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Federal Register

Thursday
October 3, 1985

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Federal Reserve System

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Coast Guard

Commodity Futures
Commodity Futures Trading Commission

Customs Duties and Inspection
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Endangered and Threatened Species
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Immigration and Naturalization Service

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Environmental Protection Agency

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Presidential Documents

Title 3—

The President

Executive Order 12535 of October 1, 1985

Prohibition of the Importation of the South African Krugerrand

By the authority vested in me as President by the Constitution and laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), in order to take steps additional to those set forth in Executive Order No. 12532 of September 9, 1985, to deal with the unusual and extraordinary threat to the foreign policy and economy of the United States referred to in that Order, and in view of the continuing nature of that emergency, the recommendations made by the United Nations Security Council in Resolution No. 569 of July 26, 1985, and the completion of consultations by the Secretary of State and the United States Trade Representative directed by Section 5(a) of Executive Order No. 12532, it is hereby ordered that the importation into the United States of South African Krugerrands is prohibited effective 12:01 a.m. Eastern Daylight Time October 11, 1985. The Secretary of the Treasury is authorized to promulgate such rules and regulations as may be necessary to carry out this prohibition.

Ronald Reagan

THE WHITE HOUSE,
October 1, 1985.

[FR Doc. 85-23832
Filed 10-1-85; 4:45 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100 and 103

Statement of Organization; Powers and Duties of Service Officers; Availability of Service Records

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule delegates to regional adjudications center directors full signature authority to approve or deny all petitions and applications adjudicated at the center. The delegation of this signature authority is necessary to improve the management efficiency of Service programs.

EFFECTIVE DATE: October 15, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, Telephone: (202) 633-3048

For Specific Information: Lloyd Sutherland, Immigration Examiner, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536, Telephone: (202) 633-3946

SUPPLEMENTARY INFORMATION: The Service has four Regional Adjudications Centers (RACs) located in St. Albans, Vermont; Dallas, Texas; Lincoln, Nebraska, and San Ysidro, California. The purpose of the RACs is to provide a setting removed from district offices solely for adjudication of petitions and applications that do not require interviews in order to increase productivity, improve quality and uniformity of decisions, and assure the timeliness of Service decision making. To accomplish these objectives, RACs must be isolated from public contact, except through written communication. Under the supervision of the Regional Commissioner, each center is managed by a RAC director who has program, administrative, and supervisory responsibility for personnel assigned to the center.

Currently, the Service sends (remotes) to RAC's certain petitions and applications filed with the district office. Applications and petitions involving emergent situations (as determined by the district director) are adjudicated at the district office. The district office is responsible for handling (directly or by routing to the proper official) all inquiries regarding petitions and applications sent to the RAC, except as otherwise provided in Service operations instructions or instructions from the RAC to the petitioner or applicant. The RAC reviews the petitions and applications it receives; determines whether additional information is necessary and, if so, informs the petitioner or applicant; makes the decision to approve or deny a petition or application and issues the decision to the petitioner or applicant in the name of the District Director; and following any denial, informs the petitioner or applicant how to file appeals or motions to reopen or reconsider and handles those matters. The RAC may also return a petition or application to the district office for interview, investigation, or decision. The Service has established a management standard that district offices should send petitions and applications to RACs in the shortest feasible time and no later than 10 days from receipt and that RACs should approve, deny, or return applications within 30 days of receipt. In the majority of cases, this standard is achieved.

For the past two years (and longer in some Regions), the Service has had four fully operational RACs handling more than 33 per cent of the petitions and applications completed by Service offices. RACs have been a major factor in the Service's recent successes in eliminating backlogs and improving the uniformity and quality of Service decisions. Their high level of productivity is due mainly to the ability of their staff to adjudicate petitions and applications, based on proper written documentation, without distractions from telephone calls, visits from the public, and other assignments. To further improve the efficiency of the RACs and to address questions raised as to the authority of RAC directors, this rule formally delegates to RAC directors authority to approve or deny applications and petitions adjudicated at their centers. This clarifies that RAC directors have the same legal responsibility with respect to those cases as district directors and eliminates a burdensome administrative problem. Issuance of decisions in the name of the appropriate district director has been time consuming and inefficient because it requires each RAC to separate a large volume of decisions (10 to 12,000 per month) by district so that the appropriate district director's signature stamp can be affixed. The use of one signature stamp will significantly reduce this burden.

This change in signature authority will have a negligible operational impact on the public. District directors will still handle emergent situations and all inquiries regarding petitions and applications sent to the RAC. The public will benefit from this rule because it will improve the speed with which RACs handle cases and it will make clear their authority.

Compliance with 5 U.S.C. 553 as to notice of proposed rulemaking and delayed effective date is unnecessary because this rule relates to agency management.

In accordance with 5 U.S.C. 605(b) the Commissioner of Immigration and Naturalization certifies that the rule does not have a significant economic impact on a substantial number of small entities. This order is not a rule within the definition of section 1(a) of E.O. 12291 as it relates to agency management.

List of Subjects in 8 CFR Part 100

8 CFR Part 100

Administrative practice and procedure, Aliens, Organization and functions (government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (government agencies), Organization and functions.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for Part 100 continues to read as follows:

Authority: Secs. 100 and 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1101 and 1103).

2. Section 100.4 is amended by revising paragraph (a) and adding a new paragraph (e) to read as follows:

§ 100.4 Field Service.

* * * * *

(a) The Eastern Regional Office, located in Burlington, Vermont, has jurisdiction over districts 2, 3, 4, 5, 7, 21, 22, 23, 25 and 27; Border Patrol Sectors 1, 2, 3, 4; and the Regional Adjudications Center in St. Albans, Vermont. The Southern Regional Office, located in Dallas, Texas, has jurisdiction over districts 6, 14, 15, 20, 26, 28, 38 and 40; Border Patrol Sectors 15, 16, 17, 18, 19, 20, 21 and the Regional Adjudications Center in Dallas, Texas. The Northern Regional Office, located in Fort Snelling, Twin Cities, Minnesota, has jurisdiction over districts 8, 9, 10, 11, 12, 19, 24, 29, 30, 31 and 32; Border Patrol Sectors 5, 6, 7, 8, 9; and the Regional Adjudications Center in Lincoln, Nebraska. The Western Regional Office, located in San Pedro, California, has jurisdiction over districts 13, 16, 17, 18 and 39; Border Patrol Sectors 10, 11, 12, 13, 14; and the Regional Adjudications Center in San Ysidro, California.

* * * * *

(e) Regional adjudications centers are situated at the following locations:

St. Albans, Vermont
Dallas, Texas
Lincoln, Nebraska
San Ysidro, California

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 continues to read as follows:

Authority: Sec. 103 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103).

2. In § 103.1, a new paragraph (s) is added to read as follows:

§ 103.1 Delegations of authority.

* * * * *

(s) *Regional Adjudications Center Directors.* Under the direction of their respective regional commissioners, regional adjudications center directors have program, administrative and supervisory responsibility for all personnel assigned to their centers. Regional adjudications center directors are delegated the authority and responsibility to approve or deny any application or petition adjudicated at their centers.

Dated: September 25, 1985.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-23616 Filed 10-2-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 91

[Docket No. 85-099]

Ports Designated for Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule.

SUMMARY: This document affirms the interim rule which amended the "Inspection and Handling of Livestock for Exportation" regulations by adding Honolulu, Hawaii, to the list of ports designated as ports of embarkation and by adding the Hawaii State Quarantine Station as the export inspection facility for that port. The effect of the amendment is to add an additional port through which animals may be exported. The amendment is necessary because it has been determined that the export inspection facility of the Hawaii State Quarantine Station for the port at Honolulu meets the requirements of the regulations for inclusion in the list of export inspection facilities.

EFFECTIVE DATE: October 3, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. George Winegar, Import/Export Animals and Products Staff, VS, APHIS, USDA, Room 845, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8383.

SUPPLEMENTARY INFORMATION:

Background

An interim rule published in the **Federal Register** on July 9, 1985 (50 FR 27929-27930), (a correction was published at 50 FR 29205 on July 18, 1985) amended § 91.14 by adding Honolulu, Hawaii, to the list of ports designated as ports of embarkation and by adding the "Hawaii State Quarantine Station, 99-762 Moanalua Road, Aiea, Hawaii, 96701, (808) 487-5351" as the export inspection facility for that port.

The interim rule was made effective on July 9, 1985. Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of July 9, 1985, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in conformance with Executive Order 12291 and has been determined to be not a major rule. The Department has determined that this rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have any 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.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

It is anticipated that, compared with the total number of animals exported annually from the United States, less than one percent of the total number of animals will be exported annually through the port at Honolulu.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983; 49 FR 22675, May 31, 1984; 50 FR 14088, April 10, 1985).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Humane animal handling, Livestock and livestock products, Transportation.

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

Accordingly, the interim rule amending 9 CFR Part 91 which was published at 50 FR 27929-27930 on July 9, 1985, (a correction was published at

50 FR 29205 on July 18, 1985) is adopted as a final rule.

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618, 46 U.S.C. 466a, 466b, 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, DC, this 27th day of September 1985.

Gerald J. Fichtner,

Acting Deputy Administrotor, Veterinary Services.

[FR Doc. 85-23669 Filed 10-2-85; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

Procedures for Production or Disclosure of Records or Information in Response to Subpoenas or Demands of Courts or Other Authorities

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; correction.

SUMMARY: This document corrects a final rule adding Subpart D to Part 9 of Chapter 10 of the Code of Federal Regulations to prescribe procedures with respect to the production of documents or disclosure of information in response to subpoenas or demands of courts or other judicial or quasi-judicial authorities in State and Federal proceedings (excluding Federal grand jury proceedings). The rule also clarifies Commission procedures regarding subpoenas or other judicial or quasi-judicial demands on NRC employees to produce NRC records or to disclose information through testimony or depositions, and it ensures that the responsibility for determining that the response to the demands is placed on the appropriate Commission official. This action is necessary in order to make several minor typographical corrections and to clarify that Subpart D applies to NRC employees only and not to former NRC employees which was inadvertently overlooked when the rule was published on September 17, 1985 (50 FR 37642).

EFFECTIVE DATE: October 17, 1985.

FOR FURTHER INFORMATION CONTACT: Theresa W. Hajost, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (202) 634-1493.

1. On page 37642, in the fourth line from the bottom of the page in column three, "not" should read "no".

2. On page 37643, column two, B.1., 7th line should read "2201); and section 201, Pub. L. 93-438; 88".

3. On page 37643, column three, fifth line from the bottom of the page, there should be an opening parenthesis in front of "NLRB)".

4. On page 37644, column three, in the next to last line of the Regulatory Flexibility Certification, "CRR" should read "CFR".

5. On page 37645, column one, line one, "informaton" should read "information".

6. On page 37645, column one, line four, there should not be a comma after "State".

7. On page 37645, column one, § 9.1a, in line 12 remove the words "current or former" and insert "NRC" in their place.

Dated at Washington, DC this 27th day of September 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 85-23679 Filed 10-2-85; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R-0551]

Rules Regarding Delegation of Authority; Delegation of Authority to Reserve Banks To Act on Certain Applications To Establish Edge Corporations

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending 12 CFR Part 265, its Rules Regarding Delegation of Authority, to delegate to the Federal Reserve Banks authority to act on applications by U.S. banking organizations to establish Edge corporations. It is anticipated that this delegation of authority will aid in the expeditious processing of applications to establish Edge corporations.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: James Keller, Manager, International Banking Applications, Division of Banking Supervision and Regulation (202/452-2523) or Kathleen O'Day, Senior Counsel, Legal Division (202/452-3786), Board of Governors of the Federal Reserve System, Washington, D.C. 20551; or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) (202/452-3244).

SUPPLEMENTARY INFORMATION: The Board's Regulation K sets forth the procedures and requirements for establishment of an Edge corporation (12 CFR 211.4). In acting on a proposal to establish an Edge corporation, the Board considers factors such as the financial condition and history of the applicant; the general character of its management; the convenience and needs of the community to be served; and the effects of the proposal on competition. Notice of such proposals are published by the Board in the **Federal Register** in order to allow interested persons an opportunity to express their views.

Based on its experience in processing applications by U.S. banking organizations [1] to establish Edge corporations, the Board believes that standards can be established under which it is appropriate to delegate approval of these applications to the Reserve Banks. The amendment to the Rules Regarding Delegation of Authority would permit a Reserve Bank, after consideration of the factors specified in § 211.4, to approve an application by a U.S. banking organization to establish an Edge corporation if the application meets the following criteria:

(1) The U.S. banking organization meets minimum capital guidelines and is otherwise in satisfactory condition;

(2) The proposal does not involve a joint venture; and

(3) No other significant policy issue is raised on which the Board has not previously expressed its view.

Failure to meet these criteria does not indicate that an application would be disapproved. It requires only that the application must be acted on by the Board rather than by a Reserve Bank.

The Board believes that this delegation of authority will be useful in the expenditious processing of applications by U.S. banking organizations to establish Edge corporations and will review the standards for delegation from time to time.

The provisions of 5 U.S.C. 553 relating to notice, public participation and deferred effective date are not followed in connection with the adoption of this amendment because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirement of that section.

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354; 5 U.S.C. 601 *et seq.*), the Board of Governors of the Federal Reserve

[1] The delegation of authority would not include applications to establish Edge corporations where the investor is a foreign bank or a U.S. nonbanking organization.

System certifies that the amendment adopted will not have a significant economic impact on a substantial number of small entities that would be subject to the regulation.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, Banking, Federal Reserve System.

PART 265—[AMENDED]

12 CFR Part 265 is amended as follows:

1. The authority citation for Part 265 continues to read as follows:

Authority: Sec. 11, 38 Stat. 261; 12 U.S.C. 248.

2. Section 265.2 is amended by adding paragraph (f)(47) to read as follows:

§ 265.2 Specific functions delegated to Board employees and to Federal Reserve Banks.

(f) * * *

(47) Under section 25(a) of the Federal Reserve Act and Subpart A of the Board's Regulation K, to approve applications by a United States banking organization to establish an Edge corporation if all the following criteria are met:

(i) The U.S. banking organization meets capital adequacy guidelines and is otherwise in satisfactory condition;

(ii) The proposed Edge corporation will be a wholly-owned subsidiary of a single banking organization; and

(iii) No other significant policy issue is raised on which the Board has not previously expressed its view.

By order of the Board of Governors of the Federal Reserve System, September 27, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-23589 Filed 10-2-85; 8:45 am]

BILLING CODE 6210-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 12

Rules Relating to Reparation Proceedings

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On this date, the Commission adopted an amendment to § 12.407(d) of its reparation rules which requires the compounding of interest on a reparation award on an annual basis whenever the period for which interest has accrued exceeds one year.

DATE: Effective date is November 4, 1985.

ADDRESS: Interested persons wishing to comment may submit comments to: Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254-6314.

FOR FURTHER INFORMATION CONTACT: Edward S. Geldermann, Attorney, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone (202) 254-9880.

SUPPLEMENTARY INFORMATION:

I. Background

On May 13, 1985, the Commission amended § 12.407(d) to reflect a change in the method for calculating the amount of interest that has accrued on reparation awards.[1] This amendment, which codified the Commission's decision in *Newman v. Bache Halsey Stuart Shields, Inc.*,[2] made it clear that for all initial decisions rendered on and after November 19, 1984, interest shall be computed in accordance with 28 U.S.C. 1961(a). Because the Commission's *Newman* decision did not specifically address the issue of compounding of interest, the Commission on May 13, 1985, also proposed a further amendment to § 12.407(d) that would require the compounding of interest on an annual basis whenever the period for which interest has accrued exceed one year.[3]

In the notice of proposed rulemaking, the Commission invited comment from interested persons on or before July 12, 1985, on the questions whether it should adopt the annual compounding amendment to § 12.407(d) of its reparations rules as proposed, and, if so, when the rule should take effect. The Commission received no comments concerning this proposed rule. For the reasons discussed below, the Commission has determined to adopt the amendment to § 12.407(d) as proposed, and to make this rule applicable to all initial decisions (or final decisions in voluntary decisional proceeding) rendered on and after November 4, 1985.

As the Commission observed in proposing this rule,[4] it has traditionally considered interest to be "an adjunct to the award of damages, a differential paid to compensate for the loss of the use of a sum of money for a period to time."[5] By adopting the methodology of 28 U.S.C. 1961(a) (1982), the Commission determined that this differential should be calculated with reference to the 52-week U.S. Treasury bill rate. Under this approach, it intended that a party who has received an award receive as interest an amount that he or she would have earned had the amount of the award been invested in 52-week United States Treasury bills from the date upon which interest first accrued.[6] In the event that this period exceeds one year (for example, because prejudgment interest was awarded or the losing party appealed the initial decision without success), a prevailing party who had had the funds to invest in a 52-week Treasury bill would also have had the opportunity to invest in a second bill because the first 52-week Treasury bill would have reached its maturity. Thus, had the prevailing party not been deprived of the funds representing the original reparation award until satisfaction of that award, he or she would have been in a position to reinvest in a new 52-week Treasury bill both the original amount of the reparation award and the amount representing the accrued interest on the award (arising from the first 52-week T-bill). Such a person would therefore have enjoyed the effect of compounded interest. The Commission continues to believe that compounding on an annual basis in the manner just described is appropriate to ensure that a party deprived of the use of funds is restored as nearly as possible to the financial status he or she would otherwise have enjoyed.

The Commission also believes that the annual compounding of interest on a reparation award is consistent with Congress' intention in enacting the compounding provisions of 28 U.S.C. 1961(b) (1982). Those provisions were enacted as part of a scheme designed to provide an economic disincentive to losing parties in judicial proceedings who might file frivolous appeals "simply

[1] 50 FR 19910 (1985).

[2] [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 22,432 (November 19, 1984).

[3] 50 FR 19951 (1985).

[4] *Id.* at 19952.

[5] *Id.*, *quoting Sherwood v. Madda Trading Company*, [1977-1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 20,728, at 23,026 (January 5, 1979).

[6] As the Commission stated in proposing this rule, *see* 50 Fed. Reg. 19951, 19952 n.4, although the *Newman* decision makes clear that the relevant date for ascertaining the rate of interest is the date of the initial decision, the period for which interest is to be computed may often be the amount of time from the date of the loss caused by the violation to the initial decision (prejudgment interest) as well as postjudgment interest. *See Newman*, *supra*, at p. 29919.

to gain the advantage of artificially low interest rates on judgments while judgments were tied up in the courts for months or even years." [7] The present amendment to § 12.407(d) would serve similar purposes. Unless interest on reparation awards is permitted to be compounded annually, a losing party may be encouraged to delay paying a claim or a reparation award for as long as possible because, by depriving the prevailing party of funds upon which interest would not accrue on a compounded basis, the losing party would be in a position to invest the same funds in a transaction which earns compounded interest, and thereby profit at the prevailing party's expense. This, of course, would discourage settlement efforts before an initial decision is reached, invite the filing of unjustified appeals, and thus frustrate the Commission's recent efforts to make reparations a more expeditious and efficient remedy.[8]

As the Commission stated in its notice of proposed rulemaking,[9] the fact that annual compounding is expressly authorized by 28 U.S.C. 1961(b) is in itself reason to permit annual compounding of interest on reparation awards. The Commission, in adjudicating private claims for money damages based on violations of the Act, Commission rule or order is performing a role analogous to a federal district court in cases brought pursuant to section 22 of the Act. The Commission does not see why there should be any distinction between awards in reparation cases and judgments in section 22 actions in federal district court, insofar as compounding of interest is concerned.[10]

In the May 13, 1985 amendment to § 12.407(d), which codified the Commission's decision in *Newman* v. *Bache Halsey Stuart Shields*, the Commission announced that

> [c]onsistent with 28 U.S.C. 1961(a) (1982), the interest rate to be applied to any particular reparation award is the "coupon issue yield equivalent . . . of the average accepted auction price for the last auction of fifty-two week United States Treasury bills settled immediately prior to the date" of the initial decision (or final decision in a voluntary decisional proceeding). The amount of interest due in connection with a reparation award is computed by multiplying the number of days that interest has accrued by a fraction, the numerator of which is the equivalent coupon issue yield multiplied by the amount of the reparation award, and the denominator of which is the number 365.[11]

In a particular case where annual compounding applies to the computation of interest on a reparation award, a figure of one plus the coupon issue yield equivalent is multiplied by the amount of the original reparation award on the first anniversary of interest accrual. For each successive full year of interest accrual following the first anniversary, the figure representing the product of the multiplication equation for the preceding anniversary is then multiplied by the figure of one plus the coupon issue yield equivalent in a separate equation. When the period of interest accrual concludes with a fraction of a year (*i.e.*, a period which is less than 365 days), the amount of interest is computed by multiplying the number of days since the most recent anniversary of interest accrual by a fraction, the numerator of which is the coupon issue yield equivalent multiplied by the figure representing the product of the most recent anniversary's equation, and the denominator of which is 365. The amount computed for this final partial year's period is then added to the figure representing the product of the multiplication equation computed for the most recent anniversary of interest accrual. This sum represents this original reparation award plus interest compounded annually to the date of satisfaction of the award.[12]

$$\text{Number of days interest has accrued during fraction of year} \times \frac{\text{Coupon issue yield equivalent} \times \text{amount of award plus interest computed on most recent anniversary of interest accrual}}{365}$$

$$\text{or } 12 \times \frac{.1462 \times 26,275.49}{365} = \$126.24$$

$126.24 would then be added to $26,275.49 to arrive at the amount of award plus compounded interest on July 12, 1985, or $26,401.73.

In its notice of proposed rulemaking, the Commission proposed to make this rule applicable to all initial decisions rendered on or after the rule's effective date. Applying the rule in this fashion strikes a compromise between applying the rule to all pending cases on appeal to the Commission as well as cases in which a final decision has been rendered (and only the award remains unsatisfied), which would have maximum retroactive effect, and applying the rule only to cases in which the complaint is filed on or after the rule's effective date, which would have no retroactive effect.

The Commission does not believe the rule should apply to cases pending on its appellate docket or which are final but involve awards which remain unsatisfied. In general, those cases are the oldest on the Commission's docket and involve awards, and a method of computing interest, that have already been fixed by order of the Commission or Administrative Law Judge. The parties' expectations about the amount of liability in those cases are considerably more settled than in cases

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[7] 127 Cong. Rec. S 14699 (Dec. 8, 1981, daily ed.).

[8] *See* Section 14(b) of the Commodity Exchange Act (the "Act"), 7 U.S.C. 18(b) (1982); 49 FR 6602, 6602–44 (1984).

[9] 50 FR at 19952.

[10] *Newman* makes clear that a reparations judgment is analogous to a civil judgment for damages and for that reason should ordinarily follow the interest requirements laid down by Congress for federal district courts. Earlier, in *Sherwood* v. *Madda Trading Company, supra*, the Commission observed that Congress intended to grant parties in reparations the same remedy available to parties in federal district court. In *Sherwood*, and in the context of addressing the issue of recoverability of attorneys' fees, we stated: "If there is a single theme emerging from the Commission's treatment of reparations cases before it, it is that one suing in the reparations forum is entitled to no greater remedy—but no lesser—than he could expect in federal district court. Congress created the reparations process as an alternative forum of special expertise, one with no inherent monetary advantage or disadvantage." *Id.*, at 23,024. The same reasoning applies to the method of computing interest accruing in connection with a reparation award.

[11] 50 FR 19951 n. 2. In this **Federal Register** publication, the Commission also stated:

"Once the relevant coupon issue yield equivalent is ascertained (*i.e.*, by looking to the most recent treasury bill auction prior to the date of the initial decision), that same rate applies to the computation of interest on the reparation award regardless of: (1) Whether there are subsequent appeals (which ultimately sustain all or part of the award); (2) how long the reparation award remains unpaid; and (3) whether coupon issue yield equivalents determined in subsequent Treasury bill auctions vary from the relevant coupon issue yield equivalent. Moreover, the Commission announced in the *Newman* decision that the relevant date for ascertaining the rate of prejudgment interest in summary and formal decisional proceedings shall be the same as the date for the determining the rate of postjudgment interest—which is the date of the initial decision."

50 FR at 19911.

[12] For purposes of illustration only, assume that interest on a reparation award commenced accruing on June 30, 1983, and the award was not satisfied until July 12, 1985. Assume also that the relevant coupon issue yield equivalent is a rate of 14.62% and that the original amount of the reparation award is $20,000. On June 30, 1984, the first anniversary of interest accrual, the amount of the reparation award is mutiplied by one plus the coupon issue yield equivalent to produce a figure that will serve as a base for compounding interest in the second year of interest accrual. The amount of reparation award plus interest on June 30, 1984 is:

$21,000 × (1 + .1462) = $22,924.00

On June 30, 1985, the second anniversary of interest accrual, the product of the multiplication equation for the preceding year (or $22,924) is multiplied by the figure of one plus the coupon issue yield equivalent to produce a figure that represents the original award plus compounded interest accrued as of June 30, 1985. Thus, the amount of award plus accrued interest on June 30, 1985 is:

$22,924 × (1 + .1462) = $26,275.49

For the twelve days following the second anniversary of interest accrual, interest would be computed as follows:

where the questions of whether liability exists, and of the amount of net liability from one party to another, have not yet determined in an initial decision.

On the other hand, the Commission does not believe that this annual compounding of interest rule should be restricted in application to cases which are commenced after the rule's effective date. The Commission believes that the purposes of this rule—providing a more equitable measure of compensation to the prevailing reparations litigant, and discouraging the frivolous prosecution or defense of a reparation case by a party standing to benefit from delaying the payment of a claim, are remedial in nature. Therefore, the rule should apply immediately to all pending cases in which an initial decision has not yet been reached. Application of the rule to all such cases would also promote Congress' intent, evidenced by the 1982 amendments to section 14(b) of the Act, that the Commission administer the reparations efficiently and expeditiously, insofar as it would encourage existing parties to settle the claims prior to a decision in reparations, thereby reducing the number of cases pending on the Commission's docket.[13]

II. Regulatory Flexibility Act And Other Matters

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601, *et seq.*, requires agencies when adopting final rules to consider the impact of those rules on small businesses. While the rule as adopted could augment a litigation-related cost to one of the parties to a reparation proceeding, it would be speculative to quantify the likelihood that a particular small business entity will become a party in a reparations proceeding, and thus subject to this increased cost. Since this rule will not impact on any small business entities unless and until they become losing litigants in a reparations case, the rule is not likely to have any substantial economic impact on small business entities that is greater than their existing cost of litigating in federal court. Accordingly, pursuant to section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman certifies that § 12.407(d), as amended herein, would not have a significant economic impact on a substantial number of small business entities.

In proposing this rule, the Commission determined that the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* do not apply because a rule requiring the annual compounding of interest in connection with a reparation award does not contain a collection of information requirement, or an "information collection request" within the meaning of 44 U.S.C. 3502(4). For the same reason, the Commission continues to believe that the provisions of the Paperwork Reduction Act do not apply.

List of Subjects in 17 CFR Part 12

Administrative practice and procedure, Commodity exchange, Commodity futures, Reparations.

PART 12—[AMENDED]

17 CFR Part 12 is amended as follows:

1. The authority citation for Part 12 continues to read as follows:

Authority: 7 U.S.C. 12a(5), 18(b) (1982).

2. In Part 12, § 12.407(d) is revised to read as follows:

§ 12.407 [Amended]

* * * * *

(d) *Reinstatement.* The sanctions imposed in accordance with paragraph (c) of this section shall remain in effect until the person required to pay the reparation award demonstrates to the satisfaction of the Commission that he has paid the amount required in full with interest at the prevailing rate computed in accordance with 28 U.S.C. 1961 from the date directed in the final order to the date of payment, compounded annually.

* * * * *

Issued in Washington, D.C., on September 27, 1985, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 85-23580 Filed 10-2-85; 8:45 am]

BILLING CODE 6351-01-M

[13] By analogy, this treatment is also consistent with the permissive view of retroactive application of statutes announced by the United States Supreme Court in *Bradley* v. *Richmond School Board*, 416 U.S. 696 (1974). In *Bradley*, the Court stated:

"A court is to apply the law in effect at the time it renders its decision, unless doing so would result in manifest injustice or there is statutory direction or legislative history to the contrary."

Id., at 7111. As we have indicated, retroative application of the interest compounding rule to cases in which the initial decision has yet to be rendered in consistent, not contrary to, the 1982 amendments to Section 14 and the legislative history. And retroactive application does not work a manifest injustice to parties in these cases. *Cf. Nelson* v. *Chilcott, Inc.*, [1982-1984 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 21,934 (Dec. 12, 1983). Parties to these cases have all along been free to settle their claims privately, and will continue to have the opportunity to avoid application to this rule until an initial decision, or similar dispositive order, is reached in their cases. Whatever adverse consquences befall a party ordered to pay compounded interest in such a case are outweighed by the need to provide a more equitable measure of compensation to the prevailing party. Indeed, a failure to apply the rule to these pending cases could be said to perpetuate an injustice to parties who ultimately receive an award.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 152, 154, 157, 284, 375, and 381

[Docket Nos. RM79-63-000 and RM82-31-000; Order No. 433]

Fees Applicable to Natural Gas Pipelines

Issued: September 30, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to establish fees for the services and benefits it provides to natural gas pipelines under the Natural Gas Act and the Natural Gas Policy Act of 1978. This is the fifth of a series of rules to be issued on fees. These fees are authorized by the Independent Offices Appropriations Act, which provides for the collection of fees to make agenices "self-sustaining to the extent possible."

EFFECTIVE DATE: This rule will become effective November 4, 1985.

FOR FURTHER INFORMATION CONTACT: William H. Sipe, III, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9088.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, A.G. Sousa and Charles G. Stalon.*

I. Introduction

By this rule, the Federal Energy Regulatory Commission amends its regulations to establish fees for services and benefits provided under the Natural Gas Act (NGA) [1] and the Natural Gas Policy Act of 1978 (NGPA) [2] to natural gas pipeline companies. In earlier rulemakings, the Commission adopted its basic methodlogy for establishing fees with respect to services and benefits provided by the Commission, as well as the procedures for billing, collecting, waiving, and updating fees.[3]

*Commissioner Sheldon resigned effective July 19, 1985. She was present and voting when this order was approved at the June 28, 1985, meeting.

[1] 15 U.S.C. 717-717w (1982).

[2] 15 U.S.C. 3301-3432 (1982).

[3] Fees Applicable to Producer Matters Under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984) (Docket No. RM82-25-000) (issued Feb. 6, 1984), *reh'g denied and rule clarified*, 49 FR 17,435 (Apr. 20, 1984); Fees Applicable to Natural Gas Pipeline Rate Matters, 49

Continued

This rule also clarifies the Commission's fee collection practices in some respects.

This rule establishes the following fees for pipeline matters:

(1) $12,200 for review of an application for authorization under section 7(c) of the NGA for a certificate of public convenience and necessity, a substantial amendment to such an application, and an application to amend an outstanding authorization; [4]

(2) $1,700 for review of a request for authorization under the blanket certificate notice and protest procedures of § 157.205 for routine transactions; [5]

(3) $12,200 for review of an application under NGPA section 311(a) for transportation authorization filed under §§ 284.107, 284.127 and 284.244, a substantial amendment to such an application, and an application to amend an outstanding authorization;

(4) $3,300 for review of a tariff filing establishing a new or revising an existing curtailment plan filed under section 4 of the NGA in accordance with § 154.21; and

(5) $12,200 for review of an application for declaration of Hinshaw exemption under section 1(c) of the NGA, a substantial amendment to such an application, and an application to amend an outstanding exemption.

II. Background

The Commission is authorized under the Independent offices Appropriation Act of 1952 (IOAA) to establish fees for the services and benefits it provides.[6] The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,[7] which states that a fee should be assessed for each measurable unit or amount of government service or property from which an identifiable recipient derives a special benefit.

In accordance with the IOAA and authoritative interpretations of that statute,[8] the Commission, in establishing any fee, must:

(a) identify the service for which the fee is to be assessed;

(b) explain why that particular service benefits an identifiable recipient more than it benefits the general public;

(c) base the fee on as small a category of service as practical;

(d) demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule meet those requirements.

III. Summary and Analysis of Comments

On September 10, 1982, the Commission issued its Notice of Proposed Rulemaking (NOPR) in Docket No. RM82-31-000 [9] and received twenty-four comments in response. The NOPR proposed fees for certain services and benefits provided to interstate natural gas pipelines under the NGA and the NGPA.

The Commission initially proposed a fee schedule for pipeline certificates and related services in Docket No. RM79-63.[10] However, in the NOPR the Commission stated at n.1 that it was superseding the proposal in Docket No. RM79-63 as to all issues except for the direct billing of Alaska Natural Gas Transportation System (ANGTS) proceedings. This action was taken because subsequent to the issuance of the NOPR in Docket No. RM79-63, the Commission reformulated the basis for establishing fees for its services to more fully and accurately recover costs consistent with the manner adopted in the other fee rules.[11] The second NOPR, therefore, proposed to calculate fees based on budgeted FY 1982 agency-wide direct and indirect costs, and actual FY 1981 project completions and time expended per employee per class of docketed activity (including non-docketed support functions). Accordingly, the NOPR eliminated the four categories of fees proposed in the earlier NOPR, the first of which assessed a nominal $50.00 fee upon the filing of certain applications. Instead, the Commission will charge a full-cost recovery fee (unless the Commission decides in its discretion to categorically reduce a fee for good cause) with respect to those activities for which the Commission has sufficient data to establish a fee and which bestow a special benefit upon an identifiable recipient; otherwise, no fee is charged.

Accordingly, in this final rule the Commission is issuing its regulations concerning Docket No. RM82-31-000 and the ANGTS direct billing proposal from Docket No. RM79-63. The final rule is in accord with the methodology proposed in the NOPR, but uses actual, more current costs, completions and time computations. Also, in response to comments, this final rule departs from the NOPR in Docket No. RM79-63 by treating ANGTS certificate applications on the same basis as applications for authorization for non-ANGTS projects requiring Commission certification.

This final rule, encompassing both ANGTS-related and non-ANGTS-related proceedings, establishes fees for review of natural gas pipeline certificate applications under section 7(c) of the NGA (including blanket certificates), requests for authorization under the

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FR 5083 (Feb. 10, 1984) (Docket No. RM83-2-000) (issued Feb. 6, 1984), *reh'g denied*, 49 FR 17,437 (Apr. 24, 1984). Petitions for review of these orders have been consolidated in *Phillips Petroleum Co.* v. *FERC*, Nos. 1848, 2267, and 2270 (10th Cir. 1984).

[4] The $12,200 fee will also apply to blanket certificates under 18 CFR 157.201-157.204 and 284.221-284.222 (1984).

[5] If a pipeline proposes activity under the notice and protest procedures applicable to blanket certificates and a protest is filed, the Commission, under 18 CFR 157.205(f) (1984), treats the request as an application under NGA section 7 for authorization for the particular activity. Under those circumstances, the $1,700 fee paid for a request under the blanket certificate notice and protest procedures will be credited against the $12,200 fee for an application under section 7 of the NGA. The requirement under § 381.103(c) of the Commission's fees rules that the filing must be accompanied by the higher of the applicable fees when the filing may be considered within two or more categories or services for which a fee is established is inapplicable to § 157.205 filings, since most of these requests are uncontested and the higher fee is due only if a protest is filed. When the request becomes a regular section 7(c) application, the additional fee will be due within 20 days of the end of the reconciliation period determined by § 157.205(f).

[6] 31 U.S.C. 9701 (1982).

[7] Bureau of the Budget Circular A-25 (Sept. 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the Act." FPC v. New England Power Co., 415 U.S. 345, 351 (1974).

[8] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Air Transport Association of America v. CAB, 732 F. 2d 219 (D.C. Cir. 1984); Mississippi Power & Light v. NRC, 601 F. 2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). National Cable Television Association, Inc. v. FCC, 554 F. 2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 554 F. 2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F. 2d 1118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F. 2d 1135 (D.C. Cir. 1976).

[9] Fees Applicable to Natural Gas Pipelines, 47 FR 40834 (Sept. 15, 1982) (proposed to be codified at 18 CFR Parts 2, 152, 153, 154, 156, 157, 281, 284, 375, and 381) (Docket No. RM82-31-000) (Sept. 10, 1982), hereinafter referred to as "NOPR".

[10] Fees Applicable to Natural Gas Pipelines, 46 FR 42,075 (Aug. 19, 1981) (Docket No. RM79-63) (issued Aug. 12, 1981), hereinafter referred to as "NOPR in Docket No. RM79-63."

[11] Fees Applicable to Producer Matters Under the Natural Gas Act, *supra*, n.3; Fees Applicable to Natural Gas Pipeline Rate Matters, *supra*, n.3; Fees Applicable to the Natural Gas Policy Act, 49 FR 35357 (Sept. 7, 1984) (Docket No. RM82-30-000) (issued Aug. 31, 1984), *reh'g denied*, 49 FR 44275 (Nov. 6, 1984), *appeal pending*, Phillips Petroleum Co. v. FERC, No. 2786 (10th Cir. 1984); Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984) (Docket No. RM82-35-000) (issued Aug. 31, 1984), *reh'g denied*, 49 FR 44273 (Nov. 6, 1984), *appeal pending*, Phillips Petroleum Co. v. FERC, No. 2767 (10th Cir. 1984).

blanket certificate notice and protest procedures under § 157.205, and review of applications under sections 311(a)(1) and 311(a)(2) of the NGPA. This final rule also establishes fees for review of tariff filings under NGA section 4 establishing new or revising existing curtailment plans in accordance with Part 154 and for review of applications for declarations of exemption from jurisdiction under NGA section 1(c). All substantial amendments to an application for a certificate, order, authorization, or to a proposed new or revised curtailment plan will be treated as initial applications and the fees prescribed by this final rule will be charged. Similarly, applications to amend an outstanding certificate order, authorization, or existing curtailment plan will be treated as initial applications and the fees prescribed by this final rule will be charged.

A. Identification of Services

The Commission processes a number of filings, among them the following:

(1) Applications for certificates of public convenience and necessity under NGA section 7(c);

(2) Requests for authorization filed pursuant to the blanket certificate notice and protest procedures for routine transactions;

(3) Applications under NGPA section 311(a) for transportation arrangements exceeding two years or otherwise requiring prior authorization;

(4) Review of tariff filings establishing new or revising existing curtailment plans under NGA section 4;

(5) Applications for declarations of exemption under NGA section 1(c);

(6) Applications by municipalities or local distribution companies requesting service under NGA section 7(a);

(7) Applications for abandonment authorization under NGA section 7(b);

(8) Requests for relief from curtailment under NGA section 4;

(9) Review of indices of entitlements filed under NGPA section 401;

(10) Applications (in certain limited circumstances) for authorization to import or export natural gas under NGA section 3;

(11) Applications under section 5 of the Outer Continental Shelf Lands Act (OCSLA), regarding proportionate amounts of gas to be transported or purchased by pipelines from submerged or outer Continental Shelf lands, and OCSLA section 25 applications, regarding the preparation of environmental impact statements; and

(12) Applications under Executive Order 10,485 with respect to facilities constructed on the borders of the United States.

Of these filings, a fee is established for review of the first five, and no fee is established at this time for review of the remaining seven activities.

1. Services for Which a Fee Is Being Charged

Under section 7(c) of the NGA, an interstate natural gas pipeline may not construct, extend, acquire or operate facilities for the transportation or sale of natural gas in interstate commerce without the prior approval of the Commission. Once the Commission provides the applicant with certificate authority, the applicant may enter a market, charge an initial rate for the transportation or sale of gas, and acquire, construct, or improve facilities necessary for the sale or transportation of natural gas in interstate commerce. While NGA section 7(g) provides that the issuance of a certificate does not grant the pipeline an exclusive right to serve a market, the certificate increases the prospects for successful bank financing for a project for the acquisition or construction of facilities. Also, a pipeline holding a certificate may exercise eminent domain authority under section 7(h) of the Natural Gas Act. Inasmuch as the interstate pipeline receives more immediate benefits from Commission review of an application for section 7(c) authority than the general public, charging a fee for this service is appropriate.

The fee for applications under NGA section 7(c) includes applications for blanket certificates filed pursuant to §§ 157.201–157.204 and §§ 284.221–284.222 of the Commission's regulations.[12] Under the Commission's blanket certificate program, an interstate pipeline can obtain a one-time blanket certificate to undertake or abandon certain activities.[13] The Commission broadened its blanket certificate program on July 20, 1983, by expanding the category of transactions that can be approved under a blanket certificate to include transportation to all end users and for off-system sales transactions between interstate pipelines.[14]

Once a pipeline receives the blanket certificate under NGA section 7(c), the pipeline is automatically authorized to undertake certain routine transactions using simplified procedures, subject only to specified reporting requirements. No fee is established under these simplified procedures because no Commission action is required. The blanket certificate also authorizes certain other activities only after notice is published and interested parties are given the opportunity to protest in accordance with § 157.205 of the Commission's regulations.[15] A fee is established to recover costs for review of a request under these procedures. The pipeline benefits in much the same way it benefits from the usual NGA section 7(c) authorization, but a substantially smaller fee is charged for this service, because significantly less work per completion is required.

The Commission has the authority under NGPA section 311(a) to authorize transportation by interstate pipelines for intrastate pipelines and local distribution companies, and to authorize transportation by intrastate pipelines for interstate pipelines and any local distribution company served by any interstate pipeline. The Commission has adopted regulations permitting the transportation of gas under section 311(a) on a self-implementing basis under certain circumstances.[16] Intrastate and interstate pipelines benefit from self-implementing transactions because they can transport gas for one another in a national transportation system without prior Commission approval of the transaction. Since prior Commission approval is not required, no basis exists for charging a fee. The Commission's implementing regulations, however, do require an application for authorization of transportation arrangements under sections 311(a)(1) and 311(a)(2) where the arrangement exceeds a period of two years or where a pipeline or local distribution company does not receive the gas for its system supply. Sections 284.107 and 284.127 of the Commission's

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[12] 18 CFR 157.201–157.204 and 284.221–284.222 (1984).

[13] Interstate Pipeline Certificates for Routine Transactions, 47 FR 24254 (June 4, 1982) (Docket No. RM81–19–000) (issued May 28, 1982), *reh'g denied in part and granted in part*, 47 FR 38871 (Sept. 3, 1982).

[14] Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories Authorized Under Blanket Certificate, 48 FR 34875 (Aug. 1, 1983) (Order No. 319) (Docket No. RM81–29–000) (issued July 20, 1983); Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors, 48 FR 34872 (Aug. 1, 1983) (Order No. 234–B) (Docket Nos. RM81–19–000 and RM81–29–000) (issued July 20, 1983); *reh'g denied in part and granted in part*, 48 FR 51436 (Nov. 9, 1983) (Order Nos. 319 and 234–B); *Maryland People's Counsel* v. *FERC*, No. 84–1090, slip op. (D.C. Cir. May 10, 1985) (vacating in part and remanding Order No. 234–B). On June 17, 1985, the Commission extended the blanket certificate program in Order No. 234–C, Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors, 50 FR 25701 (June 21, 1985) (Docket Nos. RM81–19–000 and RM81–29–000).

[15] 18 CFR 157.205 (1984).

[16] These regulations are codified at 18 CFR 284.101–284.107 (1984) (transportation by interstate pipelines) and 18 CFR 284.121–284.127 (1984) (transportation by intrastate pipelines).

regulations enumerate the elements of an application that the interstate pipeline and intrastate pipeline, respectively, must file to undertake transportation arrangements under NGPA section 311(a).[17] These applications benefit pipelines by providing them with the opportunity to increase the volume of gas transported and thereby increase their transportation revenues over an extended period of time. A fee, therefore, is established for their review.

Pursuant to the Commission's authority under section 603 of the Outer Continental Shelf Lands Act Amendments of 1978,[18] an interstate pipeline may file an application under NGPA section 311(a)(1) or NGA section 7(c) for authorization to transport gas from the Outer Continental Shelf (OCS) on behalf of a local distribution company owning gas under a lease in the OCS for its general system supply, and an intrastate pipeline may file an application under NGPA section 311(a)(2) for such authorization.[19] The pipeline transporting gas from the OCS benefits from the service because access to the OCS provides another source of transportation revenue at the same time that it gives the pipeline an opportunity to develop its transportation system while meeting the reserve requirements of the local distribution company. A fee, therefore, is appropriate for review of these, as well as the preceding applications, for transportation authorization.

The NOPR proposed to charge a fee for tariff filings pertaining to curtailments. Pipelines that must curtail deliveries of natural gas to customers must do so in accordance with a curtailment tariff that all pipelines must file with the Commission under NGA section 4. To revise an existing plan, a pipeline must file new tariff sheets indicating the revisions. A pipeline curtailment plan provides the applicant with certainty with respect to the allocation of gas in times of shortage and a possible defense to breach of contract actions initiated by gas customers. Accordingly, a fee will be charged for filing a new or revising an existing curtailment plan. This view, also expressed in the NOPR, reflects a reconsideration of the Commission's position since issuance of the NOPR in Docket No. RM79-63.

Some companies may apply for a Hinshaw exemption under section 1(c) of the NGA. That section, by its own terms, exempts certain companies from Commission NGA jurisdiction.[20] While section 1(c) operates on a self-implementing basis for companies not presently subject to the Commission's jurisdiction, the Commission requires a declaration of exemption when the Commission is currently exercising NGA jurisdiction over a company and circumstances have changed such that the company may qualify for the exemption.[21] A company granted a declaration of exemption is subject to the jurisdiction of the state regulatory commission rather than to Commission jurisdiction under the NGA. Approval of an application for a declaration of an exemption under NGA section 1(c) is a benefit to the company that would otherwise be subject to the regulator requirements of the NGA and, therefore, review of such an application is a service for which a fee is appropriate. The fee will also be applicable where a pipeline not currently regulated under the NGA files an application to assure exempt status. In this respect, the NOPR and this final rule depart from the NOPR in Docket No. RM79-63, which assessed a nominal filing fee for NGA section 1(c) applications. It is the Commission's position that NGA section 1(c) applications benefit the applicant more than the general public, such that a full-cost recovery fee is justified.

2. Services for Which a Fee Is Not Being Charged

The NOPR proposed to charge the applicant a fee for review of NGA section 7(a) applications. Under the Commission's regulations implementing section 7(a),[22] a local gas distribution company or municipality may apply to the Commission for an order directing an interstate pipeline to extend or improve its transportation facilities, establish physical connection of its transportation facilities with, and sell gas to, the local gas distributor or municipality. Although section 7(a) exists mainly to benefit the customers of the pipeline, *i.e.*, the distributor-applicants, by expanding the customers' geographic market and/or securing for the customers an assured gas supply, the Commission is not charging the applicant a fee for review of section 7(a) applications due to the small number of applications filed and the resulting lack of representative data on which to establish a fee. Moreover, municipalities are exempt from all fees under the IOAA,[23] but the time spent reviewing applications filed by municipalities is not tracked separately from other section 7(a) applications. This integration further complicates the calculation of a representative fee with respect to applications filed by nonmunicipalities.

The NOPR also would have established a fee for review of an abandonment application filed under section 7(b) of the NGA. On reconsideration, the Commission has decided not to charge a separate fee at this time for that service.[24] In some cases, abandonments under NGA section 7(b) benefit gas consumers more than they benefit the pipeline. For instance, they may provide for the removal of unneeded or obsolete facilities from the rate base or may provide for reductions in contract demand (and the accompanying demand charges) for services that are no longer desired.

The Commission recognizes, nonetheless, that not all abandonments are for the primary benefit of the ultimate consumer. For instance, applications may be filed in order to transfer the facilities or operations of an interstate pipeline for economic reasons that benefit the pipeline.[25] Accordingly, the Commission may decide to establish a fee for abandonments in the future, or may decide to bill directly for the cost of processing a complex abandonment application, where the pipeline is clearly the primary beneficiary. Any decision to establish a filing fee in this instance would be made by subsequent rulemaking.

In the NOPR, the Commission indicated that a fee would be charged for review of applications for relief from curtailment under § 2.78(b) of the Commission's regulations[26] and for

[17] 18 CFR 284.107 and 284.127 (1984). The Commission notes, however, that in the Notice of Proposed Rulemaking in Docket No. RM85-1-000, issued on May 30, 1985, 50 FR 24130, it has proposed the removal of §§ 284.107 and 284.127.

[18] 43 U.S.C. 1862 (1982).

[19] *See* the Commission's implementing regulations at 18 CFR 284.243 (1984).

[20] Under the Commission's implementing regulations at 18 CFR 152.1-152.5 (1984), an applicant must demonstrate that all of the gas it receives from another person within or at the boundary of a state is ultimately consumed within that state and that the applicant is subject to state regulation.

[21] *See* Natural Gas Pipeline Co. of America and Energy Gathering, Inc., 16 FERC ¶ 61,235 (1982).

[22] The regulations appear at 18 CFR 156.1-156.11 (1984).

[23] Fees Applicable to General Activities, *supra*, n.8 (to be codified at 18 CFR 381.108).

[24] This is consistent with Docket No. RM82-25-000 (*see* n.3, *supra*), the final rule establishing fees for producer matters under the NGA.

[25] *See, e.g.*, Florida Gas Transmission Co., 28 FERC ¶ 61,298 (1982), *reh'g denied*, 24 FERC ¶ 61,005 (1983), *aff'd*, Port Everglades Authority, *et al.* v. FERC, No. 83-1934 (D.C. Cir. Oct. 5, 1984) (unpublished opinion).

[26] 18 CFR 2.78(b) (1984).

review of a pipeline's annual update of its index of entitlements for priority 2 (P-2) essential agricultural users under § 281.204 of the Commission's regulations.[27] The final rule, however, does not establish a fee for applications for relief from curtailment inasmuch as such applications benefit the particular customers seeking relief from the curtailment plan rather than the pipeline. In addition, any fee charged may act to negate the value of the relief sought. Similarly, this rule does not establish a fee for review of the pipeline's annual update of its index of entitlements for P-2 users because the pipeline cannot be identified as the primary recipient of the benefits.

While the NOPR proposed to charge a fee for Commission review of an application for authorization to export or import natural gas under section 3 of the NGA, the Commission has decided not to charge a fee for review of such an application. By sections 301(b) and 402(f) of the Department of Energy Organization Act, Congress transferred the Federal Power Commission's authority to approve the import or export of natural gas under section 3 of the NGA to the Secretary of Energy. The Secretary, in turn, has the authority to delegate or assign such a function to the Commission. At the time the NOPR was issued, the Secretary of Energy had delegated and assigned to the Commission certain functions with respect to the regulation of exports and imports of natural gas under NGA section 3.[28] After the Commission issued its NOPR, the Secretary of Energy redelegated the Commission's residual section 3 authority to the Economic Regulatory Administration (ERA), which has subsequently issued new regulations implementing section 3.[29] Inasmuch as almost all of the Commission's previously delegated authority under section 3 has now been withdrawn and redelegated to ERA,[30] this final rule does not establish a fee for applications under NGA section 3.[31]

The NOPR also proposed to charge a fee for review of applications under Outer Continental Shelf Lands Act (OCSLA) section 5 (for Commission determination of the proportionate amounts of natural gas to be transported or purchased by pipelines from submerged or Outer Continental Shelf lands) [32] and OCSLA section 25 (for the preparation of environmental impact statements regarding Outer Continental Shelf development and production plans involving the production and transportation of natural gas).[33] In addition, the NOPR proposed a fee for review of applications for a Presidential permit under Executive Order No. 10,485 [34] for the construction and maintenance of facilities located on the borders of the United States for the exportation or importation of natural gas. These activities represent minimal Commission activity to date, and the Commission has inadequate current data to establish a fee. Also, despite reference in the NOPR to a fee for NGPA section 312 applications regarding the assignment of rights to receive surplus natural gas, no fee is established herein for review of these applications due to a lack of data.

Although the NOPR proposed to charge fees that included the costs of hearings in connection with services involved in this rule, the Commission has decided not to charge fees to recover these costs. Some commenters argue that the applicant should pay fees regardless of whether staff, the applicant, or intervenors ask for a hearing. On the other hand, pipelines argue that assessing pipelines a fee for a hearing requested by intervenors would encourage fruitless interventions and would confer no benefit on the pipeline that might otherwise have received certificate authorization without the hearing. One commenter suggests that the administrative law judge should determine responsibility for fees for a hearing requested by an intervenor.

These varied viewpoints illustrate the practical difficulties in determining the primary beneficiary or beneficiaries of any hearing. Absent more refined information or significant changes in the Commission's Rules of Practice and Procedure regarding hearings and interventions, the Commission believes that it is not administratively feasible to determine when fees would be appropriate for this service.

The Commission, in its discretion, has decided not to charge a fee for hearings at this time, but may, in the future, reconsider its position on this point. Meanwhile, the Commission does retain the option to bill an applicant directly [*see* Section III.H., *infra*] for the costs associated with a hearing where the hearing provides a private benefit to an identifiable recipient and where the hearing requires an extraordinary amount of Commission time and effort to process.

The Commission, as mentioned in the NOPR, is not establishing fees for other actions it takes relating to natural gas pipeline matters because they generally do not manifest the necessary, identifiable benefit to an individual entity. These actions include preliminary and formal enforcement investigations, Commission enforcement-related settlements, news releases, and litigation in the courts.

The Commission has also decided not to establish a fee for filing a petition for rehearing at this time. In those cases where an applicant's petition for rehearing seeks a private benefit, the Commission believes it could charge a fee for a review of that nature. However, there are also cases where a petition for rehearing raises matters that, on balance, address more general public interest issues. In those cases, the Commission does not believe it would be reasonable to impose a fee. Due to the substantial administrative burden involved in trying to segregate which rehearing petitions could be subject to a fee, no fee for such a service is established herein. In addition, the Commission has decided not to establish a separate fee category for rulemakings at this time, although it believes that these actions might warrant fees where special benefits are provided to identifiable recipients

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[27] 18 CFR 281.204 (1984).

[28] *See* DOE Delegation Order No. 0204-55, 44 FR 56735 (Oct. 2, 1979) (effective Oct. 2, 1979).

[29] Department of Energy regulations, to be codified at 10 CFR 590.201, provide that any person seeking authorization to import or export natural gas into or from the United States must file an application with ERA. ERA will charge a non-refundable filing fee of $50.00, and intends to issue a separate rulemaking to establish other filing and processing fees for review of applications to import or export natural gas. Import and Export of Natural Gas; New Administrative Procedures, 49 FR 35302 (Sept. 6, 1984) (Docket No. ERA-R-81-05). *See also* Delegation Order No. 0204-112, 49 FR 6684 (Feb. 22, 1984) (effective Feb. 22, 1984), superseding Delegation Order No. 0204-55, *supra*, preceding note.

[30] Under Delegation Order No. 0204-112 (*see* preceding note), the Commission now has jurisdiction under section 3 in only two very limited areas. One is authorization of the place of import or export, but only when the import or export involves construction of new pipeline facilities. Under those circumstances, the section 3 applicant will invariably also have to file a section 7 application for the new construction (*see* footnote following). There are also rare instances in which the Commission has occasion to process applications under section 3 for authorization of section 7-type activities. *See* Distrigas Corp., *et al.* v. FPC, 495 F.2d 1057 (D.C. Cir. 1974); Inter-City Minnesota Pipelines Ltd., 29 FERC ¶ 61,150 (1984).

[31] Many import and export projects also involve other activities regulated under the NGA, such as construction of facilities to receive or ship natural gas in interstate commerce, or sale of natural gas for resale in interstate commerce. The typical applicant under section 3 must also apply for a certificate of public convenience and necessity under NGA section 7. *See* West Virginia Public Service Commission v. United States Department of Energy, 681 F.2d 847, 856 n. 38 (D.C. Cir. 1982). The $12,200 fee will be applicable to these related section 7 filings.

[32] 43 U.S.C. 1334(e), (f)(1)(B), (f)(2) (1982).

[33] 43 U.S.C. 1351(k) (1982).

[34] Exec. Order No. 10,485, 3 CFR 970 (1953), *amended*, Exec. Order No. 12,038, 3 CFR 136 (1979).

B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge under the terms of the IOAA, Budget Circular A–25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a government service.[35] In addition, the circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public", or the service "provides business stability or assures public confidence in the business activity of the beneficiary (e.g., certificates of necessity and convenience . . . .)"[36]

Commenters generally argue that the Natural Gas Act is intended to benefit the consuming public and, therefore, that the services the Commission performs under the NGA do not primarily benefit identifiable recipients. Commenters add that there can be no value or benefit to the applicant because the applicant must comply with the Commission's regulatory requirements in order to engage in the activities authorized by statute. Rather than conferring a benefit or a special benefit on identifiable recipients, commenters argue that Commission activities may interfere with essential services performed by interstate pipelines.

The IOAA authorizes the Commission to charge fair and equitable fees for "a service or thing of value provided by the agency."[37] The United States Court of Appeals for the D.C. Circuit has held that a fee may be established even where the benefit to the applicant is not greater than the benefit to the general public.[38] Further, Budget Circular A–25 specifically cites a certificate of public convenience and necessity and a license as examples of services for which fees are appropriate because of the special benefits involved. Although not specifically cited as an example, review of a tariff filing is also an appropriate service for charging a fee by the same reasoning. Likewise, a fee for review of an application for a Hinshaw exemption under NGA section 1(c) is appropriate because Commission approval of the application enables the beneficiary to obtain more immediate and substantial benefits than those that accrue to the general public.

The court in *Electronic Industries Association* v. *FCC* observed that the FCC is "not prohibited [under the IOAA] from charging an applicant . . . the full cost of services rendered to an applicant which also result in some incidental public benefits."[39] The court reached this conclusion even though activities such as permits for construction of new or extended facilities or discontinuance of service are required by statute. As noted by the court:

> [T]he [agency] is entitled to charge for services which assist a person in complying with his statutory duties. Such services create an independent private benefit.[40]

Similarly, services for which fees are established in this rule assist pipelines in complying with the jurisdictional statutes. The public benefits derived from these services are incidental thereto and, as suggested by the *Electronic Industries* case, the assessment of fees is proper under such circumstances.

Many commenters argue that the proposed fees will increase the burner-tip price of gas paid by ratepayers and will result in a loss of customers for natural gas. Commenters argue that these consequences are contrary to the public interest under the NGA.

The NGA requires that the rates charged by an interstate natural gas pipeline to its jurisdictional customers be just and reasonable. Initial rates reflect estimated costs to the pipeline, including the amount of the fee incident to a section 7(c) application. The initial rate is determined to be in the public convenience and necessity until a new rate is approved in a subsequent section 4 or section 5 rate case under the "just and reasonable" standard. Therefore, the fees may be recovered through the pipeline's initial rates. Moreover, the burner-tip price of gas is related to all elements of cost, including an appropriate allocation of fixed costs, commodity costs, costs of transportation, and the cost of purchased gas. Given the magnitude of these costs, which are all reflected in a pipeline's rates, any rate effect caused by the fees imposed under this rule is likely to be insignificant. Finally, the Commission's authority to assess fees for services rendered to interstate natural gas pipelines exists independently under the IOAA. The IOAA provides that beneficiaries of a service should pay for it, and the Commission's authority to charge for such services under that statute is unfettered by the NGA or the NGPA.

C. Smallest Practical Unit

In designing a fee schedule, the IOAA requires the Commission to base fees on the smallest unit or category of service that is practical. The United States Court of Appeals for the D.C. Circuit set forth the general rule as follows:

> [W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees of services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines, but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[41]

Further, Budget Circular A–25 states that "costs shall be determined or established from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose."[42]

The Commission, in keeping with Budget Circular A–25, is classifying its fees by types of applications or filings, which are the smallest practical units. The Commission has calculated its fees from its Management Information System (MIS), which is an agency system established to track workload. The MIS tracks time, by work-months, based on types of applications or proceedings. The Commission is establishing one fee for each filing because that filing is the smallest practical unit for which the Commission can develop a fee.[43]

The NOPR requested comments on whether smaller fee categories should be established and whether separate fees should be established for each stage of a proceeding. While some commenters do not believe that a further breakdown of fee categories should be

[35] Budget Circular A–25, at 1.

[36] *Id.* at 2.

[37] 31 U.S.C. 9701 (1982). This phrase was changed in 1982 from "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility" for consistency and to eliminate unnecessary words. H.R. Rep. No. 651, 97th Cong., 2d Sess. 226 (1982). *See* former 31 U.S.C. 483a (1976).

[38] Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 n.12 (D.C. Cir. 1976).

[39] Electronic Industries Association v. FCC, 554 F.2d 1109, 1115 (D.C. Cir. 1976).

[40] *Id.* (discussing tariff filing).

[41] *Id.* at 1116.

[42] Budget Circular A–25, at 3.

