applications that provide for Bentyl with Phenobarbital Capsules and Tablets and Bentyl Syrup with Phenobarbital. The withdrawal is based on a lack of substantial evidence of effectiveness. The combination products contain dicyclomine hydrochloride and phenobarbital and have been used to treat various gastrointestinal conditions. This notice does not apply to single entity Bentyl products that are effective in the treatment of the irritable bowel syndrome.

EFFECTIVE DATE: October 17, 1984.

ADDRESS: Requests for an opinion of the applicability of this notice to a specific product should be identified with the reference number DESI 597 and directed to the Division of Drug Labeling Compliance (HFN-310), Rm. 216, Center for Drugs and Biologics, Food and Drug Administration, 5640 Nicholson Lane, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Nicholas P. Reuter, Center for Drugs and Biologics (HFN-366), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: In notices published in the **Federal Register** of January 16, 1981 (46 FR 3977) and April 12, 1983 (48 FR 15717), FDA offered an opportunity for a hearing on a proposal to withdraw approval of the new drug applications (NDA's) for certain anticholinergic/antispasmodic drugs in fixed combination with a sedative. The proposal was based on the lack of substantial evidence of effectiveness as required by section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and 21 CFR 314.11 and 21 CFR 300.50. In response to the notices, Merrell Dow Pharmaceuticals, Inc., requested a hearing for Bentyl with Phenobarbital Capsules and Tablets and Bentyl Syrup with Phenobarbital.

Subsequently, Merrell Dow withdrew its hearing request. Accordingly, FDA is now withdrawing approval of parts of the following NOA's:.

1. NDA 7-409, those parts that provide for Bentyl with Phenobarbital Capsules and Tablets containing 10 to 20 milligrams (mg) dicyclomine hydrochloride, respectively, and 15 mg phenobarbital; Merrell Dow Pharmaceuticals, Inc., 110 East Amity Rd., Cincinnati, OH 45215.

2. NDA 7-961, those parts that provide for Bentyl Syrup with Phenobarbital containing dicyclomine hydrochloride 10 mg/5 milliliter (mL) and phenobarbital 15 mg/mL, Merrell Dow Pharmaceuticals, Inc.

This notice does not apply to those parts of NDA 7-409 that provide for single entity Bentyl Capsules and Tablets and those parts of NDA 7-961 for Bentyl Syrup or NDA 8-370 for Bentyl Injection. Single entity Bentyl products are effective treatment for the irritable bowel syndrome (see 49 FR 25681).

Any drug product that is identical, related, or similar to the drug products named above and is not the subject of an approved new drug application is covered by the new drug applications reviewed and is subject to this notice (21 CFR 310.6). Any person who wishes to determine whether a specific drug product is covered by this notice should write to the Division of Drug Labeling Compliance (address above).

The Director of the Center for Drug Biologics, under the Federal Food, Drug, and Cosmetic Act (sec. 505, 52 Stat. 1052-1053 as amended (21 U.S.C. 355)) and under authority delegated to him (21 CFR 5.82), finds that, on the basis of new information before him with respect to the drug products, evaluated together with the evidence available to him when the applications were approved, there is a lack of substantial evidence that the combination products Bentyl with Phenobarbital Capsules and Tablets and Bentyl Syrup with Phenobarbital will have the effect they purport or are represented to have under the conditions of use prescribed, recommended, or suggested in their labeling.

Therefore, pursuant to the foregoing finding, approval of those parts of NDA's 7-409 and 7-961 that provide for the combination products listed above and all amendments and supplements thereto is withdrawn effective October 17, 1984. Shipment in interstate commerce of the products above or any identical, related, or similar product that is not the subject of an approved new drug application will then be unlawful.

Dated. Sepatember 12, 1984.

Harry M. Meyer, Jr.,

Director, Center for Drugs and Biologics.

[FR Doc. 84-24579 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (47 FR 38409-24, August 31, 1982, as amended at 48 FR 54538, December 5, 1983), is amended to reflect the restructuring of components and the realignment of functional responsibilities within the office of the Associate Director for Health Planning, Bureau of Health Maintenance Organizations and Resources Development.

Under Section HB 10, Organization and Functions, delete the Divisions in their entirety and substitute the following:

Division of Analysis and Assistance (HBHB2). Directs the analytical and technical assistance activities of the Office of Health Planning which support the development and maintenance of integrated health planning efforts. Specifically: (1) Directs and monitors a national health planning assistance program for regional offices, State and Local Planning Agencies, and other private or public organizations, and groups interested or involved in health planning and resources development; (2) establishes an analytic agenda for the development of studies, reports, and sessions; (3) establishes specific plans and activities to link agency and non-Federal sources; (4) identifies the need for studies and other products to support the health planning program at the regional, State, and local levels; (5) coordinates Division activities with other components of the Bureau, Agency, Department and regional offices; (6) develops and implements strategies, either directly or through contracts, for the evaluation of the outcome and impact of the health planning program; and (7) recommends legislative and policy changes, and approaches based on the conduct of its analytic and assistance activities.

Division of Agency Operations and Management (HBHB3). Directs the development of effective, integrated and well managed health systems agencies (HSAs), state health planning and development agencies (SHPDAs) and statewide health coordinating councils (SHCCs). Specifically: (1) Serves as a focal point for the development, interpretation and dissemination of

program policy, regulation, guidance, and performance standards for use by regional offices in implementing and monitoring the health planning program, and by State and local agencies in conducting health planning and resources development functions; (2) serves as the focal point to regional offices, HSAs, SHPDAs and others for the provisions of guidance and technical assistance on agency organization and management, plan development and implementation, capital expenditure review programs, and other legislatively prescribed functions; coordinates division activities with other components of the Department and/or outside groups in their development and implementation; (3) directs and monitors the national certificate of need (XV PHS Act) and section 1122 of the Social Security Act programs, providing guidance to regional offices and State agencies on consistency of State laws with Federal requirements; (4) reviews area designation requests and agency funding applications and recommends action as appropriate, develops and modifies designation agreements, and notifies regional offices of decisions made; (5) develops and oversees programs for the periodic assessment of Agency performance and impact; (6) either directly or through contracts, develops studies and other reports to identify problems requiring central office involvement, or to evaluate agency effectiveness, and provides feedback to regional offices on findings; and (7) participates in the development of legislative and policy changes.

National Health Planning Information Center (HBHB4). Is the focal point for obtaining, developing and disseminating information and data necessary to carry out the requirements of the health planning program. Specifically: (1) Provides overall direction and supervision to the information and data gathering, development and dissemination process within NHPIC; (2) develops, promotes, and implements special information and communication initiatives (i.e., video taping, subject specific conferences) to serve intelligence needs of planning and other entities; (3) identifies and initiates relationships with NCHSR, NCHS, AHA, HCFA, etc. to strengthen working and data/intelligence bases and to foster two-way data and information sharing on cost, access, and technology issues; (4) serves as the focal point for OHP international health planning efforts, develops and coordinates plans and knowledge with OHP, BHMORD and HRSA offices and participates in dissemination of information gained through these efforts; and (5) provides consultation and assistance to other components of OHP, BHMORD and HRSA in the design, establishment and operation of information collection, development and dissemination.

Dated: September 1, 1984.

Robert Graham,

Administrator, Health Resources and Services Administration.

[FR Doc. 84-24529 Filed 9-14-84; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-84-1444]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer of the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirement is described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Litigation Handbook for Program Participants
Office: General Counsel
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments, Businesses or Other For-Profit, and Non-Profit Institutions
Estimated Burden Hours: 500
Status: New
Contact: Steven Goldstein, HUD. (202) 755-4942; Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 21, 1984.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 84-24480 Filed 9-14-84; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Int. RMP/EIS 84-26]

Availability of the Proposed Resource Management Plan and Final Environmental Impact Statement for the Egan Resource Area, Ely District, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of and protest period for the Proposed Resource Management Plan and Environmental Impact Statement for the Egan Resource Area, Ely District, Ely, Nevada.

SUMMARY: The Ely District Office, Bureau of Land Management, has prepared a combined Proposed Resource Management Plan and Final Environmental Impact Statement for the Egan Resource Area. The Egan Resource

Area covers 3.8 million acres of public land in the following Nevada Counties: White Pine, Lincoln, and Nye.

Copies of the Proposed Plan and Final Environmental Impact Statement for the Egan Resource Area will be sent to many individuals, agencies, and groups who have been involved in the Egan Resource Area planning process. A limited number of copies of the Proposed Plan and Final Environmental Impact Statement are available upon request. Copies may be obtained by contacting Merrill L. DeSpain, Ely District Manager, at the address listed below. Any part of the Proposed Plan with the exception of the wilderness recommendation may be protested. The wilderness recommendations that have been made are preliminary and subject to change during administrative review. A separate final legislative environmental impact statement will be prepared for the wilderness study recommendations. If a protest is submitted it should contain the following information:

- The name, mailing address, telephone number, and interest of the person filing the protest.
- A statement of the issue or issues being protested.
- A statement of the part or parts being protested.
- A copy of all documents addressing the issue or issues that were submitted during the planning process by the protesting party or an indication of the date the issue or issues were discussed for the records.
- A short concise statement explaining precisely why the BLM Ely District Manager's decision is wrong.

Protests must be filed on or before October 22, 1984. Protests should be sent to Robert Burford, Director of the Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Merriall L. DeSpain, District Manager, Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, Nevada 89301, (702) 289–4865.

Copies of the draft document are available for review at the following locations:

Office of Public Affairs, Bureau of Land Management, 18th and C Streets, NW., Washington, D.C. 20240
Bureau of Land Management, Elko District Office, 2002 Idaho Street, Elko, NV 89801
Bureau of Land Management, Nevada State Office, P.O. Box 12000, 300 Booth Street, Reno, NV 89520, (702) 784–5448
Bureau of Land Management, Las Vegas District Office, 4765 W. Vegas Drive, Las Vegas, NV 89102, (702) 385–6403
Bureau of Land Management, Winnemucca District Office, 705 E. 4th Street, Winnemucca, NV 89445, (702) 623–3676
Bureau of Land Management, Ely District Office, Star Route 5, Box 1, Ely, NV 89301, (702) 289–4965
Bureau of Land Management, Carson City District Office, 1050 E. William Street, Carson City, NV 89701
Bureau of Land Management, Battle Mountain District Office, North 2nd & Scott Streets, Battle Mountain, NV 89820, (702) 635–5181.

Also, copies are available for review at the following public libraries:

White Pine County Library, Campton Street, Ely, NV 89301
Nevada State Library, Library Building, Carson City, NV 89701
Government Publications Dept., University of Nevada, Reno Library, Reno, NV 89557
Lincoln County Library, Pioche, NV 89043
James Dickinson Library, 4505 Maryland Parkway, University of Nevada, Las Vegas, Las Vegas, NV 89154
Nye County Library, Tonopah, NV 89049
Lincoln County Library, Tonopah, NV 89043.

Dated: September 10, 1984.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 84–24530 Filed 9–14–84; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Izembek National Wildlife Refuge Comprehensive Conservation Plan/ Environmental Impact Statement and Wilderness Review, Availability and Public Hearings, Alaska

Correction

In FR Doc. 84–23141 beginning on page 35432 in the issue of Friday, September 7, 1984, make the following correction: In column three, the table at the bottom of the page, "Public Hearing", first column, "Date", first entry, "Nov. 2, 1984" should read "Nov. 1, 1984".

BILLING CODE 1505-01-M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7313.

Title: Industrial Minerals Surveys

Abstract: Respondents supply the Bureau of Mines with domestic production and consumption statistical data on nonfuel minerals commodities. This information is published in Bureau of Mines publications including the Mineral Industry Survey (MIS), Minerals Yearbook Volumes I, II, and III, Mineral Facts and Problems, Mineral Commodity Summaries, Mineral Commodity Profiles, and Minerals and Materials for use by private organizations and other government agencies.

Bureau Form Number: 6–1221–A ET AL
Frequency: Annual, Biennially, Monthly, Quarterly, and Semiannually
Description of Respondents: Producers and Consumers of Industrial Minerals
Annual Responses: 16,952
Annual Burden Hours: 13,248
Bureau Clearance Officer: James T. Hereford 202–634–1125

Dated: September 11, 1984.

Robert C. Horton,

Director.

[FR Doc. 84–24484 Filed 9–14–84; 8:45 am]

BILLING CODE 4310-53-M

National Park Service

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 10:30 a.m. (PST) on Saturday, September 29, 1984, at the West Marin School, Point Reyes Station, California.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin and San Francisco counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman.
Ms. Amy Meyer, Vice Chair.
Mr. Ernest Ayala.
Mr. Richard Bartke.
Mr. Fred Blumberg.
Ms. Margot Patterson Doss.
Mr. Jerry Friedman.
Mr. Charles Gould.
Ms. Daphne Greene.
Mr. Peter Haas, Sr.
Mr. Burr Heneman.
Mr. John Jacobs.
Mr. John Mitchell.
Ms. Gimmy Park Li.
Mr. Merritt Robinson.
Mr. John J. Spring.
Dr. Edgar Wayburn.
Mr. Joseph Williams.

The major agenda items for this meeting will be the Point Reyes Superintendent's report on the status of Limantour road, bicycle use in the wilderness area, the progress on planning and fund-raising for the Clem Miller Environmental Education Center and a general status report from Golden Gate National Recreation Area.

The meetings are open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact Shirwin Smith, Staff Assistant at Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, CA 94123; telephone (415) 556–4484.

Minutes of the meeting will be available for public inspection by October 29, 1984 in the Office of the General Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, CA 94123.

Dated: September 5, 1984.

Howard Chapman,

Regional Director, Western Region.

[FR Doc. 84–24562 Filed 9–14–84; 8:45 am]

BILLING CODE 4310-70-M

Lake Clark National Park and Preserve Subsistence Resource Commission; Meeting

AGENCY: Alaska Region, National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Alaska Regional Office of the National Park Service announces a forthcoming meeting of the Lake Clark National Park and Preserve Subsistence Resource Commission. The following agenda items will be discussed:

—Commission membership
—Research and resource management
—Summary of park/preserve regulations
—General management plan update
—Land status
—Residency requirements
—Traditional use

DATE: The meeting will begin at 9:00 a.m. on September 29, 1984, and conclude the afternoon of September 29, 1984.

ADDRESS: The meeting will be held at the Nondalton, Alaska school.

FOR FURTHER INFORMATION CONTACT: Paul F. Haertel, Superintendent, Lake Clark National Park and Preserve, 701 C Street, Box 61, Anchorage, Alaska 99513.

SUPPLEMENTARY INFORMATION: The Lake Clark National Park and Preserve Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act. Pub. L. 96–487.

Robert L. Peterson,

Acting Regional Director, Alaska Region.

[FR Doc. 84–24561 Filed 9–14–84; 8:45 am]

BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

Availability of Annual Evaluation Reports on the Administration of State Regulatory and Abandoned Mine Lands Programs Under the Surface Mining Control and Reclamation Act of 1977

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

ACTION: Notice of availability.

SUMMARY: OSM is anouncing the availability of six annual evaluation reports on the administration of State regulatory and abandoned mine lands (AML) programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The six reports, covering the States of Colorado, Kentucky, Mississippi, Montana, Ohio and West Virginia, were prepared under the provisions of OSM's oversight policy and have been transmitted to Congress.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for the addresses where copies of the reports may be obtained.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Chief, Division of State Program Assistance, Office of Surface Mining, 1951 Constitution Avenue, N.W., Washington, D.C. 20240; Telephone: (202) 343–5351.

SUPPLEMENTARY INFORMATION: Copies of the reports are available, free of charge, at the respective OSM offices listed below:

Colorado: Albuquerque Field Office, Office of Surface Mining, 219 Central Avenue, NW., Albuquerque, New Mexico 87102.

Kentucky: Lexington Field Office, Office of Surface Mining, 340 Legion Drive, Suite 28, Lexington, Kentucky 40504.

Mississippi: Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

Montana: Casper Field Office, Office of Surface Mining, Freden Building, 935 Pendell Boulevard, Mills, Wyoming 82644.

Ohio: Columbus Field Office, Office of Surface Mining, 2242 South Hamilton Road, Columbus, Ohio 43227.

West Virginia: Charleston Field Office, Office of Surface Mining, 603 Morris Street, Charleston, West Virginia 25301.

Background

Under section 503 of SMCRA, a State may elect to assume primary responsibility for regulating surface coal mining and reclamation operations within its borders by submitting a program to the Secretary of the Interior which demonstrates the State's capability to carry out the provisions of SMCRA. Once the Secretary approves the program, the State is granted primacy, and the Federal government assumes a monitoring and evaluation role. OSM has developed an evaluation policy, in consultation with the States, which is implemented primarily through OSM's Field Offices. Monitoring of the State's administration and enforcement of its regulatory and AML programs is conducted throughout the year. The Field Office Directors compile and analyze the data gathered during the evaluation period and prepare annual evaluation reports for transmittal to Congress. The schedule for the reports calls for staggered completion dates.

The first six evaluation reports for this year have been completed. The Colorado, Kentucky, Mississippi, Montana, Ohio and West Virginia reports were completed and sent to Congress September 5, 1984. These final reports are now publicly available. As the remaining reports are completed, OSM plans to make them available also.

Dated: September 11, 1984.

Wesley R. Booker,

Acting Director, Office of Surface Mining.

[FR Doc. 84–24473 Filed 9–14–84; 8:45 am]

BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-37 (Sub-12X)]

Oregon-Washington Railroad & Navigation Co. and Union Pacific Railroad Co. Abandonment and Discontinuance in Lewis County, WA; Exemption

The Oregon-Washington Railroad & Navigation Company (OWR&N) and the Union Pacific Railroad Company (UP) (applicants) have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments.* OWR&N intends to abandon and UP to discontinue service over a line of railroad known as the Grays Harbor Branch extending from milepost 1.02 near Centralia to milepost 2.5 near Blakeslee Junction, a distance of 1.48 miles in Lewis County, WA.

Applicants have certified: (1) That no local traffic has moved over the line for at least 2 years, and that any overhead traffic on the line is being rerouted over the Burlington Northern Railroad Company track between the points to be abandoned pursuant to an agreement with Burlington Northern, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or has been decided in favor of the complainant within the 2 year period. The Public Service Commission (or equivalent agency) in Washington [1] has been notified in writing at least 10 days prior to the filing of this notice. *See Exemption of Out of Service Rail Lines,* 366 I.C.C. 885 (1983).

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979).

The exemption will be effective on October 17, 1984 (unless stayed pending reconsideration). Petitions to stay the effective date of the exemption must be filed by September 27, 1984, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 9, 1984, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Joseph D. Anthofer, Jeanna L. Regier, 1416 Dodge Street, Omaha, NE 68179.

[1] Washington Utilities and Transportation Commission.

If the notice of exemption contains false or misleading information, the use of the exemption is void ab initio.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: September 6, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-24482 Filed 9-14-84; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30550]

Southern Pacific Transportation Co.; Abandonment and Trackage Rights Exemption Over the Atchison, Topeka & Santa Fe Railway Co. and the Sierra Railroad Co.; Exemption

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR 1180.4(g) to permit relocation of a line of railroad. SPT would accomplish this by: (1) Abandoning a 27.6 mile segment of its rail line in San Joaquin and Stanislaus Counties, CA, from milepost 94.00 at or near Stockton to milepost 121.60 at or near Oakdale, and (2) acquiring (a) 30 miles of trackage rights over The Atchison, Topeka & Santa Fe Railway Company (Santa Fe) from milepost 1120 + 2732 at or near Stockton to milepost 6 + 3211 at or near Oakdale, and (b) 4,700 feet of trackage rights over the Sierra Railway Company in the city of Oakdale.

Relocation over essentially parallel lines of the Santa Fe will allow SPT to abandon a branch in need of substantial maintenance while preserving comparable or faster service to existing shippers over the Santa Fe line.

Thus, this joint project of three railroads will relocate a branch line of SPT which will not disrupt service to the public and falls within the class of transactions identified at 49 CFR 1180.2(d) which the Commission has found to be exempt under 49 U.S.C. 10505.

As a condition to use of the exemption, SPT has proposed that any employees affected by the transaction be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment Goshen,* 360 I.C.C. 91 (1979). However, since the relocation project involves not only an abandonment but a trackage rights transaction, we must also impose the conditions set forth in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980). Together these conditions satisfy the statutory requirements of 49 U.S.C. 10505(g) (2).

This notice is effective upon publication.

Decided: September 6, 1984.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 84-24481 Filed 9-14-84; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. The Coastal Corp.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. section 16(b) through (h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement ("CIS") as set out below have been filed with the United States District Court for the District of Columbia in *United States of America* v. *The Coastal Corporation.*

The Complaint in this case alleged that Coastal violated section 7A of the Clayton Act, 15 U.S.C. 18a (commonly known as the Hart-Scott-Rodino Act) by failing to comply with the reporting and waiting period requirements of the Act before it acquired 75,500 shares of Houston Natural Gas Corporation common stock on January 19, 1984. The proposed Final Judgment requires Coastal to pay to the United States a civil penalty of $230,000. The CIS explains the background of the case and the intended effects of the proposed judgment.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Mark Leddy, Deputy Director of Operations, Antitrust Division, United States Department of Justice, Washington, D.C. 20530.

Mark Leddy,

Deputy Director of Operations, Antitrust Division.

In the U.S. District Court for the District of the District of Columbia

[Civil Action No. 84-2675]

Filed: August 30, 1984.

United States of America, Plaintiff v. *The Coastal Corporation,* Defendant.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the procedures of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plantiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. Venue is proper in this district for purposes of this action.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated: August 30, 1984.

For the Plaintiff.

J. Paul McGrath,

Assistant Attorney General.

Mark Leddy,

Catherine G. O'Sullivan,

Jack Sidorov,

Attorneys, Antitrust Division, Department of Justice, Washington, D.C. 20530.

For the Defendants.

Neal R. Stoll,

Skadden, Arps, Slate, Meagher & Flom, 919 Third Avenue, New York, N.Y. 10022.

For the Federal Trade Commission.

Walter T. Winslow,

Acting Director, Bureau of Competition, Federal Trade Commission, Washington, D.C. 20580.

In the U.S. District Court for the District of the District of Columbia

[Civil Action No. 84-2675]

United States of America, Plaintiff v. *The Coastal Corporation*, Defendant.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein on August 30, 1984, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by the defendant with respect to any allegation of the complaint;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

(1) This court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7A of the Clayton Act (15 U.S.C. 18a);

(2) this Final Judgment applies to the defendant and its successors and assigns;

(3) Judgment hereby is entered in favor of the plaintiff, United States of America, and against the defendant, The Coastal Corporation, and the defendant shall pay to the United States, pursuant to Section 7A(G)(1) of the Clayton Act (15 U.S.C. 18a(g)(1)), a civil penalty of $230,000, an amount representing $10,000 a day for each day that defendant was alleged in the Complaint to be in violation of Section 7A(a), due and payable within 15 days from the date of the entry of this Final Judgment; such payment to be made by certified check payable to the Treasurer of the United States and delivered to the Chief of the Claims Unit, Office of the United States Attorney for the District of the District of Columbia;

(4) In the event of a default in payment that continues for 10 days beyond the due date of the payment, interest at the rate of nine percent per annum shall accrue thereon from the date of default to the date of payment; and

(5) Entry of this Final Judgment is in the public interest.

Dated: _____

United States District Judge.

U.S. District Court for the District of the District of Columbia

[Civil Action No. 84-2675]

Filed: August 30, 1984.

United States of America, Plaintiff v. *The Coastal Corporation*, Defendant.

Competitive Impact Statement

The United States files this Competitive Impact Statement, relating to the proposed Final Judgment submitted for entry in this case, in accordance with the procedures of Section 2(B) of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h).[1]

I

Nature and Purpose of the Proceeding

On August 30, 1984, the United States, at the request of the Federal Trade Commission ("FTC"), filed a suit for a civil penalty under Section 7A of the Clayton Act, commonly known as the Hart-Scott-Rodino Act ("HSR Act"), 15 U.S.C. 18a, alleging that The Coastal Corporation ("Coastal" or "Defendant") had violated the HSR Act. The HSR Act imposes certain notification and waiting period requirements on parties meeting the size threshold that are contemplating relatively large acquisition of voting securities or assets.

The manifest congressional intent behind the HSR Act was to give the Government the information needed to determine whether such an acquisition would violate the antitrust laws, and an opportunity to block an anticompetitive acquisition, before it is consummated.

The complaint alleges that Coastal did not comply with the notification and waiting period requirements of the HSR Act before it acquired 75,500 shares of Houston Natural Gas Corporation ("HNG") on January 19, 1984. The complaint asks the Court to: (1) Find that Defendant violated the HSR Act; and (2) require Defendant to pay a civil penalty of $230,000.

On the same day the complaint was filed, the parties filed a proposed Final Judgment, Stipulation and this Competitive Impact Statement. Under the Stipulation, the proposed Final Judgment may be entered after compliance with the procedures of the Antitrust Procedures and Penalty Act. Entry of the proposed Final Judgment will terminate the action.

II

Practices and Events Giving Rise to the Alleged Violation

On January 19, 1984, Coastal, which already held voting securities of HNG valued in excess of $15 million, purchased 75,500 additional shares of HNG common stock. Prior to purchasing this stock, Coastal did not file a HSR

[1] The United States does not believe that the Antitrust Procedures and Penalties Act is applicable in actions where the complaint seeks, and the final judgment provides for, only the payment of civil penalties. The government has taken this position with respect to the consent judgment in *United States* v. *RSR Corp.*, Civ. No. CA3-83-1828-C (N.D. Tex.) (decree entered November 1, 1983) and the civil penalties component of the consent judgment in *United States* v. *ARA Services, Inc.*, Civ. No. 77-1165-C (E.D. Mo.) (consent judgment, including civil penalties, approved August 14, 1979). We believe it appropriate to follow the procedures of the Antitrust Procedures and Penalties Act here, however, because those procedures provide an excellent means of describing to the public the proposed Final Judgment in this first civil penalty action brought under the Hart-Scott-Rodino Act and the circumstances and events that gave rise to the proposed Final Judgment.

Act premerger notification and report form nor did it observe the waiting period prescribed by the Act. Because of the size of Coastal and HNG, the extent of Coastal's holdings of HNG stock, and the involvement of Coastal and HNG in interstate commerce, the January 19, 1984 transaction was subject to the HSR Act's notification and waiting requirements unless an exemption applied. (See 15 U.S.C. 18a(a).)

The January 19, 1984 stock purchases would be exempt from the requirements of the HSR Act if made "solely for the purpose of investment" as that term is used in the Act (15 U.S.C. 18a(c)(9)) and the Act's implementing regulations (16 CFR 801.1, 802.9). The Federal Trade Commission's Bureau of Competition ("Bureau") conducted an investigation of Coastal's January 19th purchases in order to determine whether the purchases were "solely for the purpose of investment." The Bureau's investigation indicated that the purchases were not made "solely for the purpose of investment." Thus, the Bureau concluded, as the complaint alleges, that Coastal's January 19, 1984 acquisition violated the notification and waiting requirements of the HSR Act.

On January 27, 1984, Coastal publicly announced a tender offer for additional shares of HNG stock and filed a notification and report form pursuant to the HSR Act with regard to that proposed acquisition. The waiting period relating to this tender offer expired February 11, 1984, after which Coastal would acquire HNG shares without violating the HSR Act. The complaint alleges that Coastal remained in violation of the HSR Act at least through February 11, 1984.

Coastal has divested the 75,500 shares it acquired on January 19, 1984. (See Complaint, Attachment 1.) Coastal was required to divest those shares by an agreement it entered into with the Bureau on February 10, 1984. (See Complaint, Attachment 2.)

III

Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the procedures of the Antitrust Procedures and Penalties Act. The proposed Final Judgment does not constitute an admission by any party as to any issue of law or fact. Under the provisions of the Antitrust Procedures and Penalties Act, entry of the proposed Final Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The proposed Final Judgment requires the defendant to pay a civil penalty to the United States Treasury. Section (g)(1) of the HSR Act, 15 U.S.C. 18a(g)(1), provides that any person who fails to comply with the requirements of the HSR Act shall be liable in an action brought by the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation.

The proposed judgment imposes on Coastal a civil penalty of $230,000, an amount representing the maximum $10,000 per day for each of the 23 days that Coastal was alleged in the complaint to be in violation of the Act. Payment is due within 15 days from the date of entry of the Final Judgment. The proposed judgment also contains a provision regarding the payment of interest to be required in the event that Coastal's payment is more than 10 days late.

IV

Competitive Effect of the Proposed Final Judgment

The relief encompassed in the Final Judgment is aimed at penalizing and thereby deterring non-compliance with the notification and waiting requirements of the HSR Act.

Prior to the passage of the HSR Act, the antitrust enforcement agencies often lacked sufficient time and information to obtain an adequate remedy for an anticompetitive acquisition. By assuring that the antitrust enforcement agencies receive prior notification and information concerning significant acquisitions involving sizeable parties, the HSR Act has improved the effectiveness of antitrust enforcement. Strict compliance with the Act's notification and reporting requirements is essential if the government is to be effective in interdicting anticompetitive acquisitions.

The Final Judgment requires Defendant to pay the Act's maximum civil penalty of $10,000 per day for each day that defendant was alleged to be in violation of the Act. While civil penalties are intended to penalize a defendant for violating the law and, unlike structural or other forms of injunctive relief in antitrust cases, have no competitive effect in and of themselves, the civil penalty in this case will help deter Defendant and others who in the future may be similarly situated from failing to comply with the notice and waiting requirements of the HSR Act. Compliance with these requirements will strengthen antitrust enforcement and thereby help to maintain competitive markets.

V

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorneys fees. Entry of the proposed Final Judgment in this proceeding will neither impair nor assist the bringing of any such private antitrust action. Under Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed judgment has no *prima facie* effect in any private lawsuit that may be brought against the defendant.

VI

Procedures Available for Modification of the Proposed Final Judgment

The Proposed Final Judgment is subject to a Stipulation between the United States and the Defendant providing that the United States may withdraw its consent to the proposed Judgment at any time before it is entered by the Court. The Antitrust Procedures and Penalties Act conditions entry upon the court's determination that the proposed Judgment is in the public interest.

The Antitrust Procedures and Penalties Act provides a period of at least sixty days preceding the entry of the proposed Final Judgment within which any person may submit to the United States comments regarding the proposed Final Judgment. The United States will evaluate any such comments and determine whether it should withdraw its consent. The comments and the response of the United States to the comments will be filed with the Court and published in the **Federal Register** in accordance with the Antitrust Procedures and Penalties Act.

Written comments should be submitted to: Mark Leddy, Deputy Director of Operations, Antitrust Division, U.S. Department of Justice, Washington, D.C. 20530.

VII

Alternatives to the Proposed Final Judgment

All substantive relief request in the Complaint is included in the proposed Final Judgment. Accordingly, the United States did not consider alternatives.

VIII

Determinative Documents

The United States has brought this action at the request of the Federal Trade Commission. In formulating the proposed Final Judgment, the United States considered determinative a February 10, 1984 letter agreement between Coastal and the FTC's Bureau of Competition. That letter agreement is attached to the complaint as Attachment 2, and is being filed along with this Competitive Impact Statement.

Dated: August 30, 1984.

Mark Leddy,

Catherine G. O'Sullivan,

Jack Sidorov,

Attorneys, Antitrust Division, Department of Justice, Washington, D.C. 20530; Tel: (202) 633-3544.

Federal Trade Commission

February 10, 1984.

George L. Brundrett, Jr., Esquire,
Senior Vice President, General Counsel, The Coastal Corporation, Nine Greenway Plaza, Houston, Texas 77046.

Re The Coastal Corporation's Obligation to File a Hart-Scott-Rodino Premerger Notification Form Under Section 7A of the Clayton Act.

Dear Mr. Brundrett: This letter states the terms of the agreement between the Bureau of Competition and The Coastal Corporation ("Coastal") concerning the Bureau's investigation of possible violations of Section 7A of the Clayton Act, 15 U.S.C. 18a ("the Act"), by Coastal.

On January 19, 1984, Coastal, which already held voting securities of Houston Natural Gas Corporation ("HNG") valued in excess of $15 million, purchased 75,500 additional shares of HNG common stock. Prior to purchasing this stock, Coastal did not file a Hart-Scott-Rodino premerger notification and report form nor observe the waiting period required by the Act. We understand that Coastal's position is that it did not file a notification and report form because it believed that the purchases of January 19th were made "solely for the purpose of investment" as that term is used in the Act [1] and the Act's implementing regulations.[2] The Bureau has reason to believe, however, that Coastal's purchases of HNG voting securities on January 19, 1984, were not made "solely for the purpose of investment."

The Bureau construes the term "solely for the purpose of investment," as that term is used in the Act and in the premerger rules, to apply only to purchases of voting securities made with the intention to hold the stock as a passive investment. The Bureau's investigation of Coastal's purchases of HNG stock indicates that at the time of Coastal's January 19th purchases, Coastal's intent included that possibility of acquiring control of HNG. The Bureau understands, however, that Coastal maintains that at the time it made its January 19th purchases, it had the investment intention necessary to rely on the "solely for the purpose of investment" exemption.

Having been informed of the Bureau's position regarding its January 19th purchases, and in reliance on the Bureau's statements concerning its intended actions set forth below, Coastal has agreed (i) to divest, within ten (10) business days of the execution of this agreement, 75,500 shares of HNG common stock that being the number of shares acquired by Coastal on January 19, 1984, and (ii) to enter into a Final Judgment in substantially the form attached hereto as Attachment A.

The Bureau has determined to close its investigation[3] and not to seek the issuance of a request for additional information under Section 7A(e) of the Act with respect to the alleged violation by Coastal. In addition, in reliance upon Coastal's agreement to take the actions just described, the Bureau has determined to recommend that the Commission request the Department of Justice to file a Complaint and a Stipulation in substantially the form attached hereto as Attachment B and to file a Final Judgment in substantially the form attached hereto as Attachment A.

Nothing in this letter should be construed to limit the authority of the Commission to take any enforcement action in the future with respect to the conduct described in this letter or any other conduct by Coastal.

Very truly yours,

Barbara A. Clark,

Acting Director, Bureau of Competition.

Accepted by:

George L. Brundrett,

Senior Vice President and General Counsel, The Coastal Corporation.

In the U.S. District Court for the District of the District of Columbia

United States of America, Plaintiff v. *The Coastal Corporation*, Defendant.

Final Judgment

Plaintiff, United States of America, having filed its complaint herein, and plaintiff and defendant, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting any evidence against or an admission by any party with respect to any such issues;

Now, therefore, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby,

Ordered, adjudged, and decreed as follows:

(1) This court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 7A of the Clayton Act (15 U.S.C. 18a).

(2) This Final Judgment applies to the defendant and its successors and assigns.

(3) Without admitting liability for the offenses charged in the complaint, defendant agrees:

(a) to divest 75,500 shares of voting securities of Houston Natural Gas Corporation ("HNG"), the number of HNG shares alleged in the Complaint to have been acquired in violation of Section 7A(a) of the Clayton Act (15 U.S.C. 18a(a)), in the event that this divestiture has not occurred in accordance with the letter agreement dated February 10, 1984, between defendant and the Bureau of Competition of the Federal Trade Commission (attached as Appendix A); and (b) to pay to the United States, pursuant to Section 7A(g)(1) of the Clayton Act (15 U.S.C. 18a(g)(1)), a civil penalty of $230,000, an amount representing $10,000 a day for each day that defendant was alleged in the Complaint to be in violation of Section 7A(a), due and payable within 15 days from the date of the entry of this Final Judgment, such payment to be made by certified check payable to the Treasurer of the United States and delivered to the Chief of the Claims Unit, Office of the United States Attorney for the District of the District of Columbia;

(4) In the event of a default in payment that continues for 10 days beyond the due date of the payment, interest at the rate of nine percent per annum shall accrue thereon from the date of default to the date of payment;

It is hereby ordered, adjudged, and decreed that judgment be entered, and hereby is entered, in favor of the plaintiff, United States of America, and against the defendant, The Coastal Corporation, and that the defendant shall:

(a) divest 75,500 shares of voting securities of HNG in the event that this divestiture has not occurred in accordance with the letter agreement attached hereto as Appendix A, and

(b) pay to the United States a civil penalty of $230,000, payable according to the terms and conditions recited above.

[1] 15 U.S.C. 18a(c)(9).

[2] This term is defined at 16 CFR 801.1 and is used in the premerger rules at 16 CFR 802.9. Under the Act and the rules, Coastal would be entitled to purchase up to 10% of HNG's voting securities without filing a notification and report form or waiting the required period if the purchases were made "solely for the purpose of investment."

[3] The Bureau has concluded its investigation of Coastal's January 19th purchases of HNG stock as well as its investigation of Coastal's earlier purchases of HNG stock.

United States District Judge.