[43] The Commission has recently enhanced the MIS by tracking its employees' time on a new system (Time Distribution Reporting System or "TDRS"), which provides an even greater degree of accuracy, as described in more detail below. Beginning in FY 1984, Commission-wide reports on time expended by staff are available under the new system; therefore, the fees established in the final rule are based on this data.

made, others recommend a multiple fee schedule for different stages of a litigated proceeding, separate fees for intrastate and interstate pipelines in section 311 transactions, or separate fees for the various section 7 applications. They believe that the Commission should establish the costs of each activity level, because each application presents distinct problems of review.

Since the Commission is not at this time charging fees to recover hearing costs, a multiple fee schedule or separate fees for various stages of the litigated proceeding is unnecessary. The only stage for which fees are being charged is the "nonformal" stage, which occurs before a matter is set for hearing. Subsequent to that stage, staff hours are recorded as "formal", signifying the point at which the costs are attributable to the hearing process. This "formal" staff time is excluded from the fee computations. Further, review of interstate pipeline applications under NGPA section 311 is very similar in nature to review of intrastate pipeline applications thereunder, neither of which is substantially different from NGA section 7(c) and section 1(c) applications. Accordingly, separate fees for each of these applications is not justified. Also, inasmuch as the final rule establishes a fee for certificate applications but not for other activities under NGA section 7, the rule does assign a fee for the smallest practical unit of service for which a fee will be charged under that section.

D. Basis of Cost Recovery

1. Direct and indirect costs included. The Commission's fee schedule is designed to account for all types of recoverable costs associated with the processing of specified applications and filings under the Commission's jurisdictional statutes. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications or filings. The attributable costs include the direct salary costs as well as the substantial amount of indirect costs which the Commission expends in its reviews. As the Fifth Circuit has states:

> [Employees] must be supplied working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that [they are] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and capital equipment are all necessarily incurred in the process of reviewing an application.[44]

[44] Mississippi Power & Light Co. v. NRC, 601 F.2d 223, 232 (5th Cir. 1979).

Accordingly, the Commission has included in its identification of costs the following items: salaries and benefits; travel; transportation of things; rents, communications and utilities; printing; other support services; supplies; and equipment.

2. Methodology. (a) Underlying considerations. The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's MIS, *supra*, which provides the amount of time spent on all Commission functions. The functions are grouped into categories that represent the Commission's various programs, including gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, hydropower regulation, and electric power regulation. The MIS workload data appear monthly in bound volumes.

With respect to each function, the supervisor records for the MIS the number of projects initiated (receipts) and completed (completions) in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities." Actual time expended is reported agency-wide through the Commission's new Time Distribution Reporting System (TDRS). On a daily basis, each employee fills out a time sheet, coded by product category, reflecting the amount of time spent processing each particular type of work-activity. Every two weeks, the supervisor in each organizational unit reviews and verifies the reports, and the TDRS data are entered into a computer base. Computer reports of time expended in each functional category, expressed in terms of work-months, are generated for use in the MIS. A work-month is defined in the Commission's regulations as the amount of work represented by one employee's devotion of 100 percent of his other time for one month.[45] Each type of work-activity is assigned a product category. NGA section 7(c), NGPA section 311(a), and NGA section 1(c) applications are assigned the same product category due to the similarity of the tasks involved in their review; hence, each is charged an identical fee. The TDRS supplants the previous reporting system, which was based on the unit supervisor's estimate of time expended, with more accurate, daily reports from the employees themselves.

[45] 18 CFR 381.102 (1984).

Many non-docketed support functions are essential to the completion of any docketed activity. However, they cannot be measured in terms of receipts and completions because the nature of these functions makes it impractical to do so. Like other functions, the time spent on support activities is recorded by employees on a daily basis and is reported in terms of work-months.

Only those support functions that are related to providing a benefit are included in the fee calculations. These support functions will be referred to as "support activities" and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and routine administrative functions. Routine administrative functions include such activities as maintenance of time and leave records, the handling of property and supplies, staff meetings, the planning and organizing of leave, and business-related travel and transportation costs. The entire category is labeled "administrative services" and is included in the fee structure because it is essential to FERC's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, Congress, the General Accounting Office, and other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications", because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work on the Commission budget, management information systems, and program development functions such as special studies or briefings on relevant subjects, but which are not identified with just one docketed activity. This category is therefore an integral part of completing docketed activities.

Support activities represent a type of indirect cost, but are channeled into the cost calculations separately from all other indirect costs (such as physical

plant overhead). These other indirect costs are added together with direct costs to arrive at an average monthly cost per Commission employee of $5,000.58, *infra*. That figure is multiplied by the time (in work-months) taken to review a type of application. In contrast, support activities represent work-months expended which cannot be allocated directly to each individually-tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of filing and also a *pro rata* share of the time spent on support activities associated with reviewing that type of filing.

(b) Calculation of Fee Amounts. For purposes of this rule, the Commission has used the following methodology to determine the costs of providing any service or benefit. First, the work-months reported for a class of docketed activity are added to the *pro rata* share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for the year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's FY (Fiscal Year) 1984 actual costs:

Salaries and Benefits (Based on year-end payroll data and benefits)	$46,521
Travel	643
Transportation of Things	15
Rents, Communications & Utilities	5,695
Printing	1,448
Other Services—excludes direct program contracts	4,639
Supplies	693
Equipment	353
Total (average annual cost per employee)	$60,007

The total was divided by 12 to yield an average work-month cost per employee of $5,000.58.

Third, in order to determine the cost of an activity, the Commission multiplied the average cost per work-month by the average number of work-months required to complete the activity, the resulting product representing the norm.[46]

Commenters provide many different reasons for their belief that the Commission's cost methodology is either severely flawed or excessively vague. Among these reasons are an allegedly inadequate explanation of support cost calculations and inclusion of costs that do not benefit an identifiable recipient or are not actually incurred by the Commission in rendering a particular service. Some commenter suggest that actual costs per docketed activity, rather than average costs, would result in more reasonable fee levels. Others argue that the use of docket completions may encourage inefficiencies and may cause fees to fluctuate unduly from year to year. The suggested alternative is to base fees on the total number of dockets processed in any given year.

As for what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs to the government. Thus, there is no reasons to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. All other support activities are an integral part of completing docketed activities and therefore are included in the calculations. Moreover, in devising its fee schedule, the Commission is authorized to determined or estimate its costs "from the best available records in the agency."[47] For this Commission, that means the MIS, recently enhanced by the TDRS.

In determining the fees, the NOPR proposed to use 1982 budgeted cost figures and 1981 actual completions and work-months. In addition, the method of updating the fees was tied to 1981 as the "base year." Each subsequent year was to be adjusted by the change in costs between the base year and the year in consideration. The number of completions and work-months would not be changed from the FY 1981 base year numbers. Nevertheless, it is possible that 1981 may not be a typical year for completions and work-months, and thus would not be appropriate for use as the base year. Instead, the Commission believes that it would be more accurate to calculate fees from actual completions and work-months, as well as from actual costs, for the most current fiscal year for which data are available. Consistent with its decision in the other final fees rule, the Commission is using actual fiscal year figures in this rule as well as in updating the fees in subsequent years (*see* section III.E. below). Accordingly, the fees in this rule are based upon actual fiscal year 1984 direct and indirect costs, completions and work-months. This approach eliminates any inaccuracies that could arise from using budgeted figures and will keep data current. In addition, by updating completions and work-months with the most recently available data, the fees can be adjusted periodically to reflect any increased processing productivity, as discussed below.

To derive actual costs per filing, rather than average costs, would be extremely difficult or even impossible. The Commission would have to monitor each application to determine actual staff time per individual application, which is highly impractical from an administrative standpoint. Assignment of indirect costs would be complex or impossible as well. This approach would also preclude the use of an agency-wide fee schedule, an essential tool for assessing fees where large numbers of filings are processed in several distinct categories.

As for the use of docket completions rather than the number of dockets processed in computing the fees, Commission supervisory personnel are directly responsible for staff productivity and efficiency, and the Commission can, at any time, reduce the fee for a category of services if inefficiencies are present. Moreover, the use of actual completions should not cause the fees to fluctuate significantly because, although the number of completions in any given year may vary, the fee is determined by the average amount of time expended per completion. If there are more completions or less completions in one year than in the preceding year, the total work-months expended processing that type of work activity should be correspondingly higher or lower. The average time expended per completion, therefore, would remain essentially constant regardless of the number of completions. Accordingly, the applicable fee would not vary considerably so long as the cost of a work-month is basically unchanged from the previous year.

Several commenters also claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine fees based on the average salary of only those employees processing particular filings.

Agency-wide cost methodology is used for a number of reasons. First, cumulative agency fiscal expenditures

[46] Updated data sheets have been placed in the Commission's Public File Room detailing the calculations.

[47] Budget Circular A-25, at 3.

are reported only on an agency-wide basis, by object class, such as full time permanent staff salaries, specific support contracts, equipment rentals, telephone service, postage, printing, and the like. The Commission maintains no cumulative financial reporting systems which detail expenditures by individual organizational unit, *e.g.*, by office, division, branch, or level. Second, even though payroll reports by individual organizational unit are prepared by and available from the Department of Energy, they reflect only enrolled staff for any specific reporting period. The data are not cumulative, and will fluctuate widely based on the number and grade level of employees on board at any particular time. For example, salaries of any unit may vary from one pay period to the next, and additional outlays, such as monetary awards are not reflected in financial costs. Third, a one-time pilot study conducted by the Office of Program Management indicates that the fees would not be lowered by using participating employee costs. Rather, the results indicated virtually no change in fees the agency-wide cost methodology.[48]

Finally, changing the methodology from an agency-wide basis to a participating personnel cost basis would require the Commission to substantially refine and expand its organizational reporting procedures with regard to employee salaries. This would exceed the requirements of Budget Circular A-25, which states that "costs shall be determined or estimated from the best available records in the agency, and *new cost accounting systems will not be established solely for this purpose*" (emphasis added). Accordingly, for these reasons, this final rule utilizes the agency-wide method proposed in the NOPR.

E. Actual Fees Established and Procedures for Updating Fees

The following table (data for which are in the Commission's Public File Room) summarizes for FY 1984 the total number of work-months, completions, and the average cost per completion in rendering the services for which the Commission is establishing fees in this final rule:

Service	Total WM's in 1984	Total completions in 1984	Average number of WM's per completion in 1984	Average cost per completion in 1984
Application for authorization under NGA section 7(c)				
Application for authorization under NGPA section 311(a)	1,204.30	492	2.45	$12,251.42
Application for declaration of Hinshaw exemption under NGA section 1(c)				
Request under blanket certificate notice/protest procedures for routine transactions	122	355	0.34	1,700.00
Tariff filed to establish a new or revise an existing curtailment plan under NGA section 4	37	56	.66	3,300.38

The Commission does not believe that good cause exists at this time for the categorical reduction of any of these fees to less than full-cost recovery (*see* Section *III.* F. 1., *infra*). Accordingly, the following fees are established:[49]

Service	Fees
Application for Authorization under NGA section 7(c)	$12,200
Request under blanket certificate notice/protest procedures for routine transactions	1,700
Application for authorization under NGPA section 311(a)	12,200
Tariff filed to establish a new or revise an existing curtailment plan under NGA section 4	3,300
Application for declaration of Hinshaw exemption under NGA section 1(c)	12,200

All substantial amendments to pending applications and all applications to amend existing authorizations or exemptions are treated as initial applications, and the fees listed above will apply. An amendment to a pending application is deemed substantial if it changes the character or nature and/or magnitude of the proposal. The Commission wishes to make clear that its practice has not been to charge for insubstantial amendments. The determination of how "substantial" a filed amendment is will be made on a case-by-case basis.

In the natural gas pipeline certificates area, for example, an amendment to a pending application will be considered substantial if it changes, in effect, an application for transportation and delivery of gas for direct sale to one of sale for resale, or vice-versa. Amendment will also be deemed substantial if it significantly increases or decreases the amount of sales or transportation volumes, or changes the size or location of facilities or pipe. To clarify this point, this treatment of amendments to pending filings is being implemented by adding a new § 381.110 to guarantee a consistent policy for the collection of fees for all Commission activities.

One commenter suggests that charging the same fee for routine amendments to existing certificates as charged for major certificate applications is not cost justified. While it is true that a petition to amend an existing authorization may be routine compared to the scope of the initial proposal, this is true of initial applications as well, in the sense that some proposals are routine and require less staff time than major or controversial proposals. Nevertheless, the final rule establishes fees based on *average* costs. In the Commission's view, this is the only practical basis.

Applications to amend existing authorizations are in fact new applications. Some are complex and some are not, but they involve the same type of review as any initial application. As for amendments to pending applications, some change the initial application so much as to be tantamount to a new application. Moreover, each amendment to a pending proposal is assigned a sub-docket number upon filing, and when the case is closed, the initial application and any amendments to it are counted as separate completions for calculation of the fee amount. This substantially reduces the amount of the fee charged for most services, particularly NGA section 7(c) applications (wherein the majority of amendments are filed). The Commission believes, therefore, that the fees charged for substantial amendments and applications to amend are not excessive.

The Commission will update these fees each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the **Federal Register**, after the close of the preceding fiscal year. The updated fees will be based on actual completions, work-months and costs from the preceding fiscal year. In this way, the fees will reflect the cost of providing benefits to the recipients

[48] The pilot study, which was conducted in April 1985 and the details of which have been placed in the Commission's Public File Room, utilized the salaries only of employees who work on pipeline certificate activities for which fees are to be collected herein.

[49] Fees are established by taking actual costs and rounding *down* to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

based on the most current data available.

F. Exceptions to Full Cost Recovery

1. Reduction in fee amounts by category.

As outlined above, this final rule establishes fees that include all the recoverable costs, excluding hearing-related costs, associated with the particular benefits and services provided. The Commission recognizes that there may be instances in the future where the Commission determines that full-cost recovery fees would have an adverse effect on applicants or would undermine Commission activities. In such cases, the Commission may exercise its discretion to reduce fees to less than full-cost recovery in order to prevent a disproportionate economic impact or for other good cause. Other good cause would include situations where the Commission wishes to encourage use of a service, where little or no Commission review time (as opposed to staff time) is required, or where a future reduction in the amount of time required to process a filing is likely with respect to services with which the Commission has had little previous experience. Contrary to the NOPR, the Commission has decided not to establish specific amounts of percentage reductions in advance. Rather, the Commission will determine the amount of the reduction at the time it decides that good cause exists for less than full-cost recovery in a particular situation. This alleviates concerns raised by several commenters.

Except for the annual determinations reflecting actual data, any new, future reduction in a fee would be initiated only by rulemaking. The same percentage of reduction would carry over to subsequent years unless, through a subsequent rulemaking, further notice was given by the Commission that it was altering that reduction.

Some commenters argue that the proposed standards for exceptions to full-cost recovery are vague, too discretionary, and ineffective. They urge the Commission to establish more specific guidelines in this area, especially with respect to undue economic hardship. The Commission believes that the standards enumerated above are sufficiently specific for parties to be apprised of the circumstances under which the Commission may reduce fees to less than full-cost recovery, particularly since any such categorical reduction will be done in the context of a rulemaking. Moreover, a decision to reduce fees to less than full-cost recovery for a class of filings might involve other policy considerations that cannot be predicted at this time. This categorical approach is to be distinguished from the situation where an individual applicant can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

2. Case-by-Case Waiver Procedures

The Commission also realizes that a situation could arise in which an applicant is unable to pay the prescribed fees due to severe economic hardship.[50] The Commission has established the general procedures for case-by-case waiver of its fees in Subpart A of Part 381.[51] If an applicant is suffering severe economic hardship, it will bear the burden of presenting evidence to the Commission, such as a financial statement, showing that it is either economically unable to pay the fee or that if it does pay the fee, it will be placed in a state of financial distress or emergency. This evidence must be included with the petition for waiver at the time of filing the application. The Commission, or its designee, will analyze petitions for waiver to determine whether the standards for waiver have been met for each application. The Commission will notify the applicant as to whether the petition for waiver has been denied or accepted. Contrary to the suggestion of one commenter, the Commission is not granting an automatic waiver of application fees to pipelines with revenues or sales under a certain level because the Commission has decided to analyze each case on an individual basis.

Finally, with respect to the Commission's basic policy on waiver of fees, the Commission is not granting a waiver if the fee charged might exceed the exact cost of Commission review in a particular case. Because the Commission believes that the fees are cost-based overall and founded on the best available data, such a practice would create an administratively infeasible exception that would undermine the method by which fees are derived. The fees established in this final rule are based on the average cost per class of docketed activity, and it is inherent in the use of averages that filings may occasionally cost less to process than the fee charged, while others may cost more. Therefore, any fee over-collected in one instance will be offset by Commission under-recovery of costs in another.

G. Procedures for Paying Fees; Availability of Refunds

The Commission's notice proposed that fees be submitted by certified check, made payable to the Treasurer of the United States. A number of commenters argue that there is no reason to require certified checks. They state that a corporate check should be sufficient.

The Commission has already deleted the requirement for a certified check in establishing its general fee procedures in Subpart A of Part 381 (*see* 18 CFR 381.105). A check made payable to the Treasurer of the United States must still be included with the filing or application unless a petition for waiver is submitted in lieu of the fee. The check must indicate the type of filing for which the fee is being submitted, *e.g.*, application for transportation authority under section 311(a). This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or a petition for waiver, it will be considered deficient and will not be processed.

The final rule requires payment of the fee in full at the time the application is filed. Some commenters argue that the Commission should provide for payment of fees in increments during various stages of the proceeding. Other commenters complain that the requirement that fees be paid at the time of filing unduly burdens a pipeline's cash flow. The Commission's decision to require payment of fees in full when the application is filed will compensate the Commission for the staff effort needed to complete the necessary service. Payment of fees in installments would require additional staff time to ensure that payments are made on time. Inasmuch as the fees are relatively moderate, prepayment of the required fee in full is appropriate and is more administratively manageable. In addition, exclusion of the hearing costs initially proposed as part of the fees should greatly reduce the possibility of cash-flow problems for pipelines. As previously indicated, waiver procedures are also available to prevent undue economic hardship.

[50] Several commenters complain that fees for requests under a blanket certificate make some routine projects cost-ineffective. However, an applicant financially able to pay the appropriate fee for a request is not justified in requesting a waiver merely because the fee must be recouped in the rate base over the useful life of the investment. Further, once a pipeline is granted a blanket certificate, the pipeline is automatically authorized to undertake a variety of self-implementing transactions without the necessity of paying separate fees for each transaction, unless notice and protest procedures are involved. Finally, the $1,700 fee established in the final rule is far less than the $8,300 fee proposed in the NOPR.

[51] *See* Fees Applicable to Producer Matters Under the Natural Gas Act, *supra*, n.3 (codified at 18 CFR 381.106 (1984)).

Several commenters argue that the Commission should include a provision in the final rule whereby an applicant could receive a refund if the application were rejected on grounds other than nonpayment of fees or if the Commission did not respond within a reasonable amount of time. The IOAA, however, authorizes government agencies to become self-sustaining to the extent possible. To do so, the agency is to collect fees for services and benefits it provides. Congress gave this Commission the duty of carrying out functions under the NGA and the NGPA. These functions require reviewing each petition or application, not guaranteeing the issurance of the authorization, approval, or exemption sought. Some petitions, applications, or filings are accepted or granted; others are not. The Commission's fees cover the time and cost of providing these review services, as authorized by the IOAA. It does not necessarily cost the Commission any less when the Commission rejects an application or tariff filing. A filing, when made, should be fully supportable and supported. Fees are generally not refundable, therefore.

As a practical matter, however, some refunds are allowed. Specifically, fees paid will be refunded if the filing is withdrawn before it is noticed in the **Federal Register** or, if no notice is required, if it is withdrawn within 15 days of the date of filing. No fees will be charged, therefore, unless the review process is underway. Although this practice does not ensure that the Commission will not have invested staff resources processing a filing that is subsequently withdrawn, the Commission will presume that to be the case in order to establish clear demarcation for the refundability of fees.

H. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time required to process filings and the actual agency-wide costs involved with this processing. The Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. The figure is then multiplied by the average cost per work-month to arrive at the fee, representing the average cost per class of docketed activity completed.

However, the Commission occasionally receives filings that require substantially more than an average number of work-months per completion. These filings may be extensive in scope and may present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort in processing them. The standard fees established in this rule bear no reasonable relationship to the actual costs of processing such extraordinary filings. Moreover, if the costs of processing extraordinary filings were included in the costs associated with average filings, persons submitting average filings would be subsidizing those submitting the extraordinary filings. In the case of an extraordinary filing, therefore, the Commission reserves the option of ordering a direct billing procedure pursuant to § 381.107 of its regulations not later than one year after receiving a complete filing from an applicant.

Commenters state that the direct billing procedure is vague, abritrary, and could result in the payment of unlimited amounts of fees. Other commenters claim that the complexity of a filing might result from participation of Commission staff.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. The staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. If the decision to bill the pipeline a lesser amount is based upon the participation of intervenors in a proceeding, the Commission retains the discretion to determine whether some of the cost not billed directly to an applicant should instead be billed to the intervenors. Any decision to bill intervenors directly will be made by order of the Commission on a case-by-case basis.

The Commission expects that direct billing will be rare. The direct billing procedures will be utilized only in those cases involving complex technical, environmental, and/or legal issues. Accordingly, the Commission is amending its regulations to provide guidance on the relative magnitude of the terms of § 381.107 under which it will resort to direct billing. It will not consider a filing for direct billing unless estimated staff processing time exceeds the average for that type of filing by a factor of five. This is the Commission's best estimate of when the additional fee to be collected begins to offset the administrative burden of direct billing. However, even if the estimated staff processing time is expected to exceed five times the average, the Commission must still determine that the filing is extraordinary before the direct billing procedures are instituted. Examples of such cases that might be subject to direct billing are the Trans Alaska Pipeline System (TAPS) case[52] and complicated Alaska Natural Gas Transportation System (ANGTS) applications. At the present time, only one major and highly complicated certificate application is being directly billed under § 381.017.[53]

Where there is a direct billing, the Commission will itemize, to the best degree of accuracy under the MIS, the costs involved in the direct billing. There is no way the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter in the proceeding in which the filed application has been docketed. Moreover, the Commission will credit an applicant whose filing becomes subject to direct billing with any fee paid under the fee system prescribed here.

I. Prospective Application of the Rules

The NOPR proposed that any pipeline certificate application filed with the Commission prior to the effective date of the new rules be accompanied by the fees established by Part 159; applications filed on or after the effective date would be accompanied by the new fees prescribed and not by the fees under Part 159.[54] Some commenters

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[52] Docket No. OR78-1. This proceeding is now pending before the Commission. However, it is not being directly billed under Part 381 of the Commission's Regulations because it was filed prior to the effective date of 18 CFR 381.107.

[53] Northern Border, Docket No. CP84-407-000. This case, however, is being directly billed at the option of the applicant pursuant to a settlement agreement between the applicant and the United States Department of Justice. One other case (Gas Research Institute, Docket No. RP84-85-000), now closed, has also been directly billed under § 381.107, but this was pursuant to the directive of 18 CFR § 381.206 concerning petitions for advance approval of rate treatment of research, development, and demonstration expenditures.

[54] The Commission's existing fee rules appear at 18 CFR 159.1-159.4 (1984). In addition to a nominal filing fee of $50.00 for applications not involving construction or acquisition of facilities, the Part 159 rules establish a three-tier fee schedule based on the estimated cost of construction. Applicants for a certificate of public convenience and necessity under section 7(c) of the NGA to construct, acquire, or operate facilities must pay, in addition to an initial $50.00 fee, 0.00065 of the estimated construction or aquisition cost within 30 days after the grant of the certificate, and 0.00195 of the excess of actual cost above estimated cost.

believe that the proposed fees should apply retroactively to all pending applications filed before the effective date of the new fees rules. Their reasons are twofold. First, they argue that the level of fees under the new rules would in some cases be less than the level of fees under the Part 159 regulations. Second, they believe that the fees rules in Part 159 are illegal. In particular, one commenter asks the Commission to waive further liability for fees under the Part 159 rules in the case of the HIOS Project [55] and to clarify the effect of this final rule on its pending request for rehearing of an earlier order issued by the Commission determining the amount of fees due.[56] Also, Alaskan Northwest Natural Gas Transportation Co., in its comments in Docket No. RM79-63, points out that it has pending before the Commission a petition requesting a decision with respect to the validity of the existing fees rules and a refund of fees paid under protest for the Alaska segment of ANGTS.[57]

The Commission disagrees with the view that the new fee schedule should apply to applications filed before the effective date of the final rule. For applications filed before the effective date of this rule, the Commission approved the construction, aquisition, or operation of facilities considering the fee levels prescribed by Part 159. The pipeline constructing the project also anticipated the payment of fees at the level authorized under Part 159. Applying the new fees to old applications still pending at the Commission would create the impression that the Part 159 regulations are no longer effective for any purpose. That conclusion would be incorrect. The existing Part 159 fees rules will still apply to any application filed before the effective date of the new rules established herein. Further, this rulemaking is not the appropriate forum to reconsider the legality of the Part 159 fee rules or to determine whether the Part 159 fees should be prospectively waived in a particular docket.

Generally, the fees established in this rule would become effective 30 days after publication in the **Federal Register**, unless the Commission finds "good cause" to apply this rule to pending and past filings.[58] The Commission does not believe that a good cause finding is appropriate in this situation. The Commission must draw the line of applicability of its rules at some reasonable point. The decision to give a new prospective or retroactive effect involves a degree of discretion.[59] Among the factors pertinent to determining whether the rules should have retroactive effect are the extent of reliance on the rejected rule, whether retroactivity would cause an unfair degree of burden, and whether there is a statutory impetus for retroactivity.[60]

The Commission's current Part 159 fees rules, as amended in subsequent years, have been in effect since 1966.[61] For nearly two decades, the Commission and the jurisdictional pipelines have relied on the existing Part 159 fee schedule, and most applicants have paid the fees without protest thereunder. As such, it would be inappropriate to subject applications in process to the new rules.

Although fee levels under the new rules may in some cases be less than the fee levels under the Part 159 rules, in other cases the new fees would be higher. Moreover, in applying a new fee schedule retroactively the Commission would be required to open up settled rate cases, make refunds, and determine eligible classes of beneficiaries of refunds. This would be administratively difficult, if not impossible, and would undermine the finality associated with all completed Commission proceedings.

In the Commission's view, the date an application is filed is the most reasonable criterion for determining the applicability of the new fee schedule. Accordingly, the Commission will apply the fees in this rule prospectively to all filings for which fees are established herein, including pipeline certificate applications,[62] filed on or after the effective date of this final rule, and will not now revoke or supersede the existing Part 159 rules to the extent they apply to applications pending, or authorizations issued for which fees have not yet been paid, on the designated effective date of the final rule.

J. Fees Applicable to Alaska Natural Gas Transportation System (ANGTS)

On August 12, 1981, the Commission issued its NOPR in Docket No. RM79-63, and received four comments in response to the proposed annual direct billing of the costs of processing applications for the construction and initial operation of the ANGTS, and to the proposed procedures for protest, refund, and waiver of ANGTS-related fees. Some commenters in that docket complain that the proposed direct billing procedure does not satisfy the IOAA because the notice fails to identify a specific service or benefit or identify the specific items of costs to be charged. They argue, therefore, that for ANGTS-related certificate applications the Commission should use the same fees regulations proposed under the new rules for non-ANGTS-related certificates.[63] If the direct billing proposal were eliminated, some commenters offered to pay, under the new rules, properly assessed fees for services rendered after the effective date of the new regulations.

In response to comments, the Commission is persuaded that applications for certificates related to ANGTS filed on or after the effective date of the new rules should be treated under the new rules in the same fashion as non-ANGTS-related applications. Under this approach, applications for a final certificate of public convenience and necessity filed on or after the effective date of the new rules must be accompanied by fees established under this final rule. Complicated applications for ANGTS-related projects filed under the new rules may be subject to the direct billing procedures implemented in Subpart A of Part 381. For example, applications for a certificate for authorization to construct the Alaska segment of ANGTS will most likely be

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[55] HIOS is a general partnership, whose members are wholly-owned subsidiaries of several interstate pipelines, that transports natural gas purchased by various shippers from reserves in the High Island Area, Offshore Texas.

[56] The Order Determining Fee was issued on March 28, 1980, 10 FERC ¶ 61,294. On May 28, 1980, the Commission issued an order in Docket Nos. CP75-81 and CP75-104 granting rehearing for the purpose of further consideration. On May 22, 1985, the Commission issued an order approving settlement, pursuant to which HIOS will withdraw the pending petition for rehearing once the order becomes final and no longer subject to Commission review.

[57] The petition was filed on April 24, 1981, in Docket No. CP80-435, consolidated with Docket No. CP76-123 by order issued April 30, 1982.

[58] 5 U.S.C. 553(d)(3)(1982).

[59] *See, e.g.*, National Association of Broadcasters v. FCC, 554 F.2d 1118 (D.C. Cir. 1976) (the impact of retroactive application of the new rule ought to be the basis of consideration); Retail, Wholesale and Department Store Union v. NLRB, 466 F.2d 380 (D.C. Cir. 1972).

[60] National Association of Broadcasters v. FCC, 554 F.2d 1118, 1131-1132 (D.C. Cir. 1976); Retail, Wholesale and Department Store Union v. NLRB, 466 F.2d 380, 390 (D.C. Cir. 1972); Tennessee Gas Pipeline v. Federal Energy Regulatory Commission, 606 F.2d 1094, 1116 n.77 (D.C. Cir. 1979), *cert. denied*, 445 U.S. 920 (1980).

[61] Establishment of Fees to be Paid by Applicants for Natural Gas Pipeline Certificates and Other Authorizations, 31 FR 430 (Jan. 13, 1966) (Docket No. R-282), 35 F.P.C 30 (Jan. 5, 1966).

[62] A "pipeline certificate application" means any application filed pursuant to NGA sections 7(c) and 1(c), and NGPA section 311(a). The Rules will also apply prospectively to requests under the blanket certificate notice and protest procedures and to tariffs filed to established new or revise existing curtailment plans.

[63] One commenter in Docket No. RM82-31-000 urged the Commission to treat applications for the ANGTS project no differently than any other application filed under NGA section 7(c).

extremely complicated and, therefore subject to direct billing. Pending applications for authorization for the construction of segments of the ANGTS filed before the effective date of this final rule must be accompanied by the fees established under Part 159 of the Commission's rules to the extent such fees have not already been paid for services rendered before or after the effective date of the new rules or otherwise provided for by settlement.

The Commission is not implementing the rule proposed in Docket No. RM79–63 for ANGTS direct billing for two additional reasons. First, the proposed rule incorrectly presumes that the sponsors of the ANGTS project paid no fees under Part 159. Second, the proposed rule does not adequately deal with fee levels for relatively uncomplicated projects connected with the ANGTS that are inappropriate for direct billing.

K. Adequacy of Public Notice

Some commenters argue that the NOPR failed to provide sufficient cost data such that the accuracy of the proposed fees could be verified. For example, they cite an inability to review particular applications, the time involved in such review, the number of managerial or professional reviews, what staff work is actually required, the accounting principles used, or the method of allocating costs among the various categories of services. In addition, they claim that the notice did not clearly distinguish between the special benefits (and related costs) which are assigned to the fee-payor and those which are properly assigned to the public at large. These deficiencies, they maintain, deprived them of a meaningful opportunity to comment.

Although *Home Box Office Inc.* v. *FCC*,[64] requires that "an agency proposing informal rulemaking . . . make its views known to the public in a concrete and focused form so as to make criticism or formulation of alternatives possible", the statutory notice provision applicable to Commission rulemakings states that notice to the public is adequate when, as here, it includes either the terms or substance of the proposed rule or a description of the subjects and issues involved.[65] Furthermore, the purpose of notice is to seek "informed criticism and comments", and notice which is likely to elicit such comments is sufficient.[66] Moreover, the Administrative Procedure Act "does not require that interested parties be provided precise notice of each aspect of the regulations eventually adopted. Rather, notice is sufficient if it affords interested parties a reasonable opportunity to participate in the rulemaking process."[67]

The NOPR clearly apprised commenters of the substance of the proposed rules, including a detailed description of the methodology on which the proposed fees were based, as elicited comments fully indicate. The Commission, therefore, has properly discharged its obligation by affording interested parties reasonable opportunity to respond to, and participate in, the rulemaking initiative.

IV. Final Regulatory Flexibility Act Analysis

When an agency promulgates a final rule under the Administrative Procedure Act, 5 U.S.C. 553 (1982), after being required by that section or any other law to publish a notice of proposed rulemaking, a final regulatory flexibility analysis may be appropriate under the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612 (1982). Each final regulatory flexibility analysis must contain: (1) A statement of need for, objectives of, and legal basis for, the rule; (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments; and (3) a description of alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A–25.

This rule affects natural gas pipelines subject to Commission jurisdiction under the NGA and the NGPA. According to the Commission's Office of Chief Accountant, there are approximately 145 jurisdictional interstate natural gas pipelines in the United States as of December 31, 1984. Interstate natural gas pipelines are primarily large businesses. The Small Business Administration's (SBA) regulations do not establish specific size standards for these gas pipelines.[68] The Commission's classification of natural gas pipelines recognizes that even "Nonmajor" pipelines sell, transport, or store substantial volumes of natural gas.[69] Therefore, while this rule may have some degree of economic impact on a number of small pipelines, there is no reason to expect that this impact will be significant for a substantial number of those pipelines.

Concerning the impact on pipelines, and in particular small pipelines, the final rule addresses those situations where there is either disproportionate economic burden or severe economic hardship on a pipeline. For example, the rule contains a provision for waiver of fees for applicants that demonstrate severe economic hardship, and provides a mechanism for reduction in fee amounts by category when the Commission finds disproportionate economic impact to exist. However, the Commission is also required to satisfy the IOAA's statutory directive to be "self sustaining to the extent possible." Hence, there is no blanket exemption for small entities. The Commission believes the rule as now promulgated represents a fair balance between the purposes of both the IOAA and the Regulatory Flexibility Act.

V. Paperwork Reduction Act Statement

The information collection provisions of this rule have been approved by the

[64] 567 F.2d 9, 36 (D.C. Cir.), *cert. denied*, 434 U.S. 829 (1977).

[65] Administrative Procedure Act, 5 U.S.C. 553(b)(3)(1982).

[66] Ethyl Corp. v. EPA, 541 F.2d 1, 48 (D.C. Cir.), *cert. denied*, 426 U.S. 941 (1976).

[67] *Forester* v. *Consumer Product Safety Commission*, 559 F.2d 774, 787 (D.C. Cir. 1977) (referring to 5 U.S.C. 553 (1982)). *See also* Small Refiner Lead Phase-Down Task Force v. EPA, 705 F.2d. 506, 547 (D.C. Cir. 1983); Action for Children's Television v. FCC, 564 F.2d 458, 470 (D.C. Cir. 1977) (the notice need not specify every proposal the agency ultimately adopts as a rule); Connecticut Light and Power Co., 673 F.2d 525, 533 (D.C. Cir. 1982) (final rules that are a "logical outgrowth" of the rules as proposed satisfy the statutory notice requirements).

[68] 5 U.S.C. 601(3) (1982), *citing to* section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 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. *See also* SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (codified at 13 CFR Part 121 (1985)).

[69] Of the approximately 145 jurisdictional natural gas pipelines, the Commission considers approximately 46 to be "Major" natural gas companies (gas sold for resale, transported, or stored in excess of 50 million MCF in each of the three or stored in excess of 50 million Mcf in each of the three previous calendar years); approximately 86 to be "Nonmajor" (total gas sales or volume transactions between 200,000 Mcf and 50 million Mcf in each of the three previous calendar years); and approximately 13 to be exempted or unclassified (sales or volume transactions at or below 200,000 Mcf). *See* Revision to Public Utility and Natural Gas Company Classification Criteria, Uniform System of Accounts, Forms Nos. 1, 1–F, 2 and 2–A and Related Regulations, 49 FR 32,496 (Aug. 14, 1984) (Docket No. RM83–66–000) (Aug. 3, 1984) (to be codified at 19 CFR Part 201).

Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1985). OMB issued Control Number 1902–0132 for these reasons. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: William H. Sipe, (202) 357–9088).

VI. Effective Date

The amendments made by the final rule will be effective on November 4, 1985.

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Environmental impact statements, Natural gas, pipelines.

18 CFR Part 152

Natural gas.

18 CFR Part 154

Natural gas.

18 CFR Part 157

Natural gas.

18 CFR Part 284

Continental shelf, Natural gas, Reporting requirements

18 CFR Part 375

Authority delegations (Government Agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

General fees.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—[AMENDED]

1. The authority citation for Part 2 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

§ 2.79 [Amended]

2. In § 2.79, the introductory clause of paragraph (g) is amended by removing the words "accompanied by" and adding, in lieu thereof, the words "accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter, and".

PART 152—[AMENDED]

3. The authority citation for Part 152 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978), unless otherwise noted.

§ 152.3 [Amended]

4. In § 152.3, the introductory clause is amended by removing the words "in Part 159 of this subchapter" and adding, in lieu thereof, the words "in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter".

PART 154—[AMENDED]

5. The authority citation for Part 154 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 551–557 (1982); Natural Gas Act, 15 U.S.C. 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

§ 154.21 [Amended]

6. Section 154.21 is amended by inserting between the first and second sentences, the followng sentence: "The tariff filing hereunder must be accompanied by the fee prescribed in Part 381 of this chapter or a petiton for waiver pursuant to § 381.106 of this chapter".

PART 157—[AMENDED]

7. The authority citation for Part 157 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w; Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978), unless otherwise noted.

§ 157.6 [Amended]

8. In § 157.6, the introductory clause of paragraph (b) is amended by removing the words "filed shall" and adding, in lieu thereof, the words "filed other than an application for permission and approval to abandon pursuant to section 7(b) shall" and by removing the words "in Part 159 of this subchapter" and adding, in lieu thereof, the words "in part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter".

9. In § 157.7, a new paragraph (h) is added to read as follows:

§ 157.7 Abbreviated applications.

* * * * *

(h) *Filing fees.* Each application filed in accordance with paragraphs (b), (c), (d), (e), and (g) of this section other than an application for permission and approval to abandon pursuant to section 7(b) must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

10 In § 157.103, the introductory clause is amended by removing the words "subpart must" and adding, in lieu thereof, the words "subpart must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and must".

11. Section 157.204 is revised by adding a new paragraph (e) to read as follows:

§ 157.204 Application procedure.

* * * * *

(e) *Filing fees.* Each application for a blanket certificate under this subpart must be accompanied by the fee prescribed by Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

12. In § 157.205, paragraph (b) is amended in the first sentence by removing the words "Commission an" and adding, in lieu thereof, the words "Commission the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and an".

PART 284—[AMENDED]

13. The authority citation for Part 284 continues to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 C.F.R. 142 (1978).

14. In § 284.107, a new paragraph (c) is added to read as follows:

§ 284.107 Applications.

* * * * *

(c) *Filing fees.* Each application must be accompanied by the fee prescribed by Part 381 of this chapter or a petition

for waiver pursuant to § 381.106 of this chapter.

15. In § 284.127, a new paragraph (c) is added to read as follows:

§ 284.127 Applications.

* * * * *

(c) *Filing fees.* Each application must be accompanied by the fee prescribed by Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

§ 284.221 [Amended]

16. In § 284.221, the introductory clause of paragraph (c) is amended by removing the words "certificates shall" and adding, in lieu thereof, the words "certificates must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and shall".

§ 284.222 [Amended]

17. In § 284.222 the introductory clause of paragraph (c) is amended by removing the words "certificates shall" and adding, in lieu thereof, the words "certificates must be accompanied by the fee prescribed in Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter and shall".

18. Section 284.244 is amended by adding a new paragraph (g), to read as follows:

§ 284.244 Application requirements.

* * * * *

(g) *Filing fees.* Each application must be accompained by the fee prescribed by Part 381 of this chapter or a petition for waiver pursuant to § 381.106 of this chapter.

PART 375—[AMENDED]

19. The authority citation for Part 375 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Administrative Procedure Act, 5 U.S.C. 553 (1982).

20. In § 375.307, paragraph (u) is revised to read as follows:

§ 375.307 Delegation to the Director of the Office of Pipeline and Producer Regulation.

* * * * *

(u) Deny or accept, in whole or in part, petitions for waiver of the fees prescribed in §§ 381.201, 381.202, 381.203, 381.204, 381.205, 381.206, 381.207, 381.208, 381.209, 381.401, 381.402, 381.403, and 381.404 of this chapter in accordance with § 381.106(b) of this chapter.

PART 381—[AMENDED]

21. The authority citation for Part 381 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Natural Gas Act, 15 U.S.C. §§ 717–717w (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Natural Gas Policy Act, 15 U.S.C. 3301–3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976), unless otherwise noted.

§ 381.107 [Amended]

22. In § 381.107, paragraph (a) is amended by inserting between the first and second sentences, the following sentence: "A filing will not be considered for direct billing unless the staff processing time required, as estimated by the Executive Director, is expected to exceed five times the average for that particular type of filing.

23. In Part 381, Subpart A, §§ 381.109 and 381.110 are added to read as follows:

Subpart A—General Provisions

* * * * *

§ 381.109 Refunds.

Fees established under this part may be refunded only if the related filing is withdrawn within fifteen (15) days of the date of filing or, if applicable, before the filing is noticed in the **Federal Register.**

§ 381.110 Fees for Substantial Amendments.

Fees established under this part for any filing will also be charged, as appropriate, for any substantial amendment to a pending filing. An amendment is considered substantial if it changes the character, nature, or the magnitude of the proposed activity or rate in the pending filing.

24. In Part 381, Subpart B, §§ 381.207, 381.208, and 381.209 are added to read as follows:

Subpart B—Fees Applicable to the Natural Gas Act and Related Authorities

* * * * *

§ 381.207 Pipeline certificate applications.

(a) *Definition.* For purposes of this section, "pipeline certificate application" means any application for authorization or exemption, any substantial amendment to such an application, and any application to amend an outstanding authorization or exemption, by any person, made pursuant to:

(1) Section 7(c) of the Natural Gas Act filed in accordance with §§ 2.79, 157.6, 157.7, 157.103, 157.204, 284.221, 284.222, and 284.244 of this chapter;

(2) Section 311(a) of the Natural Gas Policy Act of 1978 filed in accordance with §§ 284.107, 284.127, and 284.244 of this chapter; or

(3) Section 1(c) of the Natural Gas Act filed in accordance with § 152.3 of this chapter. This definition does not include applications that fall within the scope of §§ 381.201 and 381.202 of Subpart B of Part 381.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a pipeline certificate application is $12,200. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and, as appropriate, §§ 2.79, 152.3, 157.6, 157.7, 157.103, 157.204, 284.107, 284.127, 284.221, 284.222, and 284.244.

(c) *Effective date.* Any pipeline certificate application filed with the Commission prior to November 4, 1985, is subject to the fees established by Part 159 of this chapter to the extent that Part 159 applies to such an application.

§ 381.208 Requests under the blanket certificate notice and protest procedures.

The fee established for a request for authorization under blanket certificate notice and protest procedures is $1,700.

The fee must be submitted in accordance with Subpart A of this part and § 157.205(b).

§ 381.209 Curtailment filings.

(a) *Definitions:* For purposes of this section, "curtailment filing" means a tariff establishing a new or revising an existing pipeline curtailment plan filed under section 4 of the Natural Gas Act in accordance with § 154.21 of this chapter. A curtailment filing excludes a tariff filing incorporating a pipeline's annual revision of its index of entitlements for priority 2 essential agricultural users under 18 CFR 281.204 or implementing an order granting a request for relief from curtailment under 18 CFR 2.78(b).

(b) *Fee.* The fee for review of a tariff filed to establish a new or revise an existing curtailment plan is $3,300. The fee must be submitted in accordance with Subpart A of this part and § 154.21.

[FR Doc. 85–23666 Filed 10–2–85; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Parts 32, 33, 34, 35, 36, 45, 101, 292, 375, and 381

[Docket No. RM82-38-000; Order No. 435]

Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers

Issued September 30, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to establish fees for the service and benefits it provides to electric utilities, cogenerators and small power producers under the Federal Power Act and the Public Utility Regulatory Policies Act. This is the sixth of a series of rules to be issued on fees. These fees are authorized by the Independent Offices Appropriations Act, which provides for the collection of fees to make agencies "self-sustaining to the extent possible."

EFFECTIVE DATE: This rule will become effective November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Thomas Moore, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (202) 357-8464.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (the Commission) is amending its regulations to establish fees for services and benefits provided under the Federal Power Act (FPA) [1] and the Public Utility Regulatory Policies Act (PURPA).[2] In earlier rulemakings, the Commission applied the same methodology for establishing fees as well as the procedures for billing, collecting, waiving, and updating fees, to services and benefits provided by the Commission.[3]

This rule establishes the following fees:

(1) $1,400.00 for review of a rate schedule filing under sections 205 and 206 of the FPA with no rate impact or involving only a rate decrease;

(2) $2,900.00 for review of a rate schedule filing under sections 205 and 206 of the FPA that has an impact on rates but that is not supported by Period II cost or service data under 18 CFR 35.13;

(3) $15,500.00 for review of a rate schedule filing under sections 205 and 206 of the FPA involving a rate increase that is supported using Period II cost of service data;

(4) $4,200.00 for review of a corporate application involving one or more jurisdictional utilities under section 203 of the FPA;

(5) $3,300.00 for review of an application for approval to assume obligations or liabilities as guarantor or for the negotiated placement of securities under section 204 of the FPA;

(6) $1,400.00 for review of an application for authorization to issue equity or long-term debt securities competitively or to issue short-term debt securities under section 204 of the FPA;

(7) $1,600.00 for review of a full application under 18 CFR Part 45 for authorization for officers or directors of utilities to hold interlocking positions under section 305 of the FPA;

(8) $1,200.00 for review of a filing to justify an extension of the period for testing equipment under the Uniform System of Accounts, 18 CFR Part 101;

(9) $1,800.00 for review of an application for certification of qualifying status as a small power production or cogeneration facility under section 201 of PURPA;

(10) no fee at present for review of an application for an order directing the physical connection of facilities uder sections 202(b) or 210 of the FPA; and

(11) no fee at present for review of an application for an order directing wheeling under section 211 of the FPA.

II. Background

The Commission is authorized under the Independent Offices Appropriation Act of 1952 (IOAA) to establish fees for the services and benefits it provides.[4] The principal interpretation of the IOAA is Bureau of the Budget Circular A-25,[5] which states that a fee should be assessed for each measurable unit or amount of government service or property from which an identifiable recipient derives a special benefit. The Commission is currently charging FPA filing fees under § 36.2 of its regulations.[6]

In accordance with the IOAA and authoritative interpretations of that statute,[7] the Commission, in establishing any fee, must:

(a) Identify the service for which the fee is to be assessed;

(b) Explain why that particular service benefits an identifiable recipient more than it benefits the general public;

(c) Base the fee on as small a category of service as practical;

(d) Demonstrate what direct and indirect costs are incurred by the Commission in rendering the service, and show that those costs are incurred in connection with the service rendered to the beneficiary; and

(e) Set a fair and equitable fee for the service.

For the reasons detailed below, the Commission believes that the fees set forth in this final rule meet those requirements.

III. Summary and Analysis of Comments

On September 1, 1982, the Commission issued its Notice of Proposed Rulemaking (NOPR) in Docket No. RM82-38-000 [8] proposing to

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[1] 16 U.S.C. 792-828c (1982).

[2] 16 U.S.C. 2601-2645 (1982).

[3] Fees Applicable to Producer Matters Under the Natural Gas Act, 49 FR 5074 (Feb. 10, 1984) (Docket No. RM82-25-000) (issued Feb. 6, 1984), *reh'g denied and rule clarified*, 49 FR 17,435 (Apr. 20, 1984); Fees Applicable to Natural Gas Pipeline Rate Matters, 49 FR 5083 (Feb. 10, 1984) (Docket No. RM83-2-000) (issued Feb. 6, 1984), *reh'g denied*, 49 FR 17,437 (Apr. 24, 1984). Petitions for review of these orders have been consolidated in Phillips Petroleum Co. v. FERC, Nos. 1846, 2267 and 2270 (10th Cir. 1984).

[4] 31 U.S.C. 9701 (1982).

[5] Bureau of the Budget Circular A-25 (Sept. 23, 1959). This interpretation has been cited by the United States Supreme Court as "the proper construction of the Act." *FPC* v. *New England Power Co.*, 415 U.S. 345, 351 (1974).

[6] 18 CFR 36.2 (1984). This rule deletes all of Part 36. The material which appeared in § 36.2 (the acutal fees) appears in new §§ 381.502-381.510. The miscellaneous material which appeared in § 36.3 is now governed by §§ 381.105, 381.108, and 381.109. The material in § 36.4, concerning accounting for fees, is deleted because the same information already appears in the Commission's accounting regulations, 18 CFR Part 101, account 928. The provision in § 36.1 concerning annual charges is eliminated because the Supreme Court has invalidated these annual charges. FPC v. New England Power Co., 415 U.S. 345 (1974).

[7] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Air Transport Association of America v. CAB, 732 F.2d 219 (D.C. 1984); Mississippi Power & Light v. NRC, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); National Cable Television Association, Inc. v. FCC, 554 F.2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 554 F.2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F.2d 118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976).

[8] Fees Applicable to Electric Utilities, Cogenerators, and Small Power Producers, 47 FR 39851 (proposed Sept. 10, 1982) to be codified at 18 CFR Parts 32, 33, 34, 35, 45, 292, 375, and 381) (Docket No. RM82-38-000).

establish fees for 12 categories of benefits and services provided under the FPA and PURPA. The Commission received over 100 responses to this NOPR.

A. Services for Which a Fee Is Being Charged

1. Rate Schedule and Rate Change Filings

The final rule charges fees for rate schedule and rate change filings. Under section 205 of the FPA, a public utility may not collect or change any rates, charges, classifications or service, or any rule, regulation, or contract relating thereto, in connection with the transmission or wholesale sale of electric energy in interstate commerce without filing with the Commission. Upon review of a rate schedule filing, the Commission is authorized by sections 205 and 206 of the FPA to order a utility to change any terms, conditions or practices affecting jurisdictional sales or transmission that are unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

If two or more public utilities make jurisdictional transactions under the same rate schedule, each utility transmitting or selling may separately file such rate schedule or, alternatively, one utility may file the rate schedule and the other parties may post a certificate of concurrence (an instrument stating agreement with the terms of another rate schedule filing, filed in lieu of such rate schedule filing). [9] The certificate of concurrence is, in effect, no more than an administrative convenience allowing one public utility to avoid executing, filing, and posting duplicative agreements or schedules of charges. It does not, however, obviate the need for each affected utility to submit appropriate support required under 18 CFR 35.12(a) and 35.13(a), including (1) the cost data and other information needed to support the charges for services rendered under the filing, (2) appropriate explanations of the terms and conditions pertaining to the service rendered, and (3) other general information, such as the revenue generated by the proposed rates and a comparison of the proposed rates with other similar services provided by the utility. As each utility must support the rate schedule with its own data, it is necessary for the Commission to perform an entirely separate review of the rate schedule for each utility providing service under the schedule.

One commenter notes that the NOPR in this docket failed to specify a charge for a certificate of concurrence. The review of the cost support data underlying a certificate of concurrence takes the same amount of time and resources as does review of the support for the principal rate schedule filing. Accordingly, the fee to be charged for this service is the same as the fee for the rate schedule represented by the certificate of concurrence. The Commission notes that this treatment is consistent with historic practice for fees purposes.

Three categories of sections 205 and 206 filings are identified in this rule for purposes of assessing filing fees, based on the general complexity of such filings. First (Class 1) are rate schedule filings that have no rate impact or that involve only a rate decrease. Second (Class 2) are rate schedule filings that have an impact on rates but that are supported using the Commission's abbreviated filing requirements [10]—that is, that are not supported by Period II cost of service data. These filings require less time to review than filings which include the more extensive Period II data. Third (Class 3) are rate increases supported by Period II data.

These categories differ from the three categories that appeared in the old § 36.2 and in the NOPR: nominal rate schedule filings, moderately complex rate schedule filings, and rate increase filings. The distinction in § 36.2 between nominal and moderately complex rate schedule filings was not completely clear, since both categories were described primarily through examples. The Commission's experience under the old categories is that companies had some difficulty determining into which category their filings fell. Moreover, any such confusion would prove more significant under the rules now being promulgated, since there will now be a greater difference between certain fees for individual categories. The Commission is adopting the new, more clearly defined categories to prevent confusion about which category is applicable—confusion which might otherwise lead to filing being found deficient for failure to file the proper fee. The enhanced clarity should also ensure that staff processing time is being recorded as accurately as possible.

The initial fees set by this rule for Class 1, Class 2, and Class 3 filings are based on data collected under the "nominal rate schedule," "moderately complex rate schedule," and "rate increase" categories as proposed in the NOPR. In some instances, as noted below, reclassification will result in a filing being treated under a less expensive fee category. This means that, in certain cases, the Commission is foregoing full cost recovery for the first year in which this rule is effective. In no case, however, will a higher fee result from the use of available historic data because no filing will be reclassified into a higher fee category than was proposed in the NOPR. Some filings that would have been classified as moderately complex under the NOPR will now be grouped in Class 1 and charged the lowest fee because they have no rate impact. These items are generally less time-consuming to process than those remaining in the intermediate class (Class 2) under the new system. Similarly, because all rate increases would have been categorized in the "rate increase" category under the NOPR, movement of less complex rate increase filings into Class 2 will have no negative effect. Thus, no applicant will be harmed by the Commission's use of data based on the old classification system to set the initial fees for these categories. In subsequent years, when the Commission has data concerning the processing time for filings under the new classification system, it will update the fees using the general updating procedure described in section III.E., below.

Charging fees for all the above services is appropriate because the IOAA authorizes the establishment of fees for the services an agency provides and because the filing entity, in each instance, receives a more immediate benefit from these services than does the general public. These fees will be charged under §§ 381.502, 381.503, and 381.504 of the final rule.

Several commenters point out that, under the NOPR, the fees for some filings could be higher than the resultant revenues, making routine projects cost-ineffective. Commenters suggest a separate fee for minor rate increases or expanding the definition of nominal rate schedule filings to incorporate such rate changes.

In the final rule, the Commission has taken steps to minimize this problem. Under the final rule, as described above, rate increases that are supported using only Period I cost of service data will be assessed a lower fee than rate increases supported by full Period II data. The Commission notes that the smaller rate increases supported by abbreviated data require less time to review than the more complex applications.

[9] 18 CFR 35.1 (1984).

[10] 18 CFR 35.13(a)(2) (1984).

2. Applications for the Physical Connection of Facilities

Sections 202(b) and 210 of the FPA allow various entities [11] to apply to the Commission for an order directing a public utility to establish physical connection of its transmission facilities with another entity's facilities or to sell or exchange energy with another entity. A Commission order directing such connection, sale, or exchange allows the entity to acquire power from a source which would otherwise be unavailable, or at a lower rate than would otherwise be applicable. Accordingly, § 381.503 of the final rule provides for a fee for such an order.

However, the Commission has so far had very little experience with these filings and does not have sufficient data to determine how much time it takes to process them. Therefore, this rule sets a zero fee at present for these filings. However, if sufficient data becomes available in the future to enable the Commission to determine the appropriate fee with reasonable accuracy, the Commission will update the fee under the general updating procedure described in section III.E., below.

3. Applications for Wheeling

The Commission has the authority, upon application under section 211 of the FPA, to order electric utilities to wheel (transmit) power for other utilities, geothermal power producers, or Federal power marketing agencies. An order directing such wheeling enables the entity requesting the order to purchase power from otherwise unavailable sources and to sell power to previously unavailable customers.

One commenter argues that the company which trasmits power subject to a wheeling order, rather than the entity which sought the order, is the primary beneficiary of a wheeling order. The Commission recognizes that the company wheeling the power is compensated for transmitting the power. However, utilities are not ordinarily required to provide transmission for other parties, and the order to wheel power is thus a special benefit to the party who requests the order. Therefore, §381.503 of the final rule provides for a fee for the review of wheeling applications. As with applications for interconnection orders, however, there is not enough data at present to set an amount, so this rule sets a fee of zero for the present. This fee will be updated if more data becomes available.

4. Applications for Authorization To Issue Securities and for Negotiated Placement of Securities

Section 204 of the FPA requires Commission approval of the issuance of securities if the State in which the utility operates does not regulate the issuance of securities. Once the Commission has approved the issuance of securities, the utility may invite bids and issue securities in accordance with the procedures in the Commission's regulations. If a utility wants to attempt a negotiated placement of securities, it must also seek Commission approval. Approval of a negotiated placement of securities enables the issuing utility to have the greatest degree of flexibility in placing securities. Given the special benefits associated with this statutory authorization, fees are established in §§381.507 and .508 of the final rule for the review of a negotiated placement of securities and for the review of applications for authorizations to issue securities.[12]

The NOPR proposed to charge separate fees for an authorization to assume an obligation or liability and an authorization for the negotiated placement of securities under section 204 of the FPA. The final rule establishes the same fee for each service. These services are tracked together in MIS because they require the same type of review in terms of time, difficulty, and general similarity of subject matter.

5. Applications to Assume an Obligation or Liability as a Guarantor.

Section 204 of the FPA also requires Commission approval before a public utility may assume any obligation or liability as guarantor or surety for a security of another entity.[13] Commission approval permits a company to enter into business arrangements, such as financing leases, which require a guarantee as part of the arrangement. These arrangements enhance the viability of projects or investments with which the utility is involved. In view of this individual benefit, a fee is also charged for this service under § 381.507 of the final rule.

6. Corporate Applications Involving One or More Jurisdictional Utilities

Under section 203 of the FPA, the Commission must authorize any merger, consolidation, or purchase or acquisition of securities of a public utility by a public utility, and any sale, lease, or other disposition of a jurisdictional facility, or a part of a facility, if the value of such facility or part exceeds $50,000. Commission authorization permits the utility to enter into desirable business arrangements which would otherwise be prohibited.[14] A fee, therefore, is established in § 381.509 of the final rule for review of any of these corporate applications.

7. Authorization To Hold Interlocking Positions

Under section 305 of the FPA, a person must receive prior Commission authorization to hold certain interlocking positions involving public utilities.[15] The Commission's authorization permits a person to be an officer or director of more than one public utility, or of a public utility and a bank, trust company, banking association or firm that is authorized by law to underwrite or participate in the marketing of securities of a public utility, or of a public utility and a company supplying electrical equipment to the public utility. Absent Commission authorization, these interlocking positions could be held. Accordingly, a fee will be charged for review of such applications filed in accordance with the full requirements of the Commission's regulations for such applications in 18 CFR Part 45.[16] This fee is prescribed in § 381.510 of the final rule.

8. Extension of Period for Testing Equipment

Commission review of filings to justify extensions of the period for testing equipment under 18 CFR Part 101 again provides the filing party with a benefit of more immediate value than that obtained by the general public. As a company invests in plant under construction, it is allowed to accrue the

[11] These entities are State commission, electric utilities, geothermal power producers, Federal power marketing agencies, qualifying cogenerators, and qualifying small power producers.

[12] These filings are made under 18 CFR Part 34 (1984).

[13] These filings are made under 18 CFR Part 34 (1984).

[14] These filings are made under 18 CFR Part 33 (1984).

[15] These filings are made under 18 CFR Part 45 (1984).

[16] Persons serving as officers or directors of public utilities and officers and directors of commercial banks that do not engage in the underwriting or marketing of public utility securities, including commercial paper, will not be charged for abbreviated applications to hold interlocking positions provided that the conditions and minimal filing requirements of Edison Electric Institute, 15 FERC ¶61,173 (1981), are met. In addition, the Commission has proposed to allow blanket authorization of certain interlocking positions in affiliated electric utilities because these applications have been routinely granted. Automatic Authorization for Holding Certain Corporate Positions that Require Commission Approval Under section 305(b) of the Federal Power Act, 50 FR 21304 (May 23, 1985) (Docket No. RM83-63-000).

Allowance for Funds Used During Construction (AFUDC) (defined under "Components of Construction Cost" in Plant Instruction 3 (17) in Part 101). Once the plant is placed in service the company is no longer permitted to accrue AFUDC. All facilities are tested as a routine function of the construction activity. Electric Plant Instruction 9D requires an electric utility to file data with the Commission when the test period exceeds standards specified therein. Staff review and acceptance of such data facilitates the processing of future staff audits of the company's books and records and provides the company with a date to cut off the capitalization of AFUDC that is acceptable to staff based upon the information furnished. The benefit of having this date determned justifies charging a fee. The fee is prescribed in § 381.506 of the final rule.