The parties, by their respective counsel, hereby consent to the terms and conditions of the Final Judgment as set forth above and consent to the entry thereof.

For plaintiff:

Joseph E. diGenova,

United States Attorney for the District of the District of Columbia.

For defendant:

Neal R. Stoll,

Skadden, Arps, Slate, Meagher & Flom (A member of the Firm).

For the Federal Trade Commission:

Barbara A. Clark,

Attorney, Bureau of Competition.

The Coastal Corporation,

By: George L. Brundrett

State of Texas,

County of Harris, ss:

On the 10th day of February, 1984, before me came George L. Brundrett, Jr. to me known, who, being by me sworn, did depose and say that he/she resides at Houston, Texas that he/she is the Senior Vice President, Gen. Counsel & Secretary of The Coastal Corporation, the defendant herein, which executed the foregoing instrument, and who is duly authorized to sign and has so signed said instrument on behalf of defendant, The Coastal Corporation.

Judgment entered this —— day of February —, 1984.

Clerk

Judith A. Bloss,

Notary Public.

In the U.S. District Court for the District of the District of Columbia

United States of America, Plaintiff v. *The Coastal Corporation,* Defendant.

Complaint for Civil Penalties and Other Relief Pursuant to Section 7A of the Clayton Act

The United States of America, plaintiff, by its attorneys acting under the direction of the Attorney General of the United States and at the request of the Federal Trade Commission, brings this action to obtain monetary relief in the form of civil penalties and other relief against the defendant named herein, and alleges as follows:

I

Jurisdiction and Venue

1. This complaint is filed and these proceedings are instituted under Section 7A of the Clayton Act, 15 U.S.C. § 18a, commonly known as the Hart-Scott-Rodino ("HSR") Act, in order to recover civil penalties and obtain other relief for a violation by defendant of the HSR Act.

2. This Court has jurisdiction over Coastal and over the subject matter of this action pursuant to the HSR Act and 28 U.S.C. 1331, 1337, 1345.

3. Venue is proper by virtue of Coastal's consent, in the Stipulation relating hereto, to the maintenance of this action and entry of Final Judgment in the District.

II

Defendant

4. The Coastal Corporation ("Coastal") is a corporation organized and existing under the laws of the State of Delaware and has its principal place of business at Coastal Tower, Nine Greenway Plaza, Houston, Texas 77046.

III

Violation Alleged

5. On January 19, 1984, Coastal, which already held voting securities of Houston Natural Gas ("HNG") valued in excess of $15 million, purchased 75,500 additional shares of HNG common stock.

6. The transaction described in paragraph 5 above is subject to the reporting and waiting period requirements of the HSR Act and the regulations thereunder, 16 CFR 801.1 *et seq.*

7. Coastal did not comply with the reporting and waiting period requirements of the HSR Act before it acquired the 75,500 shares of HNG common stock on January 19, 1984.

8. Subsequent to Coastal's January 19, 1984 purchases, on January 27, 1984, Coastal made a public announcement of a tender offer to acquire additional shares of HNG common stock and, pursuant to the requirements of the HSR Act and the regulations thereunder, 16 CFR 801.1 *et seq.*, filed a notification and report form as required by the HSR Act.

9. Coastal's violation of the HSR Act continued until 11:59 p.m., February 11, 1984, when the waiting period relating to its tender offer expired.

10. Section (g) of the HSR Act, 15 U.S.C. 18a(g)(1), authorizes civil penalties of not more than $10,000 for each day during which a violation continues and such other equitable relief as a court may order.

IV

Relief Requested

Wherefore, plaintiff prays that this Court:

1. Adjudge and decree that Coastal's purchase of 75,500 shares of HNG stock on January 19, 1984, was in violation of the HSR Act, and that this violation continued each day that Coastal held this stock until the waiting period described above expired.

2. Direct Coastal to pay to the United States Treasury civil penalties of $230,000, an amount which represents $10,000 a day for each day that Coastal was in violation of the HSR Act.

3. Direct Coastal to divest 75,500 shares of voting securities of HNG in the event that this divestiture has not occurred in accordance with the letter agreement dated February 10, 1984, between Coastal and the Bureau of Competition of the Federal Trade Commission (attached as Appendix A).

Respectfully submitted,

United States Attorney for the District of the District of Columbia, Attorney for Plaintiff, United States of America.

In the U.S. District Court for the District of the District of Columbia

United States of American, Plaintiff v. *The Coastal Corporation,* Defendant.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. Venue is proper in this district for purposes of this action.

3. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the plaintiff:

Assistant Attorney General.

Director of Operations.

[Staff Attorney].

[Staff Attorney].

For the defendants:
Neal R. Stoll
Skadden, Arps, Slate, Meagher & Flom (Attorneys for The Coastal Corporation).

For the Federal Trade Commission:
Barbara A. Clark,
Attorney, Bureau of Competition.

[FR Doc. 84-24468 Filed 9-14-84; 8:45 am]
BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[84-72]

NASA Advisory Council (NAC), Space Applications Advisory Committee (SAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Applications Advisory Committee.

DATE AND TIME: October 2, 8:30 a.m. to 5:00 p.m.; and October 3, 1984, 8:30 a.m. to 12:00 noon.

ADDRESS: National Aeronautics and Space Administration, Room 226A, 600 Independence Avenue, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Dudley G. McConnell, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1420).

SUPPLEMENTARY INFORMATION: The NAC Space Applications Advisory Committee consults with and advises the Council as a whole and NASA on plans for, work in progress on, and accomplishments of NASA's Space Applications programs. The Committee is chaired by Dr. Artur Mager and is composed of 25 other members who will meet with several invited participants and certain NASA personnel.

The meeting will be open to the public up to the seating capacity of the room (approximately 50 persons, including Committee members and other participants). Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda

October 2, 1984

8:30 a.m.—Introductory Remarks, Comments on Agenda.
9 a.m.—Briefings to the Subcommittees on Plans for Space Station Utilization for Applications.
1 p.m.—Subcommittee Meetings.
3 p.m.—Briefing on French Satellite System.
5 p.m.—Adjourn.

October 3, 1984

8:30 a.m.—Committee Business, Review of Reports.
12:00 noon—Adjourn.

Dated: September 7, 1984.

Richard L. Daniels,
Deputy Director, Logistics Management and Information Programs Division, Office of Management.

[FR Doc. 84-24456 Filed 9-14-84; 8:45 am]
BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Meeting; Literature Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Creative Writing Fellowships Section—Poetry and Prose) to the National Council on the Arts will be held on October 4-6, 1984. The Poetry section of this meeting will be held on October 4-5, from 9:00 a.m.-6:00 p.m.; and on October 6, from 9:00 a.m.-3:30 p.m. in room 730 of the Nancy Hanks Center. The Prose section of this meeting will be held on October 4-5, from 9:00 a.m.-6:00 p.m.; and on October 6, from 9:00 a.m.-3:30 p.m. in room 714 of the Nancy Hanks Center. The Poetry and Prose sections of this meeting will meet jointly on October 6, from 3:30-5:00 p.m. in room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506.

A portion of this meeting will be open to the public on October 6, from 3:00-5:00 p.m. to discuss Fellowship Policy.

The remaining sessions of this meeting on October 4-5, from 9:00 a.m.-6:00 p.m. and on October 6, from 9:00 a.m.-3:00 p.m. are for the purpose of Panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682-5433.

Dated: September 11, 1984.

John H. Clark,
Director, Office of Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 84-24531 Filed 9-14-84; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

West Virginia University; Order Terminating Facility License

[Docket No. 50-129]

By application dated September 27, 1979, as supplemented by letter dated November 30, 1979, West Virginia University (WVU) requested authorization to dismantle the AGN-211P Reactor (the facility), a research reactor located on the campus in Morgantown, West Virginia, and to dispose of the component parts in accordance with the plan submitted as part of the application, and to terminate Facility Operating License No. R-58. A "Notice of Proposed Issuance of Orders Authorizing Dismantling of Facility, Disposition of Components Parts, and Termination of Facility License" was published in the **Federal Register** on October 29, 1979 (44 FR 62087). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

By letter dated May 23, 1983, WVU indicated compliance with the dismantling and residue disposal plan submitted in 1979, and requested termination of the Facility Operating License No. R-58. The facility area has been inspected by a Nuclear Regulatory Commission Region II inspector. Radiation surveys confirm that radiation levels meet the values defined in the dismantling plan, and the area is available for unrestricted access.

Accordingly, the Commission has found that the facility has been dismantled and decontaminated pursuant to the Commission's Order dated January 22, 1980. Satisfactory disposition has been made of the

component parts and fuel in accordance with the Commission's regulations in 10 CFR Chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. In accordance with 10 CFR, the Commission has determined that the issuance of this termination Order will have no significant impact. The Finding of No Significant Environmental Impact was published in the **Federal Register.**

For further details with respect to this action see (1) the application for authorization to dismantle the facility and dispose of component parts and for termination of facility operating license dated September 27, 1979, as supplemented, (2) the Commission's Order Authorizing Dismantling of Facility and Disposition of Component Parts, dated January 22, 1980, and (3) the Commission's related Safety Evaluation. Each of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Licensing.

This termination Order is effective as of its date of issuance.

Dated at Bethesda, Maryland, this 7th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing.

[FR Doc. 84-24548 Filed 9-14-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-483]

Union Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of partial exemption from the requirements of Appendix J to 10 CFR Part 50 to the Union Electric Company (the licensee) for the Callaway Plant, Unit 1 located at the licensee's site in Callaway County, Missouri.

Environmental Assessment

Identification of Proposed Action

The exemption would eliminate the full pressure test required by paragraph III.D.2(b)(ii) of Appendix J normal air lock opening and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the licensee's request dated July 31, 1984.

The Need for the Proposed Action

The proposed exemption is required to provide the licensee with greater plant availability over the lifetime of the plant.

Environmental Impacts of the Proposed Action

The proposed exemption grants the substitution of an airlock seal test for an airlock pressure test while the reactor is in a shutdown or refueling mode. With respect to this exemption from Appendix J, the increment of environmental impact is related soley to the potential increased probability of containment leakage during an accident. This could lead to higher offsite and control room doses. However, this potential increase is very small, due to the added seal leakage tests and the protection against excessive leakage afforded by the other tests required by Appendix J.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to these exemptions will have either no environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts of plant operations and would result in reduced operational flexibility and unwarranted delays in power ascension.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "FES related to the operation of Callaway Plant Units 1 and 2," dated January 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request that supports the proposed exemption. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the requests for the exemption dated July 31, 1984, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Fulton City Library, 709 Market Street, Fulton, Missouri.

Dated at Bethesda, Maryland, this 11th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-24547 Filed 9-14-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-219]

GPU Nuclear Corp. and Jersey Central Power and Light Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR-16 to GPU Nuclear Corporation and Jersey Central Power and Light Company (the licensees) for the Oyster Creek Nuclear Generating Station located in Ocean County, New Jersey.

Identification of Proposed Action

The amendment would consist of changes to the operating license and Technical Specifications (TS) and would authorize an increase of the storage capacity of the spent fuel pool (SFP) from 1800 fuel assemblies to 2600 fuel assemblies with average enrichments no greater than 3.01 weight percent U-235.

The amendment to the TS is responsive to the licensees' application dated August 20, 1982, as supplemented September 2, and December 20, 1983. The NRC staff has prepared an Environmental Assessment of the Proposed Action, "Environmental Assessment By the Office of Nuclear Reactor Regulation Relating to the Second Modification of the Spent Fuel Storage Pool, Provisionsal Operating License No. DPR-16, GPU Nuclear Corporation and Jersey Central Power and Light Company, Oyster Creek Nuclear Generating Station, Docket No. 50-219" dated September 13, 1984.

Summary of Environmental Assessment

The Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575) concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in SFP designs, the FGEIS recommended

licensing SFP expansion on a case-by-case basis.

For Oyster Creek the expansion of the storage capacity of the SFP will not create any significant additional radiological effects or measurable non-radiological environmental impacts. The additional whole body dose that might be received by an individual at the site boundary is less than 0.1 millirem per year; the estimated dose to the population within a 50-mile radius is estimated to be less than 0.1 person-rem per year. These doses are small compared to the fluctuations in the annual dose this population receives from exposure to background radiation. The occupational radiation dose to workers during the modification of the storage racks is estimated by the licensees to be 25 person-rems. This is a small fraction of the total person-rems from occupational dose at the plant. The small increase in radiation dose should not affect the licensees' ability to maintain individual occupational dose within the limits of 10 CFR Part 20, and as low as reasonably achievable.

Finding of No Significant Impact

The staff has reviewed this proposed facility modification relative to the requirements set forth in 10 CFR Part 51. Based upon the environmental assessment, the staff concluded that there are no significant radiological or non-radiological impacts associated with the proposed action and that the proposed license amendment will not have a significant effect on the quality of the human environment. Therefore, the Commission has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see: (1) The application for amendment to the TS dated August 20, 1982, as supplemented September 2, and December 20, 1983, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575), (3) the Final Environmental Statement for Oyster Creek issued December 1974, and (4) the Environmental Assessment dated September 13, 1984. These documents are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., 20555 and at the Oyster Creek Local Public Document Room, 101 Washington Street, Toms River, New Jersey 08753.

Dated at Bethesda, Maryland, this 13th day of September 1984.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84–24680 Filed 9–14–84; 8:45 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Report Forms Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit 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 such a submission. The proposed form under review is summarized below.

DATE: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESS: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer: L. Jacqueline Brent, Office of Personnel and Administration, Overseas Private Investment Corporation, Suite 405, 1129 Twentieth Street, NW., Washington, D.C. 20527; Telephone (202) 653–2818.

OMB Reviewer: Francine Picoult, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; Telephone (202) 395–7231.

Summary of Form Under Review:

Type of Request: Revision
Title: Investment Missions Application Form
Form Number: OPIC—78
Frequency of Use: Other—once per investor per project
Type of Respondent: Business or other institutions (except farms)
Standard Industrial Classification Codes: All
Description of Affected Public: Business and other institutions
Number of Responses: 60 per year
Reporting Hours: 1 hr per application

Authority for Information Collection: Section 234(d) of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Investment Missions Application form is completed by U.S. companies interested in participating in an OPIC sponsored investment mission. The form provides the necessary information for internal evaluation of a U.S. firm's capability and resources to undertake an overseas project.

Dated: September 4, 1984.

Leo H. Phillips, Jr.,

Office of the General Counsel.

[FR Doc. 84–24492 Filed 9–14–84; 8:45 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of information collection from the public submitted to OMB for clearance.

SUMMARY: In accordance with the "Paperwork Reduction Act of 1980" (Title 44 U.S.C. Chapter 35), this notice announces a collection of information from the public which has been submitted to OMB for clearance. It establishes a new OPM Form 1495, Financial Eligibility Statement for Student and Summer Aid Programs, which will be completed by students applying for Federal positions in the Stay-in-School, Summer Aid and Federal Junior Fellowship Programs. Federal agencies will use the information to determine if applicants meet the financial needs criteria required by these programs. For copies of this proposal, call John P. Weld, Agency Clearance Officer, on (202) 632–7720.

DATES: Comments on this proposal should be received within 10 working days from date of this publication.

ADDRESSES: Send or deliver comments to:

John P. Weld, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, D.C. 20415; and

Katie Lewin, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503

FOR FURTHER INFORMATION CONTACT:
John P. Weld, (202) 632-7720, Office of Personnel Management.

Donald J. Devine,

Director.

[FR Doc. 84-24467 Filed 9-14-84; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 21308; File No. SR-MSRB-84-13]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board

September 11, 1984.

The Municipal Securities Rulemaking Board ("MSRB") on September 7, 1984, submitted copies of a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend MSRB Rule G-4, which concerns statutory disqualifications, by replacing a reference to a rescinded Commission rule with a reference to the currently applicable rule. Specifically, the proposed rule change would refer to Rule 19d-3 under the Act instead of former Rule 15b8-2 under the Act, a rescinded SECO rule, as the basis for applying for relief from certain disqualifications.

This proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act. At any time within sixty days of filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Publication of the submission is expected to be made in the **Federal Register** during the week of September 17, 1984. Interested persons are invited to submit written comments concerning the submission within 21 days from the date of publication in the **Federal Register**. Persons submitting written comments should file six copies with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Comments should refer to File No. SR-MSRB-84-13.

Copies of the submission and all related items, 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. Copies of the filing and of any subsequent amendments also will be available at the MSRB.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30-3(a)(12).

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24478 Filed 9-14-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 21306; File No. SR-NYSE-84-31]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc.

September 10, 1984.

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 August 31, 1984, the New York Stock Exchange, Inc. ("NYSE") 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 proposed rule change provides for new Forms 97A and 97B to be used in the administration and enforcement of recently amended NYSE Rule 97.[1] In contrast to the former rule, the restrictions of amended Rule 97 apply only on the day the firm acquires a position as a result of block positioning activity rather than for the entire period the block positioning firm has a position in the stock. Under the proposed rule change, a firm would be required to complete Form 97A for any day or days selected by the Exchange, reporting positions acquired as principal in connection with facilitating customer block transactions having a market value of $200,000 or more, and any subsequent additions to such positions on that trading day. When the block positioning firm carries a position acquired on one trading day over to the next trading day, the subsequent trading activity would be monitored by the firm's completion of proposed Form 97B for the period covering the next four trading days after the position is first acquired or until the position is entirely liquidated, whichever occurs first. The Exchange cites section 6(b)(5) of the Act as the statutory basis for the proposed rule change in that the rule change would promote just and equitable principles of trade and would help prevent fraudulent and manipulative acts and practices.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 under the Act. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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, DC 20549. Reference should be made to File No. SR-NYSE-84-31.

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, DC. Copies of the filing and of any subsequent amendments also will be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24479 Filed 9-14-84; 8:45 am]

BILLING CODE 8010-01-M

[1] Amendments to Rule 97 were approved by the Commission in Securities Exchange Act Release No. 21098 (June 25, 1984); 49 FR 27229, July 2, 1984 (File No. SR-NYSE-84-16).

[File No. 22-13244]

Application and Opportunity for Hearing; Trans World Airlines, Inc.

September 11, 1984.

Notice is hereby given that Trans World Airlines, Inc. ("Applicant") has filed an application under clause (ii) of section 310(b) (1) of the Trust Indenture Act of 1939, as amended (the "1939 Act"), for a finding by the Securities and

Exchange Commission (the "Commission") that the trusteeships of The Bank of New York (the "Bank") under (i) a Trust Indenture and Mortgage, dated May 1, 1971 (the "Indenture") among Bankers Trust Company, as Owner-Trustee ("Bankers Trust"), Applicant as Guarantor and the Bank as Indenture Trustee, (ii) an Equipment Trust Agreement, dated October 1, 1979 (the "Equipment Trust") between Applicant and the Bank which provides for the issuance of certain Equipment Trust Certificates due May 11, 1990 (the "Equipment Trust"), (iii) an Indenture of Mortgage, dated as of January 1, 1977 (the "Mortgage") among certain senior lenders, Applicant and the Bank, as Trustee (succeeding the original Trustee Marine Midland Bank), (iv) a Note Facility Indenture of Mortgage dated as of January 16, 1984 (the "Facility Mortgage") between the Applicant and the Bank as Trustee for the benefit of holders of Promissory Notes which may be issued under a future long-term revolving credit facility arrangement related to the Note Facility Agreement, and (v) an Indenture of Mortgage, dated as of June 29, 1984 (the "Chattel Mortgage") between Applicant and the Bank as Trustee for the benefit of holders of Floating Rate Secured Notes due June 29, 1989 and issued under the Loan Agreement, and of certain additional such notes which may be issued in the future under supplemental agreements and Chattel Mortgages in substantially the same form, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under the Indenture.

The Application alleges that:

(1) The Commission has previously considered the subject trusteeships, excepting the Chattel Mortgage trusteeship, in response to applications submitted on March 12, 1980 (the "1980 Application") and February 15, 1984, as amended on April 6, 1984 (the "1984 Application") of the Applicant, in each case under Section 310(b)(1), clause (ii), of the 1939 Act. By Orders dated May 28, 1980 in File No. 22-10302 and March 30, 1984, as amended on May 17, 1984 in File No. 22-12976, the Commission found that the Bank's trusteeships, as well as an agency appointment under a certain Pledge Agreement (which terminated by full payment of the secured obligation thereunder on August 15, 1983), were not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the Indenture.

(2) The Indenture was qualified under the 1939 Act and filed with the Commission as Exhibit 4(a)-17 to the Registration Statement (Registration No. 2-40077) which Applicant filed to register the 11% Guaranteed Loan Certificates due June 1, 1986 (the "Loan Certificates") under the Securities Act of 1933, as amended (the "1933 Act"). There were outstanding, on May 15, 1984, $13,693,000 aggregate principal amount of Loan Certificates, payment of which is guaranteed by Applicant and is secured by the mortgage of three Boeing 747-131 aircraft which were purchased in part by the proceeds of the sale of the Loan Certificates. Additional funds were provided by certain banking and financial institutions (the "Owners") for whom Bankers Trust acts as Owner-Trustee. The three aircraft have been leased to Applicant by Bankers Trust for terms ending on May 31, 1986. After the Loan Certificates have been paid in full, the three aircraft will remain the property of the Owners subject to certain rights of Applicant to acquire them at the fair market value when the lease expires.

(3) Applicant and the Bank, as trustee, entered into the Equipment Trust in connection with the purchase of three Boeing 747SP-31 aircraft (the "Aircraft") delivered in March and April of 1960. The Equipment Trust covering the Aircraft secures the Equipment Trust Certificates which are guaranteed by Applicant and were issued in private placements on the respective delivery dates of the Aircraft. The Equipment Trust Certificates have not been registered under the 1933 Act since the sales thereof have not involved public offerings and are therefore exempt under the 1933 Act. The Aircraft are leased to Applicant by the Bank for terms ending in 1990. At the termination of the lease, the lease payments will be treated as payment in full of the purchase price of the Aircraft and title to all the Aircraft will vest in Applicant. The Equipment Trust is set forth in Exhibit A to Applicant's 1980 Application. On July 27, 1984, Applicant sold one of the three Aircraft and the aggregate principal amount of Equipment Trust Certificates outstanding was reduced on a pro-rata basis in accordance with the ratio that the original purchase price of such Aircraft bore to the original purchase price of all three Aircraft.

(4) The Bank is successor to Marine Midland Bank as Trustee for certain of Applicant's senior lenders under the Mortgage, by which Applicant has mortgaged substantially all aircraft and aircraft engines (together with appliances from time to time installed) owned by Applicant on March 1, 1977, as more particularly described in the granting clauses thereof. (As of July 15, 1984, Applicant owned 53 jet aircraft subject to the lien of the Mortgage.) The Mortgage is not qualified under the 1939 Act and was filed with the Commission as Exhibit 1 to the March 1, 1977 Form 8-K filed by Applicant. The Mortgage secures Applicant's senior indebtedness currently outstanding under, or that may be issued pursuant to, certain senior debt instruments. The Mortgage has been amended by six supplemental indentures, the first five being on file with the Commission as Exhibits 3(c)-2 and 3(c)-3 of Applicant's January 25, 1979 Form 8-B and Exhibit 4(b)-3 to File No. 2-77852. The sixth supplemental indenture is set forth in Exhibit B to the 1984 Application.

(5) The Facility Mortgage established an additional trusteeship for the Bank commencing on February 1, 1984. It secured investors through Merrill Lynch International & Co. (the "Placing Agent") under a Note Facility Agreement, dated as of January 16, 1984 (the "Note Facility"). The maturity date of the last of the Promissory Notes issued under the Facility Mortgage was June 21, 1984. However, it is contemplated that the Facility Mortgage may serve in the future as the security vehicle for a possible proposed additional long-term credit facility of up to $200 million to be created between TWA, the Placing Agent and other financial institutions, not including the Bank, in accordance with the terms and conditions outlined in Paragraph 6 of the 1984 Application.

(6) The Chattel Mortgage establishes a new trusteeship for the Bank commencing on June 29, 1984 securing five year Floating Rate Primissory Notes of TWA (the "Floating Rate Notes") in the aggregate principal amount of $25 million issued under a Loan Agreement between C.C. Leasing Corporation and Goldome FSB as Lenders, and TWA. Because the sale of the Floating Rate Notes is a private placement, the offering is not required to be registered with the Commission under the 1933 Act and the Chattel Mortgage is not required to be qualified under the 1939 Act.

(7) The property initially mortgaged under the Chattel Mortgage is, as specified in Schedule I thereto, two used Boeing Model 727-231 aircraft and two used Lockheed L-1011 aircraft. Each of the aircraft includes three engines and each of those engines is subjected to the lien of the Chattel Mortgage, as specified in Schedule II thereto. Prior to

the establishment of the Chattel Mortgage, the property was encumbered by the lien of the Facility Mortgage and released by the Bank, as Trustee, upon the maturity of the three-month Promissory Notes issued thereunder. Thus, the collateral over which the Bank will exercise its duties as Trustee under the Chattel Mortgage is entirely distinct and separate from the collateral under the Indenture, the Equipment Trust and the Mortgage. As for the Facility Mortgage, there is no collateral thereunder at the present time.

(8) The Chattel Mortgage may also in the future serve as the vehicle for a proposed additional long-term credit facility to be created between TWA and other financial institutions (not including the Bank). That facility will also involve the issuance of additional Floating Rate Notes up to a maximum principal aggregate amount of $25 million, bringing the total maximum amount of all such Notes to $50 million. Any such additional Notes are to have maturity dates of June 29, 1989 and the Chattel Mortgage provides flexibility for the addition or removal of mortgaged property, provided that 66⅔% of the appraised value thereof plus 100% of the cash included in an Aviation Property Fund (as defined in the Chattel Mortgage), is not less than the aggregate amount of Floating Rate Notes outstanding, except in the case of Applicant's making of certain prepayments or cash payments in connection therewith. Thus, additional aircraft or engines can readily be added to the Chattel Mortgage to secure an increase in outstanding credit up to the $50 million maximum. The Chattel Mortgage also provides for the substitution of aircraft and engines under certain circumstances. Additional property to be placed under the Chattel Mortgage would not be subject to any other mortgage or lien encumbrance for which the Bank has a trusteeship. In submitting this Application, TWA requests that the Commission issue its Order with respect to the Bank's role as Trustee under the Chattel Mortgage, recognizing that it may, in the future, secure additional Floating Rate Notes.

(9) Applicant believes that no material conflict of interest will result from the Bank acting as Trustee under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage. The Indenture, the Mortgage, the Equipment Trust, the Facility Mortgage and the Chattel Mortgage each cover wholly separate and distinct collateral consisting of identified aircraft and aircraft engines. In the event that the Bank should have the occasion to proceed against the security of any one or more of these instruments, such action would not affect the security, or the use of any security, under any of the others. As a result, Applicant believes that the Bank, in serving as Trustee under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage, and, more importantly, in taking action on behalf of the security holders or the senior lenders with respect to their separate security under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage, will not be placed in a situation in which the potential for a material conflict of interest would arise.

(10) Applicant believes that the Bank's serving as Trustee under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage will be beneficial to the holders of the Loan Certificates, the holders of the Equipment Trust Certificates, the senior lenders, the holders of the Promissory Notes, if any, and the holders of the Floating Rate Notes, in that the operations of the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage would be simplified if the Trustee acting under the Indenture can act as the Trustee under those instruments as well. The specialized nature of the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage, is such that Applicant believes that the holders of the Loan Certificates, the holders of Equipment Trust Certificates, the senior lenders, the holders of the Promissory Notes, if any, the holders of Floating Rate Notes and Applicant would benefit by having a common trustee familiar with the operation of the Applicant under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage and the Chattel Mortgage.

(11) The Indenture contains the provisions permitted by the proviso of section 310(b)(1) of the 1939 Act which allow Applicant to make the application under section 310(b)(1)(ii). Applicant is not in default under the Indenture, the Equipment Trust, the Mortgage, the Facility Mortgage, the Chattel Mortgage or any other indenture or equipment trust agreement.

Applicant has waived any hearing as well as notice of any hearing and all rights of specified procedures under the rules of practice of the Commission.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 5th Street, NW., Judiciary Plaza, Washington, D.C. 20549.

Notice is further given that any interested person may, not later than October 1, 1984 request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by such application which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, pursuant to delegated authority, by the Division of Corporation Finance.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84-24570 Filed 9-14-84; 8:45 am]
BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange Inc.

September 10, 1984.

The above named national securities exchange has filed application with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following stocks:

Payless Cashway's, Inc.
Common Stock, $.50 Par Value (File No. 7-7760)
Page Petroleum, Ltd.
Common Stock, No Par Value (File No. 7-7761)
Pacific Gas Transmission Co.
Common Stock, No Par Value (File No. 7-7762)
Philips Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7-7763)
Combined International Corp.
Common Stock, $1.00 Par Value (File No. 7-7764)
Pioneer Corp.
Common Stock, $.50 Par Value (File No. 7-7765)
Pantry Pride, Inc.
Common Stock, $.01 Par Value (File

No. 7–7766)
Restaurant Associates Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–7767)
Rogers Corp.
Capital Stock, $1.00 Par Value (File No. 7–7768)
Raychem Corp.
Common Stock, No Par Value (File No. 7–7769)
Ryan Homes, Inc.
Common Stock, No Par Value (File No. 7–7770)
Sundance Oil Co.
Capital Stock, $.01 Par Value (File No. 7–7771)
Seatrain Lines, Inc.
Common Stock, $1.00 Par Value (File No. 7–7772)
Scientific-Atlanta, Inc.
Common Stock, $.50 Par Value (File No. 7–7773)
Sherwin Williams Co.
Common Stock, $6.25 Par Value (File No. 7–7774)
Spectra-Physics, Inc.
Common Stock, $.20 Par Value (File No. 7–7775)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 1, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24572 Filed 9–14–84; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange Inc.

September 10, 1984.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Mc Dermott International
Common Stock, $1.00 Par Value (File No. 7–7860)
U.S. Home
Common Stock, $1.00 Par Value (File No. 7–7861)
Teco Energy
Common Stock, $1.00 Par Value (File No. 7–7862)
Norwest Corporation
Common Stock, $1 ⅔ Par Value (File No. 7–7863)
Staley (A.E.) Manufacturing
Common Stock, No Par Value (File No. 7–7864)
Forest Laboratories
Common Stock, $.10 Par Value (File No. 7–7865)
Newmont Mining
Common Stock, $5.00 Par Value (File No. 7–7866)
Rochester Gas & Electric
Common Stock, $5.00 Par Value (File No. 7–7867)
Unicorp American Corporation
Common Stock, $.01 Par Value (File No. 7–7868)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interest persons are invited to submit on or before October 1, 1984, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Acting Secretary.

[FR Doc. 84–24571 Filed 9–14–84; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2164 Amdt. No. 2]

Nevada; Declaration of Disaster Loan Area

The above numbered Declaration (49 FR 32703) and Amendment No. 1 (49 FR 35459) is hereby amended to include the adjacent County of Lincoln. All other information remains the same, i.e. the termination date for filing applications for physical damage is the close of business on October 9, 1984, and for economic injury until the close of business on May 8, 1985.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 10, 1984.

Irenemaree Castillo,

Acting Administrator

[FR Doc. 84–24565 Filed 9–14–84; 8:45 am]

BILLING CODE 8025–01–M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Correction to Notice of Action Subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This corrects a notice published in the Federal Register on July 30, 1984 (49 FR 30393), concerning actions subject to Intergovernmental review.

DATE: Effective September 17, 1984.

FOR FURTHER INFORMATION CONTACT: Mrs. Johnnie L. Albertson, Deputy Associate Administrator for SBDC Programs, U.S. Small Business Administration, Washington, D.C. 20416, (202) 653–6768.

In FR Doc. 84–19941 appearing at page 30394 in the issue for Monday, July 30, 1984, in the third column, under Addressees of Proposed SBDC's and Proposal Developers, delete the third addressee which reads as follows:

Albert Calum, Interamerican University of Puerto Rico, P.O. Box 1293, Hato Rey, Puerto Rico 00919, (809) 753–8008, Ext. 253.

The proposal submitted by Interamerican University of Puerto Rico was incomplete. Therefore, the Small Business Administration is currently open to receiving any completed proposal for the establishment of an

SBDC in the Commonwealth of Puerto Rico.

James C. Sanders,

Administrator.

[FR Doc. 84-24612 Filed 9-14-84; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Whittier, AK

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed transportation project to improve access to the City of Whittier, Alaska.

FOR FURTHER INFORMATION CONTACT: Tom Neunaber, Field Operations Engineer, Federal Highway Administration, P.O. Box 1648, Juneau, Alaska 99801, Telephone (907) 586-7428; Merlyn L. Paine, Central Region Environmental Coordinator, Alaska Department of Transportation and Public Facilities, Pouch 6900, Anchorage, Alaska 99502, Telephone (907) 266-1508.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Alaska Department of Transportation and Public Facilities (ADOT&PF), will prepare an Environmental Impact Statement (EIS) on the proposed improved access to Whittier, Alaska. Highway access to Whittier does not presently exist. The proposed project would supplement railroad access through construction of a rural highway into the City of Whittier, possibly involving a tunnel; or construction of a road into Bear Valley and a railroad terminal there to improve efficiency of the present rail shuttle system.

Construction of the proposed transportation improvement is considered necessary for the following reasons: (1) The existing railroad shuttle is inconvenient and inadequate, (2) shuttle capacity could become even more inadequate if there are significant increases in Marine Highway transportation, (3) the increasing population base in the Anchorage area will increase demand for nearby marine recreation opportunities, (4) tourism is a growing industry in Alaska and could produce additional demand on Whittier access facilities as the area becomes better known, and (5) possible development of the deepwater port facility and commercial fishing industry in Whittier could pose significant demands for freight transport beyond capacity of the shuttle.

Alternatives under consideration include:

(1) No action.

(2) Construct a road from the area of the Portage Glacier Visitor Center into Bear Valley with a railroad terminal facility located in Bear Valley.

(3) A road from the Portage Glacier Visitor Center area into Bear Valley and modification of the existing railroad tunnel through Maynard Mountain between Whittier and Bear Valley to accommodate a one-lane highway.

(4) Same as number (3) above, except the existing railroad tunnel would be modified to accommodate a two-lane highway.

(5) A road from the vicinity of the Portage Glacier Visitor Center into Bear Valley and construction of a new two-lane highway tunnel just south of the existing rail tunnel.

(6) Construction of a new two-lane highway from the area of the Portage Glacier Visitor Center through Bear Valley, around Maynard Mountain, over Portage Pass and then into Whittier.

A scoping process to identify the full range of issues related to the proposed action will include solicitation of comments from appropriate Federal, State, and local agencies, private organizations, and citizens who have previously expressed interest in the proposal. Public information/scoping meetings will be held at times and locations to be determined. At least one meeting will be held in Anchorage and one in Whittier. Public hearings will be held in Whittier and Anchorage in late 1985 after the Draft EIS has been completed and made available for public and agency review.

Comments or questions concerning the proposed action should be directed to the FHWA or the ADOT&PF at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction)

Issued: September 6, 1984.

Barry F. Morehead,

Division Administrator, FHWA, Juneau, Alaska.

[FR Doc. 84-24491 Filed 9-14-84; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: September 11, 1984.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB (listed by submitting bureaus), for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of these submissions may be obtained by calling the Treasury Bureau Clearance Officer listed under each bureau. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of each bureau's listing and to the Treasury Department Clearance Officer, Room 7225, 1201 Constitution Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: IRS Form 8271
Type of Review: New
Title: Investor Reporting of Tax Shelter Registration Number
Clearance Officer: Garrick Shear, (202) 566-6254, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Norman Frumkin, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Bureau of Government Financial Operations

OMB Number: 1510-0006
Form Number: TFS 6312
Type of Review: Extension
Title: Federal Process Agent Appointments
Clearance Officer: Doug Lewis, (202) 287-4500, Bureau of Government Financial Operations, Room 163, 401 14th Street, SW., Washington, DC 20228
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Office of the Secretary

OMB Number: 1505-0001
Form Number: International Capital Form S
Type of Review: Extension
Title: Purchases and Sales of Long-Term Securities by Foreigners
Clearance Officer: Cathy Thomas, (202) 535-6020, Office of the Secretary, Department of the Treasury, Room 7225, 1201 Constitution Avenue, NW., Washington, DC 20220
OMB Reviewer: Judy McIntosh, (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

U.S. Customs Service

OMB Number: 1515-0055

Form Number: Customs Form 3229
Type of Review: Revision
Title: Certificate of Origin

OMB Number: 1515–0050
Form Number: Customs Forms 3347 and 3347A
Type of Review: Extension
Title: Declaration of Owner for Merchandise Obtained (Otherwise than) in Pursuance of a Purchase or Agreement to Purchase and Declaration of Consignee when Entry is Made by Agent

OMB Number: New
Form Number: Customs Form 3461–A (Test)
Type of Review: New
Title: Accept Entry Cover Sheet

OMB Number: New
Form Number: None
Type of Review: New
Title: Transfer Cargo to A Container Station

Clearance Officer: Vince Olive, (202) 566–9181, U.S. Customs Service, Room 2130, 1301 Constitution Avenue, NW., Washington, DC 20229
OMB Reviewer: Judy McIntosh, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Joseph Maty,

Departmental Reports, Management Office.