9. Applications for Certification of Qualifying Status

Under PURPA, Commission certification that a facility qualifies as a small power production or cogeneration facility or self-certification of such status under the Commission's regulations exempts most [17] such facilities from the burdens of certain Federal and State regulation.[18] Commission certification also has the effect of requiring electric utilities to offer to purchase power from the qualifying facility at the utilities' avoided cost of alternative power and to sell back-up power to the qualifying facility. Certification of qualifying status, facilitates project financing, the sale of power at avoided cost rates, the ability to get back-up power, and interconnection under PURPA. Inasmuch as the facility requesting certification of qualifying status receives more immediate benefits from Commission review or processing than does the general public, charging a fee for this service is appropriate. This fee is prescribed in § 381.505 of the final rule.

[17] Under 18 CFR 292.601(b)(1984), the FPA exemptions do not apply to a qualifying facility that has a power production capacity over 30 megawatts and that uses a primary energy source other than geothermal resources. Under 18 CFR 292.602(a)(1984), the exemptions from the Public Utility Holding Company Act and certain state laws do not apply to the facilities described in § 292.601(b) or to facilities over 30 megawatts that use energy sources other than biomass.

[18] These filings are under 18 CFR 292.207(1984). Self-certification under 18 CFR 292.207(a)(2)(1984) provides a facility with the same legal rights under PURPA as a facility which has received Commission certification. The Commission enters self-certification filings into its data system, maintains files, and publishes a list of filings in *The Qualifying Facilities Report.*

B. Special Benefits to Identifiable Recipients

In delineating the services or benefits for which agencies are permitted to charge fees under the terms of the IOAA, Budget Circular A-25 states that a fee may be charged to an identifiable recipient who derives a special benefit from a government service.[19] In addition, the circular states that a "special benefit" has accrued if the recipient obtains "more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those which accrue to the general public," or if the service "provides business stability or assures public confidence in the business activity of the beneficiary (*e.g.*, certificates of necessity and convenience. . . .)" [20]

Commenters generally argue that the FPA is intended to benefit the consuming public and, therefore, that the services the Commission performs under the FPA and PURPA do not primarily benefit identifiable recipients. For instance, several commenters argue that no fee should be charged for PURPA qualifying facility filings because the owner of a qualifying facility allegedly receives no benefit from Commission certification. Commenters add that there can be no value or benefit to the applicant from Commission regulation under the FPA and PURPA because the applicant must comply with the Commission's regulatory requirements in order to engage in the activities authorized by statute and that the Commission itself has recognized that its functions primarily benefit the general public.

While consumers may be ultimate beneficiaries of Commission regulation, that is not determinative of the Commission's obligation to charge fees under the IOAA. The IOAA authorizes the Commission to charge fair and equitable fees for "a service or thing of value provided by the agency."[21] The United States Court of Appeals for the D.C. Circuit has held that an otherwise valid fee is not rendered invalid because the public may also enjoy benefits from the Commission's action. That court, in *Electronic Industries Association* v. *FCC*, observed that the agency was "not prohibited [under the IOAA] from charging an applicant . . . the full cost of services rendered to an applicant which also result in some incidental public benefits."[22] The court reached this conclusion even though the services provided assisted persons in activities which are required by statute. As the court noted:

> [T]he [agency] is entitled to charge for services which assist a person in complying with his statutory duties. Such services create an independent private benefit.[23]

Thus, the assessment of fees is proper even though the public benefits from the service, as long as the applicant receives a special benefit. The specific benefits received by those who use the services covered by this rule are described under section IV.A. of the order, "Services for Which A Fee Is Being Charged," above. For instance, the considerable benefits to the owner of having a facility certified as a qualifying facility under PURPA are detailed in section III.A.9, above.

Several commenters point out that the Federal Power Commission at one time decided not to impose fees on the grounds that activities subject to the FPA are primarily for the public benefit.[24] In light of subsequent developments, including interpretation of the statutory scheme by the courts, this Commission has re-evaluated the position. Not until the 1970's did the courts begin reviewing fee structures of various agencies.[25] Those cases provided specific guidance regarding the IOAA, including the appropriate apportionment of public and private benefits. The Commission now believes that it can charge the fees established by this rule.

Some commenters express concern that full cost recovery would undermine the Commission's accountability to Congress, since Congress now provides operating funds for the Commission. However, the Commission notes that the Congressional policy as expressed in the

[19] Budget Circular A-25, at 1.

[20] *Id.* at 2.

[21] 31 U.S.C. 9701 (1982). This phrase was changed in 1982 from "any work, service, publication, report, document, benefit, privilege, authority, use, franchise, license, permit, certificate, registration or similar thing of value or utility" for consistency and to eliminate unnecessary words. H.R. Rep. No. 651, 97th Cong., 2d Sess. 226 (1982). *See* former 31 U.S.C. 483a (1976).

[22] Electronic Industries Association v. FCC, 554 F.2d 1109, 1114 n.12 (D.C. Cir. 1976).

[23] *Id.* (discussing tariff filings).

[24] Natural Gas Pipeline Company Certificates, Proposed Schedule of Filing Fees, 30 FR 12077 (Sept. 22, 1965).

[25] *See* National Cable Television Association, Inc. v. United States, 415 U.S. 336 (1974); FPC v. New England Power Co., 415 U.S. 345 (1974); Mississippi Power & Light Co. v. NRC, 601 F.2d 233 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980); National Cable Television Association, Inc. v. FCC, 554 F.2d 1094 (D.C. Cir. 1976); Electronic Industries Association v. FCC, 544 F.2d 1109 (D.C. Cir. 1976); National Association of Broadcasters v. FCC, 554 F.2d 1118 (D.C. Cir. 1976); Capital Cities Communications, Inc. v. FCC, 554 F.2d 1135 (D.C. Cir. 1976).

IOAA is to require agencies to be self-sufficient to the extent possible.

C. Smallest Practical Unit

In designing a fee schedule under the IOAA, the Commission must base fees on the smallest unit or category of service that is practical. The United States Court of Appeals for the D.C. Circuit set forth the general rule as follows:

[W]e interpret the statute and the Supreme Court decisions to require reasonable particularization of the basis for the fees, accomplished by an allocation of costs to the smallest unit that is practical. In most cases, we expect this unit will be classes of carriers or applicants or grantees of services which the Commission has already singled out for separate treatment in its 1975 fee schedule. Classification is always a difficult problem, involving as it does the drawing of lines, but the solution is not to group dissimilar entities together. The Commission must examine its expenses and set forth the maximum particularization of costs which it conveniently can make, so that the correctness of its actions can be reviewed.[26]

However, Budget Circular A-25 states that "costs shall be determined or established from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose." [27]

The Commission, in keeping with Budget Circular A-25, is classifying its fees by types of applications or filings, which are the smallest practical units. The Commission has calculated its fees from its Management Information System (MIS), which is an agency-wide system established to track workload. The MIS tracks time, by work-months, based on types of applications or proceedings. The Commission is establishing one fee for each filing because that filing is the smallest practical unit for which the Commission can develop a fee.[28]

The NOPR requested comments on whether smaller fee categories should be considered. Some commenters suggest subdividing interlocking directorate applications to reflect the time needed to process applications of various levels of complexity.

The Commission has recently proposed to allow blanket authorization of certain interlocking positions in affiliated electric utilities because this type of application has been routinely granted.[29] If the proposed rule becomes final, an individual wishing to hold such positions would not be required to file an application under Part 45 of the regulations. The Commission also currently provides an abbreviated application procedure for an interlocking position involving a public utility and a bank, if the bank does not participate in underwriting or marketing of public utility securities, including commercial paper,[30] and in certain other limited instances. Given these abbreviated procedures, the present rule establishes a filing fee only for full Part 45 interlocking directorate applications. The Commission believes that this distinction should obviate the principal concerns expressed by the commenters.

Commenters also suggest establishing a separate fee category for interconnection applications, arguing that the proposed fees would hurt competition. The final rule provides for separate fees for such requests. As discussed in section III.A.2, above, the fee at present is zero.

Although the NOPR in this docket proposed to charge fees that included the costs of formal evidentiary hearings initiated in connection with the services involved, the Commission has decided not to charge fees to recover these administrative costs. There are considerable practical difficulties in determining the primary beneficiary or beneficiaries of hearings generally. The commenters express various opinions concerning who benefits and who should pay for hearings. Many commenters say that the cost of Commission trial staff should be excluded, as the applicants allegedly receive no benefit from staff's participation. Some suggest apportioning the costs of hearings among the parties to a hearing. Absent more refined information or significant changes in the Commission's Rules of Practice and Procedure regarding hearings and interventions, the Commission believes that it is not administratively feasible to determine how fees should be assessed for this service.

The Commission, in its discretion, has decided not to charge a fee for hearings at this time, but may, in the future, reconsider its position on this point. Meanwhile, the Commission does retain the option to bill an applicant directly (see section III.H., *infra*) for the costs associated with a hearing where the hearing provides a private benefit to an identifiable recipient and where the hearing requires an extraordinary amount of Commission time and effort to process.

The Commission has also decided not to establish a fee for filing a request for rehearing at this time. In those cases where an applicant's request for rehearing seeks a private benefit, the Commission believes that it could charge a fee for a review of that nature. However, there are also cases where a request for rehearing raises matters that, on balance, address more general public interest issues. In those cases, the Commission does not believe that it would be reasonable to impose a fee. Due to the substantial administrative burden involved in trying to segregate which rehearings should be subject to a fee, no fee for such a service is established herein.

Since the final rule does not charge fees to recover hearing costs, a multiple fee schedule or separate fees charged to the various parties or for various stages of a litigated proceeding are unnecessary. The only stage for which filing fees are being charged is the "nonformal" stage, which occurs before a matter is set for hearing. After that stage, staff hours are recorded in the MIS as "formal" time, signifying the point at which the costs are attributable to the hearing process. This "formal" staff time is excluded from the filing fee computations.

D. Basis of Cost Recovery

1. Direct and Indirect Costs Included

The Commission's fee schedule is designed to account for all types of recoverable costs, except hearing and post-hearing costs, associated with the processing of specified applications and filings under the Commission's jurisdictional statutes. The costs attributable to a particular Commission service are not merely the salaries of the employees who review the applications. The attributable costs also include the substantial amount of indirect costs which the Commission incurs in its reviews. As the Fifth Circuit has stated:

[Employees] must be supplied working space, heating, lighting, telephone service and secretarial support. Arrangements must be made so that [they are] hired, paid on a regular basis and provided specialized training courses. These and other costs such as depreciation and interest on plant and

[26] Electronic Industries Association v. FCC, 554 F.2d 1109, 1116 (D.C. Cir. 1976).

[27] Budget Circular A-25, at 3.

[28] The Commission has recently enhanced the MIS by tracking its employees' time on a new system (Time Distribution Reporting System or "TDRS") that provides an even greater degree of accuracy, as described in more detail below. Beginning in FY 1984, Commission-wide reports on time expended by staff are available internally under TDRS; therefore, the fees established in the final rule are based on these data.

[29] Automatic Authorization for Holding Certain Corporate Positions that Require Commission Approval Under Section 305(b) of the Federal Power Act, 50 FR 21304 (proposed May 23, 1985) (Docket No. RM85-63-000).

[30] Edison Electric Institute, 15 FERC ¶ 61,173 (1981).

capital equipment are all necessarily incurred in the process of reviewing an application.[31]

Accordingly, the Commission has included in its identification of costs the following items: salaries and benefits; transportation of things; rents, communications and utilities; printing; other support services; supplies; and equipment.

2. Methodology

a. *Underlying Considerations.* The Commission's calculation of the costs of providing each of the services represented by a fee category is directly related to the amount of time that the Commission spends providing each of the services. The fees in this rule are based on information obtained through the Commission's MIS, *supra*, which shows the amount of time spent on all measured Commission functions. The functions are grouped into categories that represent the Commission's various programs, including electric power regulation as well as gas wellhead pricing, gas pipeline rates, gas pipeline certificates, gas producer certificates, gas producer rates, oil pipeline regulation, and hydropower regulation. The MIS workload data appear monthly in bound volumes for internal use at the Commission.

With respect to each function, the Dockets Branch of the Commission records for the MIS the number of projects initiated (receipts) and the various program offices track the completed projects (completions) for the MIS in a particular time period. Most Commission functions can be measured in terms of the number of projects initiated and completed. In accordance with Commission practice, these projects are generally assigned docket numbers and, for purposes of this discussion, will be referred to as "docketed activities."

Actual time expended is reported agency-wide through the Commission's new Time Distribution Reporting System (TDRS). Based on daily workload, each employee fills out a time sheet, coded by product category, reflecting the amount of time spent processing each particular type of work-activity. Twice a month, a supervisor in each organizational unit reviews and verifies the reports, and the TDRS data are entered into a computer base. Computer reports of time expended in each functional category, expressed in terms of work-months, are generated for internal use in the MIS. A work-month is defined in §381.102 of the Commission's regulations [32] as the amount of work represented by one employee's devotion of 100 percent of his or her time for one month. Each type of measured work-activity is assigned a product category. The TDRS supplants the previous reporting system, which was based on the unit supervisor's estimate of time expended, with more accurate, regular reports from the employees themselves.

Many non-docketed support functions are essential to the completion of any docketed activity. However, they cannot be measured in terms of receipts and completions because the nature of these functions makes it impractical to do so. Like other functions, the time spent each day on support activities is reported by employees and is recorded in terms of work-months.

Only those support functions that are related to providing a benefit are included in the fee calculations. Support functions will be referred to as "support activities" and can be divided into three categories. First, there are support activities that involve general supervision, personnel management, and routine administrative functions. Routine administrative functions include such activities as maintenance of time and leave records, the handling of property and supplies, staff meetings, and the planning and organizing of leave. The entire category is labeled "administrative services" and is included in the fee structure because it is essential to the Commission's ability to complete docketed activities.

Second, support staff responds to requests for information that may not contribute directly to the completion of a docketed activity. Examples include requests for information from the public, Congress, the General Accounting Office, and other governmental agencies. The Commission has excluded from its calculation of fees the work-months associated with this second category of "inquiries and internal communications," because this type of support activity is not involved in completing docketed activities.

Third, support staff establishes or reviews certain Commission operations and procedures. This is "technical management and operations." These activities include work which is not identified with a particular docketed activity but which is necessary in completing docketed activities generally (such as work on the Commission budget, management information systems, and program development functions such as special studies or briefings on relevant subjects). This category is therefore an integral part of completing docketed activities.

Support activities are a type of indirect cost, but are channeled into the cost calculations separately from all other indirect costs (such as physical plant overhead). These other indirect costs are added together with direct costs to arrive at an average monthly cost per Commission employee. That figure is multiplied by the time (in work-months) taken to review a type of application or filing. In contrast, support activities represent work-months expended which cannot be allocated directly to each individually-tracked, docketed activity. Therefore, the work-months used in the fee calculation consist both of time actually spent reviewing a particular type of filing and also a *pro rata* share of the time spent on support activities associated with reviewing that type of filing.

b. *Calculation of Fee Amounts.* i. Methodology Used. For purposes of this rule, the Commission has used the following methodology to determine the cost of providing any service or benefit. First, the work-months reported for a class of docketed activity are added to the *pro rata* share of the work-months reported for the relevant support activities for that activity. This figure, representing the total number of work-months dedicated to a class of docketed activity for a year, is divided by the number of completions for that year for the given activity. The resulting quotient represents the average number of work-months required to complete one proceeding in that given class of docketed activity.

Second, the Commission has used the following data provided by its Office of Program Management to figure the average cost of a work-month, based on the Commission's FY (Fiscal Year) 1984 actual costs:

Average Salaries and Benefits (Based on year-end payroll data and benefits)	$46,521
Travel	643
Transportation of Things	15
Rents, Communications & Utilities	5,695
Printing	1,448
Other Services—excludes direct program contracts	4,639
Supplies	693
Equipment	353
Total (average annual cost per employee)	60,007

The total was divided by 12 to yield an average work-month cost per employee of $5,000.58.

Third, in order to determine the cost of an activity, the Commission multiplied the average cost per work-month by the average number of work-months required to complete the activity, the resulting product representing the average cost of an activity.[33]

[31] Mississippi Power & Light Co. v. NRC, 601 F.2d 223, 232 (5th Cir. 1979).

[32] 18 CFR 381.102 (1984).

[33] Updated sheets detailing the calculations have been placed in the Commission's Public File Room.

Commenters provide many different reasons for their allegations that the Commission's cost methodology is either severely flawed or excessively vague. Among these reasons are an allegedly inadequate explanation of support cost calculations and inclusion of costs that are not actually incurred by the Commission in rendering a particular service. Some commenters suggest that actual costs per filing, rather than average costs, would result in more reasonable fee levels and prevent subsidization of complex filings. Others argue that the use of docket completions does not encourage efficiency. Some note that the Commission's work in a particular docket may occur primarily in one year, but be completed in another. Thus, the fee for that docket would be based on the year of completion rather than on the year in which most of the work took place. The alternatives suggested by the various commenters are to base fees on the total number of dockets processed in any given year, on the average costs of those employees actually performing the work, or on a comparison of the median and average time spent processing the filings.

As to what costs are permissible for inclusion, the IOAA provides for the collection of fees which include both direct and indirect costs to the government. Thus, there is no statutory reason to exclude any item except for support functions relating to inquiries and internal communications, as discussed above. All other support activities are an integral part of completing docketed activities and therefore are included in the calculations. Moreover, in devising its fee schedule, the Commission is authorized to determine or estimate its costs "from the best available records in the agency." [34] For the Commission, MIS, as recently enhanced by the TDRS, provides the best data for this purpose.

In determining the fees, the NOPR proposed to use 1982 budgeted cost figures and 1981 actual completions and work-months. In addition, the method of updating the fees was tied to 1981 as the "base year." Each subsequent year was to be adjusted by the change in costs between the base year and the year under consideration. The number of completions and work-months would not be changed from the FY 1981 base year numbers. However, the FY 1981 numbers are now outdated and thus would not be appropriate for use as the base year. Instead, the Commission believes that it is more reasonable to calculate fees from actual completions and work-months, as well as from actual costs, for the most current fiscal year for which data are available. Consistent with its decision in the other final fees rules, the Commission is using actual fiscal year figures in this rule as well as in updating the fees in subsequent years (*see* section III.E. below). Accordingly, the fees in this rule are based upon actual FY 1984 direct and indirect costs, completions, and work-months. This approach eliminates many inaccuracies that could arise from using budgeted figures and will keep data current. In addition, by updating completions and work-months with the most recently available data, the fees can be adjusted periodically to reflect any increased processing productivity, as discussed below.

To derive actual costs per filing, rather than average costs, would be extremely difficult and costly. The Commission would have to monitor each application to determine actual staff time per individual application, which is highly impractical from an administrative standpoint. Assignment of indirect costs would be complex or impossible as well. This approach would also preclude the use of an agency-wide fee schedule, an essential tool for assessing fees where large numbers of filings are processed in several distinct categories.

In response to the commenters who argue that focusing on completions will not encourage efficiency, the Commission notes that fee collection under the IOAA is not intended as an incentive to increase efficiency. Questions of efficency are a matter of Commission internal management outside the scope of this rule-making. The Commission finds no reason to believe that the recovery of costs through fees will have any direct effect on resource efficiency, however.

As for the fact that a docketed activity may span more than one year and will be counted as completed only in the last year, the Commission does not believe that this will unduly skew the analysis on which a particular year's fees are based. Each year's completion figures will include projects that were begun in a prior year but completed in that year and will exclude projects which are begun but not completed in that year. On balance, it is reasonable to assume that this imperfect synchronism will not produce any systematic bias. Moreover, the elimination of the hearing phase from the fee analysis condenses processing time, thus reducing the instances in which the measured activities span multiple years.

Several commenters also claim that the Commission should not use an agency-wide figure for determining its direct costs. Instead, they maintain that the Commission should determine fees based on the average salary of only those employees processing particular filings.

Agency-wide cost methodology is used for a number of reasons. First, cumulative agency fiscal expenditures are reported only on an agency-wide basis, by object class, such as full time permanent staff salaries, specific support contracts, equipment rentals, telephone service, postage, printing, and the like. The Commission maintains no cumulative financial reporting systems which detail expenditures by individual organizational unit, *e.g.*, by office, division, branch, or level. Second, even though payroll reports by individual organizational unit are prepared by and available from the Department of Energy, they reflect only enrolled staff for any specific reporting period. The data are not cumulative, and will fluctuate widely based on the number and grade level of employees on board at any particular time. For example, salaries of any unit may vary from one pay period to the next, and additional outlays, such as monetary awards, are not reflected in financial costs. Third, a one-time pilot study conducted by the Office of Program Management indicates that the fees would not be lowered by using participating employee costs. Rather, the results indicate a slight increase in fees from the agency-wide cost methodology.[35]

Finally, changing the methodology from an agency-wide basis to a participating personnel cost basis would require the Commission to substantially refine and expand its organizational reporting procedures with regard to employee salaries. This would exceed the requirements of Budget Circular A-25, which states that "costs shall be determined or estimated from the best available records in the agency, and new cost accounting systems will not be established solely for this purpose" (emphasis added). Accordingly, for these reasons, this final rule utilizes the agency-method proposed in the NOPR.

E. Actual Fees Established and Procedures for Updating Fees

The following table (data for which are in the Commission's Public File

[34] Budget Circular A-25, at 3.

[35] The pilot study, which was conducted in September 1985 and the details of which have been placed in the Commission's Public File Room, utilized the salaries only of employees who work in electric utility, cogenerator and small power activities for which fees are to be collected herein.

room) summarizes for FY 1984 the total number of work-months, completions, and average cost per completion in rendering the services for which the Commission is establishing fees in this final rule:[36]

Service	Total WM's in 1984	Total completions in 1984	Average number of WM's per completion in 1984	Average cost per completion in 1984
Review of nominal rate schedule filings under sections 205 and 206 of the FPA	114.2	388	.294	$1,470.17
Review of moderately complex rate schedule filings under 205 and 206 of the FPA, including rate changes supported by abbreviated data	127.5	217	.587	2,935.34
Review of rate schedule filings involving rate increases under sections 205 and 206 of the FPA supported by Period II data	213.9	69	3.1	15,501.79
Review of extension of equipment testing period filings	3.8	14	.257.0	1,285.15
Review of applications for authorization of the negotiated placement of securities under section 204 of the FPA and applications for approval to assume obligations or liabilities as guarantor under section 204 of the FPA	15.3	23	.665	3,330.38
Review of applications for authorization to issue equity or long term debt securities competitively or to issue short-term debt securities under section 204 of the FPA	15.7	53	.296	1,480.17
Review of applications for certification of qualifying status under section 201 of PURPA	105.96	284	.373	1,865.21
Review of applications involving one or more jurisdictional utilities under section 203 of the FPA	23.0	27	.852	4,260.49
Review of full applications to hold interlocking positions under section 305 of the FPA filed in accordance with Part 45 of the Commission's regulations	22.7	71	.32	1,600.17

The Commission does not believe that good cause exists at this time for the categorical reduction of any of these fees to less than full-cost recovery (see section III.F.1., *infra*). According, the following fees are established:[37]

Service	Fees
Class 1 Rate Schedule Filings (filings having no rate impact or involving only a rate decrease)	$1,400.00
Class 2 Rate Schedule Filings (filings that have a rate impact not based on Period II data)	2,900.00
Class 3 Rate Schedule Filings (filings involving rate increases supported by Period II data)	15,500.00
Applications for Physical Connection of Facilities	0
Applications for Wheeling	0
Extension of Equipment Testing Period Filings	1,200.00
Authorizations to Assume an Obligation or Liability as a Guarantor or for the Negotiated Placement of Securities	3,300.00
Authorizations to Issue Equity or Long-Term Debt Securities Competitively or to Issue Short-Term Debt Securities	1,400.00
Corporate Applications Involving One or More Jurisdictional Utilities	4,200.00
Full Applications to Hold Interlocking Filed in Accordance with 18 CFR Part 45	1,600.00
Certification of Qualifying Small Power Production or Cogeneration Status	1,800.00

The Commission will update these fees each year to reflect the most current Commission costs. An updated fee schedule will be published annually in the **Federal Register** after the close of each fiscal year. The updated fees will be based on actual completions, work-months, and costs from the preceding fiscal year. Although some commenters contend that the annual revision of fees is a drawback, the Commission feels that revision is necessary to reflect the cost of providing benefits to the recipients based on the most current data available.

F. Exceptions to Full Cost Recovery

1. Reduction in Fee Amounts

As outlined above, this final rule establishes fees that include all the recoverable costs, excluding hearing-related costs, associated with the particular benefits and services provided. The Commission recognizes that there may be instances in the future where the Commission determines that full-cost recovery fees would have an adverse effect on applicants or would undermine Commission activities. In such cases, the Commission may exercise its discretion by rulemaking to reduce fees to less than full-cost recovery in order to prevent a disproportionate economic impact or for other good cause. Other reasons would include situations where the Commission believes it is necessary to reduce fees in order to encourage use of a service, where little or no Commission time (rather than staff time) is required, or where a future reduction in the amount of time required to process a filing is likely with respect to services with which the Commission has had little or no previous experience, as suggested by commenters.

The Commission has decided not to establish specific amounts of percentage reductions in advance, as the NOPR proposed. Rather, the Commission will determine the amount of the reduction at the time it decides that good cause exists for less than full-cost recovery in a particular situation. This alleviates concerns raised by commenters that there was no basis for the three different rates of reduction in the proposed rule (40–60 percent to prevent a disproportionate economic impact, 20 percent to encourage use of a service and 5 percent if a service required only staff time to process or if the service is one with which the Commission has little experience). Except for the annual determinations reflecting actual data, any future reduction in a fee will be initiated only by rulemaking. The same percentage of reduction will carry over to subsequent years unless the Commission gives further notice that it is altering that reduction.

Some commenters argue that the proposed standards for exceptions to full-cost recovery are vague, discretionary, and ineffective. They urge the Commission to establish more specific guidelines in this area. The Commission believes that the standards enumerated above are sufficiently specific for parties to be aware of the

[36] Note, however, that the "nominal rate schedule," "moderately complex rate schedule" and "rate increase" categories are being replaced by a somewhat different method of categorization (see discussion in Section III.A.1., above). As noted in that discussion, no filing will be reclassified into a higher fee category.

[37] Fees are established by taking actual costs and rounding *down* to:

(1) The nearest $5 increment, if the total cost is $100 or less; and

(2) The nearest $100 increment, if the total cost is more than $100.

circumstances under which the Commission may consider reducing fees to less than full-cost recovery. Moreover, any such categorical reduction will be done by rulemaking. A decision to reduce fees to less than full-cost recovery for a class of filings might involve other policy considerations that cannot be predicted at this time. This categorical approach is to be distinguished from a situation where an individual applicant can demonstrate severe economic hardship and qualify for a waiver, as discussed below.

Many commenters argue that the proposed $2,600 fee for applying for certification as a qualifying facility under PURPA would violate PURPA's mandate to encourage small power production and cogeneration facilities. They generally argue that certification may be very important in order to obtain financing and that $2,600 is an excessive fee. Alternatives suggested include no fee, a fee only for larger projects, a sliding scale of fees, and fees based on a percentage of the cost of the facility or its annual revenue.

The fee in the final rule ($1,800) is considerably less than in the proposed rule. The Commission's staff estimates that qualifying facilities require substantial investments and ordinarily cost at least $120,000. The $1,800 fee is a small element in such investments, and the Commission believes that it is unlikely that the feasibility of any project would be jeopardized by this fee. There may be instances in which a project is so small or the developer so impecunious that the $1,800 fee would discourage development of this facility. These situations will be rare, however. In these cases, individual waivers are available for severe economic hardship, as with any of the fees rules. The Commission is determined not to undermine its PURPA program or to violate the expressed intent of the Congress.

A number of commenters took exception to the fact that the NOPR would have imposed fees on States, municipalities, and rural electric cooperatives. The Commission, however, provided an exemption for government entities in section 381.108 of its fees rules.[38] That exemption applies to all fees rules.

A commenter suggests that the Commission should make provision to lessen the impact of multiple fees resulting from the overlapping jurisdiction of the Commission and other agencies, such as the Securities and Exchange Commission. Each agency's review functions serve separate purposes and present different fee considerations. The IOAA requires this Commission to be self-sustaining, to the extent possible, and the fees imposed by this rule are therefore warranted, notwithstanding related activities by other agencies. The Commission cannot anticipate all instances in which a person might be subject to multiple fees. It would, of course, consider on a case-by-case basis whether such situations cause economic hardship. Any so-called "overlap" in jurisdiction is likely to involve approval of related activities, not duplicative review of the same regulated activity.[39] Because the benefit conferred by Commission approval is distinct, the Commission believes its fees are also separable.

A consumer-owned power system argues that the fees proposed in the NOPR are too high and, if passed through to customers, would have a chilling effect on the ability of consumers to challenge rate increases. Another commenter also objects to the results of the passing through of fees. In response, the Commission points out that the IOAA requires agencies to become as self-sustaining as possible. Moreover, many of the fees in the final rule are lower than in the NOPR, and the largest proposed fee, applicable to evidentiary hearings, has been eliminated. Given the relative magnitude of an electric utility's other costs, any rate effect caused by passing through the fees imposed under this rule is likely to be insignificant. Further, since the final rule does not charge for a hearing, a consumer challenge to a filing will not increase the fee; thus, consumers' rights to preserve their interests will not be chilled. Although the rate effect of the fees is a cost-of-service issue outside the scope of this rulemaking, the Commission believes that the dollar impact on individual customers will generally be small.

2. Case-by-Case Waiver Procedures

The Commission realizes that a situation could arise in which an applicant is unable to pay the prescribed fees due to severe economic hardship. The Commission has established the general procedures for case-by-case waiver of its fees in Subpart A of Part 381. If an applicant is suffering severe economic hardship, it will bear the burden of presenting evidence to the Commission, such as a financial statement, showing that it is either economically unable to pay the fee or that if it does pay the fee, it will be placed in a state of financial distress or emergency. This evidence must be included with the petition for waiver at the time of filing the application. If so supported, a filing date would be assigned and the statutory notice period would begin to run. The Commission, or its designee, will analyze petitions for waiver to determine whether the criteria for waiver have been met for each application. The Commission will notify the applicant as to whether the petition for waiver has been denied or accepted.

G. Procedures for Paying Fees

The Commission proposed that fees be submitted by certified check, made payable to the Treasurer of the United States. The Commission has deleted the requirement for a certified check in establishing its general fee procedures in Subpart A of Part 381 (*see* 18 CFR 381.105). A check made payable to the Treasurer of the United States must be included with the filing or application unless a petition for waiver is submitted in lieu of the fee. The check must indicate the type of filing for which the fee is being submitted, *e.g.*, application for an order directing wheeling under section 211 of the FPA. This may be written on the bottom of the check. If the filing or application is not accompanied by either the appropriate fee or an adequately supported petition for waiver, it will be considered deficient and will not be processed.

The final rule requires payment of the fee in full at the time the application is filed. The Commission's decision to require payment of fees in full when the application is filed will compensate the Commission for the resources needed to complete the necessary service. Payment of fees in installments would require additional staff time to ensure that payments are made on time. Inasmuch as the fees are relatively moderate, prepayment in full of the required fee is appropriate and is more administratively manageable. In addition, exclusion of the hearing costs initially proposed as part of the fees should greatly reduce the possibility of cash-flow problems.

The Commission has decided not to allow refunds of filing fees, except where a filing is withdrawn before review begins. This decision is consistent with the policy behind the IOAA. The statute requires government agencies to become self-sustaining to the extent possible. To do so, the agency is to collect fees for services and

[38] Fees Applicable to General Activities, 49 FR 35348 (Sept. 7, 1984) (to be codified at 18 CFR Parts 3, 375, 381, 385, and 389) (Docket No. RM82-35-000).

[39] There can be no actual overlap between the Commission's jurisdiction and that of the Securities and Exchange Commission (SEC). Under section 318 of the FPA, where there would be such an overlap, the FPA gives way to the SEC's statutory authority.

benefits it provides. Congress gave this Commission the duty of carrying out specific functions under the FPA and the PURPA. These functions require reviewing each petition or application, not guaranteeing the issuance of the authorization, approval, or exemption sought. Some applications or filings are accepted or granted; others are not. The Commission's fees cover the time and cost of providing these review services, as authorized by the IOAA. It does not necessarily cost the Commission any less when the Commission ultimately rejects an application or filing. A filing, when made, should be fully supportable and supported. Nonetheless, fees will be refunded if the filing is withdrawn before it is noticed in the Federal Register or, if no notice is issued, if it is withdrawn within 15 days of the date of filing. This ensures that no fees will be charged unless the review process is substantially under way.

H. Direct Billing

The methodology used to establish the fees in this rule is based on the actual time required to process filings and the actual agency-wide costs involved in this processing. As noted, the Commission takes the actual work-months associated with a class of docketed activity and divides it by the number of completions in that class to arrive at an average number of work-months per completion. The figure is then multiplied by the average cost per work-month to arrive at the fee, representing the average cost per class of docketed activity completed.

However, the Commission occasionally receives filings that require substantially more than an average number of work-months per completion. These filings may be extensive in scope and may present factual, legal, or policy issues of such complexity that the Commission may devote an extraordinary amount of time and effort to processing them. The Standard fees established in this rule bear no reasonable relationship to the actual costs of processing such extraordinary filings. While such filings are expected to be extremely rare, the Commission recognizes that to the extent they arise, they may skew the data upon which the fees for more average filings are calculated. In the case of an extraordinary filing, therefore, the Commission reserves the option of ordering a direct billing procedure pursuant to § 381.107 of its regulations; such a determination would be made as soon as practicable, but not later than one year after receiving a complete filing from an applicant.

Commenters state that the direct billing procedure is vague, arbitrary, and could result in the payment of unlimited amounts of fees. Other commenters urge that a direct billing alternative also be made available for routine filings.

Under the direct billing procedure, the Commission will periodically bill the entity that submitted the filing for all the direct and indirect costs incurred by the Commission in processing the filing, unless a lesser amount is determined to be fair and equitable. The staff resources devoted to processing a filing resulting in a direct billing will be separately recorded and will not be included in the work-months associated with processing average filings. If the decision to bill the applicant a lesser amount is based upon the participation of intervenors in a proceeding, the Commission retains the discretion to determine whether some of the costs not billed directly to an applicant should instead be billed to the intervenors. Any decision to bill intervenors directly will be made on a case-by-case basis.

Again, the Commission expects that direct billing will be rare. The direct billing procedures will be utilized only in those cases involving complex technical, environmental, and/or legal issues. The Commission will not consider a filing for direct billing unless estimated staff processing time exceeds the average for that type of filing by a factor of five. This is the Commission's best estimate of when the additional fee to be collected begins to offset the administrative burden of direct billing. However, even if the estimated staff processing time is expected to exceed five times the average, the Commission must still determine that the filing is extraordinary before the direct billing procedures are instituted.

Where there is a direct billing, the Commission will itemize, with the best accuracy available under the MIS, the costs involved in the direct billing. There is no way that the Commission can estimate in advance what the costs will be, but once the party is advised that direct billing will be used, it can then decide whether or not to pursue the matter in the proceeding in which the filed application has been docketed. Moreover, the Commission will credit an applicant whose filing becomes subject to direct billing with any fee paid under the fee system prescribed here.

IV. Final Regulatory Flexibility Act Analysis

When an agency promulgates a final rule under the Administrative Procedure Act, 5 U.S.C. 553 (1982), a final regulatory flexibility analysis may be required by the Regulatory Flexibility Act (RFA) of 1980, 5 U.S.C. 601–612 (1982). The RFA requires the agency to prepare certain statements, descriptions, and analyses of rules that would have "a significant economic impact on a substantial number of small entities." The Commission is not required to make such analyses if the rule would not have such an impact. Each final regulatory flexibility analysis must contain: (1) A statement of need for, objectives of, and legal basis for, the rule; (2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, and the agency response to those comments; and (3) a description of alternatives to the rule consistent with the stated objectives of the applicable statute which the agency considered and ultimately rejected.

In this preamble, the Commission has already detailed its reasons for this agency action, its objectives, and the legal basis for this rulemaking. As discussed, the rule establishes a schedule of fees to be paid to the Commission for certain benefits it provides, in accordance with the IOAA and Budget Circular A–25.

This rule affects public utilities subject to Commission jurisdiction under the FPA and the PURPA as well as non-jurisdictional entities seeking qualifying status as small power production or cogeneration facilities. There are approximately 223 public utilities in the United States. The Small Business Administration's (SBA) regulations do not establish specific size standards for electric utilities.[40] Most utilities, however, are large businesses. Only about 26 of these could possibly be classified as small entities.[41]

Although some prospective cogenerators or small power producers may be small entities, many others are not small entities within the meaning of the RFA. Those developing cogeneration, for example have included the paper and chemical industries, hospitals, and large residential complexes. Further, as noted, projects of

[40] 5 U.S.C. 601(3) (1982), *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. *See also* SBA's revised Small Business Size Standards, 13 CFR Part 121 (1985).

[41] For this analysis, small entities are those classified as nonmajor utilities; that is, utilities that are not classified as major, and that had total sales in each of the last three consecutive years of 10,000 megawatt-hours or more. (18 CFR Part 101, Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, General Instructions, 1.A. (1) and (2).)

which the Commission is aware typically represent relatively large capital investments. In any case, the impact of the fees on these entities will not be significant. As discussed in the preamble, the fee for applications for Commission certification is small compared to the usual cost of even the smallest facilities. Therefore, the Commission does not expect that the fee will significantly affect the feasibility of developing or operating any qualifying facility. The Commission's regulations address situations where there is severe economic hardship. The regulations provide for waiver of fees for entities that demonstrate severe economic hardship and the rule discusses a mechanism (rulemaking) for reduction in fee amounts by category when the Commission finds disproportionate economic impact to exist.

Four commenters dispute the adequacy of the Initial Regulatory Flexibility Analysis. The commenters feel that the analysis did not adequately describe the small entities likely to be affected by the rule or the alternatives available to the Commission in lieu of its fees proposal. This Final Regulatory Flexibility Analysis describes the small entities likely to be affected with as much precision as is possible. The major alternatives available include: (1) Imposing no fees or (2) imposing higher or lower fees. The Commission believes that the rule as now promulgated represents a fair balance between the purposes of the IOAA, which directs agencies to be as self-sustaining as possible, and the FRA, which requires agencies to be sensitive to the effects of actions on small entities. The Commission does not believe that the impact of the rule will be significant for a substantial number of small entities.

V. Paperwork Reduction Act Statement

The information collection provisions of this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), and OMB's regulations, 5 CFR Part 1320 (1985). OMB issued Control Number 1902–0132 for these sections. Interested persons can obtain information on the information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426 (Attention: Thomas Moore, (202), 357–8464).

VI. Effective Date

The amendments made by the final rule will be effective on November 4, 1985.

List of Subjects

18 CFR Part 32

Electric Utilities, Foreign Relations.

18 CFR Part 33

Electric Utilities, Securities.

18 CFR Part 34

Electric Power, Electric Utilities, Reporting Requirements Securities.

18 CFR Part 35

Electric Power Rates, Electric Utilities, Reporting Requirements.

18 CFR Part 36

Electric Utilities.

18 CFR Part 45

Electric Utilities.

18 CFR Part 101

Electric Power, Electric Utilities, Uniform System of Accounts.

18 CFR Part 292

Electric Utilities, Natural Gas, Reporting Requirements.

18 CFR Part 375

Authority Delegations (Government Agencies), Seals and Insignia, Sunshine Act.

18 CFR Part 381

General Fees.

In consideration of the foregoing, the Commission amends Chapter I, Title 18, *Code of Federal Regulations*, as set forth below.

By the Commission

Kenneth F. Plumb,

Secretary.

PART 32—[AMENDED]

1. The authority citation for Part 32 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 32.1 [Amended]

2. Section 32.1 is amended in the introductory clause by removing the words "Part 36 of this subchapter" and inserting, in their place, the words "Part 381 of this chapter".

§ 32.22 [Amended]

3. Section 32.22 is amended by removing the words "Part 36 of this subchapter" and inserting in their place, the words "Part 381 of this chapter".

§ 32.61 [Amended]

4. Section 32.61 is amended in the introductory clause by removing the words "Part 36 of this subchapter" and inserting, in their place, the words "Part 381 of this chapter".

PART 33—[AMENDED]

5. The authority citation for Part 33 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 33.2 [Amended]

6. Section 33.2 is amended in the introductory clause by removing the words "Part 36 of this subchapter" and inserting, in their place, the words "Part 381 of this chapter".

PART 34—[AMENDED]

7. The authority citation for Part 34 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 34.9 [Amended]

8. Section 34.9 is amended by removing the words "18 CFR 36.2" and inserting, in their place, the words "Part 381 of this chapter".

PART 35—[AMENDED]

9. The authority citation for Part 35 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 35.0 [Amended]

10. Section 35.0 is amended by removing the words "Part 36 of this subchapter" and inserting, in their place, the words "Part 381 of this chapter".

PART 36—[REMOVED]

11. Part 36 is removed.

PART 45—[AMENDED]

12. The authority citation for Part 45 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 45.8 [Amended]

13. Section 45.8 is amended in the introductory clause by removing the words "Part 36 of the subchapter" and inserting, in their place, the words "Part 381 of this chapter".

14. The authority citation for Part 101 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

PART 101—[AMENDED]

15. In Part 101, the Uniform System of Accounts Prescribed for Public Utilities and Licensees Subject to the Provisions of the Federal Power Act, under ELECTRIC PLANT INSTRUCTIONS, in "9. EQUIPMENT", paragraph D is amended in the second sentence by inserting after "the utility shall" the words "pay the fee prescribed in Part 381 of this chapter and shall".

PART 292—[AMENDED]

16. The authority citation for Part 292 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

§ 292.207 [Amended]

17. Section 292.207 is amended in paragraph (b)(2) by inserting in the introductory clause between the words "shall" and "contain" the phrase "be accompanied by the fee prescribed by Part 381 of this chapter and shall".

PART 375—[AMENDED]

18. The authority citation for Part 375 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

19. Section 375.303 is amended by revising paragraph (g) to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(g) Deny or grant, in whole or in part, petitions for waiver of the fees prescribed in §§ 381.301, 381.506, 381.507, 381.508, and 381.509 of this chapter in accordance with § 381.106(b) of this chapter.

20. Section 375.308 is amended by revising paragraph (m) to read as follows:

§ 375.308 Delegations to the Director of the Office of Electric Power Regulation

* * * * *

(m) Deny or grant, in whole or in part, petitions for waiver of the fees prescribed in §§ 381.502, 381.503, 381.504, 381.505, 381.510, 381.511, and 381.512 of this chapter in accordance with § 381.106(b) of this chapter.

* * * * *

PART 381—[AMENDED]

21. The authority citation for Part 381 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Exec. Order No. 12,009, 3 CFR 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791a–825r (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982).

22. Part 381 is amended by adding a new Subpart E to read as follows:

Subpart E—Fees Applicable to Certain Matters Under Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act

Sec.

Subpart E—Fees Applicable to Certain Matters Under Parts II and III of the Federal Power Act and the Public Utility Regulatory Policies Act

§ 381.501 Applicability.

The fees set forth in this subpart apply to filings submitted on or after November 4, 1985.

§ 381.502 Class 1 rate schedule filings.

(a) *Definition.* For purposes of this section, "Class 1 rate schedule filings" are rate schedule changes under sections 205 and 206 of the Federal Power Act having no rate impact or involving only rate decreases.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a Class 1 rate schedule filing is $1,400.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this Part and Part 35 of this chapter.

§ 381.503 Class 2 rate schedule filings.

(a) *Definition.* For purposes of this section, "Class 2 rate schedule filings" are rate schedule changes under sections 205 and 206 of the Federal Power Act and under § 35.13(a)(2) of this chapter that have an impact on rates and that are not supported by Period II data.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a Class 2 rate schedule filing is $2,900.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this Part and, as appropriate, Part 35 or 32 of this chapter.

§ 381.504 Class 3 rate schedule filings.

(a) *Definition.* For purposes of this part, "Class 3 rate schedule filings" are those filings under sections 205 and 206 of the Federal Power Act that involve the filing of Period II cost of service data.

(b) *Fee.* Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a Class 3 rate schedule filing is $15,500.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and Part 35 of this chapter.

§ 381.505 Certification of qualifying status as a small power production or cogeneration facility.

Unless the Commission orders direct billing under § 381.107 or otherwise, the

fee established for an application for Commission certification as a qualifying facility under section 3(17) of the Federal Power Act, as amended by section 201 of the Public Utility Regulatory Policies Act, is $1,800.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 292.207(b)(2) of this chapter.

§ 381.506 Extension of equipment testing periods.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an extension of equipment test period filing under Part 101 of this chapter (under ELECTRIC PLANT INSTRUCTIONS, in "9. EQUIPMENT", paragraph D), is $1,200.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and Part 101 of this chapter.

§ 381.507 Applications to assume obligation or liability as guarantor or for the negotiated placement of securities.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application for authorization to assume an obligation or liability as a guarantor or surety in respect to securities under section 204 of the Federal Power Act is $3,300.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 34.9 of this chapter.

§ 381.508 Equity, long-term or short-term debt securities.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application under section 204 of the Federal Power Act for authorization to issue equity or long-term debt securities competitively or to issue short-term debt securities is $1,400.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 34.9 of this chapter.

§ 381.509 Corporate applications involving one or more jurisdictional utilities.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a corporate application under section 203 of the Federal Power Act involving one or more jurisdictional utilities is $4,200.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 33.2 of this chapter.

§ 381.510 Applications to hold interlocking positions.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for a full application under section 205 of the Federal Power Act and Part 45 of this chapter to hold an interlocking position is $1,600.00. The fee filed under this paragraph must be submitted in accordance with Subpart A of this part and § 45.8 of this chapter.

§ 381.511 Applications for physical connection of facilities.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application for an order directing physical connection of facilities under sections 202(b) and 210 of the Federal Power Act is zero.

§ 381.512 Applications for wheeling.

Unless the Commission orders direct billing under § 381.107 or otherwise, the fee established for an application for an order directing wheeling under section 211 of the Federal Power Act is zero.

[FR Doc. 85-23665 Filed 10-2-85; 8:45 am]
BILLING CODE 6717-01-M

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18 CFR Part 271

[Docket No. RM80-47-000; Order No. 94-G]

Regulations Implementing Section 110 of the Natural Gas Policy Act and Establishing Policy Under the Natural Gas Act

Issued: September 27, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order Clarifying and Denying Rehearing of Order No. 94-F.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is clarifying Order No. 94-F, issued July 24, 1985, 50 FR 31347 (August 2, 1985), by stating that the terms "undisputed" and "uncontested," used in Order No. 94-F with reference to Natural Gas Policy Act section 110 costs, mean section 110 costs which natural gas purchasers agreed to offset against Btu refunds under Commission Order No. 399-A. The Commission also denies rehearing of Order No. 94-F.

EFFECTIVE DATE: September 27, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9115.

SUPPLEMENTARY INFORMATION:

Order Clarifying and Denying Rehearing of Order No. 94-F

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is clarifying Order No. 94-F [1] by confirming that the terms "undisputed" and "uncontested," used in Order No. 94-F with reference to NGPA section 110 costs, mean section 110 costs which natural gas purchasers previously agreed to offset against Btu refunds under Commission Order No. 399-A.[2] The Commission also denies rehearing of Order No. 94-F.

II. Background

On July 24, 1985, the Commission issued Order No. 94-F, which provided guidance for payment of undisputed section 110 charges which purchasers had previously agreed to offset against Btu refunds pursuant to Order No. 399-A. Order No. 94-F was issued in light of the decision of the United States Court of Appeals for the District of Columbia Circuit in *Interstate Natural Gas Association* v. *Federal Energy Regulatory Commission* (*INGAA-II*) disallowing the offset procedure.[3] In Order No. 94-F, the Commission stated that good cause exists not to hold natural gas purchasers that used the previously-allowed offset procedures to pay these undisputed amounts to be in violation of the regulations requiring payment of these particular section 110 costs by December 31, 1984,[4] provided that the undisputed amounts are paid on or before September 30, 1985. Timely requests for rehearing of Order No. 94-F were filed by Associated Gas Distributors (AGD), and jointly by Panhandle Eastern Pipe Line Company and Trunkline Gas Company (Panhandle).

III. Discussion

A. Request for Clarification

AGD requests clarification of the term "undisputed" used in Order No. 94-F. AGD asserts that Order No. 94-F makes no mention of challenges by third parties to the contractual authority of first sellers to collect section 110 charges. AGD argues that the decision of the United States Court of Appeals for the Fifth Circuit in *Texas Eastern Transmission Corporation* v. *Federal*

[1] 50 FR 31347 (Aug. 2, 1985).
[2] 49 FR 46353 (Nov. 26, 1984).
[3] 756 F.2d 166 (D.C. Cir. 1985).
[4] *See*, Order No. 94-A, 48 FR 5152 (Feb. 3, 1983), and codified at 18 CFR 271.1104(e)(3) (1985).

Energy Regulatory Commission (*Texas Eastern*) [5] requires the Commission to adopt procedures to permit challenges to the contractual authority of first sellers to charge section 110 allowances. AGD requests the Commission to make clear that the term "undisputed" in Order No. 94–F is not intended to include amounts which may be the subject of protests filed under procedures adopted pursuant to *Texas Eastern* or to pre-judge allegations made by AGD on October 31, 1984, in its blanket protest and complaint filed in Docket No. GP85–4–000.

Order No. 94–F does not pre-judge AGD's allegations in Docket No. GP85–4–000 or any other protest regarding contractual authority of first sellers to collect section 110 costs. As used in Order No. 94–F, the term "undisputed" referred to those section 110 costs which purchasers agreed to offset against first seller Btu refunds as a means of paying such costs. The Commission noted in Order No. 94–F that the amounts agreed to be offset "have already been identified, are not in dispute, and should not require additional verification." [6] Order No. 94–F deals only with amounts undisputed as between the contracting parties, natural gas purchasers and first sellers. Third parties may continue to challenge section 110 costs paid pursuant to Order No. 94–F before the Production-Related Costs Board, [7] or under such procedures as *Texas Eastern* may require. The merits of third-party objections will be addressed on a case-by-case basis. Amounts paid pursuant to Order No. 94–F are subject to possible refund by first sellers following resolution of protests to claimed section 110 costs. Accordingly, as used in Order No. 94–F, the terms "undisputed" and "uncontested" mean section 110 costs which natural gas purchasers agreed to offset under Order No. 399–A.

B. Requests for Rehearing

AGD argues that the Commission erred in issuing Order No. 94–F without first obtaining leave of the United States Court of Appeals for the Fifth Circuit. AGD states that the court has exclusive jurisdiction over all appeals of the section 110 rules pending any requests for rehearing of *Texas Eastern* and issuance of the court's mandate. AGD argues that as a result, the Commission lacks jurisdiction to modify or set aside in whole or in part the section 110 orders. AGD further argues that the Commission exceeded its jurisdiction in Order No. 94–F by engaging in contract enforcement, thus invading the province of the court.

AGD's arguments are without merit. Order No. 94–F provided for the payment of section 110 costs that had previously been offset against Btu refunds. The Commission does not view this action as in any way modifying or setting aside the orders reviewed in *Texas Eastern*. The Commission also disagrees with AGD's contract enforcement argument. Order No. 94–A provided that first sellers could collect certain contractually authorized section 110 costs by December 31, 1984. Order No. 94–A was upheld with only minor modification in *Texas Eastern*. Order No. 94–F provided guidance for payment of undisputed section 110 costs previously agreed to by purchasers. The Commission therefore does not view Order No. 94–F as an enforcement order or as in any way attempting to invade the province of the courts.

In its request for rehearing, Panhandle argues that Order No. 94–F requires pipelines to pay all outstanding amounts for production-related costs by September 30, 1985. Panhandle argues that such payments are not required by *INGAA–II* and could seriously damage the ability of pipelines such as Panhandle and Trunkline to maintain their markets. Panhandle also argues that the Commission should not require the payment of any production-related costs until protest procedures pursuant to *Texas Eastern* are established and until procedures are adopted insuring that pipelines may recoup the amounts paid from the "correct generation" of customers. Panhandle refers to the Commission's recent order in *Transcontinental Gas Pipe Line Corporation*, 32 FERC ¶ 61,230 (1985) *(Transcontinental)*, in which a direct billing procedure was approved allowing Transcontinental Gas Pipe Line Corporation to bill accumulated production-related costs applicable to past periods directly to those particular customers who benefited from the services for which the costs were incurred. Panhandle urges the Commission to adopt similar procedures for Panhandle, Trunkline, and others similarly situated as a means of alleviating inter-generational inequity, preserving competitive fairness, and avoiding discrimination among pipelines.

The Commission finds that Panhandle's arguments do not provide any basis for modifying Order No. 94–F. Order No. 94–F does not require pipelines such as Panhandle or Trunkline to pay all claimed production-related costs, whether or not disputed. It provides only that purchasers who agreed to use the offset procedure of Order No. 399–A as a means of paying undisputed production-related costs will be deemed not in violation of applicable section 110 regulations provided payment of the undisputed amounts is made on or before September 30, 1985.

The Commission did not consider alternative payment or recoupment procedures in Order No. 94–F for the simple reason that such procedures were not the subject of the order and were beyond the scope of the matters addressed by the order. The Commission is well aware of the direct billing procedures approved in *Transcontinental*. The Commission believes the procedures approved in *Transcontinental* are reasonable and worthy of consideration by other pipelines as a means of recouping retroactive production-related costs paid pursuant to Order No. 94–F. The Commission will consider requests for similar direct billing procedures on a case-by-case basis. However, the establishment of generic recoupment procedures has not been shown to be necessary at this time is beyond the scope of Order No. 94–F and of this order.

Panhandle's arguments concerning the impact of lump-sum payment of production-related costs on its ability to market gas also fails as a justification for modifying Order No. 94–F. Specifically, Order No. 94–F addresses only the payment by pipelines of amounts owed to producers and not the method by which the pipelines pass on those costs to their customers. Any effect on the price of gas will occur when the amounts paid to producers are passed on to the pipeline's customers and not when pipelines pay to producers amounts not in dispute pursuant to Order No. 94–F. [8]

IV. Conclusion

Order No. 94–F is clarified as set forth in this order. Rehearing of Order No. 94–F is denied.

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[5] No. 83–4390, *et al.*, decided August 19, 1985.

[6] Order No. 94–F, 50 FR at 31348.

[7] 18 CFR 271.1105 (1985).

[8] Direct billing mechanisms for the recoupment of accumulated production-related costs for past periods, such as those approved in *Transcontinental*, pass costs on to pipeline customers which benefited from the production-related services without using the pipeline's purchased gas adjustment (PGA) clause. Direct billing can be expected to mitigate any adverse effects on the marketability of a pipeline's gas that might otherwise occur if recoupment were made through the pipeline's PGA mechanism.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-23590 Filed 10-2-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-242 (Wyoming—18); Order No. 434]

High Cost Gas Produced From Tight Formation; Wyoming

Issued: September 30, 1985.

AGENCY Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1984)). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This order adopts the recommendation of the State of Wyoming Oil and Gas Conservation Commission that a portion of the Turner Formation located in Campbell and Converse Counties, Wyoming, be designated as a tight formation under § 271.703(d) of the Commission's regulations.

EFFECTIVE DATE: The rule is effective October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Douglas L. Mattson, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C., 20426, (202) 357-8248.

SUPPLEMENTARY INFORMATION:

Final Rule

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

The Commission amends § 271.703(d) of its regulations to include certain acreage in the Turner Formation located in Campbell and Converse Counties, Wyoming, as a designated tight formation eligible for incentive pricing. The amendment was recommended by the State of Wyoming Oil and Gas Conservation Commission (Wyoming) to the Commission on December 31, 1984. Notice of the amendment was published in the **Federal Register** on February 8, 1985 (50 FR 5400 (1985)).[1] No comments were filed in response to the notice, no public hearing was requested and none was held.

Evidence submitted by Wyoming supports the assertion that certain acreage in the Turner Formation located in Campbell and Converse Counties, Wyoming, meets the guidelines contained in § 271.703(c)(2) of the Commission's regulations. Accordingly, the Commission adopts Wyoming's recommendation.

This amendment shall become effective October 30, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

PART 271—[AMENDED]

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

Section 271.703 is amended as follows:

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(191) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(191) *Turner Formation in Wyoming.* RM79-76-242 (Wyoming 18).

(i) *Delineation of formation.* The Turner Formation underlies approximately 85,760 acres within Campbell and Converse Counties, Wyoming, in Township 40 North, Range 69 West, 6th P.M., Sections 7, 18, 19, 30, and 31; Township 40 North, Range 70 West, 6th P.M., All Sections; Township 40 North, Range 71 West, 6th P.M., Sections 1, 2, 3, 11, 12, and 13; Township 41 North, Range 70 West, 6th P.M. Sections 4 through 9, 16 through 22, and 25 through 36; Township 41 North, Range 71 West, 6th P.M., Sections 1 through 5, 8 through 17, 20 through 26, 28, 34, 35, and 36; Township 42 North, Range 70 West, 6th P.M., Sections 18, 19, 30, and 31; Township 42, Range 71 West, 6th P.M., Sections 1 through 22, 24, 25, 27 through 29, and 32 through 36.

(ii) *Depth.* The Turner Formation's vertical limits are defined by the Sage Breaks Shale Formation above and the Carlile Shale Formation below. The average depth to the top of the Turner Formation is 9,400 feet and has an average thickness of 30 feet.

[FR Doc. 23663 Filed 10-2-85; 8:45 am]

BILLING CODE 6717-01-M

[1] The **Federal Register** notice inadvertently omitted Section 19 of Township 40 North, Range 69 West, 6th P.M., as a part of the Turner Formation in question.

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 113, 141, and 172

[T.D. 85-167]

Customs Bonds, Entry of Merchandise, Liquidated Damages; Amendments Relating to Time Allowed To Submit Missing Documents

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: Customs is amending its regulations relating to the time period allowed to submit missing documents required at the time that entry or entry summary documents are filed in connection with the importation of merchandise. The current 6 months allowed is being changed to 120 days.

Significant backlogs have occurred as a result of the current extended submission period, and Customs has determined that a reduction in the allowable time will aid in reducing the backlog and will produce more consistent disposition in entry processing, without imposing any significant additional burden on importers.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Herb Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, (202-566-5307).

SUPPLEMENTARY INFORMATION:

Background

Section 484(a), Tariff Act of 1930, as amended by section 102 of the "Customs Procedural Reform and Simplification Act of 1978" (19 U.S.C. 1484(a)), provides that entry of imported merchandise shall be made by filing the documentation necessary to enable Customs to determine whether the merchandise may be released from Customs custody. The documentation necessary to classify and appraise merchandise and to verify

statistical information must be filed at the time prescribed by regulations, either when entry is made, or at any time within 10 working days thereafter.

Part 141, Customs Regulations (19 CFR Part 141), provides procedures for the entry of merchandise and the presentation of the necessary entry documentation. One of the conditions set forth in § 141.91, Customs Regulations (19 CFR 141.91), which must be met by an importer that is unable to provide the required invoice at the time the entry or entry summary documentation is filed, is the filing of a bond. The bond provides, as a condition of its satisfaction, for the production of any missing invoices, declarations, certificates, or other documents required in connection with the entry of imported merchandise, in the form and within the time limits required by regulations.

Part 113, Customs Regulations (19 CFR Part 113), sets forth the general requirements applicable to Customs bonds. Section 113.42, Customs Regulations (19 CFR 113.42), provides that except where another period is fixed by law or regulation, a 6-month period from the date of the transaction is allowed for the production of a document for which a bond or stipulation is given. The regulation also gives the district director of Customs authority to grant an extension. Pursuant to § 113.43(a), Customs Regulations (19 CFR 113.43(a)), extensions may be obtained for the production of documents mentioned in § 113.42, by filing a written application. Extensions may be granted for one additional 2-month period. The 6-month period for submission of a required invoice is also stated in § 141.91(d), Customs Regulations (19 CFR 141.91(d)), the provision which details the conditions under which an incomplete entry or entry summary may be accepted. The invoice must be submitted within 6 months after the date of the filing of the entry or entry summary.

Part 172, Customs Regulations (19 CFR Part 172), contains provisions relating to the giving of notice of liquidated damages incurred under the terms of any bond posted with Customs, the filing of petitions for relief from liquidated damages incurred, and the consideration of such petitions. Section 172.22(b), Customs Regulations (19 CFR 172.22(b)), provides conditions under which the bond charge for the production of missing invoices may be cancelled by the district director upon payment of $25 as liquidated damages. The second of those conditions is the production of the missing document within 6 months after the date the entry or entry summary is required to be filed.

Customs recently completed a national audit of its fines, penalties and forfeitures process, during which the various time periods and extensions permitted by its regulations to provide bonds for, and to submit documents not available at the time of entry or entry summary filing, were analyzed. One recommendation emerging from that audit was to reduce the time permitted for such filing from 6 months, to 60 days.

In order to address the findings of the national audit and to gauge public sentiment regarding a shortened submission period, Customs published a notice in the **Federal Register** on November 23, 1984 (49 FR 46161), in which it was proposed to reduce the time for submission of missing documents to 60 days.