[FR Doc. 84–24469 Filed 9–14–84; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 49, No. 181
Monday, September 17, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

CIVIL AERONAUTICS BOARD

TIME AND DATE: 10:00 a.m., September 18, 1984.

PLACE: Room 1027 (Open), Room 1012 (Closed), 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of Items Adopted by Notation.
2. *Unified Agenda of Federal Regulations.* (Memo 2490, OGC)
3. Docket 39635, Standard Foreign Fare Level Methodology. (Memo 497–B, OGC, BIA)
4. Proposed changes in the Board's procedures for exemption applications and related changes in filing fee schedules and policy statements. (OGC, BIA, OC, BDA)
5. Docket 42316, Frontier Airlines' notice of intent to terminate service at Abilene, Texas, Durango, Colorado, Farmington, New Mexico, Fort Smith, Arkansas, Grand Island, Nebraska and Topeka, Kansas. (Memo 2487, BDA, OCCCA)
6. Docket 42129, Renewal of carrier selection to provide essential air service for Massena, Ogdensburg, Plattsburgh, Saranac Lake/Lake Placid and Watertown, New York. (BDA, OCCCA)
7. Docket 40274, Essential air service for Thief River Falls, Minnesota. (BDA, OCCCA, OC)
8. Dockets 39422, 39423 and 39424, Essential Air Service at Roswell, Carlsbad and Hobbs, New Mexico. (Memo 546–E, BDA, OCCCA, OC)
9. Dockets 42318 and 42319, Applications of Orion Lift Service, Inc. d/b/a Orion Air under Subpart Q for certificates authorizing foreign charter air transportation and interstate and overseas scheduled air transportation. (Memo 2488, BDA)
10. Order 84–4–28 which tentatively proposed to require Clearwater Flying Service d/b/a Empire Airways to change its name because of name confusion with Empire Airlines. (Memo 2042–D, BDA, OGC)
11. Commute carrier fitness determination of Lynbird International, Inc. (Memo 2484, BDA)
12. Commuter carrier fitness determination of Island Airlines, Inc. (Memo 2486, BDA)
13. Commuter carrier fitness determination of Air Caribe International, Inc.; Docket 42394, Emergency Exemption of Air Caribe to operate as a commuter pending completion of its fitness review and Docket 42401, Application for fitness review. (BDA)
14. Commuter carrier fitness determination of Enterprise Airlines, Inc. (Memo 2485, BDA)
15. Revocation of air carrier certificates of Air Chicago, Inc.; Airgo, Inc.; Colonial Airlines, Inc.; Columbia Air; Falcon Airways, Inc.; Great Western Airlines, Inc.; JFC Enterprises, Inc. d/b/a Concord International Airlines; Sun Pacific Airlines; Sundance International, Inc. d/b/a Sundance International; Swift Air Charter, Inc.; TRA Airlines, Inc.; and Transwest Air Express. (Memo 2489, BDA, OGC)
16. Docket 42171, Application of Key Airlines, Inc. (Memo 2432–A, BIA, OGC)
17. Report on Japan. (BIA)
18. Report on Peru. (BIA)
19. Negotiations with Fiji. (BIA)
20. Negotiations with Argentina. (BIA)
21. Negotiations with the Dominican Republic. (BIA)
22. Discussion of Aviation Relations with Saudi Arabia. (BIA)
23. Discussion of Aviation Relations with the United Kingdom. (BIA)
24. Report on ECAC (France). (BIA)

STATUS: 1–16 Open, 17–24 Closed.

PERSON TO CONTACT: Phyllis T. Kaylor, *The Secretary,* (202) 673–5068.

[FR Doc. 84–24564 Filed 9–12–84; 5:00 pm]

BILLING CODE 6320–01–M

2

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 9:00 a.m., Thursday, September 13, 1984.

LOCATION: Third Floor Hearing Room, 1111–18th Street, NW., Washington, DC.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

Budget FY 86

The Commission will consider issues related to the Budget for Fiscal Year 1986.

The Commission by unanimous consent vote decided that agency business required scheduling this meeting without seven days notice.

FOR A RECORDED MESSAGE CONTAINING THE LASTEST AGENDA INFORMATION, CALL: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 84–24624 Filed 9–13–84; 3:16 pm]

BILLING CODE 6355–01–M

3

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

September 12, 1984.

TIME AND DATE: 10:00 a.m., Tuesday, September 18, 1984.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Pyro Mining Company, Docket No. KENT 84–151; Sua Sponte Review. (Issues include whether the Administrative Law Judge appropriately assessed civil penalties.)

It was determined by a unanimous vote of Commissioners that a meeting be held on this item and that no earlier announcement of the meeting was possible. 5 U.S.C. 552b(e)(1).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 65–5632.

[FR Doc. 84–24643 Filed 9–13–84; 3:25 pm]

BILLING CODE 6735–01–M

4

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 September 17, 1984, at 450 Fifth Street NW., Washington, D.C.

Closed meetings will be held on Tuesday, September 18, 1984, at 10:00 a.m. and 2:30 p.m., and on Thursday, September 20, 1984, following the 2:30 p.m. open meeting.

Open meetings will be held on Wednesday, September 19, 1984, at 10:00 a.m. and Thursday, September 20, 1984, at 2:30 p.m., in Room IC30.

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 sourth 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 Treadway, Cox, Marinaccio and Peters voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting September 18, 1984, at 10:00 a.m., will be:

Formal orders of investigation.
Institutions of administrative proceedings of an enforcement nature.
Settlement of administrative proceeding of an enforcement nature.
Institution of injunctive action.
Settlement of injunctive action.

The subject matter of the closed meeting scheduled for Tuesday, September 18, 1984, at 2:30 p.m., will be:

Institution of administrative proceeding of an enforcement nature.

The subject matter of the closed meeting scheduled for Thursday, September 20, 1984, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, September 19, 1984, at 10:00 a.m., will be:

1. Consideration of whether to issue Orders granting full registration to the Boston Stock Exchange Clearing Corporation and cancelling the termporary registration of the New England Securities Depository Trust Company. For further information, please contact Easter Saverson, Jr. at (202) 272–2906.

2. Consideration of whether to adopt amendments to Rule 139, relating to the publication of research reports by brokers or dealers that contain information, opinions or recommendations concerning registrants that are in the process of registering securities for public sale. The amendments would expand the class of publications that come within the Rule's safe harbor protection from violations of section 5 of the Securities Act of 1933. For further information, please contract Patricia B. Magee at (202) 272–2589.

The subject matter of the open meeting scheduled for Thursday, September 20, 1984, at 2:30 p.m., will be:

Oral argument on an appeal by Russell G. Davy, a certified public accountant, from the decision of an administrative law judge. For further information, please contact Herbert V. Efron 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: David Martin at (202) 272–2179.

Dated: September 12, 1984.

Shirley E. Hollis

Acting Secretary.

[FR Doc. 84–24563 Filed 9–12–84; 4:39 pm]
BILLING CODE 8010–01–M

federal register

Monday
September 17, 1984

Part II

Department of Energy

Office of Conservation and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products; State Petitions for Exemption From Federal Preemption of State Standards for Refrigerators and Refrigerator-Freezers, Freezers, Water Heaters, Room Air Conditioners, Central Air Conditioners, Furnaces and Kitchen Ranges and Ovens; Proposed Rules; Correction

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket Nos. CE-CP-SPRM-AR006, VA007, FL008, PA009, WI010, SC012, NM013, GA014, RI015, NH016, MA017, CA018, OR019, NY020, MO021, TX022, NJ023, IL024, UT025, IA026, WV027, MN028, WA029, KS030, HI031, TN032]

Energy Conservation Program for Consumer Products; State Petitions for Exemptions From Federal Preemption of State Standards for Refrigerators and Refrigerator-Freezers, Freezers, Water Heaters, Room Air Conditioners, Central Air Conditioners, Furnaces and Kitchen Ranges and Ovens, Correction

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Proposed rules correction.

SUMMARY: This document corrects errors made in the proposed rules to grant 26 State petitions for exemption from Federal preemption of State standards pertaining to the energy efficiency or energy use of refrigerators and refrigerator-freezers, freezers, water heaters, room air conditioners, central air conditioners, furnaces and kitchen ranges and ovens appearing at and following page 32944 of the August 17, 1984, **Federal Register** (Vol. 49, No. 161).

DATES: Written comments on the proposed rules must be received by the Department by November 15, 1984. Oral views, data and arguments may be presented at any of the public hearings listed on page 32976 of the August 17, 1984, **Federal Register.**

ADDRESSES: Written comments, statements and requests to speak at the hearings are to be submitted to U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Energy Efficiency Program for Consumer Products, Docket No. CE-CP-SPRM-(appropriate State code), Mail Station 6B–025, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585. (202) 252–9319.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy Mail Station CE–113, Room GF–217, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127, or

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–12, Room 6B–128, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252–9513

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B–025, Forrestal Building, 1000 Independence Avenue, SW., (202) 252–9319.

Issued in Washington, D.C., September 4, 1984.

Pat Collins,

Acting Assistant Secretary, Conservation and Renewable Energy.

The following corrections are made to FR Doc. 84–21864 appearing on page 32944 of the August 17, 1984, **Federal Register** (Vol. 49, No. 161):

1. On page 32944, column two, under the heading ADDRESSES, and, on page 32976, column one, first paragraph; the starting time of all public hearings is corrected to be 9:30 a.m.

2. On page 32964, column three, last paragraph, the discussion of the petition submitted by the State of Texas (which concludes on page 32965, column two) is corrected to read as follows:

"TEXAS (TX022). The petition submitted by Texas[83] seeks a rule exempting from Federal preemption Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards and the building code ordinances of 49 localities as they pertain to the energy efficiency of water heaters, room and central air conditioners and furnaces. Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards adopts The Model Code for Energy Conservation in New Building Construction, 1977 Edition, as the State building code for the construction of modular homes. The adopted code contains energy efficiency requirements applicable to water heaters, room air conditioners, central air conditioners and furnaces. It is based on ASHRAE Standard 90–75. Texas' petition includes a list identifying the 49 localities that have energy efficiency requirements incorporated into their building codes. For each of these localities, Texas' petition identifies the building code adopted by the locality (BOCA, ICBO, or SBCC), the date of the edition of the model building code adopted, and the ordinance which adopted the model building code.

"Today's notice proposes to grant Texas' petition for exemption from preemption of its construction standards for modular homes as they pertain to water heaters, room air conditioners, central air conditioners, and furnaces, and the building codes of the 49 localities for which Texas had petitioned. See Section 430.33 (e)(15), (f)(15), (g)(16), and (h)(16) of today's proposed rule for a listing of the localities of Texas with building code energy efficiency requirements pertaining to water heaters, room air conditioners, central air conditioners and furnaces, respectively, which DOE is proposing to exempt from Federal supersession.

"1. Standard Levels

"Water Heaters

"Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards provides that electric storage water heaters shall have a standby loss not exceeding 4 watts per square foot of tank surface area; and that gas- and oil-fired storage water heaters shall have a recorvery efficiency not less than 75 percent and a standby loss not exceeding the quantity of 2.3 + 67/V, expressed in percent per hour of the stored thermal energy, where V equals the rated storage capacity in gallons.[84A]

"For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90–75, electric storage water heaters are required to have a standby loss which, for building codes adopted prior to January 1, 1977, does not exceed 4 watts per square foot of tank surface area. Gas-and oil-fired storage water heaters are required to have a recovery efficiency which, for building codes adopted prior to January 1, 1977, is not less than 70 percent and; for building codes adopted thereafter, is not less than 75 percent.

"Gas- and oil-fired storage water heaters are also required to have a standby loss which, for building codes adopted prior to January 1, 1977, does not exceed the quantity of 4.3 + 67/V, expressed in percent per hour of the stored thermal energy, where V equals the volume of the water heater in gallons; and, for building codes adopted thereafter, does not exceed the quantity of 2.3 + 67/V, expressed in percent per hour of the stored thermal energy, where V equals the volume of the water heater in gallons.[84B]

[83] Texas' petition was received by letter dated December 20, 1983, and amended by letter dated August 7, 1984.

[84A] Texas' water heater standards reference the ANSI Standard C72.1–72 test method and the ANSI Standard Z21.10.3–74 test method. DOE has reviewed these test methods and finds that they differ from the DOE water heater test procedure. The Department is treating these test methods as an integral part of Texas' water heater standards for which exemption from preemption is being sought.

[84B] The ASHRAE Standard 90–75 water heater standards reference the ANSI Standard C72.1–72

Continued

"For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90A–1980, electric storage water heaters shall have a standby loss not exceeding 4 watts per square foot of tank surface, or 43 watts, whichever is greater. Gas- and oil-fired storage water heaters with input ratings of 75,000 Btu per hour of less shall have a recovery efficiency not less than 75 percent and a standby loss not exceeding the quantity of 2.3 + 67/V, expressed in percent per hour of the stored thermal energy, where V equals the rated volume of the water heaters gallons. Oil-fired water heaters with input ratings exceeding 75,000 Btu per hour are required to have a combustion efficiency not less than 80 percent. Additionally, oil-fired water heaters with input ratings exceeding 75,000 Btu per hour but less than 4,000 Btu per hour per gallon of self stored water are required to have a standby loss which, for building codes adopted prior to January 1, 1982, does not exceed the quantity 2.8 +0.002Q/V and, for building codes adopted thereafter, does not exceed the quantity 2.8 + 67/V, expressed in percent per hour of the stored thermal energy, where V equals the rated volume of the water heater, in gallons, and Q equals the rated input of the water heater, in Btu per hour.[84C]

"Room Air Conditioners and Central Air Conditioners

"Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards provides that room air conditioners and central air conditioners shall have an energy efficiency ratio not less than 6.8 Btu per watt-hour.[85A]

"For those localities in Texas that have adpoted building codes which based on the ASHRAE Standard 90–75, room and central air conditioners are required to have an energy efficiency ratio which, for building codes adopted after January 1, 1977, but before January 1, 1980, is not less than 6.1 Btu per watt-hour; and for building codes adopted thereafter, is not less than 6.8 Btu per watt-hour.[85B]

"For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90A–1980, room and central air conditioners are required to have an energy efficiency ratio not less than 6.8 Btu per watt-hour.[85C]

"Paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards provides that furnaces shall have a combustion efficiency not less than 75 percent.[86A]

For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90–75, furnaces shall have a combustion efficiency not less than 75 percent at maximum rated output.[86B]

"For those localities in Texas that have adopted building codes which are based on the ASHRAE Standard 90A–1980, furnaces shall have a steady state combustion efficiency not less than 74 percent, except for gravity central furnaces which shall have steady state combustion efficiency not less than 69 percent.[86C]

"2. Significant State interest

"The petition states that it is in the best interest of the State to continue to utilize its resources as efficiently as possible due to its declining domestic oil production and the continued instability of OPEC oil supplies. The local units of government believe that minimum appliance efficiency standards are in the best economic interest of their citizens and that existing minimum standards provide reasonable paybacks on the additional first cost.

"3. Additional Information

"The petition states that the State has determined that enforcement of minimum appliance efficiency standards developed through a concensus approach is the most effective means of regulation without placing an undue burden on interstate commerce.

"The petition further states that preemption of local building codes is unnecessarily disruptive to local commerce and the local power to govern. These local governments believe that enforcement of these standards is the most effective means of regulation without placing an undue burden on interstate commerce.

"4. Proposed Determination

"DOE has reviewed Texas' petition in accordance with the requirements of section 327(b)(3) of the Act and § 430.47 of the regulation. Based on its analysis, DOE has determined that Texas has provided prima facie evidence showing that paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards and the building code ordinances of 49 localities within the State are more stringent than DOE's rules for water heaters, room air conditioners, central air conditioners and furnaces; are justified by a significant State interest; and do not appear to impose an undue burden on interstate commerce. Accordingly, DOE proposes to issue a rule amending § 430.33 exempting paragraph 69.78(a)(3) of the Rules of the State Department of Labor and Standards and the building code ordinances of 49 localities within Texas from the preemptive provisions of section 327(a)(2)(A) of the Act."

3. The proposed amendments to 10 CFR 430.33 are corrected by revising the introductory text of paragraphs (e)(15), (f)(15), (g)(16) and (h)(16) to read as follows:

§ 430.33 Preemption of State regulations.

* * * * *

(e) * * *

(15) Texas Department of Labor and Standards Rules, paragraph 69.78(a)(3),

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test method and the ANSI Standard z21.103–74 test method. DOE has reviewed these test methods and finds that they differ from the DOE water heater test procedure. The Department is treating these test methods as an integral part of the water heater standards of those Texas localities for which exemption from preemption is being sought.

[84C] The ASHRAE Standard 90A–1980 water heater standards reference the DOE water heater test procedure.

[85A] Texas' room air conditioner standard references the ANSI Standard z234.1–72 test method which DOE adopted as its test procedure for room air conditioners. Texas' central air conditioner standard references the ARI Standard 210–75 test method. DOE has reviewed this test method and finds that it differs from the DOE central air conditioner test procedure. The Department is treating these test methods as an integral part of Texas room air conditioner and central air conditioner standards for which exemption from preemption is being sought.

[85B] The ASHRAE Standard 90–75, room air conditioner standard references the ANSI Standard Z234.1–72 test method which DOE adopted as its test procedure for room air conditioners. The ASHRAE Standard 90–75 central air conditioner standard references the ARI Standard 210–75 test method. DOE has reviewed this test method and finds that it differs from the DOE central air conditioner test procedure. The Department is treating these test methods as an integral part of the room air conditioner and central air conditioner standards of those Texas localities for which exemption from preemption is being sought.

[85C] The ASHRAE Standard 90A–1980 room air conditioner standard references the ANSI Standard Z234.1–72 test method which DOE adopted as its test procedure for room air conditioners. The ASHRAE Standard 90A–1980 central air conditioner standard references the DOE central air conditioner test procedure.

[86A] Texas' furnace standards reference the ANSI Standard Z21.13–74 test method, the ANSI Standard Z21.47–71 test method, and the HI Standard 6.6. test method. DOE has reviewed these test methods and finds that they differ from the DOE furnace test procedure. The Department is treating these methods as an integral part of Texas' furnace standards for which exemption from preemption is being sought.

[86B] The ASHRAE Standard 90–75, furnace standards reference the ANSI Standard Z21.13–74 test method, the ANSI Standard Z21.47–71 test method, and the HI Standard 6.6. test method. DOE has reviewed these test methods and finds that they differ from the DOE furnace test procedure. The Department is treating these test methods as an integral part of the furnace standards of those Texas localities for which exemption from preemption being sought.

[86C] The ASHRAE Standard 90A–1980 furnace standards reference the DOE furnace test procedure.

pretaining to water heaters in the construction of modular homes that are covered products, is exempt from preemption. The building codes of the following localities in Texas, pertaining to water heaters that are covered products, are exempt from preemption:

* * * * *

(f)* * *

(15) Texas Department of Labor and Standards Rules, paragraph 60.78(a)(3), pertaining to room air conditioners in the construction of modular homes that are covered products, is exempt from preemption. The building codes of the following localities in Texas, pertaining to room air conditioners that are covered products are exempt from preemption:

* * * * *

(g) * * *

(16) Texas Department of Labor and Standards Rules, paragraph 69.78(a)(3) pertaining to central air conditioners in the construction of modular homes that are covered products, is exempt from preemption. The building codes of the following localities in Texas, pertaining to central air conditioners that are covered products, exempt from preemption:

* * * * *

(h) * * *

(16) Texas Department of Labor and Standards Rules, paragraph 69(a)(3), pertaining to furnaces in the construction of modular homes that are covered products, is exempt from preemption. The building codes of the following localities in Texas, pertaining to furnaces that are covered products, are exempt from preemption:

* * * * *

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federal register

Monday
September 17, 1984

Part III

Department of the Interior

Minerals Management Service

Outer Continental Shelf, Southern California; Oil and Gas Lease Sale 80; Leasing System, Sale 80; Notices

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Southern California
Oil and Gas Lease Sale 80

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act of 1953 (43 U.S.C. 1331-1343), as amended (92 Stat. 629), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Manager (RM), Pacific Region, Minerals Management Service (MMS), 1340 West 6th Street, Los Angeles, California 90017. Bids may be delivered, either by mail or in person, to the above address until the Bid Submission Deadline, at 10:00 a.m., Pacific Standard Time (p.s.t.), October 16, 1984. Bids will not be accepted on the day of Bid Opening, October 17, 1984. Bids received by the RM later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RM prior to 12:00 p.m., p.s.t., October 16, 1984. Bids may not be withdrawn unless written withdrawal is received by the RM prior to 9:00 a.m., p.s.t., October 17, 1984. Bid Opening Time will be 10:00 a.m., p.s.t., October 17, 1984, at the Los Angeles Convention Center, 1201 South Figueroa Street, Room 212, Los Angeles, California 90015. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256. The list of restricted joint bidders which applies to this sale appeared in the Federal Register at 49 FR 1267 on March 30, 1984.

3. Method of Bidding. Tract numbers will not be used. A separate bid in a sealed envelope, labeled "Sealed Bid for Oil and Gas Lease Sale 80; (map number, map name (if applicable), and block number(s)), not to be opened until 10:00 a.m., p.s.t., October 17, 1984," must be submitted for each block or prescribed bidding unit bid upon. For example, a label would read as follows: "Sealed Bid for Oil and Gas Lease Sale 80, Leasing Map No. 6A, Block 55N 89W, not to be opened until 10:00 a.m., p.s.t., October 17, 1984." For those blocks which must be bid upon together as a bidding unit (see paragraph 12), it is recommended that all numbers of blocks comprising the bidding unit appear in the label on the sealed envelope. A suggested bid form appears in 30 CFR Part 256, Appendix A. In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior--Minerals Management Service. No bid for less than all of the unleased portion of a block or bidding unit as described in paragraph 12 will be considered. All documents must be executed in conformance with signatory authorizations on file. Partnerships also must submit or have on file in the Pacific Region a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus of $371 or more per hectare or $150 or more per acre, or fractions thereof. All leases resulting from this sale will provide for a yearly rental payment of $8.00 per hectare or $3.00 per acre, or fractions thereof. All leases awarded will provide for a minimum royalty of $8.00 per hectare or $3.00 per acre, or fractions thereof. The following systems will be used:

(a) Bonus Bidding with 16-2/3 Percent Royalty. Bids on the following blocks and bidding units offered must be submitted on a cash bonus basis with a fixed royalty of 16-2/3 percent. Leasing Map No. 6A, whole blocks: 39N72W, 37N72W; bidding unit blocks: 40N73W, 40N72W; split block: 54N82W. Leasing Map No. 6B, whole and partial blocks: 49N66W, 49N65W, 49N61W; split blocks: 50N62W, 40N71W, 34N54W; bidding unit blocks: 51N63W, 51N62W, 49N60W, 49N59W. Leasing Map No. 6C, whole blocks: 34N39W, 34N38W. Leasing Map No. 6D, whole and partial blocks: 14N57W, 13N56W, 11N60W, 10N60W, 10N59W. Leasing Map No. 6E, whole blocks: 9N59W, 9N58W, 8N58W. Official Protraction Diagram NI 11-10, San Clemente, whole and partial blocks: 462, 506, 507; bidding unit blocks: 418, 419.

(b) Bonus Bidding with a 12-1/2 Percent Royalty. Bids on the remaining blocks in this sale must be submitted on a cash bonus basis with a fixed royalty of 12-1/2 percent.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline, stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form 1140-8 (June 1982) and the Affirmative Action Representation Form, Form 1140-7 (June 1982). See paragraph 14, "Information to Lessees."

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid will be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Blocks. The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted and no lease for any block or bidding unit will be awarded to any bidder unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $371 or more per hectare or $150 or more per acre, or fractions thereof. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, or other applicable regulations, may be returned to the person submitting that bid by the RM and not considered for acceptance.

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I.

For this lease sale, MMS will utilize procedures for the electronic funds transfer (EFT) payment of four-fifths of the cash bonus bid and the first year's annual rental for each lease issued. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment by EFT utilizing the Federal Reserve Communications System and the Treasury Financial Communications System, payable to the Department of the Interior--MMS. The RM will provide more detailed instructions on making the EFT payments when bidders are qualified to submit bids at the sale. Bidders are referred to 30 CFR 218.155 (49 FR 8602, March 8, 1984).

11. Leasing Maps/Official Protraction Diagrams. Blocks or bidding units offered for lease may be located on the following Leasing Maps/Official Protraction Diagrams which may be purchased from the Pacific Region at the address stated in paragraph 2 of this Notice:

(a) OCS Leasing Maps--Channel Islands Area: (Maps 6A, 6B, 6D, and 6E sell for $1.00 each; Map 6C sells for $2.00.)

6A	(revised July 24, 1967)	6D	(approved August 8, 1966)
6B	(revised July 24, 1967)	6E	(approved August 8, 1966)
6C	(revised April 25, 1977)		

(b) Official Protraction Diagrams: (Sell for $2.00 each)

NI 11-10, San Clemente	(revised September 27, 1977)
NH 11-1, Bushnell Knoll	(approved December 12, 1979)

12. Description of the Areas Offered for Bids.

(a) Categories of blocks listed:

The lease sale area offered for bids is listed by Leasing Map or Official Protraction Diagram (OPD). One, two, or three categories appear under each map or OPD listed: (1) whole or partial blocks, (2) split blocks, and (3) blocks which comprise bidding units.

(1) Whole or partial blocks fall entirely under the jurisdiction of the Federal Government. Each block must be bid on separately. Whole blocks on maps contain 5,760 acres; whole blocks on OPD's contain 2,304 hectares. Acres and hectares for whole or partial blocks listed in this paragraph may be found on the appropriate map or OPD.

(2) Split blocks are blocks divided into two portions. This occurs where the 3-geographical-mile-line or the boundary of the Channel Islands National Marine Sanctuary intersects a block and divides it into Federal and State portions or into available and withdrawn Federal portions. Each split block listed below represents the available Federal portion and must be bid on separately.

(3) Bidding units are a combination of portions of adjacent blocks. Both parts of a bidding unit must be bid on together.

(b) The following blocks or portions of blocks are offered for bids:

OCS Leasing Map No. 6A, Channel Islands

(1) Whole or Partial Blocks:

55N89W through 55N87W	49N87W 1/	40N79W through 40N78W
54N89W through 54N87W	49N86W through 49N85W	39N77W
53N89W 1/	49N76W through 49N72W	39N72W
53N88W through 53N86W	48N86W 1/	38N76W through 38N72W
52N88W 1/	48N85W	37N75W through 37N72W
52N87W through 52N81W	48N75W through 48N73W	36N75W through 36N73W
51N87W through 51N72W	42N82W through 42N81W	
50N87W through 50N72W	41N80W through 41N79W	

1/ That portion North and East of a diagonal line from the NW corner to the SE corner.

OCS Leasing Map No. 6A Continued

(2) Split Blocks:

Blocks	Acres	Blocks	Acres	Blocks	Acres
54N82W	3795.99	48N77W	5727.83	41N78W	5038.15
49N84W	5754.03	48N72W	5602.12	40N77W	4776.33
49N83W	4378.54	47N77W	1796.46	40N76W	1262.15
49N81W	4235.61	47N76W	4840.12	39N76W	5758.35
49N80W	3376.41	47N75W	3665.08	39N75W	4741.80
49N79W	3950.41	47N74W	3443.39	39N74W	4693.90
48N84W	4118.04	42N80W	4992.09	39N73W	5749.64
48N78W	1776.75				

(3) Bidding Units:

Blocks	Acres	Total Acres	Blocks	Acres	Total Acres
47N85W 1/	2880.00		42N79W	4129.48	
47N84W	1406.43	4286.43	42N78W	1511.86	5641.34
47N73W	2653.35		40N73W	975.14	
47N72W	996.55	3649.90	40N72W	3410.96	4386.10
43N82W	2614.78				
43N81W	439.80	3054.58			

OCS Leasing Map No. 6B, Channel Islands

(1) Whole or Partial Blocks:

51N71W
51N70W (W½W½)
50N71W through 50N70W
49N71W through 49N70W
49N66W through 49N65W
49N61W
48N67W
48N65W through 48N64W
42N54W through 42N53W
41N54W through 41N53W
40N70W
40N54W through 40N53W
39N68W
39N54W through 39N53W
38N68W
38N55W through 38N53W
37N68W
37N55W through 37N53W
36N68W
36N55W through 36N53W
35N55W through 35N53W
34N52W through 34N40W
33N51W through 33N40W
32N51W through 32N48W
32N42W through 32N40W
31N40W

(2) Split Blocks:

Blocks	Acres	Blocks	Acres	Blocks	Acres
50N62W	5718.74	47N65W	2860.19	34N53W	5005.09
48N71W	3671.80	46N62W	485.64	33N52W	4268.57
48N70W	3690.13	42N62W	243.34	32N47W	4815.71
48N69W	4673.61	42N59W	1567.84	32N44W	2398.91
48N68W	5742.67	40N71W	5043.18	32N43W	4680.61
47N66W	3318.67	34N54W	3624.78	31N41W	5093.28

1/ That portion North and East of a diagonal line from the NW corner to the SE corner.

OCS Leasing Map No. 6B Continued

(3) Bidding Units:

Blocks	Acres	Total Acres	Blocks	Acres	Total Acres
51N63W	2880.00(S½)		32N46W	1370.39	
51N62W	1672.17	4552.17	32N45W	1561.01	2931.40
49N60W	4098.18		31N43W	269.09	
49N59W	378.76	4476.94	31N42W	2971.95	3241.04
47N68W	382.54		30N41W	214.50	
47N67W	1475.54	1858.08	30N40W	4631.63	4846.13
47N64W	2058.49				
47N63W	2919.33	4977.82			

OCS Leasing Map No. 6C, Channel Islands

(1) Whole or Partial Blocks:

34N39W through 34N38W
33N39W through 33N38W
32N39W through 32N37W
31N39W through 31N36W
30N39W through 30N36W
29N38W through 29N36W
28N38W through 28N36W
28N35W 2/
27N38W through 27N35W
27N34W 2/
26N38W through 26N34W
26N33W 2/
25N39W through 25N33W
25N32W 2/
24N39W through 24N32W
24N31W 2/
23N39W through 23N31W
23N30W 2/
22N34W through 22N30W
22N29W 2/
21N33W through 21N29W
21N28W 2/
20N33W through 20N28W
19N32W through 19N28W
18N32W through 18N28W
17N32W through 17N28W
16N32W through 16N28W
15N31W through 15N28W

(2) Split Blocks:

Blocks	Acres	Blocks	Acres
29N39W	5653.79	28N39W	3970.44

OCS Leasing Map No. 6D, Channel Islands

(1) Whole or Partial Blocks:

28N46W
27N46W
26N47W through 26N45W
25N54W
25N49W through 25N40W
24N55W through 24N53W
24N50W through 24N40W
23N55W through 23N53W
23N50W through 23N40W
22N54W
22N50W through 22N48W
22N43W through 22N40W
21N48W
21N43W through 21N40W
20N42W through 20N40W
18N59W through 18N56W
17N58W through 17N55W
16N58W through 16N54W
15N58W through 15N53W
14N60W through 14N52W
13N60W through 13N52W
12N60W through 12N51W
11N60W through 11N50W
10N60W through 10N50W

2/ That portion South and West of a diagonal line from the NW corner to the SE corner.

OCS Leasing Map No. 6D Continued

(2) Split Blocks:

Blocks	Acres	Blocks	Acres
29N40W	1490.64	20N43W	5393.84
22N44W	5742.24	19N43W	1533.67

(3) Bidding Units:

Blocks	Acres	Total Acres	Blocks	Acres	Total Acres
22N47W	4123.51		21N44W	3563.68	
21N47W	883.96	5007.47	20N44W	646.21	4209.89
22N46W	2009.63				
22N45W	3303.07	5312.70			

OCS Leasing Map No. 6E, Channel Islands

(1) Whole or Partial Blocks:

9N60W through 9N58W	7N60W through 7N58W	5N60W through 5N58W
8N60W through 8N58W	6N60W through 6N58W	4N60W through 4N58W

Official Protraction Diagram NI 11-10, San Clemente

(1) Whole or Partial Blocks:

462 through 469	682 through 684	821 through 825
506 through 512	691 through 693	857
550 through 555	723 through 727	864 through 869
594 through 598	734 through 737	907 through 913
605	767 through 771	950 through 957
638 through 641	778 through 781	994 through 1001
648 through 649	811 through 814	

(3) Bidding Units:

Blocks	Hectares	Total Hectares	Blocks	Hectares	Total Hectares
418	121.59		422	255.82	
419	203.22	324.81	423	273.30	529.12
420	220.78		424	290.76	
421	238.31	459.09	425	308.19	598.95

Official Protraction Diagram NH 11-1, Bushnell Knoll

(1) Whole Blocks:

21 through 29	153 through 161	285 through 293
65 through 73	197 through 205	329 through 337
109 through 117	241 through 249	554 through 556

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale for the following blocks or indicated portions of blocks will be for an initial term of 10 years.

OCS Leasing Map No. 6A, Channel Islands

53N89W	42N82W	36N75W

OCS Leasing Map No. 6B, Channel Islands

39N68W	38N68W	37N53W
39N53W	38N53W	36N53W

OCS Leasing Map No. 6C, Channel Islands

25N39W	21N33W through 21N32W	18N32W through 18N28W
24N39W through 24N37W	20N33W through 20N32W	17N31W through 17N28W
24N35W	19N32W through 19N31W	16N30W through 16N28W
23N39W through 23N35W	19N29W through 19N28W	15N29W through 15N28W
22N34W through 22N33W		

OCS Leasing Map No. 6D, Channel Islands

28N46W	22N54W	16N56W through 16N54W
27N46W	22N50W	15N55W through 15N53W
26N47W through 26N45W	22N46W through 22N40W	14N54W through 14N52W
25N54W	21N44W through 21N43W	13N52W
25N49W through 25N40W	21N41W through 21N40W	12N51W
24N55W through 24N53W	20N44W through 20N43W	11N53W
24N47W through 24N40W	20N41W through 20N40W	10N54W through 10N51W
23N55W through 23N53W	19N43W	
23N50W	18N58W through 18N56W	
23N46W through 23N40W	17N57W through 17N55W	

OCS Leasing Map No. 6E, Channel Islands

6N60W	5N60W through 5N58W	4N60W through 4N58W

Official Protraction Diagram NI 11-10, San Clemente

Blocks

422 through 425	691 through 693	821 through 825
466 through 469	723 through 727	857
511 through 512	734 through 737	864 through 868
605	767 through 771	907 through 912
638 through 639	778 through 781	950 through 956
648 through 649	811 through 814	994 through 1001
682 through 684		

Official Protraction Diagram NH 11-1, Bushnell Knoll

Blocks

65 through 71	197 through 205	329 through 337
109 through 117	241 through 249	554 through 556
153 through 161	285 through 293	

All other leases issued as a result of this sale will be for an initial term of 5 years. Leases issued as a result of this sale will be on Form MMS-2005 (August 1982), available from the RM, Pacific Region, at the address stated in paragraph 2.

(b) Except as otherwise noted, the following stipulations will be included in each lease resulting from this sale.

Stipulation No. 1--Protection of Biological Resources

(a) If the Regional Manager (RM) has reason to believe that biological populations or habitats exist and require protection, the RM shall give the lessee notice that the lessor is invoking the provisions of this stipulation and the lessee shall comply with the following requirements. Prior to any drilling activity or the construction or placement of any structure for exploration or development on lease areas including, but not limited to, well drilling and pipeline and platform placement, hereinafter referred to as "operation," the lessee shall conduct site specific surveys as approved by the RM and in accordance with prescribed biological survey requirements to determine the existence of any special biological resource including, but not limited to:

(1) Very unusual, rare, or uncommon ecosystems or ecotones;

(2) A species of limited regional distribution that may be adversely affected by any lease operation.

If the results of such surveys suggest the existence of a special biological resource that may be adversely affected by any lease operation, the lessee shall: 1) relocate the site of such operation so as not to adversely affect the resources identified; 2) modify operations in such a way as not to adversely affect the significant biological populations or habitats deserving protection; or 3) establish to the satisfaction of the RM on the basis of the site specific survey, either that such operation will not have a significant adverse effect upon the resource identified or that a special biological resource does not exist. The RM will review all data submitted and determine, in writing, whether a special biological resource exists and whether it may be significantly affected by the lessee's operations. The lessee may take no action until the RM has given the lessee written directions on how to proceed.