Even though, as a result of the comments received, the time for submission has been modified, as stated in the **Federal Register** notice, Customs continues to believe that given today's communication technology, with electronic transmission of documentation, etc., shortening the time period would not impose any significant burden on the importing community. The current 6-month period has been effective for over 100 years (Article 334, Customs Regulations (1874)), and does not reflect the realities of modern business. Perhaps most important, however, is the fact that many of the bondable documents required are needed to substantiate free or reduced-duty entry. The delays currently experienced in processing the entry documents and collecting the payment of proper duties are not in keeping with sound management and fiscal policies.

Customs realizes that circumstances arise from time to time which might make it impossible to meet a shortened deadline for production of documents. Therefore, the discretionary authority given to the district director to grant extensions is not being amended.

Analysis of Comments

Thirty-two comments were received in response to the November 23, 1984, **Federal Register** notice, the general tenor of which were negative.

A number of commenters believe that the reduction in time to submit missing documents will create additional expenses for both the trade community and Customs. It was stated that there will be an increase in, the number of requests for extensions to submit documents, penalty situations, requests for mitigation, protests, and re-liquidations.

Most commenters believe that 60 days is unreasonable. While electronic transmission of documents is available, its availability is severely limited, and mail transit time suffers from uncontrollable delays. It is stated that often an importer does not have control over a foreign source from which a document is required, and that manufacturer's affidavits often must be obtained from sources not a party to a transaction. It was also stated that many manufacturers may be involved in a single consignment shipped by a single seller or shipper, and that time required to obtain appropriate documents in these circumstances can be lengthy. Many delays in obtaining documentation were stated to be beyond the control of an importer and not due to lack of adequate communications. Research time, explanations regarding the need for a particular type of documentation, and the availability of personnel were said to often cause delays. It was also suggested that delays occur in identifying and contacting the appropriate individual to furnish the required documentation.

Some commenters stated that communications with third world countries may be quite difficult, with translations and comprehension of specific requirements increasing delays. Further, sophisticated communication services may not be available. It was also pointed out that electronically transmitted documentation is not acceptable for certain required information, i.e., country of origin declarations for textiles and for visas. (These documents, however, are required for entry and may not be treated as missing documents which may be supplied later).

Nearly half of the commenters offered alternative time frames for the submission of missing documents. Some commenters proposed 90 days and others suggested 120 days as being a more reasonable time frame. One commenter stated the time should be increased to 9 months. It was also suggested that if the time frame for production of a missing document were reduced, extensions by a district director should be automatic. Department of Defense duty-free certifications were highlighted in the comments as a particular document, not within the control of an importer, which have been and continue to be processed beyond the 6-month limit, and often may take up to a year to obtain. Several commenters requested that production of this duty-free certificate should be

exempted from any proposed reduction in the time limit.

One commenter stated that no statistics were shown to demonstrate that reducing the time limit for production of missing documents would, in fact, result in a savings to the Government. Another suggested that if a reduction in the time limit were made, the time should be counted from the date of receipt from Customs of a notice to produce a document. Others offered examples of Department of Transportation and Environmental Protection Agency releases for automobiles as often being furnished outside the 6-month time frame. (It was not Customs intention to reduce these time limits). If a reduction in the time limit is adopted, one commenter would like it assured that a district director would respond to a request for an extension within 5 days of receipt of the request. Lastly, one commenter suggested that the MIDOC system (a system presently in use at the port of Buffalo, N.Y.) be installed nationally, i.e., Customs would request any document it needed for processing a transaction and an importer would not automatically be required to submit all documents or wait for a waiver if appropriate. This policy has been implemented nationally with the introduction of the revised Customs Form 7501 (Customs Entry Summary Document).

Generally, the comments received were of a sufficiently compelling nature for Customs to re-evaluate the plan to reduce the time for the submission of missing documents to 60 days. The alternative time frames offered by commenters are considered realistic. While 90 days was expressed as an alternative, Customs believes that majority of commenters desired a longer period of time. Therefore, Customs has determined that a reduction in the missing document submission time should be reduced to 120 days. This time frame should be the least disruptive to the trade community and still afford benefits in processing entry documents in a more timely fashion. Concerning Department of Defense duty-free entry certificates, it is Customs belief that the processing time to obtain this document can be reasonably anticipated within 120 days given Department of Defense automation of the process and improvements in procedures. However, Customs has established a policy which permits an importer to request an extension of liquidation in situations where processing delays occur or certifications must be reviewed by Department of Defense contracting officers.

District directors will retain full authority to grant extensions for the production of a missing document. Also, Customs concurs that the time for the submission of a missing document should commence from the date of the notice requesting such document.

Executive Order 12291

This document does not meet the criteria for a "major rule" as specified in § 1(b) of E.O. 12291. Accordingly, a regulatory impact analysis is not required.

Regulatory Flexibility Act

Pursuant to section 3 of the Regulatory Flexibility Act (Pub. L. 96–353, 5 U.S.C. 301 *et seq.*), it is hereby certified that the regulations set forth in this document will not have a significant economic impact on a substantial number of small entities. Accordingly, it is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

List of Subjects in 19 CFR Parts 113, 141, and 172

Customs duties and inspection, Imports.

Drafting Information

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

Amendments to the Regulations

Parts 113, 141, and 172, Customs Regulations (19 CFR Parts 113, 141, and 172), are amended as set forth below:

PART 113—CUSTOMS BONDS

1. The authority citation for Part 113 is revised to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624; Subpart E also issued under 19 U.S.C. 1484, 1551, 1565.

2. All other statutory authority cited at the end of various sections in Part 113 are removed.

3. Section 113.42 is revised to read as follows:

§ 113.42 Time period for production of documents.

Except when another period is fixed by law or regulations, any document for the production of which a bond or stipulation is given shall be delivered within 120 days from the date of notice from Customs requesting such document, or within any extension of such time which may be granted pursuant to § 133.43(a). If the period ends on a Saturday, Sunday, or holiday, delivery on the next business day shall be accepted as timely.

§ 113.43 [Amended]

4. Section 113.43(a) is amended by removing the parenthetical phrase "(other than an invoice or document which must be produced within 2 months, as provided in § 141.61(e) of this chapter)." Further, the same sentence is amended by removing the words "6 months" and inserting, in their place, the words "120 days."

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for Part 141 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624; Subpart B also issued under 19 U.S.C. 1483; Subpart F also issued under 19 U.S.C. 1481; Subpart G also issued under 19 U.S.C. 1505; § 141.1 also issued under 31 U.S.C. 191, 192; § 141.4 also issued under 19 U.S.C. 1498; § 141.19 also issued under 19 U.S.C. 1485, 1486; § 141.20 also issued under 19 U.S.C. 1485, 1623; § 141.66 also issued under 19 U.S.C. 1490, 1623; § 141.68 also issued under 19 U.S.C. 1315; § 141.69 also issued under 19 U.S.C. 1315; § 141.88 also issued under 19 U.S.C. 1401a(d), 1402(f); § 141.90 also issued under 19 U.S.C. 1487; § 141.112 also issued under 19 U.S.C. 1564; § 141.113 also issued under 19 U.S.C. 1499, 1623.

2. All other statutory authority cited at the end of various sections in Part 141 are removed.

§ 141.91 [Amended]

3. Section 141.91(d) is amended by removing the words "6 months" and inserting, in their place, the words "120 days."

PART 172—LIQUIDATED DAMAGES

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

Authority: 19 U.S.C. 66, 1623, 1624.

2. All other statutory authority cited at the end of various sections in Part 172 are removed.

§ 172.22 [Amended]

3. Section 172.22(b) is amended by removing the words "6 months" and inserting, in their place, the words "120 days."

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: September 12, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85–23629 Filed 10–2–85; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 177

[T.D. 85-166]

Change of Practice Relating to Tariff Classification of Gloves With Nonfunctional, Nondecorative Stitching

AGENCY: Customs Service, Treasury.

ACTION: Change of practice.

SUMMARY: This document gives notice that Customs is changing its current established and uniform practice concerning the tariff classification of gloves with nonfunctional, nondecorative "X" stitching. The merchandise has been classified under the provision for ornamented gloves, of textile materials. After reviewing comments received in response to the notice proposing this change, Customs has determined that such gloves should be classified as either ornamented or nonornamented based on the same criteria that are applied to all other textile articles: (1) The "X" stitching on the gloves must be decorative in appearance; (2) the primary purpose of that stitching must be the ornamental effect the stitching imparts; and (3) the decorative appearance of the stitching must be more than merely incidental.

This change will, in some instances, result in higher rates of duty being assessed on certain textile gloves.

EFFECTIVE DATE: This change of practice will be effective as to merchandise entered for consumption, or withdrawn from warehouse for consumption, on or after January 2, 1986.

FOR FURTHER INFORMATION CONTACT: Phil Robins, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW, Washington, DC 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to an established and uniform practice, Customs has classified gloves with nonfunctional, nondecorative "X" stitching as ornamented gloves, of textile materials, in items 704.05-704.34, Tariff Schedules of the United States (TSUS; 19 U.S.C. 1202).

However, as explained in a notice published in the **Federal Register** on July 17, 1984 (50 FR 28885), it has come to Customs attention that certain nonfunctional "X" stitching on the back of gloves is not readily visible. In order for a feature, such as stitching, enumerated in Headnote 3, Schedule 3, TSUS, to constitute ornamentation, that feature must increase the eye appeal of the article by making it more attractive, and that feature must serve a primarily decorative rather than useful function. Stitching which is not readily visible on an article cannot be said to increase the eye appeal of an article or serve a primarily decorative function.

Accordingly, Customs determined that the established and uniform practice of classifying gloves with nonfunctional, nondecorative "X" stitching as ornamented, in items 704.05-704.34, TSUS, is clearly wrong. It is Customs position that such gloves should be classified as either ornamented or not ornamented based on the same criteria that are applied to all other textile articles: (1) the "X" stitching on the gloves must be decorative in appearance; (2) the primary purpose of that stitching must be the ornamental effect it imparts; and (3) the decorative appearance of the stitching must be more than merely incidental when viewing the gloves as a whole.

Because the change will increase the amount of duties assessed on future importations, and is of significant interest to the domestic industry, in accordance with section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)), the public was given until September 17, 1984, to submit comments on the matter before the change was made final.

Discussion of Comments

The only two comments received in response to the notice opposed the change. One commenter based his objection on the belief that it would effect the quota status of some gloves and allow more of them into the U.S. This objection, which is not accurate, is not a proper matter for Customs to consider in evaluating the proposal.

The other commenter raised several relevant arguments that should be addressed.

Comment: Customs Ruling (CR) 072124, dated March 9, 1983, which is the ruling that resulted in the proposed change, does not give a sufficient basis for determining that stitching on the gloves which were the subject of that ruling was not readily visible.

Response: CR 072124 was an instance where gloves, with stitching that was not readily visible, were determined to be nonornamented for tariff purposes. The case resulted from a difference of opinion over the effect of CR 034642, dated July 16, 1974, wherein same color stitching on the back of gloves was determined to make the gloves ornamented for tariff purposes.

Customs believes that whether a feature such as stitching is readily visible on an article is a subjective judgement. No further description of the gloves involved in CR 072124, absent objective criteria with which to judge them, is necessary. Furthermore, if a practice of classification is clearly in error, then the basis for that practice should not be used to perpetuate that error.

Comment: The proposed change is vague because there is no identification in the proposal of the specific changes in classification that will result.

Response: Customs believes that the **Federal Register** document of July 17, 1984, is sufficiently definite to provide proper notice to all concerned as to the proposed change of practice and its results.

Comment: How can Customs depart from CR 034642, of July 16, 1974, which is stated in the notice as forming the apparent basis for the existing practice, when it is stated that Customs perceives no conflict between that ruling and the proposed change of practice?

Response: CR 034642 is not in conflict with the proposed change. The practice apparently developed from a misreading or misapplication of the language in that ruling.

Comment: X-stitching conforms to the definition of embroidery, but even if it is not embroidery, the stitching is nonfunctional, and therefore, included in the exemplars contained in Headnote 3, Schedule 3, TSUS, which defines the term "ornamented.

Response: The issue in this case is whether or not stitching which is not readily visible is decorative. Whether or not the subject stitching constitutes embroidery is not an issue. The cases cited in the notice clearly support the proposition that in order for a feature to constitute ornamentation, that feature must primarily decorate the article on which it is found. The fact that a feature may be nonfunctional, does not, standing alone, result in a finding that the feature is decorative.

Comment: The X-stitching on the commenter's gloves serve to primarily adorn, embellish, and enhance the gloves.

Response: If the stitching on the gloves is visible and decorates the gloves in a commercially meaningful manner, then the change will not affect these gloves. this change is applicable only to nonfunctional stitching which does not decorate, embellish, or enhance the appearance of the gloves.

Comment: The decision in *Endicott Johnson Corp.* v. *United States*, 82 Cust. Ct. 49, C.D. 4787 (1979), *aff'd*, 67 CCPA 47, C.A.D. 1242 (1980), is applicable.

Response: In the appellate court decision, the court specifically stated

that stitching which imparts no more than an incidental decorative effect will not cause an article to be classified as ornamented. The appellate court also specifically adopted the reasoning and finding of the lower court that certain stitching in question was not readily visible and did not constitute ornamentation. The court found that stitching on the articles in question did not constitute ornamentation because it was not eye catching, conspicious, or obviously decorative. The change of practice is intended to apply the principles of *Endicott Johnson* to gloves as it is now applied to all other articles.

Comment: Customs should establish articulable standards of ornamentation before the proposed changes is made final.

Response: What constitutes ornamentation is a subjective determination not readily amenable to definition by specific criteria.

Comment: Customs is not classifying merchandise with X-stitching in a uniform manner.

Response: The objective of this change is to allow Customs to uniformly classify merchandise with X-stitching. Customs has been applying the principles of *Endicott Johnson* to all merchandise, except gloves, for several years. The adoption of this proposal is required to achieve uniformity of classification for all merchandise, including gloves.

Comment: The practice of classifying gloves with stitching which is barely visible as ornamented is not clearly wrong.

Response: Customs believes that the principles of *Endicott Johnson* require holding that stitching which is not readily visible cannot constitute ornamentation. The present practice of classifying gloves with stitching which is barely visible as ornamented is, in view of the court's language in *Endicott Johnson*, clearly wrong.

Change of Practice

After careful analysis of the comments and further review of the matter, it has been determined that the current established and uniform practice of classifying textile gloves with nonfunctional, nondecorative "X" stitching as ornamented gloves is clearly wrong. It is Customs position that such gloves should be classified as either ornamented or not ornamented based on the same criteria that are applied to all other textile articles: (1) The "X" stitching on the gloves must be decorative in appearance; (2) the primary purpose of that stitching must be the ornamental effect it imparts; and (3) the decorative appearance of the stitching must be more than merely incidental.

Use of these criteria will result in gloves being classified as either ornamented, in items 704.05–704.34 TSUS, or not ornamented, in items 704.40–704.95, TSUS.

Drafting Information

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

Alfred R. De Angelus,

Acting Commissioner of Customs.

Approved: September 12, 1985.

Edward T. Stevenson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 85-23630 Filed 10-2-85; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Guidelines

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making a number of amendments in the Parole Commission's paroling policy guidelines. First, the adult guidelines and the guidelines for Youth/NARA cases are consolidated; and the guideline ranges for certain lower severity, better risk offenders are reduced. As a conforming amendment, the guideline ranges contained in the rescission guidelines are similarly revised. Second, several amendments are made in the offense severity examples contained in the parole guidelines. Some of the offense severity amendments merely clarify present policy and improve the organization of the offense behavior examples, while others will result in actual changes in time customarily served. Third, administrative parole violation(s) resulting in parole revocation are amended to be treated as if a Category One offense; and a conforming change in the rescission guidelines for escape is made.

EFFECTIVE DATE: November 4, 1985 (see "Implementation" under Supplementary Information).

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492–5980.

SUPPLEMENTARY INFORMATION:

The Proposal and Its Purposes

On June 10, 1985, the U.S. Parole Commission published in the **Federal Register** (50 FR 24236) a proposal to make a number of changes in the Commission's paroling policy guidelines. The proposal included revisions to 28 CFR 2.20, 2.21 and 2.36 and fell into three categories: (a) consolidation of the youth guideline ranges with the adult ranges in § 2.20 and downward revision of the guideline ranges for certain of the lower severity, better risk cases; (b) revision of certain of the offense examples in the Offense Severity Index of § 2.20; and (c) revision of § 2.21 to treat administrative parole violation(s) leading to revocation as if a Category One offense for reparole guideline purposes, and revision of § 2.36 for escape cases to conform to the revision in § 2.21.

(a) *Revisions of the Guideline Ranges.* Currently, three classes of prisoners are considered under the youth guideline ranges: any prisoner less than age 22 at the time of the offense; any prisoner sentenced under the Youth Corrections Act, regardless of age at the time of the offense; and any prisoner sentenced under the Narcotics Addict Rehabilitation Act. The Commission is consolidating the guidelines for such offenders with the guidelines for adult offenders and will use the consolidated guideline ranges for all cases, but with a downward revision of the guideline ranges for certain lower severity, better risk cases. This amendment will provide heavier penalties for the more serious youth offenders while relying less on incarceration for certain of the lower severity, better risk cases.

(b) *Revision of Certain Offense Examples in the Offense Behavior Severity Index.* Certain of the changes are made for clarity; others add new offense examples or make substantive changes in the current offense examples which will impact upon the time served before parole. The addition of offense example 213 adds a behavior previously not specifically covered in the offense severity index, as do the amendments to 321(b)(2) and 331(f)(1), and the addition of Offense Example 631. The amendments to the titles of Offense Examples 402 and 1161 are for clarity. The amendments to Offense Examples 611, 901(h), 1141, 1151, and 1152 raise the offense severity level for these specific offense behaviors. The amendment to Definition 18 of Chapter Thirteen, Subchapter B conforms to an expanded

legislative definition of this offense. The Commission also requested public comment on the addition and grading of environmental protection offenses (e.g., unlawful disposal of hazardous wastes).

Two important points should be kept in mind in evaluating these changes. First, the examples within the severity categories are not intended to be used as a form of criminal code. They are merely guideposts for the exercise of discretion, and individual circumstances in actual cases may justify a decision or a severity rating different from that listed. Second, the examples are not comprehensive either as to all possible variations in circumstances or as to all types of behavior that are deemed criminal under federal law. Commonly recurring types have been selected and are defined in general terms so as to focus attention on what the Commission considers to be the most relevant factors (e.g., for drug offenses, the amount and purity of the illicit substance involved).

(c) *Revision of the Reparole Guidelines for Administrative Parole Violators.* The Commission is increasing the penalties for parole violators with significant prior records by amending the reparole guidelines for prisoners with administrative violations to conform to the guidelines used for parole applicants with category One (the least serious) offenses. Consequently, instead of a reparole guideline range of ≤9 months for all administrative violators, the applicable guideline range will be ≤8, 8–12, or 12–16 months depending upon the prisoner's background characteristics as measured by the salient factor score (prior record, age, and history of opiate use). The Commission believes that this revision will more adequately sanction administrative violations.

Finally, certain amendments are made in § 2.36 to conform to these changes.

Public Comment

In response to these proposed changes, the Parole Commission received six (6) comments: two (2) from chief probation officers, one (1) from a federal public defender, one (1) from the attorney for the inmates in the *Watts* v. *Hadden* litigation, one (1) from the President of the National Center on Institutions and Alternatives (NCIA), and one (1) from the Post-Conviction Justice Project of the Law Center at the University of Southern California.

One of the chief probation officers wrote specifically in reference to the proposed change to § 2.21, the reparole guidelines. He "heartily" supported the proposal, noting that by such a change "not only will administrative violations be more adequately sanctioned, but it may have the effect, with drug dependent parolees, of making drug treatment a more attractive alternative to revocation."

The second chief probation officer and the attorney wrote in reference to the proposed elimination of the Youth/NARA guidelines. These respondents, both from Colorado, wrote to remind the Commission of the findings in *Watts* v. *Hadden* (and *Benedict and Ewing* v. *Rodgers*) and to express their opinion that the defendants sentenced after the rule change goes into effect should "continue to receive the positive benefits of" the findings in those cases and that the Commission should not take any "action inconsistent with these rulings or the Youth Corrections Act."

The chief probation officer, noting what he described as Commission policy that guideline changes requiring a greater period of confinement are not to be applied retroactively to any person who has had an initial hearing prior to the effective date of the final rule, encouraged the Commission to "expand that general policy to a specific policy that the guideline changes not adversely affect youth offenders."

The Commission believes the consolidation of the adult guidelines with the Youth/NARA guidelines does not conflict with either the letter or the spirit of the judicial decisions from the Tenth Circuit and the District of Colorado, since it will continue to consider a *Watts* v. *Hadden* class member's response to treatment programs as a determinative factor in the parole decision. None of the court decisions limit the Commission's authority to restructure its guidelines—even if the suggested ranges for confinement may consequently increase for some class members—as long as an offender's response to treatment programs is retained as a determinative factor in the parole decision. The Commission would note that the vast majority of class members have already had their initial hearings and thus will not be affected by the new guidelines, unless they later violate parole and the Commission applies the new guidelines at a revocation hearing. These future parole violators, in addition to the small number of future or present YCA class members who will have their initial hearings after November 4, 1985, will be the only prisoners affected by the new guidelines.

The letter from NCIA mirrored the concerns of the Chief Probation Officer and the attorney who wrote regarding the proposed revisions to the Youth/NARA guidelines. Noting that NCIA had advised "several thousand criminal justice practitioners" of the Commission's proposals, the respondent argued that the major objectional issue is the Commission's expressed intent "to apply the more harsh 'adult' guidelines to individuals whose initial hearing is scheduled after elimination of the youth ranges." He argued further that a youthful defendant who is about to appeal his case or to file a Rule 35 motion would be in "greater jeopardy" if he proceeds now to pursue those avenues and to delay his initial parole hearing. Pointing out that § 2.20(h)(2) of the Commission's Rules and Procedures manual states that the Youth/NARA guidelines are currently applied "to any other offender who was less than 22 years of age at the time the current offense was committed, regardless of sentence type," the respondent reasoned that separate youth guidelines should be retained despite the repeal of YCA and NARA.

The federal public defender wrote to express approval of the changes in the guideline ranges for Youth/NARA and low risk offenders and to oppose both deleting Offense Example 901(h) and amending Offense Example 1141. Noting that his comments were written after an "interoffice discussion" of the proposals, he said the guideline changes were logical, "would eliminate disparity," and would comport with his office's extensive experience with such offenders. He felt, however, that Category Three should be retained for Offense Example 901(h) and that changing the age level from 16 to 18 in Offense Example 1141 [concerning interstate transportation for purposes of commercial prostitution] was "arbitrary" and that it appeared "impractical, if not impossible to regulate the sexual conduct of persons over the age of 18 in our society."

Finally, the attorneys for the Post-Conviction Justice Project provided four comments. They stated that Offense Example 213 should contain the requirement that "the person firing the weapon knew or had reason to know that the structure fired on had occupants inside;" absent that knowledge, the offense should receive a less severe category rating. Next, they argued that Offense Example 811 should be modified "by providing that a person in possession of one to three weapons should be placed in Category Three." They felt that the "single versus multiple weapons" distinction was too narrow and that decisions outside the guidelines could accommodate the facts in particular cases. Third, instead of the use of the term "bribery" in Offense Example 1151, they recommend "gratuity" a more appropriate and less

restrictive. And, in regard to the amendments of 28 CFR 2.21, they argued for retention of the present system for administrative violations, stating that the proposal is too harsh and would punish "more severely those offenders with lower salient factor scores for the same conduct."

Changes From the Proposal

Changes from the proposal include:

(1) The table in § 2.20 folllowing paragraph (j)(2) has been revised. In the column labeled "Offense Characteristics: Severity of Offense Behavior," the colons (":") and the words "adult range" are removed from categories 1 through 8. Now that the guidelines have been consolidated, there is no need to label the range as adult. Further, the word "months" is removed from the top of each of the four columns of offender characteristics and the word "months" is added under each of the eight ranges in each of the four columns. Finally, the words "Guideline Range" are placed within each of the eight sets of guideline ranges.

(2) The proposal noted the Commission's intention to amend Offense Example 321(b)(2) of Chapter Three, Subchapter C, of the Offense Behavior Severity Index in § 2.20 to include cases in which the victim is tied, bound, or locked up. The final rule includes the language of the offense example as amended.

(3) The proposal noted the Commission's intention to amend Offense Example 331(F)(1) in Chapter Three, Subchapter D, of the Offense Behavior Severity Index of § 2.20 to include "credit cards or money orders." The final rule includes the language of the offense example as amended.

(4) The proposal removed Offense Example 901(h) in Chapter Nine, Subchapter A, of the Offense Behavior Severity Index of § 2.20. The final rule contains a conforming deletion of Offense Example 901(g).

(5) The proposal noted the Commission's intention to amend Offense Example 1141(a) in Chapter Eleven, Subchapter E, of the Offense Behavior Severity Index of § 2.20 to refer to a person less than 18 rather than 16 years of age. The final rule includes the language of the offense example as amended.

(6) Pursuant to public comment, the title of Offense Example 1151 in Chapter Eleven, Subchapter F, in the Offense Behavior Severity Index of § 2.20 is revised to read: "Demand or Acceptance of Unlawful Gratuity Not Involving Federal, State, or Local Government Officials." As conforming amendments, the title of Subchapter F of Chapter Eleven is revised to read: "Non-Governmental Corruption," and the title of Chapter Eleven is revised to read: "Offenses Involving Organized Crime Activity, Gambling, Obscenity, Sexual Exploitation of Children, Prostitution, Non-Governmental Corruption, and the Environment."

(7) The proposal noted the Commission's intention to amend Definition 18 of Chapter Thirteen, Subchapter D in the Offense Behavior Severity Index of § 2.20 to include a person less than 18, rather than 16, years of age. The final rule includes the language of the definition as amended.

(8) The proposal noted the Commission's intention to create a separate subchapter concerning the grading of environmental protection offenses. That subchapter is contained in a separate Interim Rule and not as part of this Final Rule.

(9) The final rule contains a revision of the entire 28 CFR 2.21, Reparole Consideration Guidelines, including the revision of subparagraph (a) which was included in the proposal, and the amendments to clarify the rule to conform with other changes made to § 2.20.

(10) As a conforming amendment, the table that accompanies § 2.36(a)(2)(ii), *Other New Criminal Behavior in a Prison Facility*, is revised to conform with the changes in § 2.20.

Implementation

The revised guidelines will be applied to all prisoners who have their initial parole hearing on or after November 4, 1985. The revised guidelines will also be applied to rescission and revocation hearings to be held on or after November 4, 1985. Workload considerations prohibit the Commission from providing full retroactivity by examining each case previously given an initial hearing prior to the next regularly scheduled hearing or record review. However, the revised guidelines will be calculated at all subsequent hearings (e.g., interim hearings) and pre-release record reviews held on or after November 4, 1985. Any prisoner receiving a guideline requiring a lesser period of confinment will have that guideline retroactively applied and the case reconsidered in light of the revised guidelines. If the new guidelines are not more favorable, the previous decision will stand.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

§ 2.20 [Amended]

2. 28 CFR 2.20, Paroling Policy Guidelines; Statement of General Policy, is amended by revising paragraph (h) to read as follows:

* * * * *

(h) If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

3. The table in 28 CFR 2.20 following paragraph (j)(2) is revised to read as follows:

GUIDELINES FOR DECISIONMAKING

(Guidelines for decisionmaking, customary total time to be served before release (including jail time))

Offense characteristics: Severity of offense behavior	Offender characteristics: Parole prognosis (salient factor score 1981)			
	Very good (10 to 8)	Good (7 to 6)	Fair (5 to 4)	Poor (3 to 0)
	Guideline range (months)			
Category:				
1	≤4	≤8	8–12	12–16
2	≤6	≤10	12–16	16–22
3	≤10	12–16	18–24	24–32
4	12–18	20–26	26–34	34–44
5	24–36	36–46	48–60	60–72
6	40–52	52–64	64–78	78–100
7	52–80	64–92	78–110	100–148
8 [1]	100+	120+	150+	180+

[1] Note: For Category 8, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category by more than 48 months, the pertinent aggravating case factors considered are to be specified in the reasons given (e.g., that a homicide was premeditated or committed during the course of another felony; or that extreme cruelty or brutality was demonstrated).

4. New Offense Example 213 in Chapter Two, Subchapter B, of the Offense Behavior Severity Index in § 2.20 is added to read as follows:

213 *Firing a Weapon at a Structure Where Occupants are Physically Present*

Grade according to the underlying offense if one can be established, but not less than Category Five.

5. Offense Example 321(b)(2) of Chapter Three, Subchapter C, of the Offense Behavior Severity Index in § 2.20 is revised to read as follows:

(b) (1) * * *

(2) If any offender forces a victim to accompany any offender to a different location, or if a victim is forcibly detained by being tied, bound, or locked up, grade as Category Six.

6. Offense Example 331(f)(1) in Chapter Three, Subchapter D, of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

(f) * * *

(1) Offenses involving stolen checks, credit cards, money orders or mail, forgery, fraud, interstate transportation of stolen or forged securities, trafficking in stolen property, or embezzlement shall be graded as not less than Category Two;

7. The title of Offense Example 402 in Chapter Four of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

402 *Transportation of Unlawful Alien(s)*

8. A new Subchapter D (Voting Fraud) in Chapter Six of the Offense Behavior Severity Index of § 2.20 is added to read as follows:

SUBCHAPTER D—VOTING FRAUD

631 *Voting Fraud*
Category Four.

9. Offense Example 811 in Chapter Eight, Subchapter B, of the Offense Behavior Severity Index in § 2.20 is revised to read as follows:

811 *Possession by Prohibited Person* (e.g., ex-felon)
(a) If single weapon (rifle, shotgun, or handgun), grade as Category Three;
(b) If multiple weapons (rifles, shotguns, or handguns), grade as Category Four.

10. Offense Example 901 in Chapter Nine, Subchapter A, of the Offense Behavior Severity Index of § 2.20 is amended by removing paragraph (h) and by removing the bracketed exception in paragraph (g).

11. Offense Example 1141 in Chapter Eleven, Subchapter E, of the Offense Behavior Severity Index of § 2.20 is amended by revising paragraph (a), by removing paragraph (b), and by redesignating paragraph (c) as (b) and revising it to read as follows:

(a) If physical coercion, or involving person(s) of age less than 18, grade as Category Six;
(b) Otherwise, grade as Category Four.

12. Offense 1151 in Chapter Eleven, Subchapter F, in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

1151 *Demand or Acceptance of Unlawful Gratuity Not Involving Federal, State, or Local Government Officials*
Grade as if a fraud offense according to (1) the amount of the bribe offered or demanded, or (2) the financial loss to the victim, whichever is higher.

Also, the title of Subchapter F of Chapter Eleven is revised to read as follows:

SUBCHAPTER F—NON-GOVERNMENTAL CORRUPTION

And the title of Chapter Eleven is revised to read as follows:

Chapter Eleven—Offenses Involving Organized Crime Activity, Gambling, Obscenity, Sexual Exploitation of Children, Prostitution, Non-Governmental Corruption, and the Environment

13. Offense Example 1152 in Chapter Eleven, Subchapter F, of the Offense Behavior Severity Index of § 2.20 is added to read as follows:

1152 *Sports Bribery*
If the conduct involves bribery in a sporting contest, grade as if a theft offense according to the amount of the bribe, but not less than Category Three.

14. The title of Offense 1161 in Chapter Eleven, Subchapter G, of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

1161 *Reports on Monetary Instrument Transactions*

15. Definition 18 of Chapter Thirteen, Subchapter B in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

18. "Sexual exploitation of children" refers to employing, using, inducing, enticing, or coercing a person less than 18 years of age to engage in any sexually explicit conduct for the purpose of producing a visual or print medium depicting such conduct with knowledge or reason to know that such visual or print medium will be distributed for sale, transported in interstate or foreign commerce, or mailed. It also includes knowingly transporting, shipping, or receiving such visual or print medium for the purposes of distributing for sale, or knowingly distribution for sale such visual or print medium.

16. 28 CFR 2.21, Reparole Consideration Guidelines, is revised to read as follows:

§ 2.21 Reparole consideration guidelines.

(a) (1) If revocation is based upon administrative violation(s) only, grade the behavior as if a Category One offense under § 2.20.

(2) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(b) The guidelines for parole consideration specified at 28 CFR 2.20 shall then be applied with the salient factor score recalculated. The conviction and commitment from which the offender was released shall be counted as a prior conviction and commitment.

(c) Time served on a new state or federal sentence shall be counted as time in custody for reparole guideline purposes. This does not affect the computation of the expiration date of the violator term as provided by §§ 2.47(d) and 2.52 (c) and (d).

(d) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant.

§ 2.36 [Amended]

17. 28 CFR 2.36, Rescission Guidelines, is amended by revising the guideline range in paragraph (a)(2)(i)(A) from "6–12 months" to "8–16 months." Also, to conform to the revisions in 28 CFR § 2.20, the table that accompanies § 2.36(a)(2)(ii), *Other New Criminal Behavior in a Prison Facility*, is revised to read as follows:

(a) * * *
(2) * * *
(ii) *Other New Criminal Behavior in a Prison Facility.*

Severity rating of the new criminal behavior (from § 2.20)	Guideline range
Category One	≤4 months.
Category Two	≤6 months.
Category Three	≤10 months.
Category Four	12–16 months.
Category Five	24–36 months.
Category Six	40–52 months.
Category Seven	52–80 months.
Category Eight	100 + months.

* * * * *

Dated: September 18, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-23384 Filed 10-2-85; 8:45 am]

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Interim rule with request for comment.

SUMMARY: The Parole Commission is making several interpretative clarifications, revisions and additions to its paroling policy guidelines contained in 28 CFR 2.20 and 2.36. These changes and additions are intended to remove ambiguities, to conform to other parts of the guidelines, and to make the guidelines more comprehensive.

DATES: Effective date of the interim rule is November 4, 1985. Public comment must be received by December 15, 1985.

ADDRESS: Comments should be addressed to: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-5980.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Telephone (301) 492-5980.

SUPPLEMENTARY INFORMATION: Among the amendments being made to the paroling policy guidelines are the following:

1. A revision is made to 28 CFR 2.20(j)(1) to conform to amendments made to 28 CFR 2.21 concerning the recalculation of the salient factor score for parole violators. And a revision is made to 28 CFR 2.36(a)(1) to conform to amendments made to 28 CFR 2.21 concerning the grading of administrative violations as Category One.

2. Several changes are being made to the offense examples in the Offense Severity Index of 28 CFR 2.20. These amendments are, for the most part, editorial and serve to clarify the offense examples. Other revisions add new offense examples, making the offense severity index more comprehensive by including behaviors previously not specifically covered. Offense Example 211(a) has been revised for clarity as have Offense Examples 212(a), 221(e), 615 and 621(b). (For consistency, an amendment has been made to Definition 17 in Subchapter B of Chapter Thirteen to conform to the revision in Offense Examples 211(e) and 212(a)). The titles of Offense Examples 232 and 801 are revised for clarity and consistency and the statutory reference in the title of Offense Example 361 is removed. New subparagraph (c) is added to Offense Example 322 to clarify the relationship of extortion to non-governmental corruption. Operating video gambling machines are added to the list of gambling law violations in Offense Example 1111 and, for consistency, Offense Example 1112 is revised for grading by reference to Offense Example 1111. Offense Example 803 is removed; the underlying statute has been repealed and involuntary manslaughter is covered elsewhere in the guidelines. New Offense Example 363 is added to make the index more comprehensive by providing coverage for "insider trading" offenses. The grading of the severity of these offenses parallels that of the antitrust offenses in Offense Example 361. New Offense Examples 1171 and 1172, rating environmental offenses, are added. The Commission proposed the creation of a subchapter on these offenses in the proposed rule published on June 10, 1985 (50 FR 24236). No comment was received, and the Commission has developed these two offense examples pursuant to that proposal. Also, new General Note (7) has been added to Subchapter A of Chapter Thirteen to clarify the grading of state offenses committed at or about the same time as the current federal offense.

3. To make the rules more comprehensive, the Commission is revising several offense examples and other paragraphs by incorporating, as part of the rules, instructional material previously included in the Commission's internal Rules and Procedures manual. These changes should also help to clarify the rules and examples. In this regard, amendments are made to Offense Examples 232(c), 331(f)(3), 331(g)(2), 362(d), and 618 (a) and (b). Similarly, Note (3) is added to the Notes to Chapter Nine; subparagraphs (a) through (e) have been added to General Note (2) of subchapter A of Chapter Thirteen; and the salient factor scoring instructions have been incorporated into the rules.

These rule changes will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, prisoners, probation and parole.

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.20, *Paroling Policy Guidelines; Statement of General Policy*, is amended by revising paragraph (j)(1) to read as follows:

§ 2.20 Paroling policy guidelines; Statement of general policy.

* * * * *

(j) (1) In probation revocation cases, the original federal offense behavior and any new criminal conduct on probation (federal or otherwise) is considered in assessing offense severity. The original federal conviction is also counted in the salient factor score as a prior conviction. Credit is given towards the guidelines for any time spent in confinement on any offense considered in assessing offense severity.

* * * * *

3. Offense Example 211(a) in Chapter 2, Subchapter B, in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

211 *Assault During Commission of Another Offense*

(a) If serious bodily injury* results of if 'serious bodily injury is the result intended'*, grade as Category Seven;

4. Offense Example 212(a) of Chapter 2, Subchapter B of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

212 *Assault*

(a) If serious bodily injury* results or if 'serious bodily injury is the result intended'*, grade as Category Seven;

5. Offense Example 221(e) of Chapter 2, Subchapter C of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

221 *Kidnapping*

* * * * *

(e) *Exception:* If not for ransom or terroism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed within an hour), grade as Category Six.

6. The title of Offense Example 232 of Chapter 2, Subchapter D in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

232 *Unlawful Sexual Conduct with Minors (e.g., carnal knowledge*)*

7. Offense Example 232 of Chapter 2, Subchapter D in the Offense Behavior Severity Index of § 2.20 is amended by adding new subparagraph (c) to read as follows:

232 * * *

* * * * *

(c) *Note:* Where the victim is less than 12 years of age at the time of the offense, the aggravating factor of an extremely vulnerable victim is presumed to exist.

8. Offense Example 322 of Chapter 3, Subchapter C in the Offense Behavior Severity Index of § 2.20 is amended by adding paragraph (c) to read as follows:

322 *Extortion*

* * * * *

(c) If neither (a) nor (b) is applicable, grade under Chapter Eleven, Subchapter F;

9. Offense Example 331 of Chapter 3, Subchapter F in the Offense Behavior Severity Index of § 2.20 is amended by adding paragraph (f)(3) to read as follows:

331 *Theft, Forgery* * * *

* * * * *

(f) * * *

(3) Grade obtaining drugs for own use by a fraudulent or fraudulently obtained prescription as Category Two.

10. Offense Example 331 of Chapter 3, Subchapter F in the Offense Behavior Severity Index of § 2.20 is amended by adding paragraph (g)(2) to read as follows:

331 *Theft, Forgery* * * *

(a) * * *

(g)(2) Grade fraudulent sale of drugs (e.g., sale of sugar as heroin) as 'fraud'.

11. The title of Offense Example 361 of Chapter 3, Subchapter G in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

361 *Violation of Securities or Investment Regulations*

12. Offense Example 362 of Chapter 3, Subchapter G in the Offense Behavior Severity Index of § 2.20 is amended by adding new paragraph (d) to read as follows:

362 *Antitrust Offenses*

* * * * *

(d) *Note:* The term 'economic impact' refers to the estimated loss to any victims (e.g., loss to consumers from a price fixing offense).

13. Offense Example 363 of Chapter 3, Subchapter G is added as an amendment to the Offense Behavior Severity Index of § 2.20 to read as follows:

363 *Insider Trading*

(a) If very large scale (e.g., estimated economic impact of more than $1 million), grade as Category Four;

(b) If large scale (e.g., estimated economic impact of more than $100,000 but not more than $1 million), grade as Category Three;

(c) Otherwise, grade as Category Two.

(d) *Note:* The term 'economic impact' refers to the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

14. Offense Example 615 of Chapter 6, Subchapter B in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

615 *Harboring a Fugitive*

Grade as if 'accessory after the fact' to the offense for which the fugitive is wanted, but not higher than Category Three.

15. Offense Example 618 of Chapter 6, Subchapter B in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

618 *Contempt of Court*

(a) Criminal Contempt (re: 18 U.S.C. 402). Where imposed in connection with a prisoner serving a sentence for another offense, add < = 6 months to the guidelines otherwise appropriate.

(b) *Exception:* If a criminal sentence of more than one year is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, grade such conduct as if 'accessory after the fact'.

(c) Civil Contempt. See 28 CFR 2.10.

16. Offense Example 621 of Chapter 6, Subchapter C in the Offense Behavior Severity Index of § 2.20 is amended by revising paragraph (b) to read as follows:

621 *Bribery* * * *

* * * * *

(b) If the above conduct involves a pattern of corruption (e.g., multiple instances), grade as not less than Category Four.

* * * * *

17. The title of Offense Example 801 of Chapter 8, Subchapter A in the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

801 *Unlawful Possession or Distribution of Explosives; or Use of Explosives During a Felony*

18. Offense Example 803 of Chapter 8, Subchapter A in the Offense Behavior Severity Index of § 2.20 is removed.

19. Note 3 to the Notes to Chapter Nine is added to the Offense Behavior Severity Index of § 2.20 to read as follows:

Notes to Chapter Nine

* * * * *

(3) Grade unlawful possession or distribution of precursor of illicit drugs as Category Five (i.e., aiding and abetting the manufacture of synthetic illicit drugs).

20. Offense Example 1111 of Chapter Eleven, Subchapter B of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

1111 *Gambling Law Violations—Operating or Employment in an Unlawful Business* (re: 18 U.S.C. 1955)

(a) If large scale operation [e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000); Dice or card games (estimated daily 'house cut' more than $1,000); video gambling (eight or more machines)]; grade as Category Four;

(b) If medium scale operation [e.g., Sports books (estimated daily gross $5,000–$15,000); Horse books (estimated daily gross $1,500–$4,000); Numbers bankers (estimated daily gross $750–$2,000); Dice or card games (estimated daily 'house cut' $400–$1,000); video gambling (four-seven machines)]; grade as Category Three;

(c) If small scale operation [e.g., Sports books (estimated daily gross less than $5,000); Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750); Dice or card games (estimated daily 'house cut' less than $400); video gambling (three or fewer machines)]; grade as Category Two;

(d) *Exception:* Where it is established that the offender had no proprietary interest or managerial role, grade as Category One.

21. Offense Example 1112 of Chapter Eleven, Subchapter B of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

1112 *Interstate Transportation of Wagering Paraphernalia* (re: 18 U.S.C. 1953) Grade as if 'operating a gambling business'.

22. Subchapter H (Offense Examples 1171 and 1172) of Chapter Eleven, is added to the Offense Behavior Severity Index of § 2.20 to read as follows:

SUBCHAPTER H—ENVIRONMENTAL OFFENSES

1171 *Knowing Endangerment Resulting From Unlawful Treatment, Transportation, Storage, or Disposal of Hazardous Waste* [Re: 42 U.S.C. § 6928(e)]

(a) If death results, grade as Category Seven;

(b) If serious bodily injury results, grade as Category Six;

(c) Otherwise, grade as Category Five.

(d) *Note:* Knowing Endangerment requires a finding that the offender knowingly transported, treated, stored, or disposed of any hazardous waste and knew that he thereby placed another person in imminent danger of death or serious bodily injury.

1172 *Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility* [Re: 42 U.S.C. § 6928(d)(1–2)]

(a) If death results, grade as Category Six;

(b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds $100,000, or a community is evacuated for more than 72 hours), grade as Category Five;

(c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of $20,000–$100,000, or a community is evacuated for 72 hours or less), grade as Category Four;

(d) Otherwise, grade as Category Three;

(e) *Exception:* Where the offender is a non-managerial employee (i.e., a truckdriver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

23. General Note 2 of Chapter Thirteen, Subchapter A in the Offense Behavior Index of § 2.20 is amended by adding paragraphs (a), (b), (c), (d), and (e) to read as follows:

SUBCHAPTER A—GENERAL NOTES

* * * * *

2. * * *

(a) In certain instances, the guidelines specify how multiple offenses are to be rated. In offenses rated by monetary loss (e.g., theft and related offenses, counterfeiting, tax evasion) or drug offenses, the total amount of the property or drugs involved is used as the basis for the offense severity rating. In instances not specifically covered in the guidelines, the decision makers must exercise discretion as to whether or not the multiple offense behavior is sufficiently aggravating to justify increasing the severity rating. The following chart is intended to provide

guidance in assessing whether the severity of multiple offenses is sufficient to raise the offense severity level; it is not intended as a mechanical rule.

MULTIPLE SEPARATE OFFENSES

Severity	Points
Category One	⅓
Category Two	⅓
Category Three	1
Category Four	3
Category Five	9
Category Six	27
Category Seven	45

Examples:

3 Category Five Offenses [3x(9)=27]= Category Six

5 Category Five Offenses [5x(9)=45]= Category Seven

2 Category Six Offenses [2x(27)=54]= Category Seven

(b) The term "multiple separate offenses" generally refers to offenses committed at different times. However, there are certain circumstances in which offenses committed at the same time are properly considered multiple separate offenses for the purpose of establishing the offense severity rating. These include (1) unrelated offenses, and (2) offenses involving the unlawful possession of weapons during commission of another offense.

(c) For offenses graded according to monetary value (e.g., theft) and drug offenses, the severity rating is based on the amount or quantity involved and not on the number of separate instances.

(d) Intervening Arrests. Where offenses ordinarily graded by aggregation of value/quantity (e.g., property or drug offenses) are separated by an intervening arrest, grade (1) by aggregation of value/quantity or (2) as multiple separate offenses, whichever results in a higher severity category.

(e) Income Tax Violations Related to Other Criminal Activity. Where the circumstances indicate that the offender's income tax violations are related to failure to report income from other criminal activity (e.g., failure to report income from a fraud offense) grade as tax evasion or according to the underlying criminal activity established, whichever is higher. Do not grade as multiple separate offenses.

* * * * *

24. Chapter Thirteen, Subchapter A is amended by adding new General Note 7 to the Offense Behavior Severity Index of § 2.20 to read as follows:

SUBCHAPTER A—GENERAL NOTES

* * * * *

7. Where state offense(s) are sufficiently related to the federal offense in time or nature to be considered as part of the same episode, course, or spree of criminal conduct (e.g., during a three month period an offender robs two federal banks, one state bank, and one grocery store), such conduct shall be considered as an aggravating factor by being graded on the severity scale as if part of the current federal offense behavior. Any time spent in custody on the state offense(s) shall be credited for guideline purposes.

25. Definition 17 of Chapter Thirteen, Subchapter B of the Offense Behavior Severity Index of § 2.20 is revised to read as follows:

SUBCHAPTER B—DEFINITIONS

* * * * *

17. "Serious bodily injury is the result intended" refers to a limited category of offense behaviors where the circumstances indicate that the bodily injury intended was serious (e.g., throwing acid in a person's face, or firing a weapon at a person) but where it is not established that murder was the intended object. Where the circumstances establish that murder was the intended object, grade as an "attempt to murder".

26. 28 CFR 2.20, *Paroling Policy Guidelines; Statement of General Policy*, is amended by adding instructions for the computation of the salient factor score to read as follows:

Salient Factor Scoring Manual. The following instructions serve as a guide in computing the salient factor score.

Item A. Prior Convictions/Adjudications (Adult or Juvenile) [(None=3; One =2; Two or Three=1; Four or more. . . .=0]]

A.1 In General. Count all convictions/adjudications (adult or juvenile) for criminal offenses (other than the current offense) that were committed prior to the present period of confinement, except as specifically noted. Convictions for prior offenses that are charged or adjudicated together (e.g., three burglaries) are counted as a single prior conviction, except when such offenses are separated by an intervening arrest (e.g., three convictions for larceny and a conviction for an additional larceny committed after the arrest for the first three larcenies would be counted as two prior convictions, even if all four offenses were adjudicated together). Do not count the current federal offense or state/local convictions resulting from the current federal offense (i.e., offenses that are considered in assessing the severity of the current offense). *Exception:* Where the first and last overt acts of the current offense behavior are separated by an intervening federal conviction (e.g., after conviction for the current federal offense, the offender commits another federal offense while on appeal bond), both offenses are counted in assessing offense severity; the earlier offense is also counted as a prior conviction in the salient factor score.

A.2 Convictions

(a) Felony convictions are counted. Non-felony convictions are counted, except as listed under (b) and (c). Convictions for driving while intoxicated/while under the influence/while impaired, or leaving the scene of an accident involving injury or an attended vehicle are counted. For the purpose of scoring Item A of the salient factor score, use the offense of conviction.

(b) Convictions for the following offenses are counted only if the sentence resulting was a commitment of more than thirty days (as defined in Item B) or probation of one year or more (as defined in Item E), or if the record indicates that the offense was classified by the jurisdiction as a felony (regardless of sentence):

1. contempt of court;
2. disorderly conduct/disorderly person/breach of the peace/disturbing the peace/uttering loud and abusive language;
3. driving without a license/with a revoked or suspended license/with a false license;
4. false information to a police officer;
5. fish and game violations;
6. gambling;
7. loitering;
8. non-support;
9. prostitution;
10. resisting arrest/evade and elude;
11. trespassing;
12. reckless driving;
13. hindering/failure to obey a police officer;
14. leaving the scene of an accident (except as listed under (a)).

(c) Convictions for certain minor offenses are not counted, regardless of sentence. These include:

1. hitchhiking;
2. local regulatory violations;
3. public intoxication/possession of alcohol by a minor/possession of alcohol in an open container;
4. traffic violations (except as specifically listed);
5. vagrancy/vagabond and rogue;
6. civil contempt.

A.3 Juvenile Conduct. Count juvenile convictions/adjudications except as follows:

(a) Do not count any status offense (e.g., runaway, truancy, habitual disobedience) unless the behavior included a criminal offense which would otherwise be counted;

(b) Do not count any criminal offense committed at age 15 or less, unless it resulted in a commitment of more than 30 days.

A.4 Military Conduct. Count military convictions by general or special court-martial (not summary court-martial or Article 15 disciplinary proceeding) for acts that are generally prohibited by civilian criminal law (e.g., assault, theft). Do not count convictions for strictly military offenses. *Note:* This does not preclude consideration of serious or repeated military misconduct as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

A.5 Diversion. Conduct resulting in diversion from the judicial process without a finding of guilt (e.g., deferred prosecution, probation without plea) is not to be counted in scoring this item. However, behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be counted as a conviction even if a conviction is not formally entered.

A.6 Setting Aside of Convictions/Restoration of Civil Rights. Setting aside or removal of juvenile convictions/adjudications is normally for civil purposes (to remove civil penalties and stigma). Such convictions/adjudications are to be counted for purposes of assessing parole prognosis. This also applies to adult convictions/adjudications which may be set aside by various methods (including pardon). However, convictions/adjudications that

were set aside or pardoned on grounds of innocence are not to be counted.

A.7 Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error. Exclude any conviction reversed or vacated for constitutional or procedural grounds, unless the prisoner has been retried and reconvicted. It is the Commission's presumption that a conviction/adjudication is valid. If a prisoner challenges such conviction he/she should be advised to petition for a reversal of such conviction in the court in which he/she was originally tried, and then to provide the Commission with evidence of such reversal. *Note:* Occasionally the presentence report documents facts clearly indicating that a conviction was unconstitutional for deprivation of counsel [this occurs only when the conviction was for a felony, or for a lesser offense for which imprisonment was actually imposed; and the record is clear that the defendant (1) was indigent, and (2) was not provided counsel, and (3) did not waive counsel]. In such case, do not count the conviction. Similarly, if the offender has applied to have a conviction vacated and provides evidence (e.g., a letter from the court clerk) that the required records are unavailable, do not count the conviction. *Note:* If a conviction found to be invalid is nonetheless supported by persuasive information that the offender committed the criminal act, this information may be considered as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score).

A.8 Ancient Prior Record. If both of the following conditions are met: (1) The offender's only countable convictions under Item A occurred at least ten years prior to the commencement of the current offense behavior (the date of the last countable conviction under Item A refers to the date of the conviction, itself, not the date of the offense leading to conviction), and (2) there is at least a ten year commitment free period in the community (including time on probation or parole) between the last release from a countable commitment (under Item B) and the commencement of the current offense behavior; then convictions/commitments prior to the above ten year period are not to be counted for purposes of Items A, B, or C. *Note:* This provision does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or asssaultive conduct) as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score). Similarly, a substantial crime free period in the community, not amounting to ten years, may, in light of other factors, indicate that the offender belongs in a better risk category than the salient factor score indicates.

A.9 Foreign Convictions. Foreign convictions (for behavior that would be criminal in the United States) are counted.

A.10 Tribal Court Convictions. Tribal court convictions are counted under the same terms and conditions as any other conviction.

A.11 Forfeiture of Collateral. If the only known disposition is forfeiture of collateral, count as a conviction (if a conviction for such offense would otherwise be counted).

A.12 Conditional/Unconditional Discharge (New York State). In N.Y. State, the term 'conditional discharge' refers to a conviction with a suspended sentence and unsupervised probation; the term 'unconditional discharge' refers to a conviction with a suspended sentence. Thus, such N.Y. state dispositions for countable offenses are counted as convictions.

Item B. Prior Commitments of More Than Thirty Days (Adult or Juvenile) [[None=2; One or two=1; Three or more=0]]

B.1 Count all prior commitments of more than thirty days (adult or juvenile) resulting from a conviction/adjudication listed under Item A, except as noted below. Also count commitments of more than thirty days imposed upon revocation of probation or parole where the original probation or parole resulted from a conviction/adjudication counted under Item A.

B.2 Count only commitments that were imposed prior to the commission of the last overt act of the current offense behavior. Commitments imposed after the current offense are not counted for purposes of this item. Concurrent or consecutive sentences (whether imposed at the same time or at different times) that result in a continuous period of confinement count as a single commitment. However, a new court commitment of more than thirty days imposed for an escape/attempted escape or for criminal behavior committed while in confinement/escape status counts as a separate commitment.

B.3 Definitions

(a) This item only includes commitments that were actually imposed. Do not count a suspended sentence as a commitment. Do not count confinement pending trial or sentencing or for study and observation as a commitment unless the sentence is specifically to 'time served'. If a sentence imposed is subsequently reconsidered and reduced, do not count as a commitment if it is determined that the total time served, including jail time, was 30 days or less. Count a sentence to intermittent confinement (e.g., weekends) totalling more than 30 days.

(b) This item includes confinement in adult or juvenile institutions, and residential treatment centers. It does not include foster home placement. Count confinement in a community treatment center when part of a committed sentence. Do not count confinement in a CTC when imposed as a condition of probation or parole. Do not count self commitment for drug or alcohol treatment.

(c) If a committed sentence of more than thirty days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal), count as a prior commitment. *Note:* Where the subject unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items D and E. *Example:* An offender is sentenced to a term of three years confinement, released on appeal bond, and commits the current offense. Count as a previous commitment under Item B, but not under Items D and E. To be considered under Items D and E, the avoidance of sentence must have been unlawful (e.g., escape or failure to report for service of sentence).

Item C. Age at Commencement of the Current Offense/Prior Commitments of More Than Thirty Days (Adult or Juvenile)

C.1 Score 2 if the subject was 26 years of age or more at the commencement of the current offense and has fewer than five prior commitments.

C.2 Score 1 if the subject was 20–25 years of age at the commencement of the current offense and has fewer than five prior commitments.

C.3 Score 0 if the subject was 19 years of age or less at the commencement of the current offense, or if the subject has five or more prior commitments.

C.4 Definitions.

(a) Use the age at the commencement of the subject's current federal offense behavior, except as noted under special instructions for federal probation/parole/confinement/escape status violators.

(b) Prior commitment is defined under Item B.

Item D. Recent Commitment Free Period (Three Years)

D.1 Score 1 if the subject has no prior commitments; or if the subject was released to the community from his/her last prior commitment at least three years prior to commencement of his/her current offense behavior.

D.2 Score 0 if the subject's last release to the community from a prior commitment occurred less than three years prior to the current offense behavior; or if the subject was in confinement/escape status at the time of the current offense.

D.3 Definitions.

(a) Prior commitment is defined under Item B.

(b) Confinement/escape status is defined under Item E.

(c) Release to the community means release from confinement status (e.g., a person paroled through a CTC is released to the community when released from the CTC, not when placed in the CTC).

Item E. Probation/Parole/Confinement/Escape Status Violator This Time

E.1 Score 1 if the subject was not on probation or parole, nor in confinement or escape status at the time of the current offense behavior; and was not committed as a probation, parole, confinement, or escape status violator this time.

E.2 Score 0 if the subject was on probation or parole or in confinement or escape status at the time of the current offense behavior; or if the subject was committed as a probation, parole, confinement, or escape status violator this time.

E.3 Definitions.

(a) The term probation/parole refers to a period of federal, state, or local probation or parole supervision. Occasionally, a court disposition such as 'summary probation' or 'unsupervised probation' will be encountered. If it is clear that this disposition involved no attempt at supervision, it will not be counted for purposes of this item. *Note:* Unsupervised

probation/parole due to deportation is counted in scoring this item.

(b) The term 'parole' includes parole, mandatory parole, conditional release, or mandatory release supervision (i.e., any form of supervised release).

(c) The term 'confinement/escape status' includes institutional custody, work or study release, pass or furlough, community treatment center confinement, or escape from any of the above.

Item F. History of Heroin/Opiate Dependence

F.1 Score 1 if the subject has no history of heroin or opiate dependence.

F.2 Score 0 if the subject has any record of heroin or opiate dependence.

F.3 Ancient Heroin/Opiate Record. If the subject has no record of heroin/opiate dependence within ten years (not counting any time spent in confinement), do not count a previous heroin/opiate record in scoring this item.

F.4 Definition. For calculation of the salient factor score, the term "heroin/opiate dependence" is restricted to dependence on heroin, morphine, or dilaudid. Dependence refers to physical or psychological dependence, or regular or habitual usage. Abuse of other opiate or non-opiate substances is not counted in scoring this item. However, this does not preclude consideration of serious abuse of a drug not listed above as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

Special Instructions—Federal Probation Violators

Item A Count the original federal offense as a prior conviction. Do not count the conduct leading to probation revocation as a prior conviction.

Item B Count all prior commitments of more than thirty days which were imposed prior to the behavior resulting in the current probation revocation. If the subject is committed as a probation violator following a 'split sentence' for which more than thirty days were served, count the confinement portion of the 'split sentence' as a prior commitment. *Note:* the prisoner is still credited with the time served toward the current commitment.

Item C Use the age at commencement of the probation violation, not the original offense.

Item D Count backwards three years from the commencement of the probation violation.

Item E By definition, no point is credited for this item. *Exception:* A case placed on unsupervised probation (other than for deportation) would not lose credit for this item.

Item F No special instructions.

Special Instructions—Federal Parole Violators

Item A The conviction from which paroled counts as a prior conviction.

Item B The commitment from which paroled counts as a prior commitment.

Item C Use the age at commencement of the new criminal behavior.

Item D Count backwards three years from the commencement of the new criminal behavior.

Item E By definition, no point is credited for this item.

Item F No special instructions.

Special Instructions—Federal Confinement/Escape Status Violators With New Criminal Behavior in the Community

Item A The conviction being served at the time of the confinement/escape status violation counts as a prior conviction.

Item B The commitment being served at the time of the confinement/escape status violation counts as a prior commitment.

Item C Use the age at commencement of the confinement/escape status violation.

Item D By definition, no point is credited for this item.

Item E By definition, no point is credited for this item.

Item F No special instructions.

27. 28 CFR 2.36(a)(1), *Rescission Guidelines*, is revised to conform to 28 CFR 2.21 concerning the grading of administrative violations as Category One. The revised (a)(1) paragraph reads as follows:

§ 2.36 Rescission Guidelines.

(a) * * *

(1) Administrative Rule Infraction(s) (including alcohol abuse) normally can be adequately sanctioned by postponing a presumptive or effective date by 0–60 days per instance of misconduct, or by 0–120 days in the case of use or simple possession of illicit drugs. Escape or other new criminal conduct shall be considered in accordance with the guidelines set forth below.

* * * * *

Dated: September 18, 1985

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-23386 Filed 10-2-85; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners; Rescission

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is amending its Rescission Guidelines (28 CFR 2.36) to make them more comprehensive by establishing, as Category Three, the offense severity for possession of a weapon other than a firearm or explosives in a prison facility or a Community Treatment Center.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Alan J. Chaset, Deputy Director of Research and Program Development, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, Telephone (301) 492-4980.