(b) The lessee agrees that, if any area of biological significance should be discovered during the conduct of any operations on the leased area, the lessee shall report immediately such findings to the RM and make every reasonable effort to preserve and protect the biological resources from damage until the RM has given the lessee directions with respect to its protection.

Stipulation No. 2--Protection of Cultural Resources

(a) "Cultural resource" means any site, structure, or object of historic or prehistoric archeological significance. "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(b) If the Regional Manager (RM) believes a cultural resource may exist in the lease area, the RM will notify the lessee in writing. The lessee shall then comply with subparagraphs (1) through (3).

(1) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RM, to determine the potential existence of any cultural resource that may be affected by operations. The report, prepared by an archeologist and geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent cultural and environmental information. The lessee shall submit this report to the RM for review.

(2) If the evidence suggests that a cultural resource may be present, the lessee shall either:

(i) Locate the site of any operations so as not to adversely affect the area where the cultural resource may be; or

(ii) Establish to the satisfaction of the RM that a cultural resource does not exist or will not be adversely affected by operations. This shall be done by further archeological investigation, conducted by an archeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RM. A report on the investigation shall be submitted to the RM for review.

(3) If the RM determines that a cultural resource is likely to be present on the lease and may be adversely affected by operations, the RM will notify the lessee immediately. The lessee shall take no action that may adversely affect the cultural resource until the RM has told the lessee how to protect it.

(c) If the lessee discovers any cultural resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RM. The lessee shall make every reasonable effort to preserve the cultural resource until the RM has told the lessee how to protect it.

Stipulation No. 3--Operational Controls, Electromagnetic Emissions, and Evacuation

(a) The lessee agrees that, prior to operating or causing to be operated on its behalf boat or aircraft traffic into individual designated warning areas, the lessee shall coordinate and comply with instructions from the Commander, Western Space and Missile Center (WSMC), the Commander, Pacific Missile Test Center (PMTC), and the Commander, Fleet Area Control and Surveillance Facility (FACSFAC), or other appropriate military agency. Such coordination and instruction will provide for positive control of boats and aircraft operating in warning areas at all times.

(b) The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from individual, designated defense warning areas in accordance with requirements specified by the Commander, WSMC, the Commander, PMTC, and the Commander, FACSFAC, or other appropriate military agency, to the degree necessary to prevent damage to or unacceptable interference with Department of Defense flight, testing, or operations activities conducted within individual, designated warning areas. Necessary monitoring, control, and coordination with the lessee, its agents, employees, invitees, independent contractors or subcontractors will be affected by the Commander of the appropriate onshore military installation conducting operations in the particular warning area: provided, however, that control of such electromagnetic emissions shall permit at least one continuous channel of communication between a lessee, its agents, employees, invitees, independent contractors or subcontractors, and onshore facilities.

(Paragraph (c) of this stipulation will only be included in leases issued for the following blocks:)

OCS Leasing Map No. 6A, Channel Islands

55N89W through 55N87W	49N81W through 49N79W	42N82W through 42N78W
54N89W through 54N87W	49N76W through 49N75W	41N80W through 41N78W
54N82W	48N86W through 48N84W	40N79W through 40N76W
53N89W through 53N86W	48N78W through 48N77W	40N73W through 40N72W
52N88W through 52N81W	48N75W through 48N74W	39N77W through 39N72W
51N87W through 51N76W	47N85W through 47N84W	38N76W through 38N72W
50N87W through 50N75W	47N77W through 47N73W	37N75W through 37N72W
49N87W through 49N83W	43N82W through 43N81W	36N75W through 36N73W

OCS Leasing Map No. 6B, Channel Islands

40N71W through 40N70W	38N68W	36N68W
39N68W	37N68W	

OCS Leasing Map No. 6D, Channel Islands

25N54W	17N58W through 17N55W	13N60W through 13N52W
24N55W through 24N53W	16N58W through 16N54W	12N60W through 12N51W
23N55W through 23N53W	15N58W through 15N53W	11N60W through 11N50W
22N54W	14N60W through 14N52W	10N60W through 10N50W
18N59W through 18N56W		

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N58W	7N60W through 7N58W	5N60W through 5N58W
8N60W through 8N58W	6N60W through 6N58W	4N60W through 4N58W

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418 through 425	648 through 649	811 through 814
462 through 469	682 through 684	821 through 825
506 through 512	691 through 693	857
550 through 555	723 through 727	864 through 869
594 through 598	734 through 737	907 through 913
605	767 through 771	950 through 957
638 through 641	778 through 781	994 through 1001

Official Protraction Diagram NH 11-1, Bushnell Knoll

21 through 29	153 through 161	285 through 293
65 through 73	197 through 205	329 through 337
109 through 117	241 through 249	554 through 556

(c) The lessee, recognizing that mineral exploration and exploitation and recovery operations of the leased areas of submerged lands can impede tactical military operations, hereby recognizes and agrees that the United States reserves and has the right to temporarily suspend operations of the lessee under this lease in the interests of national security requirements. Such temporary suspension of operations, including the evacuation of personnel and appropriate sheltering of personnel not evacuated (appropriate shelter shall mean the protection of all lessee personnel for the entire duration of any Department of Defense activity from flying or falling objects or substances) will come into effect upon the order of the Regional Manager (RM) after consultation with the Commander, WSMC, Vandenberg Air Force Base, or other appropriate military agency, or higher authority, when national security interests necessitate such action. It is understood that any temporary suspension of operations for national security may not exceed 72 hours; however, any such suspension may be extended by order of the RM. During such periods, equipment may remain in place.

Stipulation No. 4--Hold Harmless

Whether or not compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property which occurs in, on, or above the Outer Continental Shelf, to any person or persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the Outer Continental Shelf, if such injury or damage to such person or property occurs by reason of the activities of

any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents, or employees, being conducted as a part of, or in connection with, the programs and activities of the Western Space and Missile Center, the Pacific Missile Test Center, or other appropriate military agency.

Notwithstanding any limitations of the lessee's liability in section 14 of the lease, the lessee assumes the risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of their officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installations and agencies, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors or subcontractors, or any of their officers, agents, or employees and whether such claims might be sustained under theories of strict or absolute liability or otherwise.

Stipulation No. 5--Transportation of Hydrocarbon Products

(a) Pipelines will be required: (1) if pipeline rights-of-way can be determined and obtained; (2) if laying of such pipelines is technologically feasible and environmentally preferable; and (3) if, in the opinion of the lessor, pipelines can be laid without net social loss, taking into account any incremental costs of pipelines over alternative methods of transportation and any incremental benefits in the form of increased environmental protection or reduced multiple-use conflicts. The lessor specifically reserves the right to require that any pipeline used for transporting production to shore be placed in certain designated management areas. In selecting the means of transportation, consideration will be given to any recommendation of the Pacific Regional Technical Working Group with the participation of Federal, State, and local governments and the industry.

(b) Following the development of sufficient pipeline capacity, no crude oil production will be transported by surface vessel from offshore production sites, except in the case of emergency. Determinations as to emergency conditions and appropriate responses to these conditions will be made by the Regional Manager.

(c) Where the three criteria set forth in the first sentence of this stipulation are not met and surface transportation must be employed, all vessels used for carrying hydrocarbons to shore from the leased area will conform with all standards established for such vessels, pursuant to the Ports and Waterways Safety Act of 1972 as amended (33 U.S.C. 1221, et seq.).

Stipulation No. 6--Wells and Pipelines

(a) Wells. Subsea wellheads and temporary abandonments, or suspended operations that leave protrusions above the sea floor, shall be protected, if feasible, in such a manner as to allow commercial trawl gear to pass over the structure without snagging or otherwise damaging the structure or the fishing gear. Latitude and longitude coordinates of these structures, along with water depths, shall be submitted to the Regional Manager. The coordinates of such structures will be determined by the lessee utilizing state-of-the-art navigation systems with the accuracy of at least ±50 feet at 200 miles.

(b) Pipelines. All pipelines, unless buried, including gathering lines, shall have a smooth-surface design. In the event that an irregular pipe surface is unavoidable due to the need of valves, anodes, or other structures, those irregular surfaces shall be protected in such a manner as to allow trawl gear to pass over the object without snagging or otherwise damaging the structure or the fishing gear.

Stipulation No. 7--Fisheries and Wildlife Training Program

The lessee shall include in its exploration and development plans, submitted under 30 CFR 250.34, a proposed fisheries and wildlife training program for review and approval by the Regional Manager. The training program shall be for all personnel involved in exploration, development, and production operations, and for platform and shorebased supervisors. The purpose of the training program shall be to familiarize persons working on the project of the value of the commercial fishing industry, the methods of offshore fishing operations, the potential conflicts between fishing operations and offshore oil and gas activities, the locations of marine mammal and bird rookery sites in the area, the locations of gray whale and other endangered whale migration routes in the area, the seasonal abundance and sensitivities of these animals to disturbance, and the Federal laws that have been established to protect endangered and threatened species from harassment or injury. Additionally, the lessee shall include in the training program required above, information on the behavior of gray whales migration and how to avoid conflicts with this migration. The program shall be formulated and implemented by qualified instructors.

Stipulation No. 8--Hazardous Waste

(This stipulation will be included in leases issued for the following blocks:)

(a) OCS Leasing Map No. 6B: 34N47W.

(b) OCS Leasing Map No. 6C: 23N34W, 20N31W, 20N30W, 17N29W, 17N28W, 16N30W, 16N29W, 16N28W, 15N30W, 15N29W, 15N28W.

(c) OCS Leasing Map No. 6D: 26N47W, 25N49W, 25N48W, 24N50W.

Prior to any drilling activity or the construction or placement of any structure for exploration or development on the lease, including but not limited to well drilling and pipeline and platform placement, hereinafter in this stipulation referred to as "operation," the lessee shall investigate the potential existence of any radioactive waste, munitions, or toxic chemical waste on the lease. This investigation shall consist of examination of data acquired in the course of the shallow geologic hazard survey as conducted in accordance with the current Notice to Lessees issued by the Regional Manager (RM) and examination of the dump site records. This survey shall be over an acceptable grid and shall employ a magnetometer, water depth recorder, and dual side scan sonar or other equipment as determined necessary by the RM. If the results of the survey indicate the presence of such dumped materials, further investigation as to their nature may be required. A report of this investigation shall be included in the shallow geologic hazards survey report.

If the presence of dumped material is established, the lessee shall: (1) locate the site of the operation so as not to disturb the material; (2) conduct the operation in a manner that minimally disturbs the ocean floor (e.g., dynamically positioned drilling vessel); or (3) establish to the satisfaction of the RM, on the basis of further investigation, that disturbance of the material would not result in any adverse effects on the human or marine environments.

Stipulation No. 9--Protection of Important Biological Resources

(The following part of this stipulation will be included on leases issued on blocks listed under (i) and (ii) below:)

(i) OCS Leasing Map No. 6A, Channel Islands

54N82W	50N78W through 50N77W	42N82W through 42N78W
52N85W through 52N84W	49N83W	41N80W through 41N78W
52N82W	49N81W through 49N79W	40N79W through 40N76W
51N85W	49N74W	40N73W through 40N72W
51N80W through 51N79W	48N84W	39N77W through 39N74W
51N77W through 51N72W	48N73W through 48N72W	38N76W through 38N72W
50N86W through 50N84W	47N77W through 47N72W	37N75W through 37N73W
50N82W through 50N81W	43N82W through 43N81W	

OCS Leasing Map No. 6B, Channel Islands

51N62W	48N65W through 48N64W	36N55W through 36N53W
50N62W	47N68W through 47N63W	35N54W through 35N53W
49N66W through 49N65W	46N62W	34N54W through 34N40W
49N61W through 49N59W	44N54W	33N52W through 33N50W
48N71W through 48N67W	37N55W through 37N53W	32N51W through 32N50W

(ii) OCS Leasing Map No. 6D, Channel Islands

16N58W through 16N57W	13N59W through 13N54W	11N60W through 11N55W
15N58W through 15N55W	12N60W through 12N54W	10N60W through 10N55W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N58W	7N59W through 7N58W	6N58W
8N59W through 8N58W		

Official Protraction Diagram NI 11-10, San Clemente

418 through 421	506 through 510	594 through 598
462 through 465	550 through 554	638 though 641

(a) The lessee shall be required to maintain state-of-the-art oil spill containment and cleanup equipment (in accordance with the requirements of the previously agreed upon U.S. Coast Guard (USCG) Notice No. 5740) onsite and in the vicinity of exploratory drilling and development and production operations. In addition, suitable means of deployment and personnel trained in deployment and use of this equipment must be available. Such deployment for exploration, development, and production operations shall have the capability of immediate initiation of oil spill containment and cleanup.

(The following part of this stipulation will be included in leases issued on blocks listed under (i) above:)

(b) In the case of spills larger than can be contained by equipment on exploration vessels or production platforms, the lessee shall maintain state-of-the-art equipment on the vessels which, based on the proximity to the Channel Islands National Marine Sanctuary, are capable of responding to a request for assistance and being on the scene within 2 to 4 hours of the request if local conditions permit. The lessee shall install on exploration vessels and production platforms real-time monitoring capability to assist the USCG in acquiring meteorological and oceanographic data necessary to make accurate predictions of the trajectory of oil spills. This information shall support oil spill containment and cleanup operations. When a spill greater than 1 barrel occurs, the lessee shall notify the California Office of Emergency Services within 24 hours of such a spill.

(The following part of this stipulation will be included in leases issued on blocks listed under (ii) above:)

(c) Development and production operations will be required to include the capability to automatically detect the loss of oil and gas at any time.

Stipulation No. 10--Testing of Oil Spill Containment Equipment

The lessee shall conduct semiannual full-scale drills at the request of the lessor for platforms and operator-controlled contracted cleanup vessels for deploying equipment in open water to test the equipment and the contingency plan. These drills must involve all primary equipment identified in the oil spill contingency plans as satisfying Outer Continental Shelf Operating Order No. 7. At least two of these drills shall include the primary equipment controlled and operated by the appropriate cooperative. These drills will be unannounced and held under realistic environmental conditions in which deployment and operations can be accomplished without endangering safety of personnel. Representatives of the U.S. Coast Guard, Minerals Management Service, and California Coastal

Commission may be present as observers. The lessor's inspectors will frequently inspect oil and gas facilities where oil spill containment and cleanup equipment are maintained in order to assure readiness.

Stipulation No. 11--Onshore Oil Processing

Any initial processing of oil will be conducted at an onshore facility, if feasible, subject to the granting of necessary permits by local authorities within a reasonable period of time as provided for in State of California law. If after review by local and State authorities these permits cannot be acquired, then the Regional Manager shall determine, in cooperation and participation with the State, what further action needs to be taken in regard to the lessee's development and production plan. Exceptions to the initial onshore processing include standard oil/gas/water separation processes and necessary treatment of oil prior to being pumped from the platform into a pipeline to shore, if pipeline transport is determined practicable.

Stipulation No. 12--Protection of Commercial Fisheries

(a) The lessee, operator(s), subcontractor(s), and all personnel involved in exploration, development, and production operations shall endeavor to minimize conflicts between the oil and gas industry and the commercial fishing industry.

Prior to submitting a plan of exploration or development to the lessor, appropriate oil and gas personnel shall contact potentially affected commercial fishermen or their representatives to discuss potential conflicts with the siting, timing, and methods proposed. Through this consultation the lessee shall assure that, whenever feasible, exploratory and development activities are compatible with seasonal fishing operations and will not result in permanently barring commercial fishing from important fishing grounds.

A discussion of the resolutions reached during this consultation process and a discussion of any unresolved conflicts shall be included in the Plan of Exploration or Development/Production. The lessee shall send a copy of the Plan of Exploration or Development/Production to the fisheries liasion office and the marine extension office at the same time they are submitted to the lessor to allow concurrent review and comment as part of the lessor's plan approval process.

In accordance with 30 CFR 250.34-1(b)(1), copies of such plans are sent to appropriate State agencies, such as the California State Lands Commission, California Department of Fish and Game, and the California Coastal Commission.

(b) In particular, the lessee shall show in the Plan of Exploration or Development/Production crew and supply boat operation routes which will be used to minimize impacts to commercial fishing, marine mammals, and endangered and threatened species. Conflicts foreseen in the planning stages or that develop later shall be resolved whenever feasible and as quickly as possible.

(c) The lessee also shall include in the Plan of Development/Production analyses of the effects of its operations on the allocation and use of local dock space by fishing boats and crew and supply boats. These analyses shall include present (baseline) uses, predicted oil and gas uses which increase the level of demand, and an assessment of individual and cumulative impacts. Conflicts foreseen in the planning stages or that develop later shall be resolved whenever feasible and as quickly as possible.

(d) The lessee shall be required to employ jack-up drilling rigs for drilling exploratory wells in primary commercial fishing trawl grounds as determined by the Regional Manager (RM) when water depths are 275 feet or less. The RM may approve other drilling vessels when geological or bottom conditions prohibit the use of jack-ups. When considering the use of other drilling vessels, the RM will consult with the California Department of Fish and Game to determine the effects of the vessels on commercial fishing.

(e) All activities associated with exploration and development operations shall be conducted to avoid the creation of obstacles to commercial fishing operations. If the RM has reason to believe that the site has not been adequately cleared, additional surveys shall be required to detect the location of any obstacles to commercial fishing.

Stipulation No. 13--Protection of Marine Biota

All drilling muds discharged from exploration and development and production operations must contain only those components approved by the U.S. Environmental Protection Agency in accordance with National Pollutant Discharge Elimination System permits issued for this lease.

When drilling fluid discharges are proposed within 1000 meters of Areas of Special Biological Significance, a National Marine Sanctuary, or other sensitive areas as determined by the Regional Manager, the lessee shall include the results of a drilling fluids dispersion model for anticipated discharges in a Plan of Exploration or Development/Production.

Stipulation No. 14--Disposal of Drilling Discharges

(This stipulation will be included in leases issued on the following blocks:)

OCS Leasing Map No. 6D, Channel Islands

16N58W through 16N57W
15N58W through 15N55W
14N59W through 14N54W
13N59W through 13N54W
12N60W through 12N54W
11N60W through 11N55W
10N60W through 10N55W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N58W
8N59W through 8N58W
7N59W through 7N58W
6N58W

Official Protraction Diagram NI 11-10, San Clemente

418 through 421	506 through 510	594 through 598
462 through 465	550 through 554	638 through 641

The Regional Manager (RM) may require the lessee to modify muds and cutting discharge operations or transport the material to disposal sites approved by the U.S. Environmental Protection Agency (EPA). After consultation with the EPA, the RM shall determine the method of disposal based upon review of the data obtained from the surveys and studies established pursuant to Stipulation No. 1 and from other relevant sources of information.