SUPPLEMENTARY INFORMATION: To make the guidelines more comprehensive, the Parole Commission is amending its Rescission Guidelines, 28 CFR 2.36, to establish as Category Three the offense severity for possession of a weapon other than a firearm or explosives in a prison facility or a Community Treatment Center. Presently, 28 CFR 2.36 does not give specific guidance on the proper severity rating for possession of a knife, "shank" or other dangerous weapons in an institution.

A proposed rule that would have added the offense severity for possession of a weapon other than a firearm in a prison facility or a Community Treatment Center as Category Two was published in the **Federal Register** (48 FR 53578, November 28, 1983). The Parole Commission received three (3) responses from the public on the proposed amendment. A U.S. Parole Commission Hearing Examiner wrote to note the seriousness of weapon possession in an institution and the need to adequately sanction such behavior. He stated such behavior "should be categorized as no less than Category Three." A Federal Bureau of Prisons Regional Director wrote to indicate that possession of such a weapon "should be considered extremely serious and treated accordingly;" he commented that the offense category should be raised to Category Five rather than the proposed Category Two. The Director of the Federal Bureau of Prisons wrote in support of the comments of the Regional Director noting that raising the offense category to Category Five would "place the behavior in a severity range more congruent with our policy on inmate discipline."

The Parole Commission, after considering the comments received, has determined to raise the severity rating for these offenses from Category Two to Category Three and, with that change made, to adopt the proposed amendment as a final rule. Such an increase reflects the seriousness of the offense while maintaining the appropriate distinction between the possession of a weapon and its use in an assault. In this regard, it should be noted that, under present procedures, an assault with a dangerous weapon on a correctional officer is rated as no less than Category Six; that offense severity rating remains unchanged.

This rule change will not have a significant economic impact on a

substantial number of small entities within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedures, Prisoners, Probation and Parole.

PART 2—[AMENDED]

1. The authority citation for 28 CFR Part 2 is revised to read:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. 28 CFR 2.36, Rescission Guidelines, is amended by adding a note after the Table in 2.36(a)(2)(ii) to read as follows:

§ 2.36 Rescission Guidelines.

(a) * * *
(2) * * *
(ii) * * *

Note.—Grade unlawful possession of a dangerous weapon other than a firearm or explosives (e.g., a knife) within a prison facility or community treatment center as Category Three.

Dated: September 18, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-23385 Filed 10-2-85; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is making procedural revisions and clarifications to its rules at 28 CFR 2.55 and 2.56. These revisions are intended to make the Commission rules more fully congruent with the Department of Justice disclosure regulations.

EFFECTIVE DATE: November 4, 1985.

FOR FURTHER INFORMATION CONTACT: Toby Slawsky, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd. Chevy Chase, Maryland 20815, Telephone (301) 492-5959.

SUPPLEMENTARY INFORMATION: In September of 1984 the Commission began a program to update and clarify its disclosure regulations and procedures. Since that time the Commission has experimented with the amended rules and is now making these procedural amendments final.

In the area of prehearing disclosure the Commission formalized the process by which the parole file is compiled from the Bureau of Prisons central file to ensure that all necessary documents are available for review by the Commission and for disclosure to the prisoner prior to the parole hearing. Since these are internal housekeeping matters, the majority of the changes are set forth in the Commission's Procedures Manual rather than in the rule at § 2.55 (Disclosure of the File Prior to Parole Hearing). However, the rule is amended to make it clear that prehearing disclosure of documents used by the Commission can normally be accomplished by disclosure of documents in the prisoner's institutional file. The prisoner retains the right to request disclosure of documents to be considered by the Commission at a hearing which are contained in the Commission's Regional Office file but not in the prisoner's institutional file. The amendments also make clear the longstanding policy of the Commission that a case will not be reopened for disclosure of a late received document that only contains favorable information, which restates already available information or which provides insignificant information. The rule also has been reorganized for clarification.

The amendments to 28 CFR 2.56, Disclosure of Parole Commission Regional Office File, make the Commission's regulations and procedures more fully congruent with the Department of Justice disclosure regulations. The amendments also make clear the longstanding policy of the Commission that a response to a request for disclosure under § 2.56 is not a prerequisite to an adequate parole hearing or administrative appeal.

This rule change will not have a significant economic impact on a substantial number of small entitites within the meaning of the Regulatory Flexibility Act.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and parole.

Accordingly, the Commission is amending 28 CFR as follows:

1. The authority citation for Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

2. Sections 2.55 and 2.56 are revised to read as follows:

§ 2.55 Disclosure of file prior to parole hearing.

(a) *Processing Disclosure Requests.* At least 60 days prior to a hearing scheduled pursuant to 28 CFR 2.12 or 2.14 each prisoner shall be given notice of his right to request disclosure of the reports and other documents to be used by the Commission in making its determination.

(1) The Commission's file consists mainly of documents provided by the Bureau of Prisons. Therefore, disclosure of documents used by the Commission can normally be accomplished by disclosure of documents in a prisoner's institutional file. Requests for disclosure of a prisoner's institutional file will be handled under the Bureau of Prison's disclosure regulations. The Bureau of Prisons has 15 days from date of receipt of a disclosure request to respond to that request.

(2) A prisoner may also request disclosure of documents used by the Commission which are contained in the Commission's regional office file but not in the prisoner's institutional file.

(3) Upon the prisoner's request, a representative shall be given access to the presentence investigation report reasonably in advance of the initial hearing, interim hearing, and a 15-year reconsideration hearing, pursuant and subject to the regulations of the U.S. Bureau of Prisons. Disclosure shall not be permitted with respect to confidential material withheld by the sentencing court under Rule 32(c)(3)(A), F.R.Crim.P.

(b) *Scope of Disclosure.* The scope of disclosure under this section is limited to reports and other documents to be used by the Commission in making its determination. At statutory interim hearings conducted pursuant to 28 CFR 2.14 the Commission only considers information concerning significant developments or changes in the prisoner's status since the initial hearing or a prior interim hearing. Therefore, prehearing disclosure for interm hearings will be limited to such information.

(c) *Exemption to Disclosure (18 U.S.C. 4208(c)).* A document may be withheld from disclosure to the extent it contains:
(1) Diagnostic opinions which, if known to the prisoner, could lead to a serious disruption of his institutional program;
(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or
(3) Any other information which, if disclosed, might result in harm, physical or otherwise to any person.

(d) *Summarizing Nondisclosable Documents.* If any document or portion of a document is found by the Commission, the Bureau of Prisons or the originating agency to fall within an exemption to disclosure, the agency shall:

(1) identify the material to be withheld; and

(2) state the exemption to disclosure under paragraph (c) of this section; and

(3) provide the prisoner with a summary of the basic content of the material withheld with as much specificity as possible without revealing the nondisclosable information.

(e) *Waiver of Disclosure.* When a timely request has been made for disclosure, if any document or summary of a document relevant to the parole determination has not been disclosed 30 days prior to the hearing, the prisoner shall be offered the opportunity to waive disclosure of such document without prejudice to his right to later review the document or a summary of the document. The examiner panel may disclose the document and proceed with the hearing so long as the prisoner waives his right to advance disclosure. If the prisoner chooses not to waive prehearing disclosure, the examiner panel shall continue the hearing to the next docket to permit disclosure. A continuance for disclosure should not be extended beyond the next hearing docket.

(f) *Late Received Documents.* If a document containing new and significant adverse information is received after a parole hearing but before all review and appellate procedures have been concluded, the prisoner shall be given a rehearing on the next docket. A copy of the document shall be forwarded to the institution for inclusion in the prisoner's institutional file. The Commission shall notify the prisoner of the new hearing and his right to request disclosure of the document pursuant to this section. If a late received document provides favorable information, merely restates already available information or provides insignificant information, the case will not be reopened for disclosure.

(g) *Reopened Cases.* Whenever a case is reopened for a new hearing and there is a document the Commission intends to use in making its determination, a copy of the document shall be forwarded for inclusion in the prisoner's institutional file and the prisoner shall be informed of his right to request disclosure of the document pursuant to this section.

§ 2.56 Disclosure of Parole Commission Regional Office File.

(a) *Procedure.* Copies of disclosable records pertaining to a prisoner or parolee which are contained in the prisoner's regional office file may be obtained by that prisoner or parolee upon written request pursuant to this section. Such requests shall be answered as soon as possible in the order of their receipt. Other persons may obtain copies of such documents only upon proof of authorization from the prisoner or parolee concerned.

(b) *Scope of Disclosure.* Disclosure under this section shall extend to Commission documents concerning the prisoner or parolee making the request. Documents which are contained in the regional file and which are prepared by agencies other than the Commission shall be referred to the appropriate agency for a response pursuant to its regulations, unless such document has previously been prepared for disclosure pursuant to § 2.55 or is fully disclosable on its face, or has been prepared by the Bureau of Prisons. A prisoner or parolee shall be directed to request records in his/her institutional Inmate Central File from the Bureau of Prisons. Any request for copies of court documents (including the presentence investigation report) must be directed to the appropriate court.

(c) *Exemptions to Disclosure.* A document or segregable portion thereof may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions which if known to the prisoner could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise, to any person.

(d) *Specification of Documents Withheld.* Documents that are withheld pursuant to paragraph (c) of this section shall be identified for the requester together with the applicable exemption for withholding each document or portion thereof. In addition, the requester must be informed of his or her right to appeal any non-disclosure to the Office of Privacy and Information of the Department of Justice (Associate Attorney General).

(e) *Hearing Record.* Upon request by the prisoner or parolee concerned, the Commission shall make available a copy of any verbatim record (e.g., tape recording) which it has retained of a hearing, pursuant to 18 U.S.C. 4208(f).

(f) *Costs.* In any case in which reproduction costs equal or exceed three dollars (based upon the fee schedule as set forth in the Department of Justice regulations at 28 CFR 16.47), prisoners will be notified that they will be required to reimburse the United States for such reproduction costs. The Regional Commissioner may require payment in advance of making a disclosure in circumstances where deemed necessary.

(g) *Relation to Other Provisions.* Disclosure under this section is authorized by 28 CFR 16.85, under which the Parole Commission is exempt from the record disclosure provisions of the Privacy Act of 1974, as well as from certain other provisions of that Act pursuant to 5 U.S.C. 552a(j)(2). Requests submitted under the Freedom of Information Act (FOIA) for requester's own records will be processed under this section. In no event will the Commission consider satisfaction of a request under this section, the FOIA, or the Privacy Act of 1974, to be a prerequisite to an adequate parole hearing under 18 U.S.C. 4208 (for which disclosure is exclusively governed by § 2.55 of this Part) or to the exercise of a parole applicant's appeal rights under 18 U.S.C. 4215.

Dated: September 17, 1985.

Benjamin F. Baer,

Chairman, U.S. Parole Commission.

[FR Doc. 85-23387 Filed 10-2-85; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Ch. VII

Availability of Final Technical Report; Special Study Report, Texas Topsoil Substitution Practice

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

ACTION: Notice of availability.

SUMMARY: The Office of Surface Mining (OSM) is making available to the public upon request a copy of the final technical report which pertains to the adequacy of information available to the Texas Railroad Commission (TRC), Surface Mining and Reclamation Division (SMRD) when it evaluates topsoil substitution practices permitted by Texas under the approved State program. A thorough evaluation of the information prepared for mining and reclamation plans under the Texas State program is completed and is now available from OSM.

ADDRESSES: Technical reports are available at the following OSM offices:

Office of Surface Mining, U.S. Department of the Interior, Interior South Building, Technical Information Branch, Room 139, 1951 Constitution Avenue NW, Washington, DC 20240 (telephone: 202-343-5587)

Office of Surface Mining, Tulsa Field Office, 333 West Fourth St., Room

3014, Tulsa, Oklahoma 74103 (telephone: 918–581–7927)
Office of Surface Mining, Western Technical Service Center, Administrator's Office, Brooks Towers, 1020 15th Street, Denver, CO. 80202 (telephone: 303–844–5421).

FOR FURTHER INFORMATION CONTACT: Donald F. Smith, Office of Surface Mining, 1951 Constitution Avenue, NW Washington, DC 20240 (telephone: 202–343–4140 or Kenneth Wangerud, Office of Surface Mining, 1020 15th Street, Denver, Colorado 80202 (telephone: 303–844–2451).

SUPPLEMENTARY INFORMATION: A special study report has been prepared to evaluate the adequacy of information available to the Texas Railroad Commission (TRC) in approving mining and reclamation plans under the approved Texas State program. The primary focus of the study is to determine whether or not the information available to the TRC is adequate to make a finding that the applicant has demonstrated that surface coal mining and reclamation operations can be feasibly accomplished utilizing the topsoil substitution practice.

OSM previously released drafts of the study on December 18, 1984, 49 FR 49113 and on April 5, 1985, 50 FR 13566. The study is entitled Special Study Report: *Technical Evaluation of Topsoil Substitution Practices and Handling of Potential Acid/Toxic-Forming Materials in Texas*. Since release of these previous draft reports, OSM has completed the final report which is now being made available to the public.

Dated: September 30, 1985.

Brent Wahlquist,

Assistant Director, Technical Services and Research.

[FR Doc. 85–23620 Filed 10–2–85; 8:45 am]

BILLING CODE 4310–05–M

POSTAL SERVICE

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is amending the Postal Contracting Manual to update the clauses for personal services contracts.

EFFECTIVE DATE: September 15, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245–4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 85–3, dated September 15, 1985.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with the Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of Subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

PART 601—[AMENDED]

The authority citation for Part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

Explanation of Changes

Section 7, Part 5, is revised to update the clauses for personal services contracts.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85–23636 Filed 10–2–85; 8:45 am]

BILLING CODE 7710–12–M

39 CFR Part 601

Procurement of Property and Services; Amendments to Postal Contracting Manual

AGENCY: Postal Service.

ACTION: Amendments to Postal Contracting Manual.

SUMMARY: The Postal Service announces that it is amending the Postal Contracting Manual to transfer responsibility as Head of Procuring Activitiy for the supply centers from the Assistant for Procurement Policy to the Director, Office of Contracts. Other sections of the Manual are changed to be consistent with this transfer, and certain other contracting and purchasing authorities are changed as explained in greater detail below.

EFFECTIVE DATE: September 15, 1985.

FOR FURTHER INFORMATION CONTACT: Eugene A. Keller, (202) 245–4818.

SUPPLEMENTARY INFORMATION: The Postal Contracting Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR 601.100), has been amended by the issue of PCM Circular 85–4, dated September 15, 1985.

In accordance with 39 CFR 601.105, notice of these changes is hereby published in the **Federal Register** and the text of the changes is filed with Director, Office of the Federal Register. Subscribers to the basic manual will receive these amendments from the Postal Service. (For other availability of the Postal Contracting Manual, see 39 CFR 601.104.)

List of subjects in 39 CFR Part 601

Government procurement, Postal Service, Incorporation by reference.

PART 601—[AMENDED]

The authority citation for Part 601 continues to read as follows:

Authority: 5 U.S.C. 552(a), 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

Explanation of Changes

1–201.5, Head of Procuring Activity, transfers responsibility as Head of Procuring Activity for the supply centers from the Assistant for Procurement Policy (now the General Manager, Procurement Policies and Programs Division), Procurement and Supply Department, to the Director, Office of Contracts, Procurement and Supply Department.

1–401.2(c) is changed to agree with the new 1–201.5, by directing the General Managers, Procurement Divisions, or Contract Branch Managers of the supply centers to forward proposed awards that exceed their authority to the Director, Office of Contracts.

Exhibit 1–401.1a (p.1), Contracting Authority, is also revised to agree with 1–201.5. The $500,000 limitation on the contracting authority of the General Manager, Procurement Policies and Programs Division, for "the area supply centers, mail bag units, U.S. Stamped Envelope Agency and Label Printing Center; for stock, operational requirements and direct shipments specified by the Procurement and Supply Department" is deleted. The Director, Office of Contracts, will operate as head of the procuring activity for the supply centers under the $3 million limit already authorized to the Director for supplies, services, and equipment. Direct contracting authority for supplies, services and equipment,

limited to $500,000, is retained by the General Manager, Procurement Policies and Programs Division.

Exhibit 1–401.1b, Local Purchasing Authority, is changed to increase the local purchasing authority of CAGs H, J, and K postmasters to $750. The authority of CAG K Postmasters is limited to purchases for minor repairs and improvements. Similar authority for minor repairs and improvements is given to station and branch managers. This change was published in the June 13 *Postal Bulletin*.

W. Allen Sanders,

Associate General Counsel, Office of General Law and Administration.

[FR Doc. 85–23637 Filed 10–2–85; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[A–10–FRL–2906–1]

Approval and Promulgation of State Implementation Plan; Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule; Correction.

SUMMARY: This notice corrects a final rule relating to the Idaho State Implementation Plan. In FR Doc. 85–16596 appearing on July 12, 1985 (50 FR 28544), the Code of Federal Regulations section entitled "Section 52.689 Visibility Protection" should be corrected to read "Section 52.690 Visibility Protection." This reference appears twice on page 28553 of that issue of the **Federal Register**. This correction does not change the regulation.

EFFECTIVE DATE: October 3, 1985.

FOR FURTHER INFORMATION CONTACT: David C. Bray, Air Programs Branch, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101. Telephone No. (206) 442–4253, FTS: 399–4253.

The correction is as follows: Change the section entitled "Section 52.689 Visibility Protection" to read "Section 52.690 Visibility Protection."

Authority: 42 U.S.C. 7401–7642.

Dated: September 20, 1985.

Ernesta Barnes,

Regional Administrator.

[FR Doc. 85–23626 Filed 10–2–85; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 271

[WH–7–FRL–2906–5]

Kansas: Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Final Determination on Kansas' Application for Final Authorization.

SUMMARY: State of Kansas has applied for final authorization under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed Kansas application and has reached a final determination that Kansas' hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA is granting final authorization to the State of Kansas to operate its program in lieu of the Federal program, subject to the limitations on its authority imposed by the Hazardous and Solid Waste Amendments of 1984.

EFFECTIVE DATE: Final Authorization for State of Kansas shall be effective at 1:00 p.m. on October 17, 1985.

FOR FURTHER INFORMATION CONTACT: Michael J. Sanderson, Chief, RCRA Branch, U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101, 913–236–2852.

SUPPLEMENTARY INFORMATION: .

A. Background

Section 3006 of the RCRA allows EPA to authorize a state hazardous waste program to operate in the State in lieu of the Federal hazardous waste program. To qualify for final authorization, a state's program must (1) be "equivalent" to the Federal program, (2) be consistent with the Federal program and other state programs, and (3) provide for adequate enforcement (Section 3006(b) of RCRA, 42 U.S.C. 6926(b)).

B. Kansas

On July 16, 1984, Kansas submitted an official application to obtain final authorization to administer the RCRA program. On October 24, 1984, EPA published in the **Federal Register** (FR) a tentative decision announcing its intent to grant Kansas final authorization. Along with the tentative determination EPA announced the availability of the application for public review and comment and the date of a public hearing on the application. The public hearing was held on November 27, 1984.

On reviewing the State's application in light of public comments received at the November 27, 1984 public hearing EPA decided additional clarification was needed on the State's authority in the areas of imposing criminal fines per day in the case of a continuing violation and providing citizens the right to intervene in all civil actions initiated by the Secretary as well as by a county or district attorney.

Kansas submitted the requested clarification on June 11, 1985. The State revised its statutes to clarify its authority in these two areas. These statutory amendments ensure that the Kansas program meets the Federal requirements for approving a state's program under Section 3006 of the RCRA.

During the time taken to obtain the statutory clarifications, the State further amended its program as follows:

(1) Kansas has enacted a statutory amendment which prohibits the underground burial of hazardous waste. Such prohibition does not include mound landfill, above ground storage, land treatment or underground injection of hazardous waste. On a case by case determination, the Secretary of the Kansas Department of Health and Environment may approve land burial of hazardous waste if a petitioner demonstrates to the Secretary that, except for underground burial, no economically reasonable or technologically feasible methodology exists for the disposal of a particular hazardous waste. The statute contains procedures, including public participation, for obtaining an exception to the prohibition against underground burial of hazardous waste.

(2) The State also revised its program to adopt regulatory revisions in the Federal program as required under 40 CFR 271.21. The State has adopted by reference Federal regulations in effect as of July 15, 1985. The regulatory revisions include, but are not limited to, the adoption of the uniform manifest, the identification of additional wastes, and the change in the definition of solid waste. They also include the dioxin waste standards which the EPA issued under the authority of the RCRA and Harzardous and Solid Amendments of 1984 (HSWA).

(3) The State revised the Memorandum of Agreement (MOA) as necessary to ensure the implementation of HSWA, particularly in the area of issuing a permit to a facility which treats, stores or disposes of hazardous waste.

We reviewed the State's addendum as discussed above in terms of meeting the Federal criteria for authorizing a State program. We concluded the Agency's tentative decision to approve the State's

application for final authorization, as discussed in the **Federal Register** notice of October 24, 1984, remains in effect. In the **Federal Register** notice of July 31, 1985 we invited the public to review the State's application, including the addendum and our review of it, and to submit comments through September 3. Additionally, the Agency held a public hearing on September 3, 1985 to receive public comment.

The Regional Administrator received written comments during the public comment periods as announced in the October 24, 1984 and July 31, 1985 **Federal Register** notices. We reviewed the comments in terms of the State meeting the Federal criteria for authorizing a state and our annual program audit of the State's capability to carry out a quality and effective program. Our findings from the review of the public comments are discussed in the responsiveness summary and in a reply to each commentor. Statutory deficiencies have been addressed by the State as discussed above. Once Kansas is authorized, the EPA will carry out its obligation to monitor the State's performance as set forth in the Federal regulations and MOA for final authorization.

C. The Decision

After reviewing the public comments and the changes the State has made to its program since the tentative decision, I conclude that Kansas' program has met all the statutory and regulatory requirements established by RCRA. Accordingly, Kansas is granted final authorization to operate its hazardous waste program in lieu of the Federal program, subject to the limitation on its authority by the HSWA (Pub. L. 98-616, November 8, 1984). Kansas now has the responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out the other aspects of the RCRA program, except for provisions of the HSWA. Kansas also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 3007 of the RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of the RCRA.

Prior to the HSWA modifying the RCRA program, a state with final authorization administered its hazardous waste program entirely in lieu of the EPA. The Federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities that the state was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, under the newly enacted section 3006(g) for the RCRA, 42 U.S.C. 6926(g), the new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time they take effect in non-authorized States. The EPA is directed to carry out those requirements and prohibitions in authorized states, including the issuance of full or partial permits, until a state is granted authorization to do so. Thus, while States must still adopt HSWA related provisions, the HSWA applies in authorized States in the interim.

As a result of the HSWA, there will be a dual State/Federal regulatory program in Kansas. To the extent the authorized State program is unaffected by the HSWA, the State program will operate in lieu of the Federal program. If the HSWA related requirements are more stringent than those of Kansas, EPA will administer and enforce those portions of the HSWA in Kansas until the State receives authorization to do so. Among other things, this may entail the issuance of Federal RCRA permits for those areas in which the State is not yet authorized. Once the State is authorized to implement a HSWA requirement or prohibition, the State program in that area will operate in lieu of the Federal program. Until that time Kansas will assist EPA's implementation of the HSWA under a Cooperative Agreement.

Any State requirement that is more stringent than an HSWA provision remains in effect; thus, the universe of the more stringent provisions in the HSWA and the approved State programm define the applicable requirements in Kansas.

EPA has published a notice that explains in detail the HSWA and its effect on authorized States. That notice was published at 50 FR 28702-28755, July 15, 1985.

We wish to clarify the scope of our final authorization determination. We are approving the State's program which was enacted and promulgated at the time the Attorney General signed the revised Attorney General's Statement on June 10, 1985. Thus, the proposed regulatory revisions, including the dioxin standards, which Kansas submitted in the June 11, 1985 addendum and subsequently adopted on September 24, 1985, are not part of the authorized State program. The September 24, 1985 regulations will become part of the authorized program once the State submits a program revision application as specified under 40 CFR 271.21(e) and EPA approves it.

The State's June 11, 1985 addendum revises the MOA as necessary to ensure the cooperative implementation of HSWA, particularly in the area of issuing a permit to a facility which treats, storages or disposes of hazardous waste.

D. Indian Lands

The State has not sought authority to operate the RCRA program on Indian lands.

Compliance with Executive Order 12291

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

Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Kansas' program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

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

Dated: September 20, 1985.

Morris Kay,

Regional Administrator.

[FR Doc. 85-23625 filed 10-2-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. 1

[CC Docket No. 85-26; FCC 85-509]

Furnishing of Customer Premises Equipment and Enhanced Service

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Order removes the structural separation requirements for AT&T's provision of CPE, although it retains those requirements for AT&T's enhanced services operations. The structural requirements are replaced by a group of nonstructural safeguards.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Geoffrey Jarvis, (202) 632-9342.

SUPPLEMENTARY INFORMATION:

Order

In the matter or furnishing of customer premises, equipment and enhanced services by American Telephone & Telegraph Company; CC Docket 85-26.

Adopted: September 18, 1985.

Released: September 30, 1985.

By the Commission.

I. Introduction

1. On February 22, 1985, we released a Notice of Proposed Rulemaking [1] proposing that the American Telephone and Telegraph Company ("AT&T") be permitted to provide customer premises equipment ("CPE") [2] free of the structural separation requirements established in the *Second Computer Inquiry*.[3] In this Order we adopt the relief we proposed in the *Notice*, although we take no action in this proceeding with respect to AT&T's provision of enhanced services,[4] which will continue to remain subject to the full structural separation requirements.[5]

2. In reaching the conclusion that the structural separation requirements of § 64.702 of our rules [6] should no longer apply to AT&T's provision of CPE, we acknowledge the significant changes in the telecommunications industry that have occurred in the last several years, including the divestiture of the Bell Operating Companies ("BOCs") by AT&T and the growth of competition in CPE and inter-LATA [7] toll markets. We are, however, instituting certain nonstructural safeguards for AT&T's CPE operations to limit AT&T's ability to unfairly use its regulated operations for the benefit of its unregulated CPE activities. We will require AT&T to: (i) Adhere to a modified version of the existing network disclosure rules; (ii) not discriminate in favor of its CPE customers in providing services and file periodic reports to substantiate that nondiscrimination; (iii) not disclose any AT&T-Communications' ("AT&T-COM") customer's proprietary network service information to any CPE personnel if the customer so requests; and (iv) file a detailed accounting plan prior to the final implementation of relief and submit its operations under that plan to an annual independent audit. We expect that these safeguards will provide adequate protection for CPE competition and ratepayers without unduly burdening AT&T's ability to compete vigorously in both the network services and CPE markets. However, we intend to monitor both AT&T's performance under these safeguards and developments in the industry. Should the requirements we establish today prove to be either insufficient to protect competition and ratepayers or overly intrusive or unnecessary, we will take whatever action is required to adjust those requirements to the existing situation.

II. Background

A. Second Computer Inquiry and Related Decisions

3. In the *Second Computer Inquiry*, we conducted an extensive examination into what would be the most appropriate regulatory framework for the provision of CPE and enhanced services by common carriers and others in light of technological and competitive developments that had occurred in the industry since the *First Computer Inquiry*.[8] In the *Final Decision*, we found a competitive market for enhanced services [9] and determined that "the terminal equipment market is subject to an increasing amount of competition . . ." [10] We further determined that consumers were deriving considerable benefits from these competitive forces, but that these benefits could be jeopardized by regulation. Accordingly, we concluded that regulation of enhanced services was unwarranted and that the existing regulation of CPE should be eliminated. We also decided, however, that the immediate deregulation of all CPE offerings would not be in the best interests of telecommunications vendors and consumers and required a bifurcated deregulatory process.[11] Offerings of new CPE were deregulated as of January 1, 1983, and embedded equipment was to be detariffed at a later date.[12]

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[1] American Telephone and Telegraph Co., Petition for Relief from Structural Separation Requirements, Memorandum Opinion and Order and Notice of Proposed Rulemaking, CC Docket No. 85-26 (ENF 84-17), 50 FR 9060 (March 6, 1985) (hereinafter *Notice*).

[2] For a definition of CPE, see Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services, Report and Order, 95 FCC 2d 1276, para. 1 n.2 (1983) (hereinafter *CPE Detariffing Order*).

[3] Second Computer Inquiry, Final Decision, 77 FCC 2d 384 (hereinafter *Final Decision*), *modified on reconsideration*, 84 FCC 2d 50 (1980) (hereinafter *Reconsideration Order*), *further modified on reconsideration*, 88 FCC 2d 512 (1981) (hereinafter *Further Reconsideration Order*), *aff'd sub nom. Computer and Communications Indus. Ass'n v. FCC*, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied*, 461 U.S. 938 (1983), *aff'd on second further reconsideration*, FCC 84-190 (released May 4, 1984).

[4] For a definition of "enhanced services" see 47 CFR 64.702(a) (1984).

[5] On July 25, 1985, we adopted a Notice of Proposed Rulemaking proposing a comprehensive scheme for the long-term regulation of enhanced services. Third Computer Inquiry, CC Docket No. 85-229, *Notice of Proposed Rulemaking*, 50 FR 33581 (August 20, 1985).

[6] 47 CFR 64.702.

[7] "LATA" stands for Local Access Transport Area, a term used to describe the areas, created by the AT&T Plan of Reorganization, in which the BOCs provide services. *See* AT&T Plan of Reorganization, *United States* v. *AT&T* (filed December 16, 1982) and approved in *United States* v. *Western Electric Co.*, 569 F. Supp. 990, 993 n.9 (D.D.C.), *aff'd sub nom. California* v. *United States*, 104 S. Ct. 542 (1983).

[8] Regulatory and Policy Problems Presented by the Interdependence of Computer and Communications Services and Facilities, Tentative Decision, 28 FCC 2d 291 (1970); Final Decision and Order, 28 FCC 2d 267 (1971), *aff'd sub nom. GTE Service Corp.* v. *FCC*, 474 F.2d 724 (2d. Cir. 1973), *decision on remand*, 40 FCC 2d 293 (1973). The *First Computer Inquiry* was the Commission's initial attempt to establish the most appropriate regulatory framework for the provision of CPE and enhanced services by common carriers or entities that are affiliated with common carriers.

[9] *Final Decision*, 77 FCC 2d at 433, paras. 127-28.

[10] *Id.* at 439, para. 141.

[11] *Reconsideration Order*, 84 FCC 2d at 66, para. 48-49

[12] In the *Reconsideration Order*, We determinnd that new CPE was to be deregulated as of March 1, 1982; however, the date for deregulation of new CPE was subsequently extended to January 1, 1983. *See Further Reconsideration Order*, 88 FCC 2d at 536-37, para. 69. The proceedings in CC Docket No. 81-893 address the detariffing of embedded CPE. *See infra* para. 10. "Embedded" CPE is "that equipment or inventory, which is tariffed or otherwise subject to the jurisdictional separations process as of the bifurcation date [January 1, 1983]", while "new" CPE is "[a]ny other CPE which is acquired by a carrier or manufactured by an affiliated entity after [the bifurcation date]." *Further Reconsideration Order*, 88 FCC 2d at 527-28, para. 45.

4. In moving toward our goal of creating a competitive marketplace for the provision of CPE and enhanced services, we were concerned with the potential for anticompetitive conduct that could result from the elimination of direct price regulation. We were particularly concerned that major carriers would be able to use their market positions in basic services to discriminate against other vendors' competitive products and services. We were also concerned that these carriers could misallocate costs from unregulated to regulated activities, allowing them to impose unfair burdens on ratepayers and engage in improper cross-subsidization of their competitive offerings. Accordingly, to protect against the potential for anticompetitive conduct, we proposed requiring these major carriers to provide CPE and enhanced services only through fully separated subsidiaries.

5. In proposing these requirements, we did not expect that we would alter a carrier's underlying incentives to engage in discrimination and cross-subsidization, but rather that the framework would make such competitive abuses more difficult to accomplish and more detectable. Under structural separation, transactions within the subject corporations would have to cross specific corporate lines and would be recorded on separate books for regulated and unregulated affiliates. We decided that these requirements should be imposed only on those carriers for whom the costs that would be incurred in complying with this form of regulation would be exceeded by the benefits gained from protecting competition and ratepayers. Thus, we sought to limit these requirements to those carriers that had the greatest capability to become involved in anticompetitive activities, either by discriminating against their competitors' CPE or by impermissibly shifting costs from unregulated to regulated activities.[13] Ultimately, we held that the structural separation requirements would apply only to AT&T.[14]

6. Pursuant to the separate subsidiary rules established in the *Final Decision*,[15] AT&T's separate subsidiary was subjected to strict limitations on its ability to provide certain services. The separate subsidiary was required to have separate officers; maintain separate books of account; employ separate personnel for operations, installation, and maintenance; undertake its own marketing, including all advertising; deal with any affiliated manufacturing entity only on an arms' length basis; and utilize separate computer facilities in the provision of enhanced services. In addition, the separate subsidiary could not engage in software development with, or purchase software from, its affiliates, except that it was permitted to obtain generic software embedded within equipment that was sold "off the shelf" to any interested purchaser ("Software Rule").[16] The subsidiary was also prohibited from owning any network or local distribution transmission facilities and equipment and from providing any basic services.[17] AT&T established AT&T Information Systems ("AT&T-IS") as its separate subsidiary for CPE and enhanced services.

7. AT&T's regulated basic service entities were also subject to certain limitations on their activity. While they were permitted to own basic facilities and provide basic service, they were not permitted to engage in the sale and marketing of CPE and enhanced services. AT&T's post-divestiture basic service functions are performed by AT&T-COM.

8. AT&T-COM is presently subject to a requirement that it disclose network design and other information. This requirement arose out of our determination in the *Second Computer Inquiry* that all carriers have the ability to hinder competition if fields that make use of the basic network by withholding information regarding the network.[18] Consequently, all carriers were required to disclose, reasonably in advance of implementation, information regarding any new service or change in the network ("All Carrier Rule").[19] AT&T, because of its special position, was subjected to the additional requirement that it disclose to the public any network information provided to its separate subsidiary.[20] The disclosure regulations applicable to AT&T were further refined in an order dealing specifically with disclosure obligations for network services.[21] In the *Disclosure Order*, we determined that in many cases the characteristics of the intercity network would determine whether a given enhanced service or CPE product would operate properly.[22] Therefore, under the *Disclosure Order*, AT&T is required to disclose all technical information regarding the introduction of new network services or changes in an existing network service, as well as "additional information which relates . . . to the timing of introduction, pricing, and geographic availability of new network services or capabilities . . . ,"[23] when such information is provided to the separate subsidiary or to other entities for the benefit of the separate subsidiary. AT&T is also required to disclose technical and other information in situations involving joint research and development by AT&T and its separate subsidiary at the time it reaches a "make/buy" decision *i.e.*, when AT&T decides to manufacture itself or to procure from a nonaffiliated company, any product the design of which either affects the network

[13] *Final Decision*, 77 FCC 2d at 466-47, para. 216. In the *Reconsideration Order*, we noted two additional criteria for determining whether a particular carrier should be subject to the structural separation requirements: the integrated nature of the carrier and affiliated entities, with specific emphasis on research and development and manufacturing capabilities used in conjunction with, or supported by, communications-derived revenues; and the carrier's possession of sufficient resources to enter the competitive market through a separate subsidiary. *Reconsideration Order*, 84 FCC 2d at 72, para. 65.

[14] In the *Final Decision*, we imposed the structural separation requirements on both GTE and AT&T. *Final Decision*, 77 FCC 2d at 466-75, paras. 215-32. In the *Reconsideration Order*, we concluded that the costs of applying those requirements to GTE exceeded the benefits, and we limited those requirements to AT&T. *Reconsideration Order*, 84 FCC 2d at 72-73, para. 66.

[15] *See Final Decision*, 77 FCC 2d at 475-86, paras. 233-60; *Reconsideration Order*, 84 FCC 2d at 75-86, paras. 72-105; 47 CFR 64.702.

[16] 47 CFR 64.702(c)(4).

[17] The AT&T separate subsidiary was permitted to undertake some joint activities with its affiliates under the *Second Computer Inquiry* rules, including engaging in joint research and development with its affiliates, or obtaining research and development from them, on a fully compensatory basis; manufacturing CPE; obtaining support services on a compensatory basis for sophisticated equipment obtained from an affiliated manufacturer; and sharing certain administrative functions (and associated physical space) with the parent on a cost-reimbursable basis. With respect to administrative functions, the subsidiary and its affiliates were allowed to share accounting, auditing, legal services, personnel recruitment and management, finance, tax, insurance, and pension services. *Reconsideration Order*, 84 FCC 2d at 84-85, para. 102. More precise descriptions of the exact services that we allowed to be shared by the AT&T separate subsidiary and its affiliates are provided in American Telephone and Telegraph Company, Report on Services to Be Shared Between Fully Separated Subsidiary and Affiliated Companies and Associated Costing Methodology, Memorandum Opinion and Order, 90 FCC 2d 184 (1982) and American Telephone and Telegraph Company, Report on Services to Be Shared Between Fully Separated Subsidiary and Affiliated Companies and Associated Costing Methodology, Memorandum Opinion and Order, 92 FCC 2d 676 (1982)(hereinafter *Shared Services Order*).

[18] *Reconsideration Order*, 84 FCC 2d at 82, para. 95.

[19] 47 CFR 68.110(b). *See Reconsideration Decision*, 84 FCC 2d at 82-83, para. 95.

[20] 47 CFR 64.702(d)(2).

[21] Computer and Business Equipment Manufacturers Association, Report and Order, 93 FCC 2d 1226 (1983) (hereinafter *Disclosure Order*).

[22] *Id.* at 1235-36, para. 29.

[23] *Id.* at 1238, para. 37.

interface or relies on the network interface.[24]

9. In 1974 the Department of Justice (DOJ) initiated a major antitrust lawsuit against AT&T, alleging that it had monopolized, or attempted to monopolize, a number of telecommunications services and equipment markets in violation of section 2 of the Sherman Act.[25] In 1982, two years after the *Final Decision*, but before the final deregulation of CPE was implemented, the United States District Court for the District of Columbia approved, with certain modifications, a settlement agreement between AT&T and DOJ requiring AT&T to divest itself of the BOCs and certain other assets.[26] As a consequence of divestiture, AT&T no longer provides local exchange telephone service and, in some States inter-LATA toll service, although it does continue in its other major lines of business. Embedded CPE and some interexchange facilities were transferred from the former BOCs to AT&T at the time of divestiture. AT&T also retained its enhanced services business and its manufacturing, research, and inter-LATA toll facilities. In addition, AT&T was freed from the requirements of the 1956 Consent Decree,[27] including the restrictions on its engaging in unregulated businesses.[28] The BOCs, as the local exchange providers, are prohibited from offering inter-LATA services or manufacturing CPE, although they are permitted to sell CPE and all of the BOCs have chosen to do so.[29]

10. The reorganization of the Bell System pursuant to the *MFJ*, and the resultant transfer of embedded CPE from the BOCs to AT&T, required a timely resolution of the unresolved embedded CPE detariffing issues for AT&T. Accordingly, shortly before divestiture we adopted the *CPE Detariffing Order*,[30] which detariffed AT&T's embedded CPE effective the same date as divestiture. Under the *CPE Detariffing Order*, AT&T transferred the embedded CPE to its separate subsidiary, AT&T–IS. After transfer AT&T–IS was subjected to a two-year price predictability period for embedded equipment and was required to offer equipment for sale to in-place customers. The price predictability period established in the *CPE Detariffing Order* will expire at the end of 1985.

11. In the aftermath of divestiture and the final detariffing of AT&T's CPE operations, AT&T filed several petitions and waiver applications requesting that we relax certain aspects of the separate subsidiary requirements established in the *Second Computer Inquiry*. In response to one such waiver request, we issued the *AT&T–IS Resale Order*,[31] which permits AT&T–IS to resell the basic domestic services of any carrier, including an affiliate, so long as all such services are acquired at nondiscriminatory, tariffed rates. In addition, in the *Notice* we granted AT&T a waiver of the Software Rule, permitting AT&T–IS to buy customized software from its affiliates, and we permitted AT&T Technologies ("AT&T–TI") to provide AT&T–IS with certain personnel and recruiting services.[32] Finally, AT&T was granted certain waivers in connection with the reorganization of its CPE operations.[33] These latter waivers were requested by AT&T in order to permit AT&T–IS to become a fully integrated CPE supplier, conducting research and development, manufacturing, and sales and marketing for AT&T's provision of CPE. AT&T–IS has also retained its role as the entity providing research, marketing, computers, and software design for enhanced services.

B. AT&T's Petition For Relief From Structural Separation

12. In addition to these requests for specific waivers or modifications of the *Second Computer Inquiry* Rules, AT&T filed a petition on April 30, 1984, requesting comprehensive relief from the structural separation requirements of § 64.702 of our rules.[34] AT&T asserted that the "monumental changes in circumstances since 1980 dictate the removal of structural separation requirements" and argued that the "MFJ eliminates the very premises for applying these requirements to AT&T."[35] AT&T contended that in the post-divestiture environment, it no longer controls bottleneck facilities, nor does it have the ability to cross-subsidize unregulated offerings from its regulated services. It further argued that, while these changes have reduced the benefits of structural separations, the costs have largely remained. Thus, it contended that the costs of the structural separation requirements now exceed their benefits, requiring the removal of such requirements.

13. On June 4, 1984, we issued a Public Notice on the *AT&T Petition* requesting further information from AT&T and providing other interested parties with the opportunity to comment. In response to the Public Notice, more than 30 parties filed comments and more than 25 filed reply comments. AT&T's position was supported fully by some end users, telecommunications unions, and by the Department of Defense (DOD). The BOCs generally argued that structural separation is unwarranted for both their operations and AT&T's and, therefore, that any relief provided AT&T should be applied to them as well. The National Telecommunications and Information Administration supported AT&T's request to be relieved from structural separation for its CPE operations, but urged caution in removing structural safeguards for the provision of enhanced services. A number of parties opposed the *AT&T Petition*, arguing that it was premature (divestiture had occurred only five months earlier) and that AT&T still possessed market power and the functional equivalent of a bottleneck in inter-LATA transmission services.

C. The Notice

14. After evaluating the *AT&T Petition*, AT&T's supplemental comments, and the comments and reply

[24] *Id.* at 1244, para. 58.

[25] 15 U.S.C. 2.

[26] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) (hereinafter *U.S.* v. *AT&T* or Modification of Final Judgment (*MFJ*)). Pursuant to the *MFJ*, AT&T was required to file a plan of reorganization, which was also approved by the court. *See* AT&T Plan of Reorganization, *United States* v. *Western Electric Co.*, 569 F. Supp. 990.

[27] *United States* v. *Western Electric Co.*, 1956 Trade Cases, para. 71,134 (D.N.J. 1956).

[28] However, AT&T is prohibited from engaging in "electronic publishing" for a period of seven years from the date of entry of the decree. *Id.* at 225.

[29] We have required the BOCs to provide CPE and enhanced services through structural separation requirements similar, but not identical, to those imposed upon AT&T. Bell Operating Companies, Report and Order, 95 FCC 2d 1117 (1984) (hereinafter *BOC Separation Order*), *aff'd on reconsideration*, 49 FR 26,056 (June 26, 1984), *aff'd sub nom. Illinois Bell Tel. Co.* v. *FCC*, 740 F.2d 465 (7th Cir. 1984).

[30] 95 FCC 2d 1276 (1983), *modified in part on reconsideration*, 50 FR 9016 (1985), *reconsideration denied in part*, FCC 85–220 (released May 15, 1985) (hereinafter *CPE Lease Order*).

[31] American Telephone and Telegraph Co., Provision of Basic Services via Resale by Separate Subsidiary, Report and Order, 98 FCC 2d 478 (1984) (hereinafter *AT&T–IS Resale Order*) *petition for stay denied*, FCC 84–142 (released Sept. 24, 1984), *reconsideration denied*, FCC 85–379 (released Aug. 1, 1985).

[32] *Notice* at paras. 33, 41. The personnel and recruiting waiver modified the Commission's decision in the *Shared Services Order*. *See supra* note 17.

[33] AT&T Information Systems, Inc., Petition for Waivers in Connection With AT&T–IS' Line of Business Reorganization, Mimeo No. 3925, File No. ENF 85–13 (released April 8, 1985).

[34] Petition of American Telephone and Telegraph Company For Relief From Structural Separation Requirements, file ENF 84–17 (filed April 30, 1984) (hereinafter *AT&T Petition*).

[35] *Id.* at 5.

comments filed in response to the Public Notice, we issued the *Notice* proposing that AT&T be relieved of structural separation requirements for its CPE operations and establishing a pleading cycle for further comment.[36] We indicated that full structural separations would continue to apply to AT&T's provision of enhanced services until we resolve the issues raised in the rulemaking proceeding dealing specifically with enhanced services regulations.[37]

15. Underlying our proposal in the *Notice* was a realization that the telecommunications industry had experienced substantial change since we adopted the *Final Decision*. We were especially aware that the divestiture of the BOCs by AT&T had eliminated its control over local exchange facilities and significantly reduced its assets and revenues from those enjoyed by the predivestiture Bell System.[38] We also noted the significant decline of AT&T's market share in CPE and the fact that it was faced with growing competition in its regulated offerings of basic, inter-LATA transmission services. In light of these findings we tentatively concluded that "the costs of continuing to require structural separation for AT&T's provision of CPE outweighs the benefits."[39]

16. In the *Notice* we invited comments on this tentative conclusion, and we identified certain additional information that would be desirable before a final determination was reached on whether AT&T should be relieved of existing structural separation requirements for its provision of CPE. Consequently, we asked AT&T and others to provide information on the costs AT&T would save from the reorganization of CPE operations into AT&T–IS, on AT&T's ability to set de facto interconnection standards for CPE, and on the effect of the *AT&T–IS Resale Order*[40] on the tentative conclusions reached in the *Notice*. We also requested information and comments on possible alternative regulatory tools we could employ to alleviate any competitive problems that might remain should we decide to follow the proposal outlined in the *Notice*. In this regard we required AT&T to describe the accounting techniques it would use to identify and allocate joint and common costs between regulated and unregulated businesses, and asked for proposals on what AT&T's network disclosure obligations should be, how to deal with intracorporate exchange of information, and whether AT&T should be required to implement special procedures to ensure that customers of competing providers of CPE do not receive discriminatory treatment in AT&T's provision of network services. In response to the *Notice*, the Commission received comments from 20 parties, reply comments from 22 parties, as well as a large number of informal comments or letters, primarily from end users.[41]

[36] For a list of commenting parties, see Appendix A. In the *Notice* at para. 49 n.47, we indicated that we were prepared to entertain requests for an additional period of 15 days in which parties might file comments on any substantial new information in AT&T's reply comments that it had excluded from its initial comments. NYNEX filed a Motion requesting such additional time at the same time it filed its reply comments, and before it had an opportunity to review AT&T's reply comments. We denied the motion because AT&T provided no new information in its reply comments that it had not provided in its original comments. CC Docket No. 85–26, Order, Mimeo No. 4616 (released May 17, 1985).

[37] *See supra* note 5.

[38] *Notice* at para. 7–8; *see also infra* note 52.

[39] *Notice* at para. 17.

[40] *See supra* note 31.

[41] Both IBM and DOJ filed comments one day late, on April 9, 1985 in each case accompanied by a Motion for Leave to File Comments Out of Time. Since neither Motion was opposed by any party, and since the reply period in this proceeding was relatively lengthy—30 days, we do not believe that any party would be prejudiced by our granting these Motions. Therefore, we accept the late filed comments of IBM and DOJ.

On May 23, 1985, the North American Telecommunication Association (NATA) filed a Motion To Compel American Telephone and Telegraph Company To Respond to the Commission's Questions. In this Order we deny that motion. In our view the information in the record is sufficient to support the relief we are ordering in this proceeding. To the extent we find the need for additional information, we have tailored the relief to reflect that need (*e.g.*, the requirement that AT&T submit a more detailed accounting plan prior to implementing the relief provided.) On June 7, 1985, NATA filed a motion requesting that we accept a late-filed Economic Analysis. We reject that motion because NATA has made no showing that it could not have filed the analysis in the ordinary pleading cycle established in this proceeding, which closed more than four weeks earlier on May 8, 1985. The analysis does not contain new information that was unavailable at the time the pleading cycle was closed, and thus it could have been provided on time. Moreover, since the pleading cycle had been closed for more than one month, many parties were not in a position to respond to NATA's late analysis and would have been prejudiced by its inclusion in the record. In addition, allowing additional comments would have unduly extended the pleading cycle. Nevertheless, we have undertaken a review of the NATA Analysis, and it appears that most of its major premises and arguments are incorrect, not relevant to the issues raised here, or duplicative of points it has already made in its pleadings; accordingly we find that the inclusion of this Analysis in the record would not be of significant value in resolving the issues raised in this proceeding. NATA also filed a Motion for an Evidentiary Hearing and for Oral Argument, in which it argued that the Commission should conduct such hearings and argument on the issues raised in this proceeding and, in particular, on its Economic Analysis. We deny this Motion as well. Since, as indicated, we have declined to accept NATA's late-filed Economic Analysis, there is no occasion for hearings and argument on it. With respect to NATA's general request, the decision whether to conduct evidentiary hearings and hold oral argument in a rulemaking such as this is entrusted to the sound discretion of the agency, unless the specific enabling statute requires such proceedings, which the Communications Act does not. *See United States v. Florida East Coast Ry. Co.*, 410 U.S. 224 (1973); *American Tel. & Tel. Co. v. FCC*, 572 F.2d 17, 21–23 (2d Cir.), *cert. denied*, 439 U.S. 875 (1978). In our view, such further proceedings as those proposed by NATA would not aid materially in supplementing the extensive record already compiled in this docket, and would only serve to delay substantially the resolution of the important issues raised herein. Finally, on July 18, 1985, NATA filed a Conditional Motion For Adherence To Normal Rulemaking Procedures, Or, In the Alternative, For Stay, requesting us to delay the effective date of this Order until 30 days after its publication in the **Federal Register**, or in the alternative, to stay the relief we are granting pending judicial review. In this Order we provide that relief will be effective either 30 days after the Order is published in the **Federal Register** or after the Common Carrier Bureau approves the accounting plan and other information we are requiring AT&T to file, whichever is later. *See infra* notes 93, 100, 107. Thus, relief for AT&T will be effective no sooner, and possibly later, than the time requested by NATA. Accordingly, we deny this NATA motion as moot.

III. Relief From Structural Separation for AT&T's CPE Operations

17. In resolving the issues before us in this proceeding, we must first address the basic question whether AT&T should be relieved of the structural separation requirements for its CPE operations. We conclude that the record strongly supports a finding that the inefficiencies and other costs associated with those requirements substantially outweigh any possible public benefits, and therefore, order that those requirements be removed. In a subsequent section of this Order, we consider what nonstructural safeguards are now appropriate for AT&T's CPE offerings.

A. Comments

18. AT&T asserts that control over bottleneck facilities, and the resulting potential for discrimination against competitors' CPE, was the primary rationale underlying the Commission's decision to require AT&T to provide CPE through a structurally separated subsidiary—a rationale that it claims has been completely undermined by the divestiture of the BOCs. It argues that its inter-LATA toll facilities are not "bottlenecks" within any antitrust, regulatory, or economic definition of that term and that such facilities provide it with no opportunity to set interconnection standards for CPE or to discriminate against its CPE competitors. It contends that the BOCs, rather than AT&T, devise the

specifications for connecting CPE to the network in most cases and that were it to discriminate against non-AT&T CPE, it would only drive potential customers to its network services competitors. Nor, it claims, can it cross-subsidize its unregulated CPE activities from its regulated operations. It contends that divestitute and the growth of competitive alternatives to its inter-LATA toll facilities have eliminated whatever incentives and ability it may have had in the past to misallocate costs to its regulated services and cross-subsidize its unregulated offerings with funds derived from monopoly ratepayers. In addition, it notes that it no longer sells most of its network equipment to affiliates [42] rendering cost-shifting much more difficult. Finally, it notes that there is now strong, well-entrenched competition in the CPE marketplace that could not be eliminated by a policy of below-cost pricing and thus any such strategy would cause it to incur significant costs with no attendant benefits.

19. AT&T further argues that, while the divestiture has substantially reduced the benefits of the structural separation requirements, the costs of those requirements have continued. In its Petition, AT&T identified costs associated with duplicated facilities and services, which it estimated exceed one billion dollars. In its comments in response to the *Notice*, AT&T estimates some 30% of these costs may be saved by certain modifications it has made on its organization and procedures in the last year as the result of the consolidation of all CPE activities in AT&T–IS, the waiver of the Software Rule, and the personnel waiver; but it insists that substantial costs of duplication will continue to be sustained. It also identifies significant costs created by its inability to offer customers the development and engineering of integrated telecommunications packages that only a facilities-based carrier can provide. It argues that such packages cannot be effectively developed by a non-carrier with resale authority and, thus, the authority AT&T–IS now has to resell basic transmission services is not an effective response to many customer needs. Finally, it argues that the most significant costs to AT&T and the public are those of lost opportunities, foregone products and services, and impaired innovation—costs that it argues, cannot be reduced by Commission waivers, internal AT&T reorganizations, or any other step short of the removal of the structural separation requirements.

20. In its comments AT&T outlines an organizational plan, which it indicates it will implement in the event that relief is granted. This plan has the following elements: (1) No lines of business ("LOBs") in AT&T–IS will be merged with AT&T–COM, although AT&T–TI, AT&T–IS, and AT&T–COM will engage in coordinated or joint activities; (2) for large business customers, AT&T–COM will establish a single interface for CPE, network services, and the customers' other communications needs, with resources drawn from regulated and unregulated activities as necessary; (3) in some cases AT&T–COM will provide "incidental" CPE (modems, NCTE, and other data communications equipment); (4) AT&T will probably combine or coordinate certain installation and maintenance functions for network services and CPE; and (5) AT&T is considering an integrated billing and collection system for AT&T–COM and end-user LOBs in AT&T–IS.

21. AT&T also proposes not only that AT&T–IS be relieved or structural separation requirements, but that enhanced services be allowed to remain in AT&T–IS unseparated from its CPE operations. It argues that:

> [T]he LOBs currently within AT&T–IS should be permitted to continue providing such enhanced services unseparated from these LOBs' provision of CPE. Where enhanced services are involved, the AT&T–IS LOBs use their owner unaffiliated computer facilities that are not collocated with AT&T Communications equipment; and these LOBs use only transmission services obtained under tariff and already used by other customers not affiliated with AT&T. The AT&T–IS LOBs would continue to observe these conditions in providing enhanced applications on an integrated basis with CPE, pending complete relief from the structural separation rules in the enhanced services proceeding.[43]

22. AT&T's position on relief for CPE is fully supported by a number of parties, including some end users,[44] telecommunications unions, the DOD, and DOJ. DOJ is particularly strong in its expressions of support for AT&T's position, noting that the divestiture of the BOCs has significantly reduced AT&T's ability to discriminate against customers who use its competitors' CPE and to cross-subsidize its unregulated offerings. It also argues that, to the extent that competition rather than regulation constrains AT&T's rates for network services, the threat of cross-subsidization is greatly reduced, if not eliminate.[45] AT&T received additional, albeit more qualified, support from several computer manufacturers. IBM and Digital do not oppose the relief suggested in the *Notice*, provided that the Commission, while removing structural requirements, retains and strengthens certain nonstructural safeguards. CBEMA supports the concept of reexamining the costs and benefits of structural separation, but suggests that the Commission should obtain more information on actual cost savings if it decides that only CPE will be subject to relief. Most of the BOCs also generally agree with AT&T that structural separation should be eliminated; [46] but, as they did in their comments in response to AT&T's original Petition, they contend that they should be granted similar relief. They are concerned that if only AT&T is provided with relief, it will be able to reestablish its previous preeminence in the CPE market, contrary to the Commission's procompetitive policies.

23. Several parties also commented on the nature of the relief the Commission should, or could, provide to AT&T. ADAPSO argues that AT&T's request to keep CPE and enhanced services together in AT&T–IS, with CPE unseparated, represents the elimination of some of the structural separation requirements for enhanced services. It contends that such relief is outside the scope of the *Notice* and would violate the APA. Digital asks the Commission to make formal conditions out of certain of AT&T's representations as to how it plans to organize its business in the absence of structural separation. It contends that the Commission should require AT&T not to merge any AT&T–IS lines of business into AT&T–COM and should limit sales of CPE by AT&T–COM to the "incidental" CPE identified by AT&T in its comments. Digital argue that these conditions will deter AT&T from cross-subsidizing its unregulated operations.

24. Parties opposing relief [47] first contend that the Commission, contrary to its statements in the *Notice*, must address the question of AT&T's market power before determining whether to provide AT&T with relief from structural separation. These parties contend that

[42] *See infra note* 57.

[43] AT&T Comments at 13 n.*.

[44] The support of end users for AT&T's position is not unanimous. The International Communications Association, a user group, opposes removing structural separation requirements for AT&T's provision of CPE.

[45] DOJ Comments at 22 n.38.

[46] Bell Atlantic and NYNEX oppose such relief for AT&T.

[47] Some of the parties opposed to granting AT&T relief are ADAPSO, CCIA, General DataComm Corp., GTE Corp., IDCMA, Intecom Corp., NATA, and Tandy Corp.

AT&T still possesses significant market power with a 90% share of the inter-LATA toll market and a virtual monopoly over 800 service, terrestrial private lines, and international MTS. They argue that the revenues from AT&T's regulated activities exceed $30 billion and are more than sufficient to allow AT&T to cross-subsidize its unregulated offerings from its regulated operations, especially since the elimination of structural separation would produce significant common costs that AT&T could allocate to its regulated operations. Citing a study prepared by Booz, Allen and Hamilton and commissioned by GTE Spring, they further argue that the Commission should not rely on inter-LATA competition to prevent cross-subsidization because such competition developed but recently and has dubious prospects. They assert that easy entry into this market is illusory, and price competition is not necessarily an effective restraint on AT&T since many of its competitors resell its services and must pass on AT&T's price increases in their prices. Finally, the parties opposed to relief indicate that certain of AT&T's activities are particularly susceptible to cross-subsidization, including its data communications activities, its advertising and marketing, and its charitable contributions.[48]

25. In addition, opponents assert that AT&T possesses the functional equivalent of bottleneck facilities that would enable it to act anticompetitively. They argue that any CPE that is not compatible with the AT&T network is of little or no value. Furthermore, they assert that in many areas the BOCs merely provide transparent pathways to AT&T's network, and it is AT&T that sets the interconnect standards for CPE. NYNEX also suggests that because the vast majority of existing central office switches use AT&T software, AT&T has substantial power to set local network interconnection standards for CPE. These opponents contend that AT&T could use this power to disadvantage non-AT&T CPE and to develop new equipment to take advantage of new network services before its competitors can develop comparable products. They also contend that only AT&T private lines can meet certain technical standards for some data transfer applications, and, therefore, AT&T could use this source of market power to tie CPE purchases to the receipt of network service. In this regard, several parties assert that AT&T has a large backlog in private line installations, and cite this phenomenon as both evidence of AT&T's market power in this area and an opportunity for AT&T to discriminate against rival CPE by processing private line orders placed by its CPE customers more expeditiously than orders placed by, or on behalf of, its CPE competitors' customers.

26. Several parties also contend that not only does AT&T possess market power in network services, but it is increasing its market share in the CPE market. NATA and Bell Atlantic both contend that AT&T–IS's share of new CPE sales is beginning to grow and that AT&T may regain much of its former market power if the relief proposed in the *Notice* is granted. They suggest that current AT&T–IS practices, including its policy of enforcing the termination charge provisions of its CPE leases when a customer terminates a lease early to buy new CPE from a source other than AT&T–IS, but waiving or providing a partial credit against such charges when the customer buys CPE from AT&T–IS, are having a significant adverse impact on the market.

27. As a final point, the parties opposed to AT&T contend that even if some of the benefits of structural separation have been reduced, the costs of structural separation for AT&T's CPE operations have also been significantly reduced. They argue that much of the cost of duplicative personnel and facilities was the result of inefficient organization by AT&T, and suggest that these costs will be greatly reduced or eliminated when AT&T completes the reorganization of its technologies sector and consolidates CPE operations in AT&T–IS. They also suggest that many of the costs of the structural separation requirements were eliminated when the Commission waived the Software Rule and certain personnel restrictions in the *Notice*. These commenters further argue that AT&T–IS's ability to resell basic services allows AT&T to offer its customers the single point of contact they desire, while ICA, a customer organization, makes the claim that "one-stop shopping" is of no great benefit. Finally, several commenters suggest that AT&T–IS is of sufficient size that it already possesses most economies of scale, and as it grows and expands into new businesses, it will be able to spread any costs that might still exist from structural separation over a large number of enterprises.