Stipulation No. 15--Suspension of Operations

(This stipulation will be included in the leases issued for the following blocks in water depths of 400-900 meters:)

OCS Leasing Map No. 6A, Channel Islands

55N89W through 55N87W	49N80W through 49N79W	41N80W through 41N78W
54N89W through 54N87W	49N76W through 49N72W	40N79W through 40N76W
53N89W through 53N86W	48N86W through 48N85W	39N77W through 39N75W
52N88W through 52N83W	48N75W through 48N72W	38N76W through 38N74W
51N87W through 51N80W	47N85W through 47N84W	37N75W through 37N74W
51N77W through 51N72W	43N82W through 43N81W	36N75W through 36N73W
50N87W through 50N72W	42N81W through 42N79W	
49N87W through 49N83W		

OCS Leasing Map No. 6B, Channel Islands

51N70W	39N54W	34N52W through 34N40W
50N71W through 50N70W	38N55W through 38N54W	33N51W through 33N40W
49N71W through 49N70W	37N68W	32N51W
48N71W through 48N69W	37N55W through 37N54W	32N46W through 32N40W
42N54W through 42N53W	36N68W	31N42W through 31N40W
41N54W through 41N53W	36N54W	30N41W through 30N40W
40N54W through 40N53W	35N53W	

OCS Leasing Map No. 6C, Channel Islands

33N39W	27N38W through 27N34W	20N31W through 20N28W
32N39W through 32N38W	26N37W through 26N33W	19N30W
31N39W through 31N37W	24N34W through 24N31W	16N32W through 16N31W
30N39W through 30N36W	23N34W through 23N30W	
29N39W through 29N36W	22N32W through 22N29W	
28N39W through 28N35W	21N31W through 21N28W	

OCS Leasing Map No. 6D, Channel Islands

29N40W	18N59W	11N55W through 11N54W
25N49W	17N58W	11N52W through 11N50W
24N50W through 24N48W	16N58W through 16N57W	10N55W
23N50W through 23N48W	15N56W	10N50W
22N49W through 22N47W	14N55W	
21N48W through 21N47W	13N54W through 13N52W	
21N42W	12N54W through 12N51W	

OCS Leasing Map No. 6E, Channel Islands

8N60W through 8N59W	7N60W through 7N59W	6N59W through 6N58W

Official Protraction Diagram NI 11-10, San Clemente

421	555	639
465	594	640
510	595	641

The Director shall suspend or temporarily prohibit production or any other operation or activity pursuant to this lease if such suspension or cessation of operations or activities is necessary to complete operations or activities described in a development and production plan approved by the Regional Manager pursuant to 30 CFR part 250.34.

Stipulation No. 16--Protection of Mackerel Fishery in San Pedro Bay

(This stipulation will be included in leases issued for the following blocks: Leasing Map No. 6B: 34N40W, 33N40W; Leasing Map No. 6C: 34N39W, 34N38W, 33N39W, 33N38W, 32N39W, 32N38W, 32N37W, 31N37W.)

(a) The lessee shall be required to employ jack-up drilling rigs for drilling exploratory wells as determined by the Regional Manager (RM) when water depths are 275 feet or less. The RM may approve other drilling vessels when geological or bottom conditions prohibit the use of jack-ups. When considering the use of other drilling vessels, the RM will consult with the California Department of Fish and Game to determine the effects of the vessels on commercial fishing.

(b) Lessees shall not employ pendant buoys on drilling vessels or shall place pendant buoys at a depth sufficient to avoid conflict with the mackerel fishery on these blocks. Anchor patterns will be designed to minimize displacement area.

Stipulation No. 17--Protection of Air Quality

Lessees shall comply with the following requirements until the Minerals Management Service completes rulemaking procedures concerning air quality regulations applicable to oil and gas operations on the Outer Continental Shelf off California. Any revisions to the current air quality rules will be applied to all exploratory and development/production operations on leases issued as a result of this sale.

(a) For drilling vessels used in exploration activities, the lessee shall apply control technologies for NO_x identified by the Regional Manager (RM) or apply other control measures that result in equivalent emissions limitations. The lessee shall use only those pollution control technologies which can be approved by the U.S. Coast Guard (USCG), the American Bureau of Shipping (ABS), and/or other agencies, as appropriate.

(b) The lessee shall provide the RM with the schedule and location of proposed exploration activities at least 2 months in advance of the activities.

(c) For all plans of development/production, the lessee shall provide, in a manner specified by the RM, an evaluation of the impacts of emissions of NO_x and VOC on onshore concentrations of NO_2 and O_3.

(d) For development/production facilities and for oil transport vessels while attached to the facility, the lessee shall apply control technologies for NO_x and VOC identified by the RM, or apply other control measures that result in equivalent emission limitations. The lessee shall use only those pollution control technologies which can be approved by the USCG, the ABS, and/or other agencies, as appropriate.

(e) The lessee shall install best available control technology, approved by the RM and by the USCG, the ABS, and/or other agencies, as appropriate, to reduce VOC emissions resulting from the transfer of oil from storage facilities to a transport vessel.

14. Information to Lessees.

(a) Information on MOU with DOT on Pipelines. Bidders are advised that the Departments of Interior and Transportation have entered into a Memorandum of Understanding dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(b) Information on Unitization. Bidders are advised that in accordance with section 16 of each lease offered, the lessor may require a lessee to operate under a unit, pooling, or drilling agreement, and that the lessor will give particular consideration to requiring unitization in instances where one or more reservoirs underlie two or more leases with a different royalty rate.

(c) Information on 10-Year Leases. For those blocks identified in paragraph 4(a) as having lease terms with an initial period of 10 years, bidders are advised that pursuant to 30 CFR 250.34-1(a)(3), the lessee shall submit to the Minerals Management Service (MMS) either an exploration plan or a general statement of exploration intention prior to the end of the ninth lease year.

(d) Information on Affirmative Action. Revision of Department of Labor regulations of Affirmative Action requirements for government contractors (including lessees) have been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Should changes become effective at any time before the issuance of leases resulting from this sale, section 18 of the lease form (Form MMS-2005, August 1982), would be deleted from leases resulting from this sale. In addition, existing stocks of the Affirmative Action forms described in paragraph 5 of this notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Pending the issuance of revised versions of Forms 1140-7 and 1140-8, submission of Form 1140-7 (June 1982) and Form 1140-8 (June 1982) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing Affirmative Action forms.

(e) Information on Navigation Safety. Surface occupancy or other activities which would, in the opinion of the U.S. Coast Guard (USCG), create a hazard to vessel traffic may be restricted or subject to other regulatory measures under the USCG's authority. Such areas include, but are not limited to, vessel safety fairways, precautionary areas, or vessel traffic separation schemes established by the USCG pursuant to the Ports and Waterways Safety Act of 1972 as amended (33 USC 1221, et seq.). These types of routing measures exist and additional ones are presently being considered within the proposed sale area. According to the rules and regulations of the Eleventh Coast Guard District, permanent surface structures will not be permitted in vessel traffic lanes or associated buffer zones. Further, temporary exploratory wells will not be permitted in the lanes and will not be permitted in the buffer zones if the location of the proposed drilling is found by the USCG to pose an unacceptable hazard to navigation.

(f) Information on U.S Army Corps of Engineers Permits. The U.S. Army Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the Outer Continental Shelf (OCS) in accordance with section 4(e) of the OCS Lands Act, as amended.

(g) Information on Protection of Marine Mammals.

(1) Activities which result in harm to, or which jeopardize an endangered species, including the gray whale, shall be prohibited by appropriate Federal officials acting pursuant to the Endangered Species Act and the Marine Mammals Protection Act.

(2) Aircraft should operate to reduce effects of aircraft disturbances on seabird colonies and marine mammals, including migrating gray whales, consistent with aircraft safety, at distances from the coastline and at altitudes for specific areas identified by the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service, and the California Department of Fish and Game (CDFG). A minimum altitude of 1,000 feet is recommended near the Channel Islands National Marine Sanctuary to minimize potential disturbances. The CDFG and FWS recommend minimum altitude restrictions over many of the rookeries and colonies.

(h) Information on Protection of Commercial Fishing. The MMS will be in close contact with affected harbor districts in reviewing analyses of the effects of oil and gas operations on the allocation and use of local dock space by fishing boats and crew and supply boats. These analyses will be included in subsequent environmental documents prepared by the MMS.

(i) Information on Protection of Biologically Significant Areas. Prior to invoking Stipulation No. 1, the Regional Manager (RM) will consult with the California Department of Fish and Game on the biological stipulation. Such consultation will address the blocks which will be surveyed and the classes of biota to be considered. Special consideration will be given to the following blocks located on the Tanner and Cortez Banks:

OCS Leasing Map No. 6D, Channel Islands

16N58W through 16N57W
15N58W through 15N55W
14N59W through 14N54W
13N59W through 13N54W
12N60W through 12N54W
11N60W through 11N55W
10N60W through 10N55W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N58W
8N59W through 8N58W
7N59W through 7N58W
6N58W

Official Protraction Diagram NI 11-10, San Clemente

418 through 421
462 through 465
506 through 510
550 through 554
594 through 598
638 through 641

(j) Information on Coastal Fisheries. Lessees proposing operations in areas of coastal fisheries should design their operations to minimize conflicts with these fisheries. These measures may include (a) the use of a jack-up drilling vessel, (b) the placement of anchors to lessen area displaced, (c) the removal of ocean floor protrusions or debris, (d) the design of pipelaying operations to minimize ocean floor disturbance, (e) the use of support vessel routes, and (f) the providing to fishermen activity locations in Loran C coordinates.

(k) Information on Water Use. Lessees planning to use water from areas with restricted water supply, such as Santa Barbara or Ventura Counties, shall provide a water use plan which describes the required amounts of water and methods for obtaining it. This plan shall be submitted to the Regional Supervisor with the submission of any Plan of Exploration or Development/Production for review by affected Federal, state, and local government Agencies.

(l) Information on NASA Operations. Lessees are advised that the RM will consult with National Aeronautics and Space Administration when Plans of Exploration are submitted and during the approval process on Applications for Permits to Drill to determine possible conflicts with space shuttle activity. If conflicts exist, lessees on the following blocks may be restricted as to timing of drilling activity and placement of drilling equipment.

OCS Leasing Map No. 6D, Channel Islands

16N57W through 16N56W
15N58W through 15N55W
14N60W through 14N54W
13N60W through 13N54W
12N60W through 12N53W
11N60W through 11N53W
10N60W through 10N52W

OCS Leasing Map No. 6E, Channel Islands

9N60W through 9N57W
8N60W through 8N57W
7N60W through 7N57W
6N60W through 6N57W
5N60W through 5N57W
4N60W through 4N57W

Official Protraction Diagram NI 11-10, San Clemente

Blocks

418 through 424
462 through 468
506 through 512
550 through 555
594 through 598
638 through 641
682 through 684
723 through 727
767 through 770
811 through 814
857

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Pacific OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

Director, Minerals Management Service
William D. Bettenberg

Approved:

Secretary of the Interior
William Clark

SEP 12 1984
Date

[FR Doc. 84-24569 Filed 9-14-84; 8:45 am]
BILLING CODE 4310-MR-C

UNITED STATES
DEPARTMENT OF THE INTERIOR
Minerals Management Service

Outer Continental Shelf
Southern California
Notice of Leasing Systems, Sale 80

Section 8(a)(8)(43 U.S.C. 1337(a)(8)) of the Outer Continental Shelf Lands Act (OCSLA) requires that, at least 30 days before any lease sale, a notice be submitted to the Congress and published in the Federal Register:

1. identifying the bidding systems to be used and the reasons for such use; and

2. designating the blocks to be offered under each bidding system and the reasons for such designation.

This notice is published pursuant to these requirements.

1. Bidding Systems to be Used. In the Outer Continental Shelf (OCS) Sale 80, blocks will be offered under the following two bidding systems as authorized by section 8(a)(1) (43 U.S.C. 1337(a)(1)): (a) bonus bidding with a fixed 16 2/3-percent royalty on 30 blocks and (b) bonus bidding with a fixed 12 1/2-percent royalty on all remaining unleased blocks.

a. Bonus Bidding with a 16 2/3-Percent Royalty. This system is authorized by section 8(a)(1)(A) of the OCSLA. This system has been used extensively since the passage of the OCSLA in 1953 and imposes greater risks on the lessee than systems with higher contingency payments, but may yield more rewards if a commercial field is discovered. The relatively high front-end bonus payments may encourage rapid exploration.

b. Bonus Bidding with a 12 1/2-Percent Royalty. This system is authorized by section 8(a)(1)(A) of the OCSLA. It has been chosen for certain blocks proposed for Southern California (Sale 80) because these blocks are expected to require substantially higher exploration, development, and production costs, as well as longer times before initial production, in comparison to shallow water blocks. The Department of the Interior analyses indicate that the minimum economically developable discovery on a block in such high-cost areas under a 12 1/2-percent royalty system would be less than for the same blocks under a 16 2/3-percent royalty system. As a result, more blocks may be explored and developed. In addition, the lower royalty rate system is expected to encourage more rapid production and higher economic profits. It is not anticipated, however, that the larger cash bonus

bid associated with a lower royalty rate will significantly reduce competition, since the higher costs for exploration and development are the primary constraints to competition.

2. Designation of Blocks. The selection of blocks to be offered under the two systems was based on the following factors:

a. Lease terms on adjacent, previously leased Federal blocks were considered to enhance orderly development of each field.

b. Blocks in deeper water were selected for the 12 1/2-percent royalty system based on the favorable performance of this system in these high-cost areas as evidenced in our analyses.

The specific blocks to be offered under each system are as follows:

1. Bonus Bidding with a 16 2/3-Percent Royalty

OCS Leasing Map No. 6A, Channel Islands

40N73W through 40N72W
39N72W
37N72W
54N82W

OCS Leasing Map No. 6B, Channel Islands

51N63W through 51N62W
50N62W
49N66W through 49N65W
49N61W through 49N59W
40N71W
34N54W

OCS Leasing Map No. 6C, Channel Islands

34N38W
34N39W

OCS Leasing Map No. 6D, Channel Islands

14N57W
13N56W
11N60W
10N60W through 10N59W

OCS Leasing Map No. 6E, Channel Islands

9N59W
9N58W
8N58W

Official Protraction Diagram No. NI 11-10, San Clemente

418, 419, 462, 506, 507

2. Bonus Bidding with a 12 1/2-Percent Royalty.

All remaining unleased blocks in this sale.

Director, Minerals Management Service

William D. Bettenberg

Approved:

SEP 12 1984

Secretary of the Interior

William Clark

[FR Doc. 84-24573 Filed 9-14-84; 8:45 am]
BILLING CODE 4310-MR-C

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Monday, September 17, 1984

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily **Federal Register** as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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[2] Refer to September 19, 1983, FEDERAL REGISTER, Book II (Federal Acquisition Regulation).

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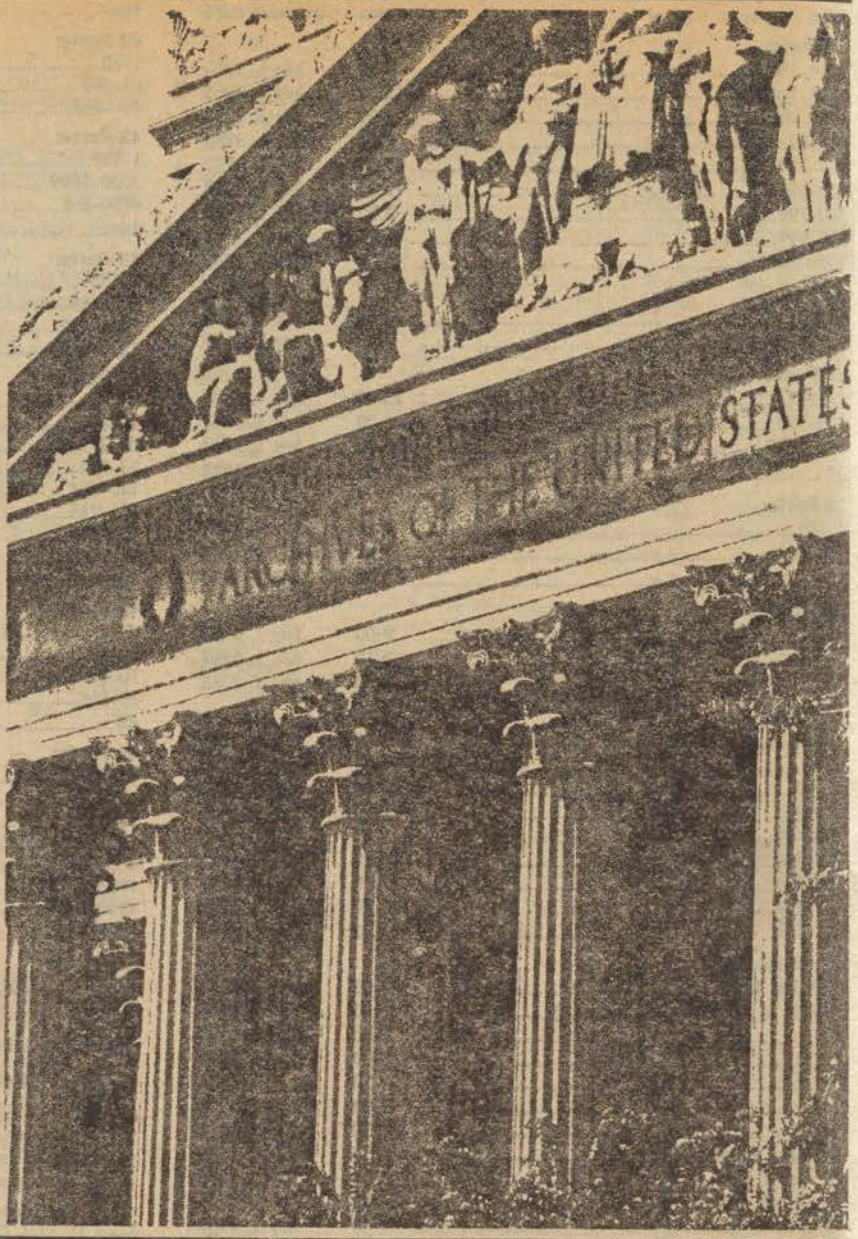

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