B. The Costs and Benefits of Structural Separation for AT&T's Provision of CPE

28. The structural separation requirements we established in the *Second Computer Inquiry* were a pragmatic attempt to fashion a set of conditions governing the relationship between dominant providers of regulated services and their unregulated affiliates so as to maximize the long-term welfare of consumers of communications services. The decision to adopt those requirements for AT&T's CPE operations was based on our judgment that the benefits they provided in protecting competitive markets from the potential for anticompetitive conduct, and ratepayers from the potential burden of improper allocations of costs to regulated services, exceeded any costs that may have been imposed on AT&T or on consumers. However, these requirements were never intended to be inflexible or unreviewable—a fact that has been amply illustrated by the changes we have made in them over the last five years.[49] In the *Final Decision*, we found that: "The judgments embodied in this Order of necessity are premised upon existing and forseeable circumstances and upon available evidence . . . . Implicit in this effort, then, is the obligation to change the conditions, or to abandon the effort altogether, as experience and changed circumstances warrant."[50] We further indicated that "the cost/benefit analysis embodied in this decision cannot be fixed [and] must be recalculated from time to time to assure . . . that important events have not caused a disequilibrium to develop."[51] We now believe that recent events in the telecommunications industry have created just such a "disequilibrium."

29. Over the last five years, a fundamental reality of the telecommunications industry has been its continual state of change. AT&T's divestiture of the BOCs pursuant to the *MFJ*, the final detariffing of AT&T's CPE operations, the implementation of the Commission's access charge plan (governing the compensation local exchange carriers receive for use of their facilities in completing interstate calls), and the conversion of BOC and other exchange carrier facilities to "equal access" are just four of the major developments in the last half-decade that have created a telecommunications environment far different from that which existed in 1980. AT&T no longer

[48] In its comments Intecom charges that AT&T used a charitable gift to the University of Southern California to obtain a $17 million CPE contract with the University. Comments of Intercom Corp. (April 8, 1985) at 6–7. AT&T strongly disputes the facts asserted by Intecom, as well as its conclusions. AT&T Reply Comments at 26–27 n.*.

[49] *See supra* para. 11.

[50] *Final Decision*, 77 FCC 2d at 463, para. 207.

[51] *Id.*

controls the lion's share of the local exchange facilities in this country, and the owners of those facilities, the BOCs, provide AT&T with potent competition in the CPE marketplace. AT&T's assets have fallen by more than two-thirds while its revenues have declined by over 50%, as the result of the diverstiture.[52] Moreover, AT&T's former dominance of the CPE marketplace has been largely eliminated, and AT&T is beginning to experience significant competition with respect to many of its network services offerings. Finally, AT&T–TI (formerly Western Electric) has been forced to move away from providing equipment almost exclusively to captive affiliates, and now must compete in competitive markets for the large majority of its sales. In light of these significant changes, we now conclude that our structural separation requirements for AT&T's CPE operations no longer provide benefits to the public that exceed their costs, and, as a consequence, the underlying rationale for imposing those requirements has been eroded.

1. The Benefits of Structural Separation

30. In the *Final Decision*, we indicated that the primary benefits of our structural separation requirements would be "protection for the regulated market ratepayer against costs transferred from the competitive market by the parent corporation, and protection for the general public against such anticompetitive activities as denial of access and predatory pricing."[53] In assessing the benefits of continuing our structural separation requirements, we will focus on the extent to which recent events have limited AT&T's ability to engage in these activities, and consequently obviated the need for such requirements.[54] We will also examine the extent to which the growth of competition in the provision of CPE has made that market less vulnerable to anticompetitive activities by AT&T.[55]

31. When we adopted the structural separation requirements in the *Final Decision*, the first important benefit we hoped to achieve was to limit AT&T's ability to cross-subsidize its competitive ventures by improperly allocating some of the costs of those ventures to its regulated operations. Such improper allocations could unfairly burden ratepayers with costs not properly attributable to the regulated services they purchase and potentially allow AT&T to harm competition by pricing its competitive offerings below cost. We required structural separation to make any such cross-subsidization occur across corporate boundaries, thereby making such activity both more difficult to accomplish and, if attempted, more easy to detect. In light of recent events, we now see a significantly reduced ability on the part of AT&T to cross-subsidize its unregulated operations. The divestiture of its local exchange companies has removed from AT&T's control the most significant portion of its monopoly operations with which it could attempt such activities. Moreover, while it does offer some network services in which it still has a significant market position—*e.g.*, 800 service, international MTS, and certain types of terrestrial private lines—the advent of competitive alternatives has reduced its ability to shift the costs of competitive ventures to its network services without suffering some loss of market share.

32. In addition, the divestiture and the CPE reorganization have made the actual mechanics of cost-shifting far more difficult. The predivestiture AT&T could attempt to shift costs by allocating common costs of research, development, and manufacturing from its CPE products to the equipment it utilized in providing basic service. With divestiture, AT&T–TI no longer has a captive market for its products and is being increasingly subjected to marketplace checks on its prices. The BOCs are actively purchasing both network and terminal equipment from non-AT&T sources,[56] requiring AT&T–TI to price such products competitively. Furthermore, AT&T indicates only 13% of its sales are to AT&T–COM;[57] thus, only a very small part of its total sales are of products that have no marketplace checks to aid in the detection of overpricing and cost-shifting.[58] The reorganization of all CPE operations into AT&T–IS [59] will also reduce AT&T's ability to shift costs. After the reorganization, the manufacturing and research and development costs incurred for CPE will be in AT&T–IS, and while AT&T–IS will no longer be required to remain separate from AT&T–COM, any such costs shifted from CPE to network equipment must cross a boundary that did not previously exist.

33. The second major benefit we hoped to achieve from the establishment of structural separation was to prevent AT&T from using its control over local

[52] *See* American Telephone and Telegraph Company, 1984 Annual Report (1985) (total assets fell from $149,530,000 in 1983 to $39,827,000 in 1984, while revenues in 1983 totalled $70,319,000 compared with $33,188,000 in 1984).

[53] *Final Decision*, 77 FCC 2d at 463, para. 208.

[54] In the *Reconsideration Order*, we listed four characteristics of a carrier that would affect our decision to impose structural separation: (1) Did the carrier possess the ability to engage in anticompetitive activity through the control of bottleneck facilities such as local exchange or toll transmission facilities; (2) did the carrier possess the ability to engage in cross-subsidization; (3) did the carrier integrate its common carrier activities with its affiliated entities, with particular emphasis on research and development, and manufacturing capabilities that are used in conjunction with, or supported by communications derived revenues; and (4) did the carrier possess sufficient resources to enter the competitive market through a separate subsidiary. *Reconsideration Order*, 84 FCC 2d at 72, para. 65. As we indicated in the *Notice*, these characteristics are only guidelines in an overall analysis of the costs and benefits of requiring structural separation for any particular carrier. In this Order we will discuss the first two of these characteristics in some detail, *see infra* paras. 31–35, and will implicitly address the third characteristics in our discussion of the first two. The final characteristic, AT&T's ability to afford the costs of structural separation, is merely a threshold condition to our initial decision to impose such requirements, and is not relevant to the cost/benefit analysis conducted here. Even assuming the AT&T could afford to participate in the CPE marketplace subject to the structural separation requirements, the continued application of those requirements would ill serve the public interest if the costs thereby imposed exceeded the benefits that were realized.

[55] As noted *supra* para. 24, several commenting parties argue that we cannot properly analyze the costs and benefits of continuing structural separation for AT&T's CPE operations until we reach a determination on the extent of AT&T's interexchange market power in CC Docket No. 83–1147, Long-Run Regulation of AT&T's Basic Domestic Interstate Services, Notice of Inquiry, 95 FCC 2d 510 (1983). They contend that our statement in the *Notice* at para. 18 n.23, that we do not need to make a determination on AT&T's market power in interexchange services before eliminating separate subsidiary requirements is incorrect. While we recognize the parties' concerns that AT&T's market power not be ignored in this proceeding, we also do not find it necessary to resolve issues of how AT&T's interexchange services are to be regulated in the future, in order to resolve the issues raised in this proceeding. The principal question here is not whether AT&T has some overall market power that mandates continued Title II regulation, but whether the costs of a particular set of restrictions on AT&T outweigh the benefits for competition they provide. By necessity, in analyzing the costs and benefits of structural separation as compared to those of alternative regulatory regimes, we will examine certain aspects of AT&T's ability to use its position in one market to the detriment of competition in another. However, when we make determinations about the benefits of structural separation in deterring particular competitive abuses, we do not have to reach any all encompassing conclusions on AT&T's interexchange market power and the future regulations of AT&T's interexchange offerings.

[56] Keller, *The Battle For the CO Market*, Communications Week at C1 (March 18, 1985).

[57] *AT&T Petition at 9.*

[58] As DOJ states in its comments: After this vertical integration is ended by the divestiture . . . if Western Electric attempted to cross-subsidize its CPE from its transmission and switching equipment, the correspondingly higher prices which would result for Western Electric's transmission and switching equipment would result in competitive losses for Western Electric in that market. DOJ Comments at 21 (quoting its response to *MFJ* Comments)

[59] *See* Sack, *AT&T To Transfer 6 Plants and 33,000 Workers to AT&T–IS*, Communications Week at 38 (June 3, 1985).

exchange and interexchange bottleneck facilities to set interconnection standards that would benefit its own CPE products in discriminatory manner, or to install and maintain basic transmission services in a manner that would discriminate in favor of its own CPE customers. With the divestiture, AT&T gave up its local facilities and lost much of the power it once had to set CPE interconnection standards and to discriminate against its competitors' CPE.

34. In this proceeding several parties have argued that even though it no longer controls local facilities, AT&T's control over interexchange facilities provides it with the same anticompetitive opportunities it had prior to divestiture. While we find merit in the argument that the interexchange network may provide AT&T with the ability to set interconnect standards in some cases, we also find that this capability has been substantially reduced from that enjoyed by the old Bell System, which effectively set all interconnect standards for the entire network. Moreover, in the post-divestiture environment, the BOCs are CPE competitors of AT&T and thus have a vested interest in ensuring the AT&T not provide superior network services to its own CPE. The entry of these competitors, who possess substantial expertise with network interconnection standards and own facilities that AT&T's CPE must be compatible with, provide a significant check on AT&T's ability to act anticompetitively. In addition, there is now a substantial base of existing non-AT&T equipment on customer premises. For example, approximately 55% of the installed PBXs in the country have been supplied by AT&T's competitors.[60] Attempts by AT&T to introduce network standards that are incompatible with the existing base of equipment could prove counterproductive and simply provide competitive opportunities for its network services competitors. Finally, as we intend to continue to require AT&T to disclose network information whenever any network change affects CPE interconnection,[61] the need for continued structural separation to deter AT&T from setting discriminatory CPE interconnection standards appears minimal.

35. Similar considerations apply to our concerns about AT&T's ability to provide superior installation and maintenance of network services for those end users who purchase its CPE. As AT&T is faced with competition in the provision of most network services, providing certain customers with preferential treatment might cause other customers to have their service delayed, and encourage them to switch to an alternate supplier of network services. While, as some parties argue, there is a backlog of orders for certain AT&T private line facilities for which AT&T could conceivably provide superior access to its own CPE customers, we do not believe the potential for such preferential treatment can justify applying the full range of structural separation requirements to AT&T. Rather, in our view, nonstructural safeguards are adequate to address this problem, and we provide such safeguards in this Order.

36. Implicit in our original analysis of the benefits of the structural separation requirements for AT&T's CPE operations was a concern that AT&T could, if allowed to operate without restriction, suppress competition and dominate the CPE market. This perceived "sensitivity" of these markets, and a decision to be very protective of the newly developed CPE competition, were important elements in calculating the benefits of structural separation. Had competition in those markets been more firmly established, the benefits we perceived in structural separation would certainly have been smaller. In examining the current state of competition in the CPE market, we conclude, contrary to the assertions of some parties,[62] that competition is vigorous and strong. In the five years since we imposed the structural separation requirements, AT&T's CPE market shares have undergone a steady and rapid decline to the point where it cannot be said to "dominate" any particular segment of the CPE marketplace.[63] In light of this robustly competitive marketplace, our previous concerns that AT&T would be able to displace competition and reestablish a dominant position in CPE have been greatly reduced.

2. The Costs of Structural Separation

37. While it is clear that the benefits of continuing the structural separation requirements for AT&T's CPE operations have dramatically declined, it is much less clear that the costs associated with these requirements have been reduced to a similar extent. The most obvious cost of structural separation, the duplication of personnel and facilties, is estimated by AT&T to exceed one billion dollars. Although some of the costs of duplication have been reduced as a result of AT&T's reorganization of its technologies sector, our waiver of the Software Rule, and our waiver of the restrictions on personel and recruiting services, AT&T estimates that more than two-thirds of these costs of duplication remain.[64]

38. In any event, these direct costs of structural separation may be less important in the long run than the inefficiencies structural separation creates in research and development, manufacturing, and marketing. In many multiproduct firms like AT&T there exist both economies of scale, which result from having a certain level of activites, and economies of scope, which result when there is an overlap in the inputs (*i.e.*, materials, personnel skills, technology) that go into creating the firm's different products.[65] While the

[60] *See infra* note 63.

[61] *See infra* paras. 49–54.

[62] *See supra* para. 26.

[63] In the *CPE Lease Order*, we analyzed the competitive balance in the PBX and key system markets in reaching a determination that certain AT&T contractual practices did not violate the Communications Act. In that Order we found that "the telecommunications market for PBXs and key systems is very competitive" and noted that AT&T's share of new PBX shipments has fallen from 45% in 1980 to between 19–26% in 1984. We also noted that AT&T's share of new key system shipments fell from 58% to between 25–33% over the same period. One result of AT&T's market position in new shipments is a significant erosion in its share of the U.S.-installed base of key systems and PBXs. Estimates indicate that, in 1980, equipment provided by AT&T respresented 75% of the U.S.-installed key system base and 61% of the U.S.-installed PBX base, and that by 1984 AT&T's market share had declined to 57% of the key systems base and 45% of the PBX base. Moreover, the companies that have scored these impressive competitive gains on AT&T include some of the world's largest corporations with substantial financial, technical, and marketing resources. AT&T's main competitors include: Northern Telecom (21.2% of 1984 new PBX sales), Rolm (a wholly-owned IBM subsidiary with 18.4% of 1984 new PBX sales), ITT, NEC, Fujitsu, and Siemens. In addition, the BOCs have reentered the marketplace for CPE and provide a potentially potent marketing counterbalance to AT&T. *CPE Lease Order* at paras. 26–29.

[64] Bell Atlantic appears to argue that the fact that the structural separation requirements impose substantial costs on AT&T is actually a positive aspect of the rules. It contends that were those requirements removed, AT&T could be expected to pass through the resulting cost savings to its customers in the form of lower prices, which would place competitive pressures on Bell Atlantic and other providers of CPE. *See* Bell Atlantic Comments at 3. This argument confuses costs and benefits and reflects a fundamental misapprehension of the purposes of the structural separation requirements. We established those requirements to guard against possible anticompetitive conduct by AT&T and not simply to handicap its efforts by imposing inefficiencies on its operations for the benefit of its competitors.

[65] *See* Bailey and Friedlander, *Market Structure and Multiproduct Industries*, 20 J. Econ. Lit. 1024, 1031–1033 (1982).

elimination of structural separation requirements will probably not create substantial new scale economies, to the extent that basic communications service and CPE have some overlap in their inputs, scope economies may result that could be realized in the absence of such restrictions. Moreover, it is clear that structural separation imposes restrictions on the free flow of information within AT&T, which could have a significant impact on the costs of developing and marketing new products. Finally, the restrictions on joint marketing prevent AT&T from engaging in the kinds of systems solutions that it, and many end users claim are necessary. Together these inefficiences could have significant deleterious impacts on AT&T's ability to compete as effectively as possible in the CPE marketplace.

39. Furthermore, while much of the debate in this proceeding focuses on the effect of the structural separation rules on AT&T's CPE operations, it is likely that the increased costs imposed by these rules also affect AT&T's regulated services. The structural separation rules address the problem of joint and common costs by prohibiting, in effect, many joint and common activities. While this may provide protection against ratepayers bearing costs associated with competitive services, to the extent that there exist economies from joint operations, the separation rules impose on ratepayers extra costs resulting from the failure to realize these economies. Costs such as unnecessary duplication of facilities and personnel and sluggish or inappropriate responses to marketplace signals may just as easily manifest themselves in AT&T's regulated operations, in the form of higher prices and reduced quality and variety of services, as in competitive operations.

40. In sum, the costs of structural separation, while not readily quantifiable in all cases, appear to impose a significant burden on AT&T and the public. In light of the reduced benefits of structural separation requirements, we conclude that those requirements are no longer justifiable for AT&T's CPE operations.

C. Relief From the Structural Separation Requirements for AT&T's CPE Operation

41. Our analysis of the costs and benefits of the structural separation requirements imposed on AT&T's provision of CPE has indicated to us that the benefits they provide by reducing the potential for anticompetitive activities have been greatly reduced by recent events, while many of the costs have continued unabated. This realignment of the cost/benefit balance has led us to the conclusion that retaining these requirements is no longer in the public interest. Therefore, we relieve AT&T from the requirements of § 64.702 of our rules that it provide CPE only through a fully separated subsidiary. Pursuant to this decision, any of AT&T's unseparated corporate entities will be permitted to provide CPE to end users, market CPE jointly with basic services, or otherwise organize their offerings of CPE without regard to the structural separation requirements established in the *Second Computer Inquiry*. This decision will still require, however, that AT&T's unseparated entities provide basic services on a dominant carrier basis.[66] Moreover, AT&T's provision of CPE, although free of structural separation requirements, will be subject to certain nonstructural safeguards designed to inhibit the potential for anticompetitive conduct.[67]

42. The relief we grant today for AT&T's provision of CPE does not extend to AT&T's provision of enhanced services,[68] and those AT&T activities continue to be subject to the existing structural separation requirements.[69] Pursuant to our decision, the AT&T affiliate providing enhanced services will be required to remain fully separated from AT&T's other operations. AT&T would appear to be able to meet this requirement with at least two basic types of organizational structure: (1) It could keep enhanced services in a fully separated AT&T–IS; or (2) it could create a new separate subsidiary for enhanced services. These different organizational structures for AT&T have slightly different regulatory consequences.

43. If AT&T elects to keep its enhanced services offerings in AT&T–IS, it would, as indicated above, be required to keep AT&T–IS fully separated from AT&T–COM. AT&T–IS could continue to supply CPE, but such CPE activities would remain fully separated from AT&T–COM, as they are now.[70] In addition, since AT&T–IS and its CPE manufacturing capability would remain subject to full structural separation, AT&T–COM or AT&T–TI would be required to deal at arms' length with the CPE manufacturer. Moreover, since AT&T–IS would remain separated, its technical personnel would not be permitted to interact with their AT&T–TI and AT&T Bell Laboratories counterparts, except to the extent already permitted under the separation rules. Nor would AT&T–IS's maintenance and installation crews be permitted to work on basic services, although AT&T–COM or AT&T–TI could provide joint CPE and basic services installation and maintenance. However, AT&T would, through AT&T–COM or some other unseparated affiliate, be able to undertake joint marketing initiatives for CPE and network services enabling AT&T to provide a single point of contact for its large customers.

44. If AT&T chooses to provide enhanced services through a new fully separated subsidiary, the structural barriers between AT&T's CPE operations and its unseparated affiliates would be eliminated. The new entity would take the place of AT&T–IS in the Commission's regulatory scheme and would be able to do anything AT&T–IS can do now (*e.g.* sell CPE, resell network services, obtain software under the

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[66] If AT&T engages in resale of network services through other than a subsidiary subject to full structural separation, it must do so on a dominant regulated basis.

[67] *See infra* paras. 46–77.

[68] In its comments AT&T requested that we allow enhanced services to remain in an unseparated AT&T–IS, together with CPE, but separated in some fashion from network services. *See supra* para. 21. The *Notice* is replete with disclaimers of any intent on our part to deal with enhanced services in this proceeding. And a number of parties explicitly stated they had certain concerns about removing structural separation requirements for enhanced services, but in reliance on our representations in the *Notice*, withheld their comments until we initiated a proceeding addressing enhanced services issues. While we are sensitive to AT&T's enhanced services concerns and will address many of them in the *Third Computer Inquiry*, *see supra* note 5, the relief it seeks would involve removing, in substantial part, the structural separation requirements from AT&T's offerings of enhanced services. This is precisely the type of relief we expressly stated we would not consider in this proceeding when we issued the *Notice*. In light of those statements, it is our view that under the notice and comment procedures of the Administrative Procedure Act, we are precluded from addressing such issues. *See* 5 U.S.C. 553(b) (1982). Furthermore, we do not believe such an approach, *i.e.* resolving issues we explicitly represented would not be addressed in a proceeding, would be an appropriate way for this Commission to discharge its regulatory obligations.

[69] We also do not address the requests of the BOCs that they be provided relief in this proceeding. We explicitly declined to include the BOCs in this proceeding, *see Notice* at para. 14 n.17, and have indicated previously that we intend to review the Computer II structural separation requirements for the BOCs within two years of the BOCs' implementation of a separate structure in compliance with those requirements. *BOC Separation Order*, *supra* note 29, at 1140, para. 61. We have already initiated such a review with respect to enhanced service offerings by the BOCs in the Third Computer Inquiry proceeding. *See supra* note 5.

[70] If AT&T chooses to adopt this approach, it will be permitted to transfer some or all of its CPE and related operations from AT&T–IS to other parts of AT&T not subject to the structural separation requirements. We grant to the Chief, Common Carrier Bureau delegated authority to require such additional reports as are necessary to monitor the transfer process.

waiver, obtain administrative support).[71] An unseparated AT&T–IS could engage in joint sales, marketing, research and development, and support services with other unseparated AT&T affiliates. However, CPE would be separated from enhanced services by structural barriers.

45. In this Order we do not specify the exact manner in which AT&T should implement the structural separation requirements for enhanced services. Whether it decides to retain AT&T–IS as a fully separated CPE and enhanced services provider, creates a new fully separated subsidiary for enhanced services, or adopts some other organizational structure that maintains full separation for enhanced services, is a business decision we leave to AT&T's discretion.

IV. Nonstructural Safeguards on AT&T's Provision of CPE

46. In reaching our decision to remove the structural separation requirements pertaining to AT&T's provision of CPE, we have concluded that as a consequence of recent developments in the telecommunications industry, the costs of such requirements now exceed the benefits. While this conclusion is based in part on our finding that there has been a substantial decrease in AT&T's ability and incentives to act anticompetitively in its CPE operations, it is not a finding that there are no potential problems in that regard. AT&T is still treated by this Commission as a dominant carrier in its provision of network services, and nothing we have said in this Order is intended to alter that status. As a dominant carrier, AT&T presumptively continues to possess some degree of market power and, accordingly, some ability to act anticompetitively in its CPE activities. Consequently, as a replacement for the structural separation requirements eliminated in this Order, we will impose certain nonstructural requirements on AT&T. We will require AT&T to adhere to a modified version of the existing network disclosure rules, file reports on its provision of basic services to subscribers who purchase CPE from its competitors, implement certain procedures with respect to the disclosure of customer proprietary information, submit a detailed accounting plan prior to the final implementation of relief, and contract for an independent audit of its operations under that plan. It is our view that these requirements are necessary to protect CPE competition and ratepayers in the absence of structural separation, and we intend that they be implemented conscientiously by AT&T. To that end, we will monitor AT&T's performance under these safeguards and will initiate appropriate proceedings should noncompliance be observed or the present safeguards prove inadequate. Conversely, it is not our intent that we simply substitute one set of costly and inefficient regulatory requirements for another. Thus, if experience and further industry developments demonstrate that these requirements, or some part of them, are unduly burdensome, we will act to modify them accordingly.

A. AT&T's Network Disclosure Obligations

1. Comments

47. In its comments AT&T contends that with the elimination of structural separation, the special requirements of the Commission's rules and the *Disclosure Order* will no longer be applicable, and it will be subject only to the disclosure requirements of the All Carrier Rule.[72] It argues that the power to set interconnection standards in now lodged almost exclusively in the BOCs and not in AT&T, although it does admit that there are "some cases in which the characteristics of the intercity network, rather than the local loop, may affect the interconnection standards for CPE used with certain private line service."[73] It also argues that its economic incentives are to make its network services available to as many different users (with all types of CPE) as possible. AT&T does state, however, that it will provide technical information six months in advance of the implementation of a new network service in those instances (which AT&T suggests would be rare) in which disclosure had not already been made by that time under the All Carrier Rule. It argues that at earlier points in time technical information is not sufficiently stable to be of use to CPE manufacturers in developing new products. Finally, it argues that requiring it to disclose market-related information would only benefit its network services competitors, and it indicates it plans to disclose this non-technical information only at the public announcement of a network service.

48. A significant number of commenters oppose the AT&T position and contend that, even though AT&T no longer possesses local exchange facilities, it does have power to set interconnection standards for CPE. IDCMA presents four examples of network services where, it asserts, AT&T has the ability to set network standards with which CPE must be compatible if it is to function properly.[74] In addition, NYNEX notes that AT&T provides most of the software for the central office switches used by the BOCs and, consequently, has the ability to introduce new features in its software that could affect the interconnection and performance of CPE.[75] Therefore, these parties contend that unless technical information explaining changes in the network is provided with sufficient advance notice to develop new products, only AT&T–IS will be in a position to take advantage of new network services introduced by AT&T–COM. They further contend that six months does not provide sufficient advance notice since it often takes 12–36 months to develop and manufacture new CPE products. Several parties, including DOJ and IBM, suggest that a more appropriate trigger for disclosure would be the "make/buy" decision, the point at which under out existing rules any unseparated AT&T affiliate must disclose network information when it undertakes joint research with AT&T–IS. They argue that AT&T make/buy decision should trigger disclosure in all cases in which network changes affect CPE interconection. These commenters also strongly support the continued disclosure of market-related and implementation information, arguing that such information is crucial to any decision on developing CPE for new network services.

2. Discussion

49. There is no disagreement in this proceeding that some form of network disclosure should continue. No party has advocated the elimination of all disclosure requirements, while many have supported retention of the existing standards. Even AT&T has not suggested that no disclosure is necessary. Moreover, we have clearly stated in previous orders our belief that AT&T's interexchange network can have an important impact on

[71] We will permit the new subsidiary to begin operations thirty days after receiving notice from AT&T of its intent to form such an entity, provided that at the time the new subsidiary's operation commences AT&T–IS's authority to offer resold basic services is transferred to the new entity, and provided that the total capitalization of the new entity does not exceed previously authorized levels.

[72] AT&T Comments at 22. For a discussion of the All Carrier Rule *see supra* note 19 and accompanying text.

[73] AT&T Comments at 19.

[74] *See* IDCMA Comments (April 8, 1985) at 42–46. The examples are ACCUNET Packet Service, M–44 multiplexing service, switched digital network capability, and DDS with a secondary channel.

[75] NYNEX Comments (April 8, 1985) at 13–14.

interconnection standards for CPE.[76] Therefore, the question presented here is not whether standards should exist, but what the timing and scope of network disclosure should be. We conclude that our existing disclosure rules,[77] with some important modifications, represent the best means to ensure that necessary network information will be transmitted in a timely fashion to the CPE vendors and manufacturers who require it.

50. Under our existing structural separation rules, two events can trigger a disclosure obligation on the part of AT&T. First, AT&T is required to disclose network information to the public whenever it is transmitted to AT&T–IS, or to a third party for the benefit of AT&T–IS.[78] Second, AT&T is required to disclose information at the point of a make/buy decision in cases where joint research is conducted by AT&T–IS and network services personnel.[79] We believe that this rule has adequately protected competition in the CPE marketplace by placing AT&T's CPE competitors in the same position as AT&T–IS with respect to acquisition of the network information required for the design of CPE. In the absence of structural separation, however, the first part of this rule, requiring disclosure when information is provided to AT&T–IS, will no longer provide a workable standard for the disclosure of network information, since there will be no required separation between CPE and network personnel. We could, as some parties suggest, continue to require that technical or other information be made public as soon as any person involved in the design, development, manufacturing, or marketing of CPE was provided with such information;[80] however, such a rule might well require disclosure of information at a very early stage of the design process. In many cases, with the elimination of the structural separation requirements, CPE and network services technical personnel will be working within close proximity of one another or on the same projects. Thus, AT&T might well be required to disclose network information as soon as the CPE technical personnel learned a change was being contemplated. This could lead to premature disclosure of many of AT&T's preliminary plans for its network or, to avoid such a result, cause AT&T to reinstitute the types of artificial and inefficient restrictions on internal information flows that this Order seeks to remove. In either case, there could be significant adverse effects on AT&T's ability to innovate in its network.

51. We believe that a better approach to the disclosure problem is to take advantage of the second portion of our existing disclosure test and require disclosure of information on all changes to the network or new network services at the make/buy point, *i.e.* the point at which AT&T decides to manufacture a product itself or to provide it from a nonaffiliated entity. Therefore, once AT&T begins to engage in CPE activities on an unseparated basis, this disclosure obligation at the make/buy point will apply in all cases where network changes or new services affect CPE interconnection. This approach, by requiring disclosure as soon as AT&T has committed to a network services project affecting CPE interconnection, will permit CPE vendors and manufacturers to obtain information sufficiently in advance of the implementation of a new service to have CPE products on the market at implementation.[81]

52. There is, however, one important drawback to this disclosure requirement. Under the rule described above, AT&T would have no latitude to reduce its disclosure obligation by limiting AT&T–IS's access to information, but would be required to disclose at the make/buy point every time it makes a network change or introduces a new network service that affects CPE interconnection standards. Thus, even if the nature of the network change being contemplated made it imperative for legitimate business reasons that there be no early disclosure to AT&T's network competitors, AT&T would not be able to postpone disclosure by keeping all information from its non-AT&T–COM affiliates.[82] We see this as an important limitation on AT&T's business discretion directly conflicting with the desire we expressed in the *Notice* not to place an undue burden on AT&T's research and development efforts by requiring it to disclose information at an earlier stage than do its network services competitors.[83] In order to avoid the possibility that our new disclosure requirements will unnecessarily inhibit AT&T's ability to innovate in its network, while at the same time providing AT&T's CPE competitors with timely technical and market information, we have decided to alter the manner in which AT&T will be required to disclose information once a make/buy decision has been made.

53. Under the network disclosure rule we are establishing today, AT&T will be required, at the time it makes a decision to manufacture itself or to procure from an unaffiliated entity, any product the design of which affects or relies on the network interface,[84] to notify the CPE industry (through direct mailings, trade associations, or other reasonable means) that a network change or new network service is under development. The notice need not contain technical information, but it must describe the proposed service with sufficient detail to allow the CPE industry to understand what the new service is and what its capabilities are. The notice must also indicate that technical information required for the development of compatible CPE will be provided to any entity involved in the manufacture, design, or sale of CPE[85] if, and only if, such an entity is willing to enter into a "nondisclosure agreement." This agreement may stipulate that such entity will use the disclosed information only for its CPE operations and will not provide such information to its non-CPE affiliates or to any third party. Once an entity has contacted AT&T and signed a nondisclosure agreement, AT&T must provide the full range of information required under our existing rules within a reasonable period,[86] but not to exceed

[76] *See, e.g., Disclosure Order*, 93 FCC 2d at 1235–36, para. 29.

[77] *See supra* para. 8.

[78] *See id.*

[79] Disclosure as a consequence of joint research, however, appears to have been an infrequent occurrence.

[80] *See* IDCMA Comments at 39.

[81] The network disclosure obligation we establish here is solely for AT&T and does not change the disclosure obligations for other carriers. Although this disclosure obligation relies on many concepts established in the *Disclosure Order*, to the extent that differences exist, the language here is controlling.

[82] In this situation, under our current disclosure rules, if AT&T did not provide information to, or engage in joint research with, AT&T–IS, or provide network information to other entities for the benefit of AT&T–IS, it would only be required to disclose pursuant to the All Carrier Rule.

[83] *Notice* at para. 29.

[84] Product in this context includes any hardware or software for use in the network which might affect the compatibility of CPE or enhanced services with the existing telephone network, or with any new basic network services or capabilites. Product also includes, for purposes of a make/buy determination, the development of any hardware or software that relies on the network interface. Thus, if AT&T makes a decision to develop a new type of CPE based on a planned interface, that decision will trigger the disclosure obligation. In applying the make/buy disclosure standard to both network services and CPE, we are adopting the same approach that we took in the *Disclosure Order*. *See Disclosure Order*, 93 FCC 2d at 1240–45, paras. 45–59.

[85] AT&T will not be required to provide information to trade associations or other organizations not directly involved in sales, design, or manufacture of CPE.

[86] *See Disclosure Order*, 93 FCC 2d at 1236–38, paras. 31–38, for a discussion of the information that must be disclosed under our existing disclosure

Continued

90 days. While we do not intend to specify the exact terms of a reasonable nondisclosure agreement, we believe that AT&T should design and make available to CPE providers as one option a "minimal" agreement. Such an agreement should be strictly limited to preventing the disclosure of the specific information released as a result of a particular notice and should not create any other relationships between the parties beyond those necessary to make the respective disclosure/nondisclosure obligations of AT&T and the other party effective and enforceable. We have no intention, however, of preventing the parties from mutually agreeing upon a broader relationship or nondisclosure agreement if they perceive it to be in their best interests. We intend that this disclosure requirement be implemented so as to provide entities in the CPE industry that require AT&T–COM network information with effective access to that information. We do not intend that AT&T's network services competitors be included in the disclosure process.[87]

54. We recognize that there may be entities in the CPE industry that, for any number of reasons, are unwilling to enter into a nondisclosure agreement; thus, we think it desirable that there be a general disclosure obligation for AT&T that is not conditioned on the execution of such an agreement. AT&T has suggested that this point be six months prior to introduction of a new service or network change and that the obligation be limited to technical information. Although the record does provide some support for the position expressed by several parties that six months is generally too short a period to allow development of new CPE, AT&T argues that six months is merely a fallback requirement because in most cases it will have made public disclosure prior to that point pursuant to the All Carrier Rule. In light of the disclosure we require at the make/buy point and the continued application of the All Carrier Rule to AT&T, we do not think it necessary to extend our unconditional disclosure obligation back beyond the period suggested by AT&T. Accordingly, we require AT&T, if it has not already done so pursuant to the All Carrier Rule, to make all technical information available to the public at least six months prior to the introduction of a new service or network change that affects CPE interconnection and market information available to the public at the general announcement of the service or change.

B. Discrimination in Access to Network Services

1. Comments

55. Many commenting parties argue that AT&T could use its significant market presence in network services to improve its CPE sales by providing installation and maintenance of network services on a preferential basis to those AT&T–COM customers who purchase AT&T CPE. In particular, IDCMA contends that AT&T–COM has a virtual monopoly over terrestrial private line service, which is critical for data communications, and therefore AT&T could leverage this market power to benefit its offerings of data communications equipment. It also points out that in 1984 AT&T–COM had an interstate private line backlog of 40,000 circuit orders, and that significant backlogs still exist for some services.[88] It argues that in the absence of structural separation, AT&T could provide more timely access to these facilities for its CPE customers. Other commenters argue that AT&T–COM could also provide a superior quality of network service to AT&T CPE customers. General DataComm indicates that private line circuits are provided by AT&T–COM under tariffs that establish only minimum performance criteria, and it contends that AT&T–COM could provide superior lines and facilities to those customers using ATT CPE.[89]

56. Some parties argue that the only way to prevent AT&T from providing preferential installation and maintenance of basic services for its CPE customers is to require AT&T to process all network services installation and maintenance orders through centralized operations groups (COGs).[90] They maintain that COGs will insulate the installation and maintenance of network services from AT&T CPE sales personnel, thereby preventing preferential treatment on the basis of a customer's CPE purchases. Other commenters contend that a particular form of organization is not required, but AT&T should be required to report on the procedures it intends to use for processing installation and maintenance orders, and should include in those procedures a method for recording and tracking orders to allow the Commission to monitor its performance.[91]

57. AT&T argues that its overriding economic incentive is to encourage the broadest possible use of its network services and that any strategy that would discourage customers with non-AT&T CPE from using those services would be counterproductive since it would drive these customers to competing service providers. AT&T indicates that it uses the same ordering and trouble-reporting procedures for its network services whether the subscriber has AT&T CPE or that of another vendor and states that it will continue to use these procedures if the structural separation requirements are eliminated. It argues that COGs or COG-like procedures are unnecessary because its incentives and existing programs will continue to ensure that all customers obtain the same network service ordering and provisioning support regardless of whose CPE they select.

2. Discussion

58. In the *Second Computer Inquiry*, we were very concerned that AT&T could use its control over "bottleneck" transmission services to provide superior access to its CPE customers,

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requirements. We realize that some market information may be tentative or even unavailable at the make/buy point. Certain critical elements of market information, such as rate structure and price, are subject to review in the tariff process, during which objections may be, and often are, lodged that the proposed service is priced improperly under the standards of the Communications Act. Similarly, the timing of the introduction of a new service depends on a number of factors, including regulatory actions, that are, to a certain extent, out of AT&T's control.

[87] We model this new disclosure obligation on AT&T–COM's existing Vendor Liason Program [VLP], which has been implemented as a result of AT&T's cooperation with NATA's Interexchange Carriers Services Committee. The VLP provides CPE vendors with technical information on new and existing network services to aid CPE manufacturers in developing CPE for such services, and often provides information substantially in advance of any disclosure requirement in our rules. This program employs nondisclosure agreements to protect the confidentiality of information, both by AT&T–COM and CPE vendors, and appears generally to have been a successful venture. *See* AT&T Comments at 28–29; NATA Reply Comments at 20. AT&T has indicated in its comments that it plans to continue this program after the structural separation requirements are removed, and it notes that the program will be completely separated from any AT&T–COM CPE activites to protect the confidentiality of CPE vendors that use the program. Although we do not require AT&T to use VLP to meet the disclosure obligations we are imposing, it may be appropriate for AT&T to use its experience with this program in fashioning a response to satisfy those obligations.

[88] IDCMA Comments at 16 n.20.

[89] General DataComm Reply Comments, Staff Analysis at 9.

[90] A COG is an organization established by a carrier to serve as a centralized point of contact for customers and vendors of CPE. COGs process orders for carrier basic services relating to the interconnection of CPE, including scheduling and coordination services. The BOCs are the only carriers currently required to utilize COGs. NATA Petition for Emergency Relief Requiring Nondiscriminatory CPE Interconnection, Memorandum Opinion and Order, FCC 84–132, para. 1 n.3 (released April 11, 1984).

[91] IBM Comments at 17.

and our decision to require structural separation for AT&T was designed, in part, to prevent such behavior. While our concerns about possible discrimination have diminished substantially as a consequence of divestiture, we still perceive some potential, in the absence of any safeguards, for AT&T to provide its CPE customers preferential access to its regulated services in violation of sections 202(a) and 202(b) of the Communications Act.[92] This concern holds especially true for those AT&T services that are subject to substantial service delays or where AT&T has the capability to provide a superior quality of network service on a selective basis. Therefore, we agree with those parties who argue that some safeguards are necessary to prevent AT&T from providing its CPE customers with preferential installation and maintenance of network services. However, we conclude that a COG requirement or other procedurally oriented approach is not necessary, and instead we intend to follow a result-oriented approach to ensure that AT&T does not discriminate in its provision of network service.

59. To prevent AT&T from actually providing discriminatory access to its network services, we require AT&T to file with the Commission, within 30 days of the release of this Order, its procedures for determining how requests for installation and maintenance will be processed.[93] To ensure that such processing does not vary depending on a customer's CPE purchases, we require AT&T to file monthly reports on the time periods required for installation and maintenance of its network services by the type of CPE (AT&T v. non-AT&T) an end-user possesses. We believe this result-oriented approach will require a minimal intrusion into AT&T's existing order processing procedures, but will also effectively prevent AT&T from providing discriminatory access to network services, since any such discrimination by AT&T should manifest itself in the filed reports.[94]

60. We are also concerned about the possibility, raised by some commenter, that AT&T sales personnel might make claims that by purchasing AT&T CPE the customer will obtain installation or maintenance of network services of a superior quality, or more quickly, than if the customer purchases CPE from another vendor. It is clear, however, that under the standards of the Communications Act and this Order, such representations would be false and improper. We expect that a party, having been apprised of its obligations under the Communications Act and our rules, will comply with them, and we anticipate the AT&T will take the necessary steps to ensure that such misrepresentations by its sales force about its ability to discriminate will not occur.

61. We wish to make clear that we consider this to be a particularly sensitive area, and we will view with deep concern any indications that AT&T is employing preferential treatment in its provision of network services to benefit its CPE operations. Moreover, should there emerge a verifiable pattern of preferential treatment by AT&T, or of claims by sales personnel that preferential treatment is available, we will reevaluate whether more substantial regulation of AT&T's practices is required.

C. Customer Proprietary Information

1. Comments

62. A number of parties argue that the removal of the structural separation requirements would inappropriately eliminate the existing rule prohibiting AT&T from providing its separate subsidiary with proprietary customer information, unless such information is available to the public on equal terms and conditions. CBEMA contends that allowing AT&T's CPE sales personnel to have access to a customer's network information will enable them to identify a customer's CPE requirements and "get in the door with an early proposal,"[95] while Digital argues that such access would provide AT&T's CPE operations "with a unique competitive advantage in customizing integrated CPE and information processing offerings. . . ."[96] IDCMA notes that sales costs for its members amount to 20% of gross revenue on average, and 80% of these costs are incurred in identifying potential customers.[97] It argues that should AT&T–IS obtain access to customer network information, AT&T–IS's costs of identifying potential customers will be significantly reduced, which will provide it with an unfair advantage over its CPE competitors. Finally, General DataComm contends that a number of companies design data networks using AT&T private lines and non-AT&T CPE (which they provide the customer). When such a company places an order with AT&T–COM for private line facilities on behalf of a customer, AT&T–COM is made aware of the nature and design of the proposed network and would be able to offer alternative packages of network design and CPE to the customer, even though that customer may never have approached AT&T–COM. General DataComm maintains that this is an unfair competitive advantage flowing to AT&T from its near monopoly control over data-quality private lines.

63. AT&T contends that the present restriction on its providing customer proprietary information to its CPE subsidiary is an adjunct of structural separation and will not, and should not, apply after it is permitted to offer CPE on an unseparated basis.[98] AT&T does, however, indicate that it will continue its current policy of making such customer proprietary information available to other CPE vendors if a customer so requests or authorizes.

2. Discussion

64. As all the parties agree, once the proposed relief is granted, our rule prohibiting carriers from providing customer proprietary information to their separate subsidiaries, unless such information is made available to the public on equal terms and conditions,[99] will no longer apply to AT&T CPE operations. Consequently, if we do not modify our rules, AT&T–COM will be permitted to provide customer proprietary information to AT&T CPE sales personnel. The two most effective means of preserving equal access to customer proprietary information by all CPE vendors are : (1) Prohibiting AT&T's CPE affiliate from obtaining access to such information; and (2) requiring AT&T to disclose such information to all CPE vendors if it is disclosed to AT&T CPE sales personnel. However, in the absence of structural separation, neither of these approaches would be effective. AT&T has indicated that it plans to offer a single point of contact to its large (and perhaps, eventually, medium-sized) business customers for all their network services and CPE needs. Under this type of sales organizations, AT&T's CPE sales personnel will also sell network services to large business customers and will have a legitimate need for access to customer proprietary information dealing with network services. To

[92] 47 U.S.C. 202(a)–(b).

[93] We will subject this plan to the same review procedures that we are establishing for AT&T's accounting plan. *See supra* note 107.

[94] We regard such monitoring to be an effective check on potential abuse and we direct AT&T in its report on its processing procedures, to be filed in 30 days, to explain how it will provide such information.

[95] CBEMA Reply at 21.

[96] Digital Comments at 16.

[97] IDCMA Reply Comment at 48–49.

[98] AT&T Comments at 26 n.*.

[99] 47 CFR 64.702(d)(3).

prohibit AT&T from offering a single point of contact would eliminate one of the benefits to AT&T of removing structural separation, and we are unwilling to so limit the relief we are granting in this Order. Moreover, given that AT&T's CPE sales personnel will have access to all customer proprietary information under this plan, providing equivalent access to all CPE vendors would require AT&T to make all its large customers' information public. Since this information belongs to the customers, and many may not want it to be made public, this approach is also unacceptable.

65. While there is no easy means of providing all CPE vendors with equal access to customer proprietary information, the problems attendant with imperfect access may not be as great as some commenters indicate. The AT&T–COM customer information that would be most valuable to a CPE vendor is that from large corporations with complex telecommunications systems, since these are the customers that make the most significant use of the interexchange network. However, these are also the customers that are most likely to be sophisticated telecommunications consumers. An early contact on CPE purchases by AT&T will not necessarily result in an immediate sale for AT&T, but is more likely to result in customer-initiated contacts with other CPE vendors to elicit counteroffers. Thus, allowing AT&T CPE personnel access to customers' network information does not appear to be a significant problem for large customers. Furthermore, while certain smaller business customers may not be as sophisticated in their telecommunications purchases, they have network information that is, in most cases, less valuable to CPE vendors. These customers often have only limited contact with AT&T–COM and the most valuable customer information is that possessed by the BOCs and the customer's current CPE vendor. Thus, as was the case with larger businesses, the problem of unequal access to customer proprietary information may not be as significant as the commenters suggest.

66. While we have concluded that it is unnecessary and inappropriate to perpetuate a modified version of our present rules restricting access to customer proprietary information for AT&T's CPE operation once structural separation has been eliminated, the record does support establishing two requirements in this area. First, in some cases, AT&T will possess information on a customer's services that a competing CPE vendor will need to design a communications system, or prepare a competing bid, for the customer. Thus, AT&T must make customer proprietary information available to competing CPE suppliers, at the customer's request. AT&T states that this is its current practice, and we are simply requiring it to continue to do so once the structural separation rules are removed for its CPE offerings. Second, there may be some instances in which AT&T–COM customers will not want their proprietary information passed on to AT&T CPE personnel. This situation might arise because the customer placing the order is actually a CPE vendor that designs data networks using AT&T private lines and does not want its network design/CPE information available to non-AT&T–COM employees whose job it is to market competing systems and products. Or the end user itself might not, for its own reasons, desire to have its proprietary information passed on to AT&T personnel who will use the information for marketing purposes having nothing to do with processing its order for network services. Whatever a customer's motivation, we conclude that those customers who desire to have their proprietary information available only to network services personnel should be able to obtain network services on that basis.

67. To create an environment where customers who request confidentiality for their proprietary information can obtain it, we require AT&T to limit access to the network information of customers who request such confidential treatment to network services personnel who have no involvement in CPE sales. We also require AT&T to file with us, within 30 days of the release of this Order, a description of the procedures it proposes to establish to limit access to customer proprietary information.[100]

D. *Accounting Procedures*

1. Comments

68. In response to a request in the *Notice*, AT&T filed in its comments a description of the accounting techniques it would use to identify and allocate costs between its regulated and nonregulated businesses if relief from the structural separation requirements were granted. It indicates that new accounting procedures would be required for only two situations: (i) Combined or coordinated activity between AT&T–IS and other AT&T entities (*e.g.*, marketing, billing, or installation and maintenance), and (ii) the provision of CPE by AT&T–COM in conjunction with network services.[101] AT&T filed two accounting plans to address concerns raised by these potential new activities.

69. AT&T indicates that its outline of procedures for combined activities is substantially identical to procedures this Commission has previously approved. It suggests that the costs associated with combined functions will be assigned as follows:

a. Costs incurred specifically for a single entity [primary costs] will be directly assigned to that entity;

b. Costs that cannot be directly associated with a specific entity [common costs] will be allocated between those entities that benefits from each activity, on a basis that reflects the benefits to each from the activity.[102]

Each combined activity will have a specific function code, and primary and common costs will be recorded by a particular combined function code. Determination of whether costs are primary or common will be made by individual organizations within AT&T.

70. AT&T–COM indicates that the accounting plan it filed for its provision of CPE [103] meets existing Commission standards for other carriers not subject to structural separation. Under AT&T's proposed accounting system, costs are recorded within each jurisdictional area (48 states, D.C., interstate, and nonregulated activities), and complete detail is provided on the nature of expenses by function performed, relevant business purpose, and exact type of expense. AT&T states that the nonregulated jurisdiction will have costs reported for three purposes: (1) To isolate investment dedicated to nonregulated CPE activity from regulated investment; (2) to account for revenue associated with CPE; and (3) to identify expenses related to nonregulated CPE activity. AT&T asserts that expenses for CPE will be assigned directly where possible, and joint and common costs will be allocated on the basis of certain allocation factors.

71. Several parties, including IBM and NATA, contend that AT&T's proposed accounting procedures lack sufficient detail for the Commission to determine their adequacy. IBM argues that the accounting plans AT&T has filed in this proceeding are not as detailed as those the Commission has required, and AT&T has filed, in the past for allocating joint

[100] We will subject this plan to the same review procedures that we are establishing for AT&T's accounting plan. *See supra* note 107.

[101] AT&TComments at 15.

[102] *Id.* at App. A, p. 2.

[103] *Id.* at App. B.

and common costs between regulated and unregulated activities (it cites AT&T's plans for joint research and development by Bell Laboratories and for sharing administrative services between AT&T–IS and other AT&T affiliates). NATA contends that the plans do not adequately define which costs are to be directly assigned to regulated or nonregulated accounts. NATA also argues that the plan does not commit AT&T to keeping accurate transaction and time records and suggests that all AT&T employees involved in joint activities should be required to keep accurate time records or their salaries should be assigned to nonregulated accounts. NATA further contends that not enough information on allocation factors is presented, except in the case of generic advertising, where it suggests the factor used—relative revenues from regulated and nonregulated activities—is flawed. Finally, NATA argues that because of the difficulty in allocating joint marketing and research and development costs, such costs should be completely assigned to nonregulated activities.

72. General DataComm and CBEMA also take the position that joint marketing costs should receive special Commission attention. CBEMA argues that the allocation of such costs to regulated services would unfairly burden ratepayers. General DataComm asserts that in the data equipment business, marketing costs usually amount to 20–25% of gross revenue, while profit margins are only 10–11% of revenue. Thus, it argues, a misallocation of such costs could allow AT&T to undercut the competitive position of other manufacturers of such equipment, possibly driving many out of the market. It also argues that such a misallocation would be relatively easy for AT&T to achieve in this market because of the imbalance between CPE costs, which amount to only 10% of a data communications system, and network costs, which represent 90% of the total. Accordingly, General DataComm asserts, AT&T could misallocate a substantial portion of its CPE costs with only a relatively minor impact on its regulated, network services costs.

73. Digital is also concerned about marketing costs and points specifically to the difficulties involved in allocating the costs of an account manager's time between network services and CPE and the costs of preparing joint CPE/network services bids, as particular examples of the problems in this area. Digital also argues that it is very difficult to allocate: (1) Costs of maintenance personnel who repair both network services and CPE; (2) joint legal expense; and (3) joint research and development expenses.

74. Several parties indicate that no relief should be granted until a detailed accounting plan has been developed and reviewed by the Commission's staff. Others suggest that such a plan should be subject to a yearly audit by an independent accounting firm at AT&T's expense. They argue that the Commission lacks the resources to perform a detailed evaluation of AT&T's activities, even though such an evaluation is crucial to preventing AT&T from subsidizing its regulated services.

2. Discussion

75. One of our primary considerations in the *Second Computer Inquiry* was to prevent AT&T from engaging in improper cross-subsidization by shifting costs associated with its competitive offerings to its regulated activities. Such cost-shifting, we found, might distort the market for CPE and enhanced services and unfairly burden ratepayers of AT&T's regulated services. This concern with the potential for cross-subsidization was a prime motivating factor underlying our decision to impose structural separation on AT&T. In the current environment, with the divestiture of the BOCs from AT&T and the growth of competition in interexchange services, AT&T's ability to cross-subsidize clearly has been diminished.[104] However, even in the current environment, we agree with General DataComm that there remains the possibility that AT&T retains some ability to cross-subsidize its unregulated activities from those network services in which it still has market power (*e.g.* 800 services, terrestrial private line service, and international MTS and perhaps, in the short run, even domestic MTS).

76. To reduce or eliminate AT&T's potential for cross-subsidization, the Commission indicated in the *Notice* that AT&T should "[d]escribe the accounting systems and techniques [it] would use to identify and allocate costs between regulated and unregulated businesses if the structural separation requirements were eliminated."[105] The two accounting plans AT&T filed in response to the *Notice* [106] are basically consistent with the accounting principles established in the *Fifth Order*, for carriers not subject to a separate subsidiary requirement. However, even though the plans are consistent with the *Fifth Order*, we believe that AT&T is not in the same competitive position as those other carriers, and conclude that the concerns raised by the commenters require us to obtain a more detailed accounting plan from AT&T.

77. Therefore, we require AT&T to provide the Commission with a more detailed plan to account for its CPE activities once the structural separation rules are eliminated for those activities. Actual elimination of the structural separation requirements should not be implemented by AT&T until an acceptable plan in filed with the Common Carrier Bureau addressing the concerns discussed herein.[107] In AT&T's more detailed plan, it should include a listing and description of all services that will be provided by AT&T for its CPE affiliate, a list of all plant and expense accounts involving joint and common costs between its regulated and unregulated operations, and the allocation methodology to be employed in each instance to assign these costs.

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[104] *See supra* paras. 31–32.

[105] *Notice* at para. 30(5). Although at the time of the *Final Decision* we found that accounting would only be an effective policy for preventing cross-subsidization by AT&T if linked with structural separation, we now find, in light of the developments in the telecommunications industry in recent years, that such linkage is no longer required. For example, in the *Final Decision*, we referred to the utility of structural separation when "a carrier has the incentive and ability to engage in sustained cross-subsidization, or predatory pricing." *Final Decision*, 77 FCC 2d at 464, para. 210. But, as we noted *supra* paras. 31–32, the developments in the industry since the adoption of the *Final Decision* have significantly reduced AT&T's incentives and ability to engage in these practices, and consequently increased the efficacy of accounting as a means of preventing cross-subsidization. Furthermore, as demonstrated by the Fifth Report and Order in CC Docket No. 81–893, 49 Fed. Reg. 46378 (Nov. 26, 1984) (hereinafter *Fifth Order*), *reconsideration pending*, we recognize the utility of accounting to guard against cross-subsidization by carriers that are providing both regulated and unregulated services and products. The question then is not whether accounting is an appropriate measure to guard against such cross-subsidization by carriers—it clearly is—but whether a particular carrier's market position justifies the further safeguards provided by structural separation requirements. In 1980 we concluded that AT&T's position at the time did justify the imposition of those additional requirements. In this Order we conclude that such justification is now lacking for the current AT&T.

[106] *See supra* para. 68–70.

[107] The Bureau will conduct an initial review of the plan, prior to the implementation of relief, and may approve the implementation of relief if it determines that the plan meets the essential criteria discussed in this Order. Subsequently, a detailed review will be conducted with an opportunity for interested parties to comment. As stated in this text, the accounting plans already filed by AT&T in this proceeding are generally consistent with the principles of the *Fifth Order*, and what we are requiring is more detailed information on how those principles will be applied, not a basic restructing of the plans. Should certain details of the plan prove inadequate, subsequent staff review, appropriate modifications, and a "true up" should serve to prevent any cross-subsidization potential not adequately addressed in the plan.

We are especially concerned with the allocation factors AT&T will employ in its plan, and require it to respond to the specific concerns raised by the commenting parties.[108]

78. We also require AT&T to submit the operation of its accounting plan to an annual audit by an independent accounting firms at its own expense. This annual review should concentrate on the allocation methods used by AT&T to ensure compliance with the accounting plan filed with the Commission. We believe that in light of the substantial demands already placed on the Commission's limited resources to undertake detailed investigations or audits of carriers' actual accounting practices, such an independent audit is the best means of assuring that AT&T conscientiously applies its accounting plan after the structural separation requirements have been removed.

V. Ordering Clauses

79. Accordingly, it it ordered that, pursuant to sections 4(i), 4(j), 201–205, 218, 220, 403, and 404, of the Communications Act of 1934, 47 U.S.C. 154(i), 154(j), 201–205, 218, 220, 403, and 404, the policies, rules, and requirements set forth herein are adopted.

80. It is further ordered, that the motion for leave to file late comments filed by the Department of Justice is granted.

81. It is further ordered, that the motion for leave to file late comments filed by the International Business Machines Corporation is granted.

82. It is further ordered, that the motion to Compel American Telephone and Telegraph Company to Respond to the Commission's Questions filed by the North American Telecommunications Association is denied.

83. It is further ordered, that the motion for the Federal Communications Commission to Accept NATA's Economic Analysis filed by the North American Telecommunications Association is denied.

84. It is further ordered, that the motion For an Evidentiary Hearing and For Oral Argument filed by the North American Telecommunications Association is denied.

85. It is further ordered, that the Conditional Motion For Adherence To Normal Rulemaking Procedures, Or, In The Alternative, For Stay filed by the North American Telecommunications Association is denied.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A.—Parties: CC Docket 85–26

Filing Comments

The American Telephone and Telegraph Company (AT&T)
The Ameritech Operating Companies (Ameritech)
Association of Data Processing Service Organizations, Inc. (ADAPSO)
The Bell Atlantic Companies (Bell Atlantic)
The BellSouth Companies (BellSouth)
Computer and Business Equipment Manufacturers Association (CBEMA)
Department of Defense (DOD)
Department of Justice (DOJ)
Digital Equipment Corporation (Digital)
GTE Corporation (GTE)
Intecom, Inc.
Independent Data Communications Manufacturers Association, Inc. (IDCMA)
International Brotherhood of Electrical Workers
International Business Machines Corp. (IBM)
Local Area Telecommunications, Inc. (LAT)
North American Telecommunications Association (NATA)
NYNEX
Pacific Telesis
Tandy Corp. (Tandy)
U.S. West

Filing Reply Comments

AT&T
ADAPSO
Communications Workers of America, AFL–CIO
CBEMA
Computer and Communications Industry Association (CCIA)
DOD
DOJ
Digital
General DataComm Industries, Inc. (General DataComm)
GTE
IBM
International Communications Association (ICA)
IDCMA
Intecom, Inc.
NATA
NYNEX
Pacific Telesis
Security Pacific Data Transmission Corp.
Southwestern Bell
Tandy
Telequest, Inc.
U.S. West

Filing Informal Comments

Filed April 5, 1985

Boston University
General Electric
Pan Am
Penn Mutual

Filed April 8, 1985

Aetna Life Insurance Company
American Satellite Company
Bank of America
Beeson, George
Charter Medical Corporation
Cigna Corporation
Comdisco, Inc.
E.I. DuPont de Nemours & Company
Farmers Insurance Group of Companies (no comment; will file reply comments)
Hapag-Lloyd Agencies
Howard Johnson Company
Hilti, Inc.
Lamb Technicon Corporation
Mervyn's
Metropolitan Life Insurance Company (no comment; will file before May 8th)
Minolta
Nationwide Mutual Insurance Co.
New South Federal Savings Bank
N W Ayer Inc.
Pizitz Executive Offices
Prescott, Ball & Turben, Inc.
Rockwell International Corp.
SouthTrust Data Services
Teledyne, Inc.
United stationers, Inc.
Westinghouse

Filed April 9, 1985

Abbott Laboratories
AmSouth Bank, N.A.
Banc One Corp.
B.F. Goodrich Corporation
FMC Corporation
Investment Rarities Inc.
King & Spaulding
Supreme Equipment & Systems Corporation
Warrington Associates, Inc.

Filed April 10, 1985

Beneficial Data Processing Corp.
The BOC Group, Inc.
Durnmentallic Corporation
Elk River Resources, Inc.
The Emory Clinic

Filed April 11, 1985

Robertshaw Controls Co.
University of Pennsylvania
William Carey College

[108] *See supra* paras. 71–73. For example, with respect to marketing and sales expenses for AT&T-COM's provision of "incidental" CPE used in private line data networks, we would expect that the allocation factor employed not be based on relative revenues or assets, but on some factor that more closely approximates actual benefits accruing to the regulated and unregulated activities. We also expect that the plan will respond to NATA's concerns that AT&T keep accurate records and use actual transaction records, rather than estimations, wherever practicable.

Filed April 12, 1985

The Christian Broadcasting Network, Inc.

Filed April 15, 1985

Allied Instrumentation Laboratory
Eastern Airlines, Inc.
Finnell Corporation
Gold Kist, Inc.
Morgan Keegan & Company, Inc.

Filed April 16, 1985

The Kissell Company
Petroleum, Inc.

Filed April 18, 1985

Pizza Hut, Inc.

Filed April 19, 1985

Thomson McKinnon Securities Inc.

Filed April 22, 1985

Boston College
Kaman Corp.
Provident Mutual
Sheplers
Systems Engineering and Manufacturing Corp.

Filed April 24, 1985

Kodak

Filed April 26, 1985

Mississippi Chemical Corp.

Filed April 29, 1985

Borg-Warner Corp.
Compass Computer Services Inc.

Filed April 30, 1985

UCCEL Corp.

Filed May 3, 1985

800 Flowers, Inc.

Filed May 6, 1985

Automatic Data Processing
General Electric Information Services Company
Ringsby Truck Lines, Inc.

Filed May 7, 1985

Doreen Bussone [Letter to President, United States 2/7/85]

Filed May 8, 1985

Hibernia Bank
Manville Service Corp.

Filed May 9, 1985

Foley's
Pacific Mutual

Comments not referencing CC Docket No. 85-26

Consolidated Freightways (February 12, 1985)
Merrill Lynch & Co., Inc. (March 25, 1985)
Mr. Fred Steele (February 26, 1985)
Motive Engineered Products Corporation (filed February 20, 1985)
United States Steel Corporation (filed April 4, 1985)

[FR Doc. 85-23605 Filed 10-2-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

Oversight of the Radio and TV Broadcast Rules

AGENCY: The Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the Order, Oversight of the Radio and TV Broadcast Rules, Mimeo No. 7001, published in the **Federal Register** on September 23, 1985 at 50 FR 38529, there is an error in the Alphabetical Index for Part 73 in the listing for "Ownership, Multiple".

It is corrected here to read as follows:

Ownership, Multiple.....73.3555

FOR FURTHER INFORMATION CONTACT: Steve Crane, Mass Media Bureau, (202) 632-5414.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-23601 Filed 10-2-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 84-894; RM-4661; RM-4707; RM-4737]

FM Broadcast Station in Boonville, Canajoharie, Deposit, Frankfort, and Sidney, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein allocates: (1) Channel 268A to Boonville, New York, at the request of Edward Murphy; (2) Channel 227A to Canajoharie, New York, at the request of WAMC; (3) Channel 234A to Deposit, New York, at the request of Hank Strong; and (4) Channel 235 to Frankfort, New York, at the request of WTMK Broadcasting Corporation. These channels could provide each community with a first local FM Service. Additionally, the request of Robert Raide to substitute Channel 235 for Channel 265A at Sidney, New York, is denied.

EFFECTIVE DATE: November 4, 1985.

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.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specified sections are cited to text.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Boonville, Canajoharie, Deposit, Frankfort and Sidney, New York) MM Docket No. 84-894, RM-4661, RM-4707, RM-4737.

Adopted: September 19, 1985.
Released: September 27, 1985.

By the Chief, Policy and Rule Division.

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 49 FR 38674, published October 1, 1984, requesting comments on proposed FM allotments to the above-captioned communities. Comments were filed by Robert Raide ("Raide"), WTMK Broadcasting Corporation ("WTMK"), DGR Communications, Inc. ("DGR"),[1] WAMC, Inc. ("WAMC"), Delaware County Broadcasting Corporation ("Delaware. County"), Hank Strong ("Strong"), and Atwood Broadcasting Corporation ("Atwood"). Reply comments were filed by Raide, WTMK, WAMC, Delaware County, DGR and Strong.

2. As stated in the *Notice*, FM channels were proposed for Boonville and Canajoharie in the Docket 84-231 proceeding.[2] WTMK filed a petition to

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[1] DGR's comment respond not only to the proposed allotment at Deposit, in response to its own request, but also to the petitions for allotments at Sidney and Frankfort. However, these comments are procedurally defective as they were not accompanied by a Certificate of Service showing that it had furnished these other petitioners with a copy as required. See § 1.1201(g) of the Commission's Rules paragraph 9 of the *Notice* and paragraph 4 of the Appendix thereto. Therefore, DGR's comments will not be considered herein.

[2] *Implementation of BC Docket 80-90 to Increase the Availability of FM Broadcast Assignments*, 49 FR 11214, published March 26, 1984.

allocate Class B Channel 235 to Frankfort, New York, prior to the adoption of the omnibus *Notice*. In accordance with the Commission's *Public Notice*,[3] the petition was accepted as a counterproposal to the Boonville and Canajoharie requests. The Frankfort request also conflicted with Raide's request to allocate Channel 235 to Sidney, New York, and DGR's request to allocate Channel 235 to Deposit, New York. Alternate channels were proposed for Boonville and Canajoharie which have removed the conflict with Frankfort. However, Channel 235 is the only Class B channel which can be allocated to either Sidney, Frankfort or Deposit. Therefore, the Commission sought comments on three optional allotment plans, as follows:

City	Channel No.	
	Present	Proposed
Option I		
Boonville, New York		268A
Canajoharie, New York		227A
Deposit, New York		235
Frankfort, New York		250A
Option II		
Boonville, New York		268A
Canajoharie, New York		227A
Frankfort, New York		235
Option III		
Boonville, New York		268A
Canajoharie, New York		227A
Deposit, New York		265A
Frankfort, New York		250A
Sidney, New York	265A	235A

The Commission also requested interested parties for Frankfort, Sidney and Deposit to consider the possibility of available Class A or B1 channels and to express a willingness to apply for these alternate channels.

3. Atwood filed comments in support of a first local allotment at Boonville in the Docket 84-231 proceeding. It later filed comments in which it states that due to changed circumstances it must withdraw its intention to apply for the frequency. However, an additional Boonville expression of interest submitted by Edward Murphy provides the requisite interest.[4] Channel 268A can be allocated to Boonville without conflicting with any of the other proposals under consideration herein.

4. WAMC, licensee of noncommercial educational FM Station WAMC, Albany, New York, filed comments in support of the allocation of Channel 227A to Canajoharie. It states that this proposal presents the first opportunity for an FM station to be allocated to the community. Further, it urges the reservation of the channel for noncommerical educational use, stating that Canajoharie does not receive adequate noncommercial service at the present time and that there are no channels available in the area within the reserved portion of the band. WAMC also points out that it is the only party to support the allotment. Channel 227A can be allocated Canajoharie without conflicting with any of the other proposals under consideration herein.

5. Raide filed comments supporting his request to have Channel 235 allocated to Sidney. He states that Sidney should be preferred among the three communities as it has the largest population, with 4,861 persons,[5] and is also an "independent" community as it is not located near any larger city. Raide claims that Frankfort, with its smaller population, is only a suburb of Utica, which already has five FM stations, and it also located close to Herkimer, New York, which has an FM station. Further, he argues that if Channel 235 is substituted for Channel 265A at Sidney, the Commission can then reallocate Channel 265A to another community, thus making possible new FM services to each of the competing communities.

6. WTMK, the proponent for the Frankfort allotment, filed comments reiterating its intention to apply for the channel. It states that Frankfort should be preferred for the Class B operation since it could provide a first local service to the community as well as an additional service to 320,180 persons residing in Herkimer and Oneida Counties, and 500,000 persons residing within Montgomery, Otsego, Madison, Oswego and Onondago Counties. It contends that there are a number of ethic and minority persons residing within the service area of a Frankfort Channel 235 operation and it would utilize the Class B frequency to provide needed specialized service to these groups. WTMK's expression of intent is limited to the Class B channel. It notes that Sidney already receives local AM and FM service from Raide's commonly owned stations and believes that the residents would not be any better served by upgrading Station WSID to the higher powered channel. As to the Deposit allotment, it states that Channel 234A can be allocated and serve the needs of that community's 1,897 residents.

7. Strong filed comments in support of the Deposit allocation. In analyzing the three proposed allotment plans, he states that Option II, which would allocate Channel 235 to Frankfort, should be rejected since under that plan, only three communities would receive channels. However, Options I and III would provide new service to at least four communities, including Deposit. Strong notes, in comparing these two options, that Sidney already has an existing FM station, WSID, which is licensed to Raide, whereas Deposit and Frankfort are presently without such local service. He states that there is no persuasive reason to upgrade WSID's operation at the expense of Deposit receiving its first local service. Strong argues that a new station at Deposit would need the higher powered Class B facilities in order to compete with the already established Sidney station, noting that the two communities are only 18 miles apart. He states that upgrading WSID to the Class B frequency would enable the station to dominate the market and thereby hinder the development of a competitive Class A station in Deposit. Strong concludes by reiterating his intention to apply for Channel 235, if allocated to Deposit.

8. Delaware County, licensee of Stations WDLA AM-FM, Walton, New York, filed comments in support of Channel 235 at Frankfort and a counterproposal, which it designated as Option II-A. Option II-A would make the following allotments:

City	Channel No.	
	Present	Proposed
Boonville, New York		268A
Canajoharie, New York		227A
Deposit, New York		234A
Frankfort, New York		235
Sidney, New York	265A	No change

Delaware County states that its counterproposal is preferable to the originally proposed allocation plans in that it would provide a first local FM service to each of the communities presently without such service and would also provide the largest such community, Frankfort, with the higher powered Class B channel. It argues that the disparity in population between Sidney and Frankfort differs from that shown in the *Notice*. The populations specified in the *Notice* are that of the

[3] See *Public Notice*, Mimeo No. 1306, released December 9, 1983.

[4] Mr. Murphy's expression of interest in the Boonville allocation was timely filed as a reply comment in Docket 84-231. In placing the Docket 84-231 pleadings in this new docket, the staff inadvertently omitted Murphy's filing from the list of parties to be served. However, as his comment is timely filed and the Boonville proposal does not conflict with any of the other proposals under consideration here, we will accept his pleading as a valid statement of interest.

[5] All population figures are taken from the 1980 U.S. Census, unless otherwise noted.

"villages," with Sidney having 4,861 persons, and Frankfort having 2,995 persons. It contends that the villages of Frankfort and Sidney are closely associated with a number of directly adjacent villages, sharing a strong local identity and a number of common local services, which the U.S. Census recognizes as the "townships" of Frankfort, with a population of 7,686 persons, and Sidney, with a population of 6,856 persons. It is this "township" population which Delaware County contends is the more accurate figure to be used in this comparative proceeding. However, whichever population figures the Commission chooses to use, Delaware County argues that Sidney should not receive the Class B allotment as it is already served by two local aural services, whereas neither Deposit nor Frankfort have any local service. If the Commission does allot the new channel to Sidney, Delaware County states an intention to apply for the frequency and therefore requests that WSID's license not be modified herein.

9. Raide, in reply comments, reiterates his belief that Sidney should receive the Class B allotment. He asserts that Delaware County's support for the Frankfort allocation is an attempt at economic protection by "parking" the higher powered channel at a community 65 miles away from its Walton operation. He argues that no station, including WDLA, is entitled to such economic protection, citing *Sanders Brothers Radio* v. *F.C.C.*, 309 U.S. 470 (1940). Raide also questions Delaware County's statement of intent for the Sidney allotment as being merely an effort to interfere with the desired upgrade of Station WSID. According to Raide, a commonly-owned Sidney Channel 235 operation and Station WDLA at Walton would result in 1 mV/m contour overlapping of the two signals, a result which is prohibited by § 73.240 of the Commission's Rules. Therefore, it contends that Delaware County's statement of intent should not be considered valid. However, in the event that the Commission believes otherwise, Raide states that he will accept the allocation of Channel 235 to Sidney without the modification of his license at this time.

10. Strong, in reply comments, reiterates his desire to have Channel 235 allocated to Deposit. He states that a Class A frequency is available for use at Frankfort, as proposed in Option III, whereas no Class A other than Channel 265, was shown as being available for Deposit. Strong questions the availability of Channel 234A, as suggested by Delaware County and WTMK, as it was not proposed by the Commission and no party submitted an engineering study confirming the availability. In a Supplement to his reply comments, however, Strong indicates that should a Class A channel be available and allocated to Deposit, he would apply for use of the frequency.[5]

11. WTMK and Delaware County separately submitted reply comments in which they support the Frankfort Channel 235 allotment and the allocation of Channel 234A to Deposit.

12. The allotments at Boonville and Canajoharie can be made without impacting the proposals for Channel 235. Expressions of interest in utilizing both channels have been received and we believe the public interest would be served by providing each community with its first local service. The allocation of Channel 268A to Boonville requires a site restriction of 1.2 kilometers (0.7 miles) east to avoid a short-spacing to an application for use of Channel 269A at Pulaski, New York, and Channel 227A can be allocated to Canajoharie without any site restriction. However, we will not reserve Channel 227A at Canajoharie for noncommercial educational use, as requested by WAMC. Noncommercial educational stations are usually located within the reserved portion of the FM spectrum, that is on Channels 201–220. The Commission has only rarely reserved channels within the commercial portion of the band, such as Channel 227A, and only upon a clear and convincing showing that no channel within the reserved portion of the band is available for allocation to the community due to existing Canadian allocations or TV Channel 6 interference problems. This, WAMC has not done. It merely states that no channel within the reserved portion of the band is "feasible" for use at Canajoharie. However, WAMC is free to submit an application for Channel 227A specifying noncommercial educational programming.

13. Before we arrive at a decision on which community will receive the Channel 235 allotment, the issue of modifying WSID's license needs to be addressed. While we did propose to modify the license of Station WSID herein, we conditioned this upon the absence of another expression of interest in use of the new channel, in accordance with *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976). Delaware County, although supporting the allocation at Frankfort, clearly stated that it would indeed apply for Channel 235 at Sidney, if allocated. Raide attacks this expression of interest by arguing that it cannot be valid since Delaware County's Station WDLA signal and the Sidney signal would cause prohibiting overlapping of signals, thus requiring WDLA to divest itself of the Walton station. We do not disagree that Delaware County might have to divest itself of Station WDLA, however, we note that Raide desires to do the same. It wishes to "trade-in" a lower powered Class A operation in preference to the higher powered Class B. Therefore, we find that Delaware County's statement of intent is valid. In accordance with *Modification of FM and TV Licenses*, 98 F.C.C. 2d 916 (1984), Raide would need to show the availability of a second channel of the same class for use by other interested parties in order for its Station WSID license to be modified at this time. However, we have confirmed the fact that Channel 235 is the only Class B frequency which can be allocated to Sidney.

14. This leaves for resolution the competing desires for Channel 235 at Sidney, Deposit and Frankfort. As stated earlier, Channel 235 is the only Class B channel which can be allocated to any of these communities. Additionally, the Commission has confirmed that there are no Class B1 channels available for allocation to these communities. Therefore, we look to the allocation priorities set forth in *Revision of FM Assignment Policy and Procedures, supra*, to aid us in making a decision. The priorities set forth therein are:

(1) First aural service;

(2) Second aural service and first local service

(3) Other public interest matters

Neither Frankfort nor Deposit receive any local aural service. Sidney, however, has both a fulltime AM and FM station; which are commonly owned by Raide. On this basis alone, we believe that Sidney should not be the preferred community to receive the Class B allotment. However, to buttress this position, we note that because of Delaware County's statement of interest in the Sidney allotment, the license of Station WSID could not be modified herein and Channel 265A would remain allocated to the community. Therefore, Channel 235 at Sidney would not, in reality, be a first local FM service, but a second.

15. Class B channels are designed to provide wide-coverage service and are therefore usually allocated to large

[5] The Commission's rules do not generally permit the acceptance of such unauthorized pleadings, filed after the record has closed. Here, however, the pleading provides the Commission with necessary clarification as to whether a proposed channel would be utilized, if allocated. Therefore, Strong's Supplement to its reply comments will be accepted and considered herein.

communities or to those which are rural in nature, isolated from larger cities, with its population base spread out over a wide area. Neither Raide nor Strong provided us with any showing that a Class B channel at Sidney or Deposit would provide service to any unserved or underserved areas or that the higher powered channel was necessary to provide coverage to the entire community of license. Deposit, with a population of 1,897 persons, is located approximately 18 miles from Sidney. Strong urges the allocation of channel 235 to Deposit solely on competitive grounds, stating that a new station at Deposit would need the higher facilities in order to effectively compete with the established Sidney stations. His opposition to Frankfort receiving the Class B channel appears to be based on an unsureness as to whether there is, in fact, a Class A channel available for Deposit other than WSID's current channel. However, in his supplemental reply comments, he states that if a Class A channel is available, he will apply for it. We believe that Deposit is a community deserving of its first local FM service. However, the fact that a new station there may have to compete with Sidney's established radio stations is not sufficient justification to override the allocation of the Class B frequency to the larger community of Frankfort. In an effort to provide Deposit with its needed first service, we have confirmed the fact that Channel 234A can be allocated to Deposit without any site restriction.

16. As proposed in Options II and III, Frankfort can be allocated either Class A Channel 250 or Class B Channel 235. Frankfort is a substantial community with a village population of 2,995 persons and a township population of 7,686 persons, deserving of its first local FM service. We agree with Raide that a Channel 235 allotment at Frankfort would also serve Utica as the communities are only 9 miles apart. However, WTMK states that in addition to providing the first local service at Frankfort, the wide coverage channel is necessary in order to fill the present void in service directed to the substantial minority and ethnic population residing within its own county and the nearby counties of Oneida, Montgomery, Otsego, Madison, Oswego and Onondago. Additionally, WTMK has expressed an intention to apply only for the Class B channel and no other party filed comments supporting the lower powered Class A. Channel 235 can be allocated to Frankfort in compliance with the Commission's separation requirements, with a site restriction of 10.9 kilometers west.

17. We believe that the public interest would best be served by the allocation of Channel 234A to Deposit, Channel 235 to Frankfort, Channel 268A to Boonville and Channel 227A to Canajoharie, as these communities first local FM allotments. The concurrence of the Canadian government has been received as these communities are located within 320 kilometers (200 miles of the U.S.-Canadian border.

18. Accordingly, it is ordered, pursuant to the authority contained in §§ 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, That effective November 4, 1985, the FM Table of Allotments, § 73.202(b) of the Rules, is amended with respect to the communities listed below, to read as follows:

City	Channel No.
Boonville, New York	268A
Canajoharie, New York	227A
Deposit, New York	234A
Frankfort, New York	235

19. The filing window for applications on these channels will open on November 5, 1985 and close on December 5, 1985.

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

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

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 85-23602 Filed 10-2-85; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. FE-84-01; Notice 4]

Light Truck Average Fuel Economy Standards Model Year 1987

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice establishes a new light truck average fuel economy standard for model year 1987. The standard is required to be established at the maximum feasible level, under section 502(b) of the Motor Vehicle Information and Cost Savings Act. The 1987 light truck fleet will consume 520 million fewer gallons of gasoline over its lifetime than it would have consumed if light truck average fuel economy were to remain at the levels of the 1986 standards.

DATES: The amendments made by this rule to the Code of Federal Regulations are effective November 4, 1985. The standard is applicable to the 1987 model year. Petitions for reconsideration must be submitted within 30 days of publication.

ADDRESS: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Shelton, Office of Market Incentives, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202-755-9384).

SUPPLEMENTARY INFORMATION:

Background

On March 8, 1984, NHTSA published in the **Federal Register** (49 FR 8637) a notice of proposed rulemaking (NPRM) on the establishment of light truck average fuel economy standards for model years 1986 and 1987. The issuance of the standards is required by section 502(b) of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2002(b). That provision requires the Secretary of Transportation to set light truck standards at the "maximum feasible average fuel economy level" for each model year after 1978. In determining the "maximum feasible" level, the Secretary is directed to consider four factors: Technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the Nation to conserve energy. See 15 U.S.C. 2002(e).

The agency's March 1984 NPRM proposed ranges of possible standards for all types of light trucks, with the 1986 composite standard to be set within the range of 20.0 to 21.5 mpg and the 1987 composite standard to be set within the range of 20.0 to 22.5 mpg. Separate ranges of standards were also proposed for two-wheel drive and four-wheel drive light trucks. These separate standards were proposed as optional means of compliance, consistent with the agency's practice in previous proceedings. The separate standards account for the fact that different

manufacturers' fleets contain significantly different proportions of four-wheel drive trucks, which tend to have lower fuel economy.

On October 22, 1984, NHTSA published in the **Federal Register** (49 FR 41250) a final rule establishing a light truck average fuel economy standard for model year 1986. That notice also amended the light truck average fuel economy standard for model year 1985. NHTSA stated that a light truck fuel economy standard for model year 1987 would be issued at a later date. The agency stated that it needed additional time to complete its analysis of issues relating to a standard for that model year, noting that some of the issues, particularly those relating to market trends, are characterized by uncertainty and complexity.

The 1987 standard established by this notice is based on the same NPRM as the 1986 standard adopted by NHTSA in October 1984. There is a large degree of commonality of facts and circumstances in setting standards for these two model years. NHTSA relied in part on analyses developed for the October 1984 notice in developing this final rule. Accordingly, the agency incorporates by reference that notice and its accompanying analyses as part of the rulemaking record for this final rule. Also, this notice freely adopts some of the discussion presented in that notice.

Among other things, the October 1984 notice and accompanying analyses provide a more complete discussion of the background for this rulemaking, including analysis of a continuing shift in consumer demand for light trucks. The demand shifts, which are due primarily to the recent trend of stable or diminishing gasoline prices, have resulted in higher levels of sales of larger light trucks and larger displacement engines than were previously anticipated by either the manufacturers or the agency.

On December 10, 1984, NHTSA published in the **Federal Register** (49 FR 48064), a questionnaire requesting data from manufacturers and the general public on the ability to increase average fuel economy levels for passenger car and light truck fleets during MY's 1985–90. The responses received from manufacturers in late February and early March 1985 updated earlier data submitted in response to the agency's March 1984 NPRM. Also, on June 7, 1985, Ford submitted a revised projection of its fuel economy capability for MY 1987 light trucks. The agency considered these updated data in determining the appropriate levels of the MY 1987 standards.

Summary of Decision

Based on the agency's analysis of projections of future gasoline prices, current sales data, and the manufacturers' most recent projections for future sales, NHTSA believes that market trends toward large vehicles and engines are likely to continue through 1987. Our analysis leads us to establish a composite average fuel economy standard of 20.5 mpg for model year 1987 light trucks. Separate standards of 21.0 mpg for two-wheel drive light trucks and 19.5 mpg for four-wheel drive light trucks are also established.

Basis for the Final Standards

a. Technological Feasibility

The agency focused its detailed analysis of manufacturer capabilities on General Motors (GM), Ford and Chrysler, which together account for over three-quarters of light truck sales. Other light truck manufacturers have significantly higher average fuel economy capabilities than the three largest domestic manufacturers because they do not offer the larger, less fuel efficient, light trucks made by domestic manufacturers to satisfy the needs of business users. These other manufacturers are thus not significantly affected by fuel economy standards which are set primarily on the basis of the capabilities of GM, Ford and Chrysler.

In evaluating the MY 1987 fuel economy capability of GM, Ford and Chrysler, the agency analyzed data submitted over a several-year period. As anticipated by the NPRM, projections submitted by the manufacturers in response to an October 1982 questionnaire had largely been negated by events, including a shift in consumer demand, attributable to economic recovery and steady or falling gasoline prices, toward larger light trucks and larger displacement engines.

Ford's comments on the March 1984 NPRM indicated that it believed it could achieve 20.4 mpg for its combined fleet in MY 1987, a figure which was later revised to 20.3 mpg based on errors in calculating the projection. That projection included a 0.5 mpg fuel economy penalty due to anticipated increases in the stringency of the Environmental Protection Agency's (EPA's) oxides of nitrogen (NO_x) standards and a 0.2 mpg fuel economy penalty due to EPA's "Extended Useful Life" (EUL) regulation, which took effect in MY 1985. (EPA's final rule, issued after the submission of Ford's original comments, increased the stringency of the NO_x standards for MY 1988 rather than MY 1987.)

Ford's comments indicated that it might be able to achieve a 0.7 mpg increase over its adjusted 20.3 mpg projection, based on several potential programs (primarily powertrain improvements) which had not yet been approved by senior management. As part of this potential increase, Ford believed it might be able to achieve a 0.2 mpg gain through powertrain recalibrations to minimize the claimed fuel economy losses associated with EPA's (NO_x and EUL regulations.

Ford also indicated that its MY 1987 fuel economy could be lower than 20.3 mpg due to market risks. This possibility existed for both MY 1986 and MY 1987, and was discussed in the MY 1986 final rule. Ford submitted a "high risk" scenario, including greater consumer demand for large trucks, which could result in a fuel economy loss of 0.6 mpg. That company indicated that its fuel economy could decline by another 0.2 mpg if standard full-size van production remained at plant capacity (as it was for MY 1984 and is currently for model year 1985). Thus, Ford projected a capability of between 19.5 mpg and 21.0 mpg.

In response to NHTSA's December 1984 questionnaire, Ford indicated (in a submission dated February 28, 1985) that its MY 1987 fuel economy could be as high as 21.8 mpg. This number included several technological improvements not included in its 20.3 mpg projection, the details of which are subject to a claim of confidentiality. That response also indicated, however, that the 21.8 mpg projection was subject to both market and technological risks. Ford projected that potential mix shifts could reduce its fuel economy capability by 0.6 mpg. That company also identified technological risks, e.g., lower than anticipated gains in fuel economy for specific "hardware" improvements, which could reduce Ford's fuel economy by an additional 0.8 mpg. Thus, in its February 1985 submission, Ford projected a capability of between 20.4 mpg and 21.8 mpg.

Ford's most recent update of its model year 1987 fuel economy projections, submitted on June 7, 1985, indicated that its maximum fuel economy is 21.0 mpg, a number which is subject to possible adverse mix shifts of 0.4 mpg and technological risks totaling 0.3 mpg. A June 14, 1985, submission by that company indicated that the 0.8 mpg reduction from its February 1985 upper limit capability projection of 21.8 mpg occurred specifically because actual test data regarding some programs have indicated smaller fuel economy improvements than projected, and because lead time problems prevented

the incorporation of one of its anticipated fuel economy improvement programs on the 1987 models. That program will now be incorporated for 1988 models. Ford also stated that an anticipated shift in mix, based on actual sales experience and current sales trends, caused a 0.2 mpg reduction from the prior projection. More detailed information, subject to a claim of confidentiality, was also submitted to the agency. Hence, this latest Ford projection anticipates a maximum capability of between 20.3 mpg and 21.0 mpg.

NHTSA has analyzed the projections and data submitted by Ford and concludes that the 20.3 mpg to 21.0 mpg range represents that company's maximum fuel economy capability for its light truck fleet in model year 1987. In the final rule for MY 1986, NHTSA projected that Ford could achieve no higher than 20.4 mpg for that year. Currently, that company projects it can achieve 20.2 mpg in MY 1986. The 0.2 mpg difference is attributable to a loss due to not meeting certain technological objectives, which is partially offset by minor changes in actual test fuel economy values.

The 21.0 mpg upper limit figure for model year 1987 would thus represent a 0.8 mpg improvement in Ford's fuel economy over model year 1986. It assumes that Ford can achieve a 0.8 mpg gain by making a variety of technological improvements, generally relating to improved engines, the details of which are subject to a claim of confidentiality. That figure also assumes that Ford can raise its fuel economy by 0.1 mpg due to maturity of certain engine control systems. The improvements would be slightly offset by a 0.1 mpg loss due to minor model mix shifts toward less fuel-efficient vehicles as well as minor changes in engine and transmission usage within model lines.

The 20.3 mpg figure for model year 1987 is based on the possibility of continued sales shifts toward larger engines and vehicles, with a potential 0.4 mpg loss (from the above-mentioned 21.0 mpg figure), as well as technological risks totaling 0.3 mpg.

The agency has concluded that other technological actions, including those discussed in Ford's submissions, are either unlikely to be feasible due to lead-time limitations or they present too high a risk of being successfully implemented by the 1987 model year to be relied on by the agency for the purpose of setting standards. NHTSA's consideration of the technological and marketing risks associated with the 20.3 mpg figure is discussed later in this document. In evaluating the potential magnitude of these risks, the agency has concentrated its analysis on Ford because that company is the "least capable" manufacturer, with regard to fuel economy capability for MY 1987.

As suggested, above, NSTSA projects that both GM and Chrysler can achieve higher fuel economy than Ford for their MY 1987 light truck fleets. In GM's comments on the NPRM, that company indicated that it believed it could achieve 23.5 mpg for MY 1987. This figure was revised downward in GM's latest projection, provided on March 1, 1985, in response to the December 1984 questionnaire. GM now projects that its MY 1987 light truck fuel economy will be between 21.1 and 22.4 mpg. GM's estimated MY 1986 light truck fuel economy is 20.3 mpg.

A large portion of the improvement in GM's estimated fuel economy results from the anticipated introduction of new full-size pick-ups in MY 1987. As a consequence of weight reduction and improved aerodynamic drag associated with these new vehicles, GM's fuel economy capability rises 1.0 mpg. A number of other technological improvements in the GM fleet are expected to add an additional 1.4 mpg to that company's fuel economy, although these will be partially offset by another change (subject to a claim of confidentiality) causing a 0.3 mpg decline. These additions and subtractions to GM's estimated MY 1986 capability result in the 22.4 mpg estimate of possible MY 1987 light truck fuel economy.

GM's March 1985 submission also indicated that a program risk (the details of which are subject to a claim of confidentiality) could result in a decline in its MY 1987 fuel economy of up to 1.3 mpg. If this should occur, GM's fuel economy would be 21.1 mpg, not significantly higher than the maximum estimated by Ford (21.0 mpg).

NHTSA believes that Chrysler could achieve a MY 1987 fuel economy of 21.6 mpg, which is that company's estimate provided in its February 8, 1985, response to the December 1984 questionnaire and in its March 20, 1985, carry-back plan. This is a minor change from Chrysler's 21.8 mpg projection provided in response to the NPRM, and would represent a 1.7 mpg improvement over its current projection of 19.9 mpg for MY 1986. Chrysler's current MY 1986 projection is significantly lower than that projected by NHTSA in the MY 1986 final rule primarily due to the deferral of introducing a new compact pickup from MY 1986 to MY 1987.

The weight and aerodynamic drag reductions associated with the introduction of a new compact pickup would add 0.9 mpg to Chrysler's projected MY 1986 fuel economy. The use of more fuel-efficient transmissions on several vehicles adds another 0.6 mpg to that company's capability. Various changes in engines add an additional 0.4 mpg. One factor which is likely to have a small negative impact on Chrysler's composite fuel economy is that anticipated introduction of a new four-wheel-drive compact pickup, which would raise the proportion of four-wheel drive vehicles in the company's fleet. This contributes to a 0.2 mpg decline in Chrysler's composite fuel economy. The resultant value is 21.6 mpg.

As in the case of Ford, the agency concluded that fuel economy improvements beyond those discussed above are not feasible for GM and Chrysler.

b. Economic Practicability

The agency has thoroughly considered economic factors in its standard-setting analysis, particularly the potential costs incurred by manufacturers should standards necessitate the sale of a restricted model mix.

It is always possible that higher levels of fuel economy could be achieved by the domestic manufacturers if they were to restrict severely their product offerings. For example, sales of particular larger light truck models and larger displacement engines could be limited or eliminated entirely. As discussed by the October 1984 notice, Ford submitted an analysis of the potential effects of restricting product offerings in this manner. This analysis showed that to achieve a 1.5 mpg average fuel economy benefit through such restrictions, sales reductions of 100,000 to 180,000 units at Ford could occur, with resulting employment losses of 12,000 to 23,000 positions at Ford, its dealers and suppliers. The agency believes this analysis to be a reasonable projection of the impacts of restricting the availability of larger light trucks in the current market.

Impacts of this magnitude go beyond the realm of "economic practicability" as contemplated in the Act. This is particularly true since it is likely that a standard set at a level resulting in impacts of this magnitude would result in little or no net fuel economy benefit. This is because consumers could meet their demand for larger light trucks by merely shifting their purchases to other manufacturers which continue to offer such trucks. The other manufacturers could increase sales of these vehicles without risking noncompliance with the standards. An additional possible negative economic consequence would

be reduced competition in the market for larger light trucks. Given the small number of manufacturers producing larger light trucks, a decision by Ford (or GM or Chyrsler) to significantly reduce its role in this market could have serious consequences for competition.

Achieving an average fuel economy benefit of somewhat less than 1.5 mpg through restrictions would result in similar types of effects, but of a lesser magnitude. Again, however, a standard resulting in such impacts would likely achieve little or no net fuel economy benefit, since consumers could easily meet their demand for larger light trucks by shifting purchases to other manufacturers. A standard could conceivably be set at a level to require an industrywide mix shift. Consumers would then be unable to obtain the vehicles they demand by shifting purchases of larger light trucks from one manufacturer to another. The negative economic consequences would be much greater than those discussed above, however, and clearly beyond the realm of "economic practicability" as contemplated in the Act.

The agency's analysis of the economic impacts associated with the manufacturers' efforts to improve the fuel economy of individual light truck models for model year 1987 is set forth in a Final Regulatory Impact Analysis, copies of which are available in the agency's Docket Section. The agency projects an average retail price increase of $130 per vehicle to result from product improvements designed to enhance fuel economy. This price increase would be offset by estimated operating cost savings of $155 for the average 1987 light truck, due to reduced lifetime gasoline consumption. Overall, the agency projects the domestic manufacturers' automotive operations to remain profitable for the 1987 model year, based on current market trends.

c. Effects of Other Federal Standards on Fuel Economy

As discussed by the October 1984 notice, three new light truck exhaust emission requirements were cited by several commenters as having possible adverse impacts on fuel economy. The first requirement is a change in stringency of hydrocarbon and carbon monoxide emissions standards, which took effect in the 1984 model year. The second requirement extends the useful life period for which manufacturers must certify compliance with emissions standards, beginning with the 1985 model year. The third requirement was the anticipated increase in stringency of light duty truck emission standards for oxides of nitrogen.

With regard to 1984 emissions standards changes and the extended useful life regulation, the agency concurs in a technical analysis provided by the Environmental Protection Agency (EPA) which indicates that there is no causal link between these regulations and any loss in fuel economy experienced by the manufacturers. An assessment of the 1984–85 emissions regulation prepared by the Transportation Systems Center, Research and Special Programs Administration, Department of Transportation, supported the EPA conclusions. Therefore, the agency has concluded that these changes will not affect the 1987 light truck fuel economy levels.

On October 15, 1984, EPA issued an NPRM covering a number of light duty and heavy duty truck emission standards, including a more stringent NOx standard for MY 1987. As indicated above, EPA issued a final rule on March 15, 1985, which implemented the more stringent light duty truck NOx standard for MY 1988 rather than MY 1987.

In addition to the three EPA requirements cited by several commenters, General Motors and American Motors each cited other EPA emissions requirements that could affect light truck fuel economy. General Motors argued that future light truck diesel particulate emission standards could effectively band diesel engines in such vehicles, reducing fuel economy levels accordingly. EPA had indicated that these standards can be met with available technology. However, for certain vehicles EPA concedes that the standards may require the use of particulate traps which could produce a fuel economy penalty of approximately 2 percent per affected vehicle. NHTSA is accepting the EPA analysis. Should the anticipated fuel economy penalty occur, however, the impact on fuel economy would be very small. Due to the small number of diesel light trucks which are produced, the potential effect on the domestic manufacturers' average fuel economy levels projected above would be much less than 0.1 mpg.

American Motors argued that changes in EPA test procedures will result in a fuel economy loss. American Motors did not provide an analysis of the quantitative impact of the proposed rule on American Motor's average fuel economy levels, and none of the other manufacturers argued for the existence of such an impact. In its comments, American Motors noted that the potential impact of the change in EPA procedures could be offset through testing additional vehicles, but pointed out that such testing might be too expensive for a smaller manufacturer. Should American Motors experience a fuel economy loss, its average fuel economy levels will still be high enough to easily comply with the standards promulgated herein. Therefore, the agency is not making a specific adjustment in the standards to account for this potential effect.

As discussed in the agency's Final Regulatory Impact Analysis, changes in Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment*, could permit reduced weight and greater flexibility to design vehicles with improved aerodynamics. However, leadtime constraints preclude manufacturers from utilizing this additional flexibility beyond what is already reflected in their current model year 1987 fuel economy estimates. A proposed change in Federal Motor Vehicle Safety Standard No. 208, *Occupant Crash Protection*, relating to enhanced comfort and convenience of safety belts, could result in a slight increase in weight. Since the increase in weight would be less than five pounds, however, there would be a negligible effect on light truck fuel economy.

d. Need of the Nation To Conserve Energy

The United States imported 15 percent of its oil needs in 1955. By 1977, the import share was 46.4 percent and the value of imported crude oil and refined petroleum products was $67 billion (stated as 1984 dollars). While the import share of total petroleum demand declined after that year, the cost continued to rise to a 1980 peak level of $93.2 billion (1984 dollars). By 1984, the import share had declined to 30.9 percent at a cost of $54.2 billion. Thus, the concern over dependence on imported petroleum, as measured by these indicators, has lessened in the past several years.

Moreover, imports from OPEC sources have been declining, from a high of 6.2 million barrels per day and 70.3 percent of imports in 1977 to 2.0 million barrels per day and 37.6 percent of imports in 1984. Imports from non-OPEC sources have risen slightly from a low of 2.0 million barrels per day or 28.5 percent of imports in 1976, to 2.6 million barrels per day or 56.7 percent in 1984. In 1984, Mexico was the largest supplier to the U.S. of crude oil and petroleum products, followed by Canada. As imports have shifted to non-OPEC sources, the United States' supply of petroleum has become less vulnerable to the political instabilities of some OPEC countries, as compared to the situation in the mid-1970's.

Overall, the nation is much more energy independent than it was a decade ago, when Congress passed the Energy Policy and Conservation Act, which established the automotive fuel economy regulatory program. Domestic oil production is higher than it was in 1975, total imports have dropped 20 percent since then, the value of the nation's imported oil bill has declined 27 percent since 1977 (on a net import basis the value of the nation's imported oil bill fell nearly 45 percent from 1980 to 1984), and the amount of imported oil from OPEC has dropped by 67 percent since the peak of 1977. In addition, the price of oil is now fully decontrolled, permitting the market to adjust quickly to changing conditions, and the Strategic Petroleum Reserve is well on its way to being filled.

According to Energy Information Administration (EIA) and Data Resources, Inc., projections, however, domestic production is expected to decline from a stable level of 10 MMB/D to about 8.5 MMB/D by 1995. Net imports are expected to rise from 4.5 to 5 MMB/D to about 7.5 (EIA) to 9.0 DRI MMB/D by 1995. This would result in imports approaching 50 percent of U.S. petroleum use by 1995. However, future projections about petroleum imports are subject to great uncertainty and may be overtaken by new domestic discoveries. Indeed, oil imports are very difficult to project beyond a year or two. For example, the EIA's *1977 Annual Report to Congress* projected that net oil imports by the U.S. would, in the "reference case," reach 11 million barrels per day by 1985. Net imports for this year are now forecast to be less than 4.5 million barrels per day, substantially less than half the level predicted in 1977.

The agency believes that energy conservation is important and notes that the 1987 light truck fleet will consume 520 million fewer gallons of gasoline over its lifetime than it would have consumed if light truck average fuel economy were to remain at the levels of the 1986 standards. This will make a positive contribution to the goal of petroleum conservation.

e. Setting the Average Fuel Economy Standard

The agency is required to set light truck standards at the "maximum feasible average fuel economy level," taking account of the four factors discussed above. In determining this level, the agency must take industry-wide considerations into account. The Conference Report on Title V of the Motor Vehicle Information and Cost Savings Act provides in this regard as follows:

> . . . a determination of maximum feasible average fuel economy should not be keyed to the single manufacturer which might have the most difficulty achieving a given level of average fuel economy. Rather, the Secretary must weigh the benefits to the nation of a higher average fuel economy standard against the difficulties of individual automobile manufacturers. Such difficulties, however, should be given appropriate weight in setting the standard in light of the small number of domestic automobile manufacturers that currently exist, and the possible implications for the national economy and for reduced competition association (sic) with a severe strain on any manufacturer. However, it should also be noted that provision has been made for granting relief from penalties under Section 508(b) in situations where competition will suffer significantly if penalties are imposed.

Senate Report 94–516, 94th Cong. 1st Sess. (1975), at 154–5.

As in the NPRM NHTSA's analysis concludes that Ford is the "least capable" manufacturer in regard to improving the average fuel efficiency of its light trucks. The agency projects that Ford could achieve an average fuel economy level between 20.3 and 21.0 mpg, while GM could achieve between 21.1 to 22.4 mpg and Chrysler could achieve 21.6 mpg.

As indicated above, the 21.0 figure for Ford is subject to a potential 0.4 mpg loss due to sales shifts toward larger engines and vehicles, and a potential 0.3 mpg loss due to technological risks. GM also faces a serious program risk which could lower its maximum fuel economy capability from 22.4 mpg to 21.1 mpg.

In this rulemaking, as in any rulemaking concerning fuel economy standards, it is difficult for the agency to project with any precision the effects of extra marketing programs on average fuel economy levels. This difficulty has several origins. First, the amount of improvement in average fuel economy through the use of such programs is fairly small. Second, there is considerable uncertainty involved in projecting sales mixes and the effects of extra marketing programs on those mixes. The further in advance of a model year that an agency attempts to make such projections, the greater the uncertainty in making them.

In deciding on the level of the MY 1987 standards, the agency nevertheless considered the possible effects of extra marketing actions in determining manufacturers' fuel economy capabilities for MY 1987 light trucks. Based on the agency's analysis of available data, including information provided by Ford concerning the effectiveness of past marketing efforts, the agency has concluded that the effect of such efforts on improving Ford's (the least capable manufacturer's) MY 1987 average fuel economy is likely to be minimal. In Ford's petition to amend the model year 1985 light truck fuel economy standards, the company indicated that could achieve up to a 0.4 mpg increase in its projected model year 1985 fuel economy through the use of marketing measures to shift sales mixes. However, 0.2 of this gain was projected to come at the expense of Ford's model year 1986 fuel economy. Thus, sales of certain fuel-efficient vehicles were merely being shifted from one model year to another, and any long-run improvement in fuel economy was very small. According to Ford, it did implement some of these programs for model year 1985, and achieved a gain of only 0.1 to 0.2 mpg.

The setting of maximum feasible fuel economy standards, based on consideration of the four required factors, is not a mere mathematical exercise but requires agency judgment. The agency has concluded that 20.5 mpg is the maximum feasible composite standard for the 1987 model year. This level balances the potentially serious adverse economic consequences associated with market and technological risks against Ford's opportunities, as the least capable manufacturer, to further increase its fuel economy levels. As the agency has consistently stated in the past, it has a responsibility to set standards at a level that can be achieved by manufacturers having a substantial share of light truck sales. Since Ford produces more than 30 percent of all light trucks subject to fuel economy standards, its capability has a significant effect on the level of the industry's capability and, therefore, on the level of the standards.

The agency's consideration of uncertainties is both prudent and required by the statute when selecting final standards. Uncertainties are part of the consideration of both technological feasibility and economic practicability. NHTSA believes that Ford faces a substantial risk that market demand for large vehicles and engines may be higher than that reflected by the 21.0 mpg figure representing the upper end of the range for Ford's MY 1987 fuel economy capability. This risk is also faced by the other manufacturers. The uncertainty of market demand projections has clearly been indicated by consumer behavior over the past several years. As noted above, these shifts in market demand are discussed at greater length in the October 1984 notice and accompanying analyses.

Data Resources, Inc.'s, Spring 1985 *U.S. Long Term Review* includes the projection that gasoline prices will drop about eight percent in real terms between 1985 and 1987. Such a drop could trigger further market shifts toward larger vehicles and engines.

The agency also believes that there is a substantial risk that Ford and other manufacturers may not be able to meet all of their engineering goals. Past experience indicates that manufacturers often are unable to achieve all of the fuel economy gain they project from technological improvements.

A standard which is set at too high a level may result in serious economic problems. As a model year approaches, it is too late for manufacturers to make major technological changes (e.g., new engines or drivetrains which typically require three to five years of leadtime) or develop new programs to compensate for market shifts or technological problems. If the agency were to set a MY 1987 standard at too high a level, Ford might be required to make drastic product restrictions, adversely affecting employment at Ford. Such actions by Ford would likely result in the shifting of sales of larger light trucks with large engines to other manufacturers, thereby achieving little or no net fuel economy improvement for the industry as a whole.

On the other hand, setting standards below the level attainable by GM and Chrysler would not likely cause those companies to reduce their fuel economy performance, since the agency's projected levels for those companies are based on the product mixes they plan to sell. Further, GM indicated in its comments that setting standards at a level below its planned levels would not cause GM to revise its plans. Therefore, the agency concludes that the risks associated with setting standards above Ford's maximum feasible level, taking account of uncertainties, and possibly forcing that company to adopt severe product restrictions, outweigh the potential benefits from setting standards at a higher level.

The agency has decided to continue setting 4×2 and 4×4 standards for each year as an alternative to the composite standard. Separate 4×2/4×4 standards allow manufacturers greater flexibility in planning their fuel economy improvements and do not discriminate against firms with truck fleets heavily weighted toward four-wheel drive models. As discussed above, Ford is the least capable manufacturer with respect to meeting a composite standard. In setting separate standards, the agency considered Ford's average fuel economy capability for 4×2 and 4×4 light trucks. The selected standards are consistent with the composite standard. American Motors, the manufacturer which has primarily been concerned about separate standards in past years due to the high percentage of 4×4 light trucks in its fleet, is estimated to easily meet the composite standard.

The final composite standard for MY 1987 is 20.5 mpg; the final 4×2 standard is 21.0 mpg; and the final 4×4 standard is 19.5 mpg.

Other Comments on the NPRM

A coalition of public interest organizations opposed the agency's proposed 1987 standard levels, arguing that it was based on an assumption of the continuation of the current favorable energy supply and cost situation. The coalition recommended a standard of 23.5 mpg for MY 1987. No technical or economic analysis was provided to support the feasibility of a standard at this level. Section 502 of the Act requires the agency to set standards at the maximum feasible average fuel economy level, considering not just energy conservation needs, but also technological and economic factors. The agency agrees that the need of the nation to conserve energy continues and that the nation still faces the risk of energy problems in the future. As discussed above, however, the agency believes that requiring compliance with more stringent standards than provided herein would create a risk of serious adverse economic repercussions such as losses in employment in the automobile and related industries, without necessarily producing fuel economy gains.

In accordance with section 502(j) of the Act, the agency has submitted this rule to the Department of Energy for review and has accommodated that Department's comments.

Impact Analyses

1. Executive Order 12291

The agency considered the economic implications of the fuel economy standards established by this rule and determined that the rule is major within the meaning of Executive Order 12291, and significant within the meaning of the Department's regulatory procedures. The agency's detailed analysis of the economic effects is set forth in its regulatory impact analysis. The contents of that analysis are generally described above.

2. Environmental Impacts

The agency has analyzed the potential environmental impacts of these light truck fuel economy standards in accordance with the requirements of the National Environmental Policy Act of 1969 and determined that the standards will not significantly affect the human environment. An Environmental Assessment (EA) has been prepared and placed in the public docket. The EA supersedes a Draft Environmental Impact Statement (DEIS) which was circulated to interested agencies and parties and made available to the public for comment. Based on all available information, including comments, the agency has determined that this rulemaking action will not have a significant effect upon the environment. Accordingly, the DEIS is being changed to a finding of no significant impact (FONSI). See 49 CFR 520.21(f)(2).

3. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking action will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer would be classified as a "small business" under the Regulatory Flexibility Act. In the case of small businesses, organizations and governmental units which purchase light trucks, those entities purchasing a 1987 truck might achieve a gain in fuel economy resulting from the 1987 standard. The cost impact of this rulemaking action is not high enough to reduce the ability of these groups to purchase new vehicles.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

1. The authority citation for Part 533 is revised to read as follows:

Authority: 49 U.S.C. 1657; 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. Table II in § 533.5(a) is revised to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE II

Model year	Combined standard		2-wheel drive light trucks		4-wheel drive light trucks	
	Captive imports	Others	Captive imports	Others	Captive imports	Others
1982	17.5	17.5	18.0	18.0	16.0	16.0
1983	19.0	19.0	19.5	19.5	17.5	17.5
1984	20.0	20.0	20.3	20.3	18.5	18.5
1985	19.5	19.5	19.7	19.7	18.9	18.9
1986	20.0	20.0	20.5	20.5	19.5	19.5
1987	20.5	20.5	21.0	21.0	19.5	19.5

Issued on September 30, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-23676 Filed 10-2-85; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 50, No. 192
Thursday, October 3, 1985

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 201, 211, 514, and 559

[Docket No. 83N-0076]

Approval of Bulk New Animal Drug Substances for Use by Licensed Veterinarians; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 14, 1985, the comment period for the proposed rule that would establish criteria and procedures for approval of new animal drug applications (NADA's) for bulk new animal drug substances for use by or on the prescription of licensed veterinarians. FDA is taking this action in response to a request that the original 90-day comment period be extended.

DATE: Comments by November 14, 1985.

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

FOR FURTHER INFORMATION CONTACT: Frank G. Pugliese, Center for Veterinary Medicine (HFV-102), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4500.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 1, 1985 (50 FR 27016), FDA proposed to amend the regulations to provide for the approval of NADA's for bulk new animal drug substances that are to be compounded into finished dosage form by or on the prescription of licensed veterinarians. Applications for such products would be required to meet the general premarketing requirements of the Federal Food, Drug, and Cosmetic Act. Veterinarians would be able to obtain approved bulk new animal drug substances for use in their private practices, and pharmacists would be able to compound such substances on the prescription of a veterinarian. In the proposal, comments were requested by September 30, 1985.

In response to the proposal, FDA has received a petition from the American Veterinary Medical Association (AVMA) for a 90-day extension of the comment period. AVMA stated, among other things, that the interaction of State and Federal law would need to be examined; that the professional and economic ramifications of the proposal must be explored; that consideration must be given to how the proposed rule will affect other FDA policies; and that the proposed rule could affect other legal liabilities of veterinarians. AVMA also stated that because it has thousands of members that are affected by the proposal, it must work through a series of committees to develop representative positions. For these reasons, AVMA stated more time was needed for further study so that it could present a thoughtful analysis and comment.

The agency initially provided 90 days rather than the usual 60 days for comment to provide ample opportunity for review and comment. However, after reviewing the request, the agency has decided to grant a 45-day extension of the comment period to November 14, 1985. Accordingly, under the provisions of 21 CFR 10.40(b)(3), the comment period is extended to November 14, 1985.

Interested persons may, on or before November 14, 1985, submit to the Dockets Management Branch (address above) written comments on the proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 30, 1985.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-23699 Filed 10-1-85; 10:15 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Proposed Revision to Document Incorporated by Reference in Outer Continental Shelf Order No. 5

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) proposes to incorporate by reference the 1984 Edition of American Petroleum Institute (API) Recommended Practice (RP) 14C, "Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms," into OCS Order No. 5 in lieu of the 1978 Edition currently incorporated.

The 1984 Edition of API RP 14C reflects the latest advances in technology, equipment, and practice, including requirements covering the location of pressure safety sensors and shutdown devices on underwater installations and safety systems and testing procedures for exhaust-heated components (components such as storage tanks which are heated by exhaust from engines). The proposed incorporation by reference would serve to bring OCS Order No. 5 up to date with current industry recommended practices.

DATE: Comments must be received or postmarked no later than November 4, 1985.

ADDRESSES: Written comments must be mailed or hand delivered to Department of the Interior, Minerals Management Service, 12203 Sunrise Valley Drive, Mail Stop 646, Reston, Virginia 22091, Attention: David A. Schuenke.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone: (703) 860-7916, (FTS) 928-7916.

SUPPLEMENTARY INFORMATION: The MMS proposes to incorporate by reference the Third Edition of API RP 14C, "Analysis, Design, Installation and Testing of Basic Surface Safety Systems for Offshore Production Platforms," issued in April 1984 in lieu of the Second Edition of that document published in January 1978 which is currently incorporated by reference in paragraph 3.9, "Additional Safety Equipment,"

OCS Order No. 5, "Production Safety Systems," in all OCS Regions.

The API RP 14C without identification of the specific edition is also incorporated by reference, partially or in total, as applicable, in the following paragraphs and subparagraphs of OCS Order No. 5.

(1) Paragraphs 4.1, 5., 5.1.2a, 5.1.5, 5.1.9a, 5.2b, 5.2c, 5.5, 5.5c, and 5.5d in all OSC Regions;

(2) Paragraphs 4.2, 4.4b, 5.1.7a(4), 5.1.7b(4), and 5.1.7c in the Gulf of Mexico and Pacific OCS Regions;

(3) Paragraphs 4.3(b) and 5.1.7(4) in the Atlantic OCS Region; and

(4) Paragraphs 4.3(b) and 5.1.7(d) in the Alaska OCS Region.

The API RP 14C concerns the basic surface safety systems of offshore production platforms (of various sizes, designs, and complexities) where liquid and gas hydrocarbons brought from beneath the ocean floor are separated before being transported to storage facilities.

Review by MMS of the 1984 Edition of API RP 14C has shown that it reflects the latest advances in technology, equipment, and practice, including requirements covering the location of pressure safety sensors and shutdown devices on underwater installations and safety systems and testing procedures for exhaust-heated components (components such as storage tanks which are heated by exhaust from engines). The MMS has concluded that these additional requirements increase safety in the operation of production safety systems and keep the OCS Order No. 5 up to date with the latest technological advances.

Therefore, the MMS proposes to incorporate by reference the 1984 Edition of API RP 14C into OCS Order No. 5.

Since the edition of the API document is currently specified only in paragraph 3.9, the MMS proposes to revise that paragraph by incorporating by reference the 1984 Edition in lieu of the 1978 Edition currently incorporated and by adding the words (immediately after the incorporation) "hereinafter referred to as API RP 14C." This will cause all susequent references to API RP 14C in Order No. 5 to apply to the 1984 Edition.

The MMS also proposes to delete the phrase "or subsequent revisions which the Chief, Conservation Division, has approved for use" contained in paragraph 3.9 of OCS Order No. 5. The MMS has revised the wording to clarify that a new edition of API RP 14C will replace the edition previously incorporated only after going through rulemaking procedures.

Executive Order 12291

This proposal is not expected to cause an increase in costs to consumers, industry, or governmental entities. Based on this assessment, the Department of the Interior (DOI) has determined that this document does not constitute a major rule under Executive Order 12291; therefore, a Regulatory Impact Analysis is not required.

Regulatory Flexibility Act

The DOI has also determined that this document will not have significant economic effect on a substantial number of small entities since offshore activities are complex undertakings generally engaged in by enterprises that are not considered small entities.

Paperwork Reduction Act

The information collection requirements contained in OCS Order No. 5 have been approved by the Office of Management and Budget under 44 U.S.C. 3507 and assigned OMB No. 1010-0059. There are no information collection requirements in this Notice of Proposed Rulemaking.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas reserves, Penalties, Pipelines, Public lands/mineral resources, Reporting and recordkeeping requirements.

Authors

The principal authors of this Proposed Rule are Terry Van Houten and Mario Rivero of MMS.

Dated: September 5, 1985.

John B. Rigg,

Acting Director, Minerals Management Service.

For the reasons set out above, OCS Order No. 5 for all OCS Regions is proposed to be revised as follows:

In paragraph 3.9 of OCS Order No. 5, the phrase "API RP 14C, Second Edition, January 1978, or subsequent revisions which the Chief, Conservation Division, has approved for use" is proposed to be replaced with the phrase "API RP 14C, Third Edition, April 1984, hereinafter referred to as API RP 14C."

(43 U.S.C. 1334)

[FR Doc. 85-23587 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-MR-M

30 CFR Part 256

Outer Continental Shelf Minerals and Rights-of-Way Management, General

AGENCY: Minerals Management Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Minerals Management Service (MMS) proposes to revise 30 CFR 256.22, General, by replacing the phrase "The Director shall request" with the phrase "The Director may request. . . ." The revision is necessary to remove a burdensome and unnecessary requirement that commits MMS to request other Federal Agencies to prepare reports on other resources or potential effects of mineral operations upon offshore lands being considered for leasing. The need for these reports does not exist in every case.

DATE: Comments on the proposed rule must be received on or before November 4, 1985.

ADDRESS: Comments and information may be mailed or delivered to David A. Schuenke; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Minerals Management Service; Mail Stop 646; 12203 Sunrise Valley Drive; Reston, Virginia 22091.

FOR FURTHER INFORMATION CONTACT: David A. Schuenke, telephone (703) 860-7916.

SUPPLEMENTARY INFORMATION: The MMS proposes in 30 CFR 256.22, General, to replace the phrase "The Director shall request" with the phrase "The Director may request . . ." in the second sentene of the section.

The change is being proposed because the imposition of a requirement on MMS to request other interested Federal Agencies to prepare reports on the impact of leasing Outer Continental Shelf lands is not appropriate in every case and creates unnecessary paperwork for MMS. The proposed revision will reduce this burden and at the same time maintain the present level of intergovernmental information exchange. The proposed revision would also more accurately reflect the practical situation addressed by the requirement. The MMS normally contacts all Federal Agencies having an interest in a particular sale area and actively solicits their input on the impact that mineral operations would have on the environment or upon other uses of the area.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553, MMS has opened the comment period for 30 days.

Executive Order 12291

The Department has determined that this Proposed Rule is not a major rule and does not require the preparation of a regulatory impact analysis under Executive Order 12291.

This Proposed Rule would have a minimal effect on small businesses as it only addresses a procedural revision to an existing rule.

Regulatory Flexibility Act

The implementation of this rule will not affect small businesses since it is a procedural revision to an existing rule. Therefore, the Department has determined that this rule will not have a significant economic effect on a substantial number of small entities. Therefore, a small entity flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) is not required.

Paperwork Reduction Act of 1980

There are no information collection requirements contained in this proposed revision. Therefore, approval in accordance with 44 U.S.C. 3501 et seq. is not required.

National Environmental Policy Act of 1969

It is hereby determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the Nationl Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

List of Subjects in 30 CFR Part 256

Administrative practice and procedure, Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

Dated: August 14, 1985.

WM. D. Bettenberg,

Director, Minerals Management Service.

PART 256—[AMENDED]

For the reasons set forth above, 30 CFR Part 256, Subpart C, is proposed to be amended as follows:

1. The authority citation for Part 256 continues to read as follows:

Authority: Secretarial Order 3071, Amendment No. 1, May 10, 1982, and the OCS Lands Act, 43 U.S.C. 1331 et. seq., as amended, 92 Stat. 629.

2. In Part 256, § 256.22 is proposed to be revised as follows:

Subpart C—Reports From Federal Agencies

§ 256.22 General.

For oil and gas lease sales shown in an approved leasing schedule and as the need arises for other mineral leasing, the Director shall prepare a report describing the general geology and potential mineral resources of the area under consideration. The Director may request other interested Federal Agencies to prepare reports describing, to the extent known, any other valuable resources contained within the general area and the potential effect of mineral operations upon the resources or upon the total environment or other uses of the area.

[FR Doc. 85-23586 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-MR-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 85-15]

Drawbridge Requirements; Grays Harbor, Highway Bridges, Aberdeen and Hoquiam, Washington

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the Washington Department of Transportation (WDOT), the Coast Guard is considering a change to the regulations governing the following highway bridges: SR-101 bridge across the Chehalis River at Aberdeen; Heron Street bridge and Wishkah Street bridge across the Wishkah River at Aberdeen; and the Simpson Avenue bridge and Riverside Avenue bridge across the Hoquiam River at Hoquiam. The change would require one hour advance notice for all bridge openings, except for the SR-101 bridge across the Chehalis River, which would open on call without advance notice, from one hour before sunrise to one hour after sunset. This proposal is being made because WDOT can realize savings in operating costs through its implementation. This action should relieve the bridge owner of the burden of having persons constantly available to open the draws and should still provide for the reasonsable needs of navigation. Also, the Coast Guard is revoking the regulation for the Union Pacific railroad bridge across the Chehalis River, mile 13.1, at South Montesano, because the bridge has been removed.

DATE: Comments must be received on or before November 18, 1985.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials referred in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation Branch, Telephone: (206) 442-5864.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

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

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Commander Judith M. Hammond, project attorney.

Discussion of the Proposed Regulations

The Washington Department of Transportation has asked the Coast Guard to approve a change to the operating regulations for their Grays Harbor area bridges which would require a one hour advance notice for bridge openings, except for the SR-101 bridge across the Chehalis River, which would open on signal from one hour before sunrise to one hour after sunset. Information submittted by WDOT shows that there has been a large decrease in the number of bridge openings over the last two years. Also, the information shows that openings of the SR-101 bridge for major vessels occur almost exclusively within the period from one hour before sunrise to one hour after sunset. Current regulations require: the SR-101 bridge across the Chehalis River to open on

signal for the passage of vessels, except for weekday morning and afternoon closed periods; the Simpson Avenue bridge across the Hoquiam River requires one hour advance notice for openings; the Riverside Avenue bridge across the Hoquiam River opens on signal from 4 a.m. to 8 p.m. and requires one hour advance notice for openings at all other times; the draws of the Heron Street bridge and the Wishkah Street bridge across the Wishkah River both require one-half hour advance notice for openings. Under the proposed change, a drawtender would be stationed at the SR–101 bridge across the Chehalis River from one hour before sunrise to one hour after sunset. The bridge would open on signal during this period, except during the regular morning and afternoon closed periods. At all other times one hour advance notice would be required for openings. The Simpson Avenue bridge and the Riverside Avenue bridge across the Hoquiam River, and the Heron Street bridge and Wishkah Street bridge across the Wishkah River would require one hour avdance notice for openings at all times. Requests for openings would be made by marine radio, telephone, or other suitable means to the Washington Department of Transportation at Aberdeen.

Meetings were held with potentially affected waterway user groups to determine the impacts of the proposed change on their operations. The present proposal is a compromise to assure that the SR–101 bridge across the Chehalis River would have a drawtender in attendance during periods of likely passage by major vessels.

Also, this amendment revokes the regulations for the Union Pacific railroad bridge across the Chehalis River, mile 13.1, at South Montesano, because the bridge has been removed.

Economic Assessment and Certification

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. There has been a substantial reduction in the number of openings of all Grays Harbor area bridges because many of the commercial activities that formerly required bridge openings are no longer active. Major vessels requiring opening of the SR–101 bridge across the Chehalis River normally pass through the bridge during the period from one hour before sunrise to one hour after sunset. The change would have no effect on these operations. Openings of the other bridges are infrequent and, with the partial exception of the Riverside Avenue bridge, already require advance notice. The regulations pertaining to the Union Pacific railroad bridge at South Montesano are now meaningless, because the bridge no longer exists. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

PART 117—DRAWBRIDGE REQUIREMENTS

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

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

Authority: 33 U.S.C. 499; and 49 CFR 1.46(c)(5) and 33 CFR 1.05–1(g).

2. Revise § 117.1031(a) and (b) to read as follows and remove (c):

§ 117.1031 Chehalis River.

(a) The draw of the Union Pacific railroad bridge, mile 0.0, at Aberdeen, shall open on a signal of three prolonged blasts.

(b) The draw of the SR–101 highway bridge, mile 0.1, at Aberdeen, shall open on a signal of two short blasts followed by one prolonged blast from one hour before sunrise to one hour after sunset, except that from 7:15 a.m. to 8:15 a.m. and 4:15 p.m. to 5:15 p.m., Monday through Friday, except Federal holidays, the draw need not be opened for the passage of vessels of less than 5,000 gross tons. At all other times, the draw shall open on signal if at least one hour notice is given by marine radio, telephone, or other suitable means to the Washington Department of Transportation.

3. Revise § 117.1047(c) and (d) to read as follows:

§ 117.1047 Hoquiam River

* * * * *

(c) The draw of Simpson Avenue bridge, mile 0.5, at Hoquiam, shall open on signal if at least one hour notice is given by marine radio, telephone, or other suitable means to the Washington Department of Transportation. The opening signal is two prolonged blasts followed by one short blast.

(d) The draw of the Riverside Avenue bridge, mile 0.9, at Hoquiam, shall open on signal if at least one hour notice is given by marine radio, telephone, or other suitable means to the Washington Department of Transportation. The opening signal is two prolonged blasts followed by two short blasts.

4. Revise § 117.1065(c) to read as follows:

§ 117.1065 Wishkah River.

* * * * *

(c) The draws of the Heron Street bridge, mile 0.2, and the Wishkah Street bridge, mile 0.4, at Aberdeen, shall open on signal if at least one hour notice is given by marine radio, telephone, or other suitable means to the Washington Department of Transportation. The opening signal for both bridges is one prolonged blast followed by two short blasts.

Dated: September 23, 1985.

R.R. Garrett,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 85–23658 Filed 10–2–85; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 152 and 158

[OPP–30091; PH–FRL 2824–1]

Submission of Pesticide Data; Flagging of Studies for Early Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish criteria by which pesticide applicants and registrants would identify data demonstrating possible adverse effects at the time they are first submitted to the Agency. Registrants and applicants for registration who submit certain types of toxicological, environmental fate, exposure assessment, or ecological effects data would be required to include a statement identifying (or "flagging") a study if it demonstrated effects or characteristics defined in the proposal. The requirement to flag such studies is necessary because of the volume of data received by the Agency and the limited resources available for its review. Flagging by the data submitter would enable the Agency to give priority review to pesticides that may potentially pose adverse effects to man or the environment, thereby focusing EPA's regulatory actions on pesticides of greatest concern.

DATE: Written comments on this proposed rule should be submitted on or before December 2, 1985. Comments should be identified with the notation "OPP-30091."

ADDRESSES: Submit three copies of written comments to:

By mail: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

In person, deliver comments to: Room 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submited for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Jean M. Frane, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Office location and telephone number: Rm. 1114, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-0944).

SUPPLEMENTARY INFORMATION:

I. Background

Under sec. 3(c)(5) (C) and (D) and 3(c)(7) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), EPA is charged with the regulation of pesticides to ensure, among other things, that their use does not pose, or increase the risk of, unreasonable adverse effects on man or the environment. The Agency makes its determinations with respect to adverse effects by reviewing data submitted by companies seeking or holding registration.

The Act provides three principal authorities under which data are required to be submitted to the Agency:

1. Section 3(c)(1)(D) requires applicants for registration to submit "a full description of the tests made and the results thereof" in support of an application for registration. Specific data required in support of an application for registration are prescribed in 40 CFR Part 158, and include data pertaining to product and residue chemistry, toxicology, environmental fate, ecological effects, non-target species effects, and, in some cases, efficacy. For each type of study, the Agency has included in its Pesticide Assessment Guidelines one or more acceptable protocols, so that studies will be scientifically valid, and can be interpreted consistently and meaningfully in making regulatory decisions.

The Agency currently receives the majority of its health and environmental effects data from applicants for registration: some 11,500 applications for registration or amended registration were received in fiscal year 1984, of which 200 were applications for new chemical registrations or significant new uses for existing chemicals which contain substantial amounts of data.

An applicant who fails to provide a "full description" of the required tests may have his application for registration denied by the Agency under FIFRA sec. 3(c)(6).

2. Section 3(c)(2)(B) requires registrants to submit information specifically required by the Agency to maintain their registrations in effect. This authority, enacted only in 1978, is primarily used in conjunction with the Registration Standards program, which is a reevaluation of all pesticides registered since 1947. Because some of these pesticides were originally registered with minimal supporting data that generally addressed only efficacy and acute toxicity, the amount of data needed for evaluation against current health and environmental standards can be substantial. The Part 158 data requirements are the basis for determining which studies are necessary to evaluate each pesticide.

A registrant who fails to respond properly or in a timely manner to a notification under FIFRA sec. 3(c)(2)(B) may have his registration suspended until he complies with the requirement by supplying the needed information.

Under its early Data Call-In (DCI) program, the Agency has since 1980 used its 3(c)(2)(B) authority to require the submission of chronic feeding, oncogenicity, reproduction and teratology studies in advance of review under the Registration Standards program. More recently, the Agency has also required the submission of certain environmental fate data under the DCI program because of concerns about potential ground water contamination. Some 70 data call-in notices have been issued each year since 1980, requiring the submission of more than 100 studies to date; the studies will begin arriving in 1985 for use in FY85 Registration Standard reviews.

Registration Standard reviews generally identify additional deficiencies in the areas of environmental fate, ecological effects, exposure and residue data. Most of these studies take less time to conduct, but more studies in these areas are required. The Agency has issued approximately 90 Registration Standards since 1980, each imposing additional data requirements under section 3(c)(2)(B). EPA estimates that, combining both the DCI and Registration Standards data call-in notices, it has imposed requirements under section 3(c)(2)(B) for submission of approximately 600 studies. Both of these programs are ongoing and will continue to produce an influx of data for review by the Agency. Based on 25 Registration Standards and 70 DCI notifications per year in the future, the Agency could receive as many as 1,000 studies each year. The studies required under section 3(c)(2)(B) are separate from those required of applicants under section 3(c)(1)(D). The number of studies that may be submitted under both sections 3(c)(1)(D) and 3(c)(2)(B), therefore, is clearly both large and increasing.

In both cases cited above, the requirement to submit the data is not dependent upon the results of the studies. The studies must be submitted regardless of the results shown, and a large percentage will simply confirm that the pesticide in question does not have adverse effects on the environment. In the past there has been no requirement that a data submitter specifically identify studies that may indicate potential adverse effects (but see Unit I.C below) nor has EPA issued scientific criteria by which the data submitter could independently make such a judgment.

3. Section 6(a)(2) imposes a general obligation on all registrants to submit "additional factual information regarding unreasonable adverse effects on the environment" if they possess, generate, or become aware of such information after registration. The obigation to submit information under section 6(a)(2) differs from that under sections 3(c)(1)(D) and 3(c)(2)(B): it applies to all registrants equally (but not to applicants) and it is non-specific in the quantity, quality and type of information required to be submitted. It should be noted that data submitted in response to a FIFRA sec. 3(c)(2)(B) notice also may be covered by section 6(a)(2) if they pertain to "unreasonable

adverse effects"; however, such data generally have submitted under the 3(c)(2)(B) notification without identification as section 6(a)(2) data. When EPA identifies data as having been submitted under 6(a)(2), the data are given high priority review. In light of the general nature of the statutory obligation, the Agency has issued in the **Federal Register** of September 20, 1985 (50 FR 38115) an interpretive rule and statement of enforcement policy (40 CFR Part 153) discussing the scope of FIFRA sec. 6(a)(2) and describing the types of 6(a)(2) information EPA actually wants to review.

The flagging rquirement proposed in this rule is discussed in the 6(a)(2) interpretive rule and will not be addressed further in this proposal with respect to 6(a)(2).

II. This Proposal

Because the volume of data the Agency expects to receive in the future will be increasing dramatically, while Agency resources for review of these data are limited, EPA must consider ways in which it can ensure that its resources are focussed on review of pesticides of greatest possible concern. EPA believes that an efficient step in this direction is to require that certain studies be marked or flagged when submitted to the Agency if they show results indicative of potential adverse effects or demonstrate that the pesticide possesses characteristics of concern. These studies would receive early review in the same manner as those submitted under FIFRA sec. 6(a)(2).

To assist in setting priorities for review of these studies, EPA proposes to select certain types of studies (by reference to its Part 158 data requirements), and establish criteria that would be applied by submitters of those data to signal data that merit early and careful attention by the Agency. The criteria are intended to assist the Agency in scheduling the review of data when resources do not permit all data to be reviewed immediately. Although the types of studies and the criteria have been selected based on potential for adverse effects, they are not intended to define—and should not be viewed as defining—adverse effects or risk *per se*. The Agency will not take any regulatory action based solely upon data or results that meet or exceed the criteria. Any subsequent regulatory actions would be based upon risk/benefit considerations.

The number or percentage of studies that might be flagged by application of these criteria cannot be reliably predicted based on past experience. However, given the large number of pesticides scheduled for review under the Registration Standards program, and the volume of data believed to be necessary for each, even, a small percentage of the total might be a significant number. EPA believes it important to establish a flagging requirement so that these studies will be recognized upon receipt and granted priority review.

Accordingly, the Agency proposes to revise its data requirement regulations in 40 CFR Part 158 to include flagging criteria and to prescribe that a statement be submitted with each study. The Agency also proposes to revise language in several sections of its recently proposed procedural regulations (proposed 40 CFR Part 152, published in the **Federal Register** of September 26, 1984 (49 FR 37915)) to require that studies submitted with applications for registration or as a result of data call-in notices comply with the flagging statement requirement.

A. Flagging Criteria

A new § 158.34 would be added to 40 CFR Part 158, Data Requirements for Registration. That section would list the types of individual studies (by title and Pesticide Assessment Guidelines number) to which the flagging requirement applies, and the flagging criterion for each. The section would also require the submitter to state for each study whether the flagging criterion defined for that study has been met or exceeded. Negative statements would be required, so that all submissions of a particular type of study, not just those meeting or exceeding the criterion, would include a statement. Paragraph (b) of proposed § 158.34 sets out the types of studies and the results that the Agency proposes should be flagged for potential adverse effects or characteristics that may indicate adverse effects. Criteria would be established for four types of studies:

1. *Toxicology.* Criteria are proposed for oncogenicity, teratogenicity, neurotoxicity, subchronic feeding, chronic feeding and reproductive effects studies. For the first three, the criteria relate to an increased or earlier incidence of effects when compared with controls. For the latter three, the criteria are based on results establishing a no-observed effect level (NOEL) at less than a certain multiple of the established dietary Acceptable Daily Intake (ADI) or provisional ADI (PADI) for the pesticide. The multiplier (10, 100, 200, or 2000) is the safety factor applied to NOELs to arrive at ADI levels when establishing pesticide tolerances. In effect, any study result that would lower the established ADI or PADI would be flagged. ADI levels are included in tolerance rules published in the **Federal Register**, and are available from the Agency for reference.

The toxicology criteria require scientific judgment. If there is doubt or scientific disagreement about whether a study meets or exceeds a given criterion, the criterion should be interpreted to include rather than exclude the study, and it should be flagged accordingly. Further guidance on oncogenicity and teratogenicity criteria may be found in the Hazard Identification Sections of the Agency's proposed Guidelines for Carcinogen Risk Assessment and proposed Guidelines for Health Assessment of Suspect Development Toxicants, both published for comment in the **Federal Register** of November 23, 1984 (44 FR 46294 and 46325 respectively). Guidance may also be found in "Standard Evaluation Procedures for Teratology Studies" (Chitlik, L.D., Bui, Q.Q., Burin, G.J., and S.D. Dapson, Office of Pesticide Programs, EPA, 1984), and "Oncogenic Potential: Guidance for Analysis Evaluation of Long Term Rodent Studies" (O.E. Paynter, Office of Pesticides and Toxic Substances, EPA, 1984). Both of these latter documents are available from the Toxicology Branch, Hazard Evaluation Division, Office of Pesticide Programs, EPA, at the Agency address given for the information contact.

The Agency would like to receive comment on whether the oncogenicity, teratogenicity and neurotoxicity criteria are adequately described for the purposes of compliance in flagging the data. If not, the Agency would like to receive comments on language that might better delineate these criteria.

2. *Persistence and mobility.* In general, the criteria reflect chemical and physical characteristics of the pesticide that would make it persistent or mobile in the environment. Studies that may indicate potential persistence (hypdrolysis, soil metabolism half-life, and soil dissipation half-life) or potential mobility (solubility and adsorption constant) are included.

3. *Exposure assessment.* The exposure assessment criteria pertain to the octanol/water partition coefficient and fish accumulation studies. These reflect the potential for biomagnification of the pesticide in the environment and therefore for accumulation in the food chain of non-target species. The octanol/water partition coefficient is a screening indicator biomagification potential. The fish accumulation study is a higher level measure of accumulation in a specific non-target species.

4. *Ecological effects.* The ecological effects studies for which flagging is proposed are the six initial studies required to measure toxicity in non-target aquatic and avian species (acute avian LD50, subcute dietary avian LC 50, and fish and invertebrate LC50). The Agency proposes that a study be flagged when results show that the pesticide is sufficiently toxic to require aquatic and avian toxicity labeling statements under 40 CFR 162.10.

B. Procedural Requirements

The flagging criteria would be applied to studies being submitted by applicants and registrants, who would be required to submit a written statement that the study did or did not exceed the criterion. The requirement to submit a statement is included as paragraph (c) of proposed § 158.34. In addition, cross-references to § 158.34, would be included in other sections of the procedural regulations in proposed Part 152, as follows:

1. Proposed § 152.50(g)(2), describing the data requirements for an application for registration under FIFRA sec. 3(c)(1)(D).

2. Proposed § 152.142, describing the requirement of FIFRA sec. 3(c)(2)(B) to submit data in order to maintain registration.

3. Proposed § 158.32(b), prescribing the format of data submitted to the Agency.

IV. Statutory Requirements

In accordance with FIFRA sec. 25(a), a copy of this proposal was provided to the FIFRA Scientific Advisory Panel (SAP). The SAP waived its formal review of this proposal.

A copy was also provided to the Secretary of Agricutlure (USDA), who commented that, in reviewing the flagged data, the Agency should keep the data in the context of the proposed use and in relationship to other data being reviewed. The Agency agrees and reiterates its position: the flagging of data will be used only as a tool to indicate a need for early review. Regulatory decisions on a pesticide will be taken only in accordance with established policies and procedures, and only after consideration of all relevant data.

Finally, copies were provided to the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition, and Forestry. No comments were received from these Committees.

V. Regulatory Requirements

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Anlysis. The Agency has evaluated this proposal against the requirements of E.O. 12291, and concludes that the proposal is not a major regulation. This proposal has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. 12291.

The Agency has also determined that this proposal will not have a significant economic impact on a substantial number of small businesses or other small entities. This conclusion is based on the fact that the studies for which flagging would be requried are conducted primarily by large pesticide producers. Applicants and registrants that are small businesses are generally exempted from the requirement to produce such data by the "formulator's exemption" provisions of FIFRA sec. 3(c)(2)(D), and thus would only infrequently be required to apply the flagging criteria or submit a statement for their studies. Even were this not the case, the flagging requirement is expected to impose only very low costs on any submitter of data.

Accordingly, I certify that this proposal does not require a separate Regulatory Flexibility Analysis under the Regulatory Flexibility Act.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and has assigned OMB Control Numbers 2070–0060 (applications for registration) and 2070–0056 (date call-in and Registration Standards). Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs of OMB marked Attention: Desk Officer for EPA. The final rule package will respond to any OMB or public comments on the information collection requirements.

(Sections 3 and 25(a), as amended; 7 U.S.C. 136 through 136y)

List of subjects in 40 CFR Parts 152 and 158

Administrative practices and procedures, Data requirements, Packaging, Pesticides and pests, Recordkeeping and reporting requirements.

Dated: September 24, 1985.

Lee M. Thomas,

Administrator.

Therefore, it is proposed that 40 CFR Chapter I be amended as follows:

PART 152—[AMENDED]

1. In Part 152:

a. The authority citation for Part 152 is revised to read as follows:

Authority:

7 U.S.C. 136 through 136y.

b. In proposed § 152.50, by revising paragraph (g)(2) to read as follows:

§ 152.90 Contents of application.

* * * * *

(g) * * *

(2) An applicant must furnish any data specified in Part 158 of this chapter which are required by the Agency to detemine that the product meets the registration standards of FIFRA sec. 3(c)(5) or 3(c)(7). All studies must be conducted in accordance with Part 160—Good Laboratory Practice Standards of this chapter, as applicable, and must be submitted in accordance with the following:

(i) Section 158.30 of this chapter, with respect to times for submission;

(ii) Section 158.32 of this chapter, with respect to format of submission;

(iii) Section 158.33 of this chapter, with respect to studies for which a claim of trade secret or confidential business information is made; and

(iv) Section 158.34 of this chapter, with respect to flagging for potential adverse effects.

* * * * *

c. By revising § 152.142 and adding OMB Control Number 2070–0060 at the end of the section to read as follows:

§ 152.142 Submission of information to maintain registration in effect.

(a) FIFRA sec. 3(c)(2)(B) authorizes the Agency to require that a registrant submit information necessary to maintain his registration in effect. Such information may consist of data on the chemistry, efficacy, toxicity, environmental fate, ecological effects or other characteristics of the product or its ingredients, or on the exposure of organisms to the product or its ingredients, or other information necessary to support the continued registration of the product.

(b) If the Agency determines that additional data are necessary to maintain a registration in effect, the procedures set out in FIFRA sec. 3(c)(2)(B) will be used. The Agency will notify each affected registrant, and list the information needed and the required submission date. The information, when submitted to the Agency, will be subject to the requirements of §§ 158.32, 158.33 and 158.34 of this chapter.

(Approved by the Office of Management and Budget under Control Number 2070–0060)

PART 158—[AMENDED]

2. In Part 158:

a. The authority citation is revised to read as follows:

Authority: 7 U.S.C. 136 through 136y.

b. In proposed § 158.32, by adding a new paragraph (b)(2)(v), to read as follows:

§ 158.32 Requirements for data submission

* * * * *

(b) * * *

(2) * * *

(v) If the study is one listed in § 158.34(b), the statement prescribed by paragraph (c) of that section.

* * * * *

c. By adding new § 158.34, to read as follows:

§ 158.34 Flagging of studies for potential adverse effects.

(a) Any person who submits a study of a type listed in paragraph (b) of this section to support an application for new or amended registration, or to satisfy a requirement imposed under FIFRA sec. 3(c)(2)(B), must submit with the study a statement in accordance with paragraph (c) of this section.

(b) The following table sets out the study types and the criteria to be applied to each. Column 1 list the studies. Column 2 is the Pesticide Assessment Guideline number. Column 3 lists the criteria for the study. Column 4 is the reporting code to be used in identifying the criterion met or exceeded.

TABLE.—FLAGGING CRITERIA

Toxicity studies	Pesticide assessment guidelines No.	Criteria	Reporting code
Oncogenicity (or combined oncogenicity/chronic feeding study)	83-2	When compared with controls, treated animals show any of the following effects	
or			
Subchronic feeding study	82-1	An incidence of neoplasms which increases with dose	1
		or	
		A substantially increased incidence of neoplasms	2
		or	
		A marginal increase in neoplasms of several organs or tissues	3
		or	
		An increase in uncommon neoplasms	4
		or	
		A decreased time to tumor development	5
Teratology	83-3	When compared with controls, treated animals show an increase in malformations on a fetus or litter basis in the absence of significant maternal toxicity at the same dose levels.	6
Neurotoxicity	81-7	When compared with controls, treated animals show a positive effect	7
Chronic feeding study or combined chronic feeding/oncogenicity study.	83-1	Cholinesterase inhibition NOEL less than 10 times the current ADI	8
		or	
		General toxicity NOEL less than 100 times the current ADI	9
Reproduction study	83-4	Reproductive effects NOEL less than 100 times the current ADI	10
Subchronic feeding study	82-1	Cholinesterase inhibition NOEL less than 200 times the current ADI	11
		or	
		General toxicity NOEL less than 2000 times the current ADI	12
Solubility	63-6	Solubility in water greater than 30 ppm	13
Leaching and adsorption/desorption	163-1	Adsorption constant less than 5	14
Hydrolysis	161-1	Half-life greater than 25 weeks	15
Aerobic soil metabolism	162-1	Half-life greater than 3 weeks	16
Anaerobic soil metabolism	162-2	Half-life greater than 3 weeks	17
Field dissipation	164-1	Half-life greater than 3 weeks	18
Octanol/water partition coefficient	63-11	Coefficient greater than 1000	19
Accumulation study	165-4	Accumulation ratio (ppm of in fish substance in fish tissue/ppm in ambient water) greater than 1000	20
Avian oral LD_{50}	71-1	LD_{50} less than 100 mg/kg	21
Avian dietary LC_{50}	71-2	LC_{50} less than 500 ppm	22
Acute fish and invertebrate LC_{50}		LC_{50} less than 1 ppm	23
Freshwater fish	72-1		
Invertebrates	72-2		

(c) *Identification of studies.* For each study type identified in paragraph (b) of this section, the applicant (or registrant in the case of information submitted under FIFRA sec. 3(c)(2)(B)) shall submit a statement containing the following information:

(1) The name and company number of the registrant;

(2) The title of the study;

(3) The date of application (or submission, if not submitted with an application);

(4) A statement that the applicant or registrant is familiar with the requirements of 40 CFR 158.34 and either:

(i) The reporting code set out in § 158.34(b) for each applicable criterion the study results met or exceeded; or

(ii) If none of the criteria were met or exceeded, a statement to that effect.

(5) The signature of an authorized representative of the company.

(d) The information required by paragraph (c) of this section may be included with other identifying information required for individual studies under § 158.32(b) and (c), or may be submitted as a separate statement.

(Approved by the Office of Management and Budget under Control Numbers 2070-0056 and 2070-0060)

[FR Doc. 85-23623 Filed 10-2-85; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Parts 264 and 265

[SWH-FRL 2865-7]

Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Coverage

Correction

In FR Doc. 85-20108, beginning on page 33902 in the issue of Wednesday, August 21, 1985, make the following correction: On page 33902, in the first column, in the fifth line of the **"SUMMARY"**, the last CFR citation, now reading "265.151(i)", should read "264.151(i)".

BILLING CODE 1505-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 2

[CGD 85-019]

Delegation of Authority to United States Classification Societies

AGENCY: Coast Guard, DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Title 46, U.S. Code, section 3316 permits delegation of the plan review and inspection of U.S. flag vessels to the American Bureau of Shipping (ABS) or a similar United States classification society. Currently, the Coast Guard accepts ABS's plan review and inspection of new construciton being classed by ABS. This acceptance affords the vessel owner the option of utilizing the services of the classification society or the Coast Guard. The success of this program has prompted other classification societies to request similar acceptance by the Coast Guard. The Coast Guard is considering adding a section to Part 2 of Title 46, Code of Federal Regulations, which will define "similar United States classification society" and delineate how a society can seek and be granted authority to work in a like manner on behalf of the Coast Guard. The advance notice of proposed rulemaking solicits information from the public concerning the framework and criteria that should be used to determine who will be allowed to work on the Coast Guard's behalf. This information will be used to develop proposed rules.

DATE: Comments must be received on or before January 2, 1986.

ADDRESSES: Comments should be submitted to Commandant (G-CMC/21), (CGD 85-019), U.S. Coast Guard Headquarters, Washington, D.C. 20593. Comments are available for examination and copying at the Marine Safety Council (G-CMC/21), Room 2110, 2100 Second Street SW., Washington, D.C. between 7:00 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Lt. John Astley (202-426-4431).

SUPPLEMENTARY INFORMATION: Interested parties are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 85-019), the specific section of the advance notice to which their comments apply, and give the reasons for each comment.

Before issuing a Notice of Proposed Rulemaking, an analysis of the economic effect of the proposal is necessary along with an analysis of the intent of the applicable governing law, 46 U.S.C. 3316. The purpose of this notice is to solicit comments on the merits of the proposal and its probable effects. Comments from the maritime community and other interested parties are requested. All comments received will be considered in preparing the Notice of Proposed Rulemaking.

Discussion

Under Title 46, United States Code, section 3316 the Coast Guard is permitted to rely on reports, documents, and certificates issued by the American Bureau of Shipping (ABS), a similar United States classification society, or an agent of the Bureau or society. The statute further authorizes delegation of the inspection or examination of a vessel documented or to be documented as a vessel of the United States and the review and approval of plans necessary for these inspections or examinations to the Bureau, a similar U.S. classification society, or agent of the Bureau or society.

In clearly defined areas such as new vessel construction, where the Coast Guard and classification societies perform similar functions, the opportunity exists to reduce governmental involvement and avoid duplication of effort while maintaining the present high level of safety found on U.S. vessels. To this end, ABS has been authorized by the Coast Guard to perform a broad range of tehcnical reviews of new U.S. flag vessels being classed by ABS and requiring Coast Guard certification. Similarly, certain inspections traditionally performed by the Coast Guard have been delegated to ABS. The Bureau is only authorized to perform these functions on new vessels and only when requested by the vessel owner. The cooperative effort between the Coast Guard and the Bureau is governed by law, regulations, and several Agreements and Memoranda of Understanding. The Coast Guard's agreements with the American Bureau of Shipping have worked well and have prompted other classification societies to seek a similar status.

To date no other classification society or agent has been authorized to conduct plan review or inspections of new U.S. flag vessels on behalf of the Coast Guard. There is a need to define the conditions under which the Coast Guard may delegate these functions to other classification societies and their agents.

There are many questions that must be resolved before we can proceed further. Some of the areas/questions which must be addressed include—

1. What is a "similar U.S. classification society?" As a minimum the Coast Guard is proposing that it be an organization which—

(a) Incorporates under the laws of a state of the United States;

(b) Establishes and administers standards for the design, construciton, and periodic survey of merchant vessels;

(c) Classes merchant vessels, thus certifying that each vessel adheres to those standards and possesses the structural and mechanical fitness required for its intended service; and

(d) Is a nonprofit organization, exempt from Federal income taxes under section 501(c)(6) of the Internal Revenue Code.

This definition would allow a classification society with foreign affiliation to be considered a "similar United States classification society." The Coast Guard believes that this definition is within the scope of 46 U.S.C. 3316, however we are particularly interested in receiving comments on our preliminary interpretation.

2. It will be necessary to delineate the framework through which a society can seek and be granted authority to work on behalf of the Coast Guard. The framework envisioned by the Coast Guard will consist of three steps: The submission of information by the society, the Coast Guard's evaluation of the information, and the signing of a Memorandum of Understanding (MOU) by the parties.

a. At a minumum, it is expected that the Coast Guard will evaluate the society's rules, its ability to enforce Coast Guard regulations, it organizational structure, its personnel, and the society's training program. What, if anything else, should be evaluated?

b. Considering paragraph (a), what specific information should the Coast Guard require to be submitted?

c. What criteria should be used for evaluating and accepting—

(i) A society's classification rules;

(ii) A society's knowledge of Coast Guard regulations; and

(iii) The training, qualifications, and experience of their surveyors and technical staff?

d. The MOU between the Coast Guard and classification society will explain the procedures for administering and implementing the process and the roles and responsibilities of each party. Included in the MOU will be a stipulation that the society—

(i) Place two government representatives appointed by the Secretary of Transportation on its executive committee;

(ii) Accept the government representatives as active members who will serve without compensation, except for necessary travel expenses;

(iii) Maintain in the U.S. complete files of information derived from or necessarily connected with the work performed under the MOU for at least 2 years after the vessel ceases to be certified; and

(iv) Permit access to these files at all reasonable times to any person authorized by the Commandant.

What, if any, other conditions should be addressed in any MOU?

3. Must only surveyors exclusively employed by the classification society be used? May exclusive surveyors of a foreign affiliate be used?

4. What are the ramifications of using foreign nationals as agents of the U.S. government?

5. Should a classification society be required to assume a liability for incidents caused by an employee or agent of the classification society when working on behalf of the Coast Guard?

6. Should only broad acceptance be given or should limited acceptance be granted based on vessel type? (i.e. drilling units, offshore vessels, tankers, etc.)

7. Should acceptance of a similar U.S. classification society that has a foreign affiliation be contingent upon reciprocal acceptance of ABS by the society's home government?

8. What is the best way for the U.S. to be involved in the development or modification of a classification society's rules?

9. Should the International Association of Classification Societies (IACS) fit into the acceptance criteria? If so, should the United States consider requesting observer status at IACS?

Your specific recommendations for addressing the issue of this matter are invited and will be considered by the Coast Guard in the development of any proposed regulations resulting from this advance notice.

J. W. Kime,

Commodore, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

September 30, 1985.

[FR Doc. 85-23655 Filed 10-2-85; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 85-283; RM-4975]

FM Broadcast Station in Lovelock, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the allotment of FM Channel 236 to Lovelock, Nevada, in response to a petition filed by Radio 1200. The allotment could provide a first FM service to the community.

DATES: Comments must be filed on or before November 18, 1985, and reply comments on or before December 3, 1985.

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.

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Station (Lovelock, Nevada) MM Docket No. 85-283, RM-4975.

Adopted: September 19, 1985.
Released: September 27, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making has been filed by Radio 1200 ("petitioner"), seeking the allotment of Class C FM Channel 236 [1] to Lovelock, Nevada, as that community's first broadcast service. Petitioner submitted information in support of the proposal and stated that it would apply for the channel.

2. Channel 236 can be allocated to Lovelock, Nevada, in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

[1] The petitioner originally requested FM Channel 226. However, Channel 226 would be short spaced to the recent allotment of Channel 227 to Susanville, California, in Dkt. 83-514 for Station KSUE-FM.

3. In view of the fact that the proposed allocation could provide a first FM broadcast service to Lovelock, Nevada, the Commission believes it is appropriate to propose amending the FM Table of Allotments, § 73.202(b) of the Commission's Rules, with respect to the following community:

City	Channel No.	
	Present	Proposed
Lovelock, NV		236

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *Note:* A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before November 18, 1985, and reply comments on or before December 3, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Carl J. Auel, Partner, Radio 1200, 4610 Briarwood Drive, Sacramento, California 95821.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the

person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules. IT IS PROPOSED TO AMEND the FM Table of Allotments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW, Washington, DC.

[FR Doc. 85-23604 Filed 10-2-85; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-285; RM-5035]

FM Broadcast Station in Roosevelt, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes the allotment of Channel 253C2 to Roosevelt, Utah, as that community's second FM service, at the request of Brian Leifson.

DATE: Comments must be filed on or before November 18, 1985, and reply comments on or before December 3, 1985.

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.

PART 73—[AMENDED]

The authority citation for Part 73 continues to read:

Authority: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations (Roosevelt, Utah) MM Docket No. 85-285, RM-5035.

Adopted: September 19, 1985.

Released: September 27, 1985.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by Brian Leifson ("Petitioner") requesting the allotment of Channel 253C2 to Roosevelt, Utah, as that community's second FM service. Petitioner has expressed his intention to apply for the channel.

2. The channel can be allotted consistent with the Commission's minimum distance separation requirements provided a site restriction of 0.8 kilometers (0.5 miles) east of Roosevelt is imposed to avoid short spacings to Station KARB (FM), Channel 252A at Price, Utah, and Station KCPX-FM, Channel 254 at Salt Lake City, Utah.

3. In view of the fact that the proposed allotment could provide a second FM service to Roosevelt, Utah, the Commission proposes to amend the FM Table Allotments, § 73.202(b) of the Commission's Rules, for the following community:

City	Channel No.	
	Present	Proposed
Roosevelt, UT	230A	230A, 253C2

4. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before November 18, 1985, and reply comments on or before December 3, 1985, and are advised to read the Appendix for the proper procedures. Additionally, a copy of such comments should be served on the petitioners, or their counsel or consultant, as follows: Howard J. Braun, Adam A. Andersen; Fly, Shuebruk, Gaguine, Boros and Braun, 1211 Connecticut Avenue, NW., Washington, D.C. 20036.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, § 73.202(b) of the Commission's Rules See, *Certification that sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Patricia Rawlings, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making, other than comments officially filed at the Commission, or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

Federal Communications Commission.

Charles Schott,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, §73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 85–23603 Filed 10–2–85; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 27 and 52

Federal Acquisition Regulation (FAR); Validation of Restrictive Markings on Technical Data

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision of the Federal Acquisition Regulation (FAR) that amends Subpart 27.4, Rights in Data and Copyrights.

COMMENT DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before November 4, 1985 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

Please cite FAR Case 85–47 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, Telephone (202) 523–4755.

SUPPLEMENTARY INFORMATION:

A. Background

Notice of availability for comment on a proposed rule to consider revision of Subpart 27.4 of the Federal Acquisition Regulation (FAR) was published in the **Federal Register** on August 15, 1985 (50 FR 32870). That proposed revision was not published in the **Federal Register**, however, the text was provided to interested parties as requested. It is now proposed to further amend that proposed revision of Subpart 27.4 by adding new sections 27.409 and 27.409–1, and the clause at 52.227–24, in order to establish policy concerning the validation of restrictive markings on technical data delivered to the Government, as required by Pub. L. 98–577 and Pub. L. 98–525. The subpart and clause establish policies and procedures by which, if a contracting officer has appropriate justification, the contracting officer may challenge the validity of restrictive markings on technical data

which a contractor has delivered to the Government. The subpart and clause also set out the rights and responsibilities of the contractor in responding to such a challenge.

B. Regulatory Flexibility Act

This proposed rule provides an inexpensive administrative procedure to determine the validity of restrictive markings for Government contracts, and it is not expected to have a significant economic impact on a substantial number of small entities because small entities should already retain necessary records in the normal course of their business activities to support the validity of restrictive markings on their technical data.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose an additional reporting requirement on the public. The requirement to maintain records to justify the validity of the markings at 52.227-24, Validation of Restrictive Markings on Technical Data, would be incurred by persons in the normal course of their business activities and is thus exempt under 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 27 and 52

Government procurement.

Dated: September 27, 1985.

Lawrence J. Rizzi,

Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, it is proposed that 48 CFR Parts 27 and 52 be amended as set forth below.

1. The authority citation for 48 CFR Parts 27 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137, and 42 U.S.C. 2453(c).

PART 27—PATENTS, DATA, AND COPYRIGHTS

2. Subpart 27.4 is amended by adding sections 27.409 and 27.409-1 to read as follows:

27.409 Validation of restrictive markings on technical data.

This section is applicable to the Department of Defense and to all civilian agencies except NASA, which is not subject to 41 U.S.C. 253d or 10 U.S.C. 2321.

27.409-1 Policy and procedures.

(a) *General.* 41 U.S.C. 253d and 10 U.S.C. 2321 set forth rights and procedures pertaining to the validation of restrictive markings asserted by contractors and subcontractors on the use, duplication, or disclosure by the Government and others of technical data required to be delivered under contracts or subcontracts for supplies or services (but see 27.409). 41 U.S.C. 418a and U.S.C. 2320 provide authority for the United States to establish remedies when data delivered or made available under a contract is found to not satisfy the requirements of the contract (e.g., contains improper or unauthorized restrictive legends). Whenever the contracting officer finds it appropriate to question the validity of restrictive markings on data provided by contractors or subcontractors, the contracting officer shall follow the procedures set forth below; except that, for civilian agencies, not including NASA, these procedures should be followed only if the items being acquired are for, or in support of, a major system (as the term "major system" is defined in section 4 of the Office of Federal Procurement Policy Act, as amended by Pub. L. 98-577). The contractor or subcontractor of any tier must maintain records adequate to justify the validity of markings that impose restrictions on the right of the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract and shall be prepared to furnish to the contracting officer a written justification for such restrictive markings. The records that justify the validity of the restrictive markings shall be maintained for as long as the contractor or subcontractor intends to assert the validity of the markings.

(b) *Prechallenge Review.* (1) The contracting officer may request the contractor or subcontractor to furnish to the contracting officer a written justification of any restriction asserted by the contrator or subcontractor on the right of the United States or others to use technical data. The contractor or subcontractor shall furnish such written justification to the contracting officer within 30 days after receipt of a written request or within such longer period as may be authorized in writing by the contracting officer. If the contracting officer receives advice that the validity of restrictive markings on technical data is questionable, the contracting officer shall request that the individual raising the question provide written rationale for the assertion. The contracting officer should also request information and advice from the cognizant Government activity having control of the data on the validity of the markings.

(2) If the contracting officer, after reviewing the written justification furnished pursuant to (b)(1) above and any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component or process to which the marked technical data relates, the contracting officer shall review the validity of the marking.

(3) As a part of the review, the contracting officer may request the contractor or subcontractor to furnish information in the records or otherwise in the possession or available to the contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or required to be delivered under the contract or subcontract. The contracting officer may request the contractor or subcontractor to furnish additional information such as a statement of facts accompanied by supporting documentation adequate to justify the validity of the marking. The contractor or subcontractor shall furnish such information to the contracting officer within 30 days after receipt of a written request or within such longer period as may be authorized fails to provide the requested information, within 30 days after receipt of the contracting officer's written request or within such longer period as may be authorized in writing by the contracting officer, the contracting officer shall proceed in accordance with (c) of this section.

(c) *Challenge.* (1) If after completion of the prechallenge review the contracting officer determines that a challenge to the restrictive marking is warranted, the contracting officer shall send a written challenge notice to the contractor or subcontractor. Such notice shall include (i) the grounds for challenging the restrictive marking, (ii) a requirement for a written response within 60 days after receipt of the written notice justifying by clear and convincing evidence the current validity of the restrictive marking, (iii) a notice that a response will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in 33.207, regardless of dollar amount, and (iv) a notice that failure to respond to the challenge notice will constitute agreement by the contractor or subcontractor with Government action to strike or ignore the restrictive legends.

(2) The contracting officer shall extend the time for response as

appropriate if the contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) Any written response from the contractor or subcontractor shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) and must be certified in the form prescribed by 33.207 regardless of dollar amount.

(4) If a contractor or subcontractor has received challenges to the same restrictive markings from more than one contracting officer, the contract or or subcontractor is to notify each contracting officer of the existence of more than one challenge. This notice shall also indicate which unanswered challenge was received first in time by the contractor or subcontractor. The contracting officer who initiated the first in time unanswered challenge is the contracting officer who will take the lead in establishing a schedule for the resolution of the challenges to the restrictive markings. This contracting officer shall coordinate with all the other contracting officers, formulate a schedule to all interested parties. The schedule shall provide to the contractor or subcontractor a reasonable opportunity to respond to each challenge notice. All parties must agree to be bound by this schedule.

(d) *Final Decision.*—(1) *Final Decision When Contractor Fails to Respond.* If the contractor or subcontractor fails to respond to the challenge notice, the contracting officer will then issue a final decision that the restrictive markings are not valid and that the Government will either strike or ignore the invalid restrictive markings. The failure of the contractor or subcontractor to respond to the challenge notice constitutes agreement with the Government action to strike or ignore the restrictive legends. The final decision shall be issued as a final decision under the Disputes clause at 52.233–1. This final decision is to be issued within 60 days after the expiration of the time period of (c)(1)(ii) or (2) above. Following the issuance of the final decision, the contracting officer may then strike or ignore the invalid restrictive markings.

(2) *Final Decision when Contractor or Subcontractor Responds.* (i) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the contractor or subcontractor has justified the validity of the restrictive marking, the contracting officer shall issue a final decision to the contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive markings. The final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice.

(ii) (A) If, after reviewing the response from the contractor or subcontractor, the contracting officer determines that the validity of the restrittive marking is not justified, the contracting officer shall issue a final decision to the contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within 60 days after receipt of the contractor's or subcontractor's response to the challenge notice, or within such longer period that the contracting officer has notified the contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within 60 days after receipt of the response to the challenge notice. Such a final decision shall advise the contractor or subcontractor of the rights of appeal under the Contract Disputes Act.

(B) The Government will continue to be bound by the restrictive marking for a period of 90 days from the issuance of the contracting officer's final decision under (d)(2)(ii)(A) of this section. The contractor or subcontractor, if it intends to file suit in the United States Claims Court, must provide a notice of intent to file suit to the contracting officer within 90 days from the issuance of the contracting officer's final decision under (d)(2)(ii)(A) of this section. If the contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the contracting officer within the 90-day period, the Government may cancel or ignore the restrictive markings, and the failure of the contractor or subcontractor to take the required action constitutes agreement with such Government action.

(C) The Government will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the contracting officer within 90 days from the issuance of the final decision under (d)(2)(ii)(A) of this section. The Government will no longer be bound and may strike or ignore the restrictive markings if the contractor or subcontractor fails to file its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the agency may, following notice to the contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure pending filing of the suit or expiration of the 1 year period without filing of the suit. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(D) The Government will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Notwithstanding the foregoing, where the head of an agency determines, on an nondelegable basis, that *(1)* the Contractor has ffled to diligently prosecute its appeal or *(2)* that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the agency may, following notice to the contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure pending final adjudication. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(e) *Appeal or Suit.* (1) If the contractor or subcontractor appeals or files suit and if upon final disposition the contracting officer's decision is sustained, the restrictive markings on the technical data shall be canceled, corrected, or ignored. If upon final disposition it is found that the restrictive marking was not substantially justified, the contracting officer shall determine the cost to the Government of reviewing the restrictive markings and the fees and other expenses incurred by the Government is challenging the marking. The contractor is then liable to the Government for payment of these costs unless the contracting officer determines

that special circumstances would make such payment unjust.

(2) If the contractor or subcontractor appeals or files suit and if upon final disposition the contracting officer's decision is not sustained, the Government shall continue to be bound by the restrictive markings. Additionally, if the challenge by the Government is found not to have been made in good faith, the Government shall be liable to the contractor or subcontractor for payment of fees or other expenses incurred by the contractor or subcontractor in defending the validity of the marking.

(f) *Survival of Right to Challenge.* The Government's right to challenge the validity of a restrictive marking is without limitation as to time and without regard as to final payment under the contract under which the data was delivered. However, if the contracting officer issues a decision sustaining the validity of a restrictive marking, the validity of such restrictive marking shall not again be challenged unless additional evidence not originally available to the contracting officer becomes available that would indicate the restrictive marking is invalid.

(g) *Privity of Contract.* These procedures for reviewing the validity of restrictive markings on technical data do not create or imply a privity of contract between the Government and subcontractors.

3. Section 27.410 is amended by adding paragraph (t) to read as follows:

27.410 Solicitation provisions and contract clauses.

* * * * *

(t) The contracting officer shall insert the clause at 52.227–24, Validation of Restrictive Markings on Technical Data, in solicitations and contracts which require the delivery of technical data; except that, for civilian agencies, not including NASA, the clause shall only be inserted in such solicitations and contracts if those solicitations and contracts are for, or in support of, a major system (as the term "major system" is defined in Section 4 of the Office of Federal Procurement Policy Act, a amended by Pub. L. 98–577). In solicitations and contracts having multiple tasks or work statements, these agencies may, in accordance with their regulations, also limit the application of the clause to the tasks or work statements which require delivery of technical data relating to a major system or supplies for a major system.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.227–24 is added to read as follows:

52.227–24 Validation of Restrictive Markings on Technical Data.

As prescribed in 27.410(t), insert the following clause:

Validation of Restrictive Markings on Technical Data (Oct 1985)

(a) *Definition.* "Technical data," as used in this clause, means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer software documentation) relating to supplies acquired or to be acquired by the Government. Such term does not include computer software or financial, administrative, cost or pricing, or management data, or other information incidental to contract administration.

(b) *Justification.* The Contractor or subcontractor at any tier shall maintain records adequate to justify the validity of markings that impose restrictions on the Government and others to use, duplicate, or disclose technical data delivered or required to be delivered under the contract or subcontract, and shall be prepared to furnish the Contracting Officer a written justification for such restrictive markings. The records that justify the validity of the restrictive markings shall be maintained for as long as the Contractor or subcontractor intends to assert the validity of the markings.

(c) *Prechallenge review.* (1) The Contracting Officer may request the contractor or subcontractor to furnish to the Contracting Officer a written justification for any restriction asserted by the Contractor or subcontractor on the right of the United States or others to use technical data. The Contractor or subcontractor shall furnish such written justification to the Contracting Officer within thirty (30) days after receipt of a written request or within such longer period as may be authorized in writing by the Contracting Officer.

(2) If the Contracting Officer, after reviewing the written justification furnished pursuant to (b)(1) of this clause and any other available information pertaining to the validity of a restrictive marking, determines that reasonable grounds exist to question the current validity of the marking and that continued adherence to the marking would make impracticable the subsequent competitive acquisition of the item, component, or process to which the marked technical data relates, the Contracting Officer may review the validity of the marking.

(3) As part of the review, the Contracting Officer may request the Contractor or subcontractor to furnish information in the records or otherwise in the possession of or available to the Contractor or subcontractor to justify the validity of any restrictive marking on technical data delivered or required to be delivered under the contract or subcontract. The Contracting Officer may request the Contractor or subcontractor to furnish additional information such as a statement of facts accompanied by supporting documentation adequate to justify the validity of the marking. The Contractor or subcontractor shall furnish such information to the Contracting Officer within thirty (30) days after receipt of a written request or within such longer period as may be authorized in writing by the Contracting Officer.

(d) *Challenge.* (1) Notwithstanding any provision of this contract concerning inspection and acceptance, if, after completing a prechallenge review, the Contracting Officer determines that a challenge to the restrictive marking is warranted, the Contracting Officer shall send a written challenge notice to the Contractor or subcontractor. Such challenge shall include (i) the grounds for challenging the restrictive marking; (ii) a requirement for a written response within sixty (60) days after receipt of the written notice justifying by clear and convincing evidence the current validity of the restrictive marking; (iii) a notice that a response will be considered a claim within the meaning of the Contract Disputes Act of 1978 and must be certified in the form prescribed in Federal Acquisition Regulation (FAR) 33.207, regardless of dollar amount; and (iv) a notice that failure to a respond to the challenge notice will constitute agreement by the Contractor or subcontractor with Government action to strike or ignore the restrictive legends.

(2) The Contracting Officer shall extend the time for response as appropriate if the Contractor or subcontractor submits a written request showing the need for additional time to prepare a response.

(3) The Contractor's or subcontractor's written response shall be considered a claim within the meaning of the Contract Disputes Act of 1978 (41 U.S.C. 601 et seq.) and shall be certified in the form prescribed by FAR 33.207, regardless of dollar amount.

(4) A Contractor or subcontractor receiving challenges to the same restrictive markings from more than one Contracting Officer shall notify each Contracting Officer of the existence of more than one challenge. The notice shall also state which Contracting Officer initiated the first in time unanswered challenge. The Contracting Officer initiating the first in time unanswered challenge after consultation with the Contractor or subcontractor and the other Contracting Officers, shall formulate and distribute to all interested parties a schedule for responding to each of the challenged notices. The schedule shall afford the Contractor or subcontractor an equitable opportunity to respond to each challenge notice. All parties agree to be bound by this schedule.

(e) *Final decision when Contractor or subcontractor fails to respond.* Upon a failure of a Contractor or subcontractor to submit any response to the challenge notice, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1, pertaining to the validity of the asserted restriction. The Contractor or subcontractor hereby agrees that failure to respond to the challenge notice within the

time period of (d) (1)(ii) or (2) above, entitles the Government to cancel, correct, or ignore the restrictive markings and constitutes agreement with such Government action. This final decision shall be issued within sixty (60) days after the expiration of the time period of (d)(1)(ii) or (2) above.

(f) *Final decision when Contractor or subcontractor responds.* (1) If the Contracting Officer determines that the Contractor or subcontractor has justified the validity of the restrictive marking, the Contracting Officer shall issue a final decision to the Contractor or subcontractor sustaining the validity of the restrictive marking, and stating that the Government will continue to be bound by the restrictive marking. The final decison shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decision will be made within sixty (60) days after receipt of the response to the challenge notice.

(2) (i) If the Contracting Officer determines that the validity of the restrictive marking is not justified, the Contracting Officer shall issue a final decision to the Contractor or subcontractor in accordance with the Disputes clause at FAR 52.233–1. Notwithstanding paragraph (e) of the Disputes clause, the final decision shall be issued within sixty (60) days after receipt of the Contractor's or subcontractor's response to the challenge notice, or within such longer period that the Contracting Officer has notified the Contractor or subcontractor of the longer period that the Government will require. The notification of a longer period for issuance of a final decison will be made within sixty (60) days after receipt of the response to the challenge notice.

(ii) The Government agrees that it will continue to be bound by the restrictive marking for a period of ninety (90) days from this issuance of the Contracting Officer's final decision under (f)(2)(i) of this clause. The Contractor or subcontractor agrees that, if it intends to file suit in the United States Claims Court it will provide a notice of intent to file suit to the Contracting Officer within ninety (90) days from the issuance of the Contracting Officer's final decision under (f)(2)(i) of this clause. If the Contractor or subcontractor fails to appeal, file suit, or provide a notice of intent to file suit to the Contracting Officer within the ninety (90)-day period, the Government may cancel or ignore the restrictive markings and the failure of the contractor or subcontractor take the required action constitutes agreement with such Government action.

(iii) The Government agrees that it will continue to be bound by the restrictive marking where a notice of intent to file suit in the United States Claims Court is provided to the Contracting Officer within ninety (90) days from the issuance of the final decision under (f)(2)(i) of this clause. The Government will no longer be bound and the contractor or subcontractor agrees that the Government may strike or ignore the restrictive markings if the Contractor or subcontractor fails to open its suit within 1 year after issuance of the final decision. Notwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, that urgent or compelling circumstances significantly affecting the interest of the United States will not permit waiting for the filing of a suit in the United States Claims Court, the Contractor or subcontractor agrees that the agency may, following notice to the Contractor or subcontractor, cancel and ignore such restrictive markings as an interim measure, pending filing of the suit or expiration of the 1-year period without filing of the suit. However, such agency head determination does not affect the contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(iv) The Government agrees that it will be bound by the restrictive marking where an appeal or suit is filed pursuant to the Contract Disputes Act until final disposition by an agency Board of Contract Appeals or the United States Claims Court. Nothwithstanding the foregoing, where the head of an agency determines, on a nondelegable basis, following notice to the Contractor that (A) the Contractor has failed to diligently prosecute its appeal, or (B) that urgent or compelling circumstances significantly affecting the interest of the United States will not permit awaiting the decision by such Board of Contract Appeals or the United States Claims Court, the Contractor or subcontractor agrees that the agency may cancel and ignore such restrictive markings as an interim measure pending final adjudication. However, such agency head determination does not affect the Contractor's or subcontractor's right to damages against the United States where its restrictive markings are ultimately upheld or to pursue other relief, if any, as may be provided by law.

(g) *Final disposition of Appeal or suit.* (1) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is sustained—

(i) The restrictive marking on the technical data shall be canceled, corrected, or ignored; and

(ii) If the restrictive marking is found not be be substantially justified, the Contractor or subcontractor, as appropriate, shall be liable to the Government for payment of the cost to the Government of reviewing the restrictive marking and the fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Government in challenging the marking, unless special circumstances would make such payment unjust.

(2) If the Contractor or subcontractor appeals or files suit and if, upon final disposition of the appeal or suit, the Contracting Officer's decision is not sustained—

(i) The Government shall continue to be bound by the restrictive marking; and

(ii) The Government shall be liable to the Contractor or subcontractor for payment of fees and other expenses (as defined in 28 U.S.C. 2412(d)(2)(A)) incurred by the Contractor or subcontractor in defending the marking, if the challenge by the Government is found not to have been made in good faith.

(h) *Survival of right to challenge.* The Government retains its right to challenge the validity of a restrictive marking asserted under this contract without limitation as to time and without regards to final payment. However, after issuing a decision sustaining the vailidity of a restrictive marking, the Government agrees not to rechallenge the validity of a restrictive marking under this clause unless additional evidence not originally available to the Contracting Officer becomes available that indicates the restrictive marking is invalid.

(i) *Privity of contract.* The Contractor or subcontractor agrees that the Contracting Officer may transact matters under this clause directly with subcontractors at any tier that assert restrictive markings. However, this clause neither creates nor implies privity of contract between the Government and subcontractors.

(j) *Flowdown.* The Contractor or subcontractor agrees to insert this clause in subcontracts at any tier requiring the delivery of technical data.

[FR Doc. 85–23581 Filed 10–2–85; 8:45 am]
BILLING CODE 6820–61–M

VETERANS ADMINISTRATION

48 CFR Part 815

Unsolicited Proposals

AGENCY: Veterans Administration.

ACTION: Proposed rule.

SUMMARY: The VA (Veterans Administration) is proposing to add to the VA Acquisition Regulation Subpart 815.5, regarding the processing of unsolicited proposals. The proposed rule implements the FAR (Federal Acquisition Regulation) Subpart 15.5 by establishing a management structure for reviewing, evaluating and disposing of unsolicited proposals received at a VA facility.

The proposed rule establishes VA policy endorsing unsolicited proposals as a means to obtain technological and innovative efficiencies which will further the mission of the agency. The rule would establish the Head of Contracting Activity serving the facility receiving the unsolicited proposal as the contact point. The contact point will ensure the proposal is evaluated consistent with FAR requirements. A decision to accept an unsolicited proposal and to negotiate a contract with the proposer will require the prior approval of the Director, Office of Procurement and Supply.

DATE: Written comments should be submitted no later than November 1, 1985.

ADDRESS: Interested persons are invited to submit written comments, suggestions or objections to the Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, D.C. 20420. All written comments received will be available for public inspection only at the Veterans Administration Central Office in room 132 of the above address between the hours of 8 a.m. and 4:30 p.m. Monday through Friday (except holidays) until November 18, 1985.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, (202) 389-2334.

SUPPLEMENTARY INFORMATION:

I. Executive Order 12291

Pursuant to the memorandum from David A. Stockman, Director, Office of Management and Budget, to Donald E. Sowle, Administrator, Office of Federal Procurement Policy, and Douglas H. Ginsburg, Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this proposed rule is exempt from sections 3 and 4 of the Executive Order 12291.

II. Regulatory Flexibility Act (RFA)

Because this proposed rule does not come within the term "rule" as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a substantial number of small entities because the proposed VAAR subpart will primarily implement management control over the disposition of unsolicited proposals, as required by Federal Acquisition Regulation Subpart 15.5.

III. Paperwork Reduction Act

This proposed rule requires no additional information collection or recordkeeping requirements upon the public.

List of Subjects in 48 CFR Part 815

Government procurement.

Approved: September 24, 1985.

By direction of the Administrator:

Everett Alvarez, Jr.,

Deputy Administrator.

Title 48 CFR Chapter 8 is amended as set forth below:

1. The authority citation for Part 815 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

PART 815—CONTRACTING BY NEGOTIATION

2. Part 815 is amended by adding Subpart 815.5 to read as follows:

Subpart 815.5—Unsolicited Proposals

Sec.

Subpart 815.5—Unsolicited Proposals

815.502 Policy.

It is the policy of the VA to promote the submission of unsolicited proposals as a means to obtain technological and innovative efficiencies which will further the mission of the agency. However, it must be emphasized that such unsolicited proposals must meet the criteria set forth in FAR 15.507(b) before such a proposal can be considered for negotiation. Prior to investment of contractor effort and VA administrative processing, advance guidance pursuant to FAR 15.504 and 815.504 is crucial.

815.504 Advance guidance.

(a) Any inquiries from a potential offeror of an unsolicited proposal shall be referred to the appropriate VA contact point designated in 815.506(a). The contact point will determine the nature of the potential proposal and determine what technical/professional disciplines need be consulted to determine the VA need for such a proposal and the likelihood that a formal proposal would be favorably reviewed. In consultation with such technical/professional offices, the VA contact point will inform the potential proposer of any additional information required to provide advance guidance as well as the information specified in FAR 15.504.

(b) The VA contact point will maintain a record of advance guidance provided and the disposition/recommendation regarding the potential offer.

815.506 Agency procedures.

(a) The Chief, Supply Service, servicing the field facility and the Director, VA Marketing Center, Hines, Illinois are designated as the VA contact points for unsolicited proposals submitted at the facility level. The Director, Office of Procurement and Supply is designated as the VA contact point for all unsolicited proposals received at VA Central Office.

(b) Each unsolicited proposal received by the Veterans Administration will be submitted to the appropriate contact point.

(c) The VA contact point will review the unsolicited proposal and ensure that it is complete as prescribed in FAR 15.505. If required information is not submitted, the VA contact point will:

(1) Determine if advance guidance as specified in FAR 15.504 is necessary and (2) request that the offeror provide the necessary information if it is determined that the formal evaluation prescribed in FAR 15.506-2 is appropriate.

815.506-1 Receipt and initial review.

(a) When the VA contact point determines that a comprehensive evaluation is to be undertaken (i.e., the proposal complies with the requirements in FAR 15.506-1(a) and is related to the mission of the VA), the offeror will be contacted to ensure that all data that should be restricted in accordance with FAR 15.509 has been identified.

(b) The VA contact point will maintain a log of all unsolicited proposals which will be evaluated. The log will indicate: (1) The date that the unsolicited proposal has been determined to warrant a comprehensive evaluation; (2) a description of the proposal; (3) the offices requested to evaluate the proposal and the date such offices are requested to return their evaluations; (4) the date the reviewing offices finalize their respective evaluations; and (5) the final disposition of the proposal.

(c) Each office which is assigned responsibility for reviewing an unsolicited proposal will be advised of the need to evaluate the proposal against the criteria set forth in FAR 15.507(a)(1) through (3), i.e., is the proposal available to the Government without restriction from another source, does it closely resemble a pending competitive acquisition, is the proposal lacking in demonstrated innovation or uniqueness? If the reviewers conclude in the affirmative as to any one of these questions, the VA contact point shall be advised and return the proposal to the proposer.

(d) With regard to an unsolicited proposal being processed at a field facility, if the reviewing offices conclude that the unsolicited proposal should be accepted and provide the justification and certification required by FAR 15.507, the VA contact point will obtain the prior approval of the Director, Office of Procurement and Supply (93) prior to proceeding with negotiation. In order to obtain the approval, the VA contact point will submit all necessary documentation supporting the noncompetitive negotiation including any justification and approval required by FAR subpart 6.3 and results of any synopsis required by FAR subpart 5.2. The Director, Office of Procurement and Supply will coordinate the proposal with the cognizant VA Central Office

program official(s) and furnish the VA contact point with the final decision.

(e) All copies of the unsolicited proposal will be controlled by the contact point by numbering each copy. If a reviewing office requires additional copies, the reviewing office will obtain approval of the VA contact point prior to duplication, numbering the copies as specified by the contact point. All copies will be returned to the VA contact point once review is completed.

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BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 23

Participation by Minority Business Enterprise in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Department of Transportation is proposing to change the way in which purchase of materials and supplies from minority, women-owned, and disadvantaged business enterprises are counted toward recipients' and contractors' goals in the Department's financial assistance programs. The proposed change would also clarify and tighten the provisions of the regulations governing participation in these programs by such enterprises.

DATE: Comments should be received by December 2, 1985.

ADDRESS: Comments should be addressed to Docket Clerk (Docket No. 64f), Department of Transportation, 400 7th Street, SW, Room 4107, Washington, DC 20590. Comments are available for inspection at this address from 9:00 a.m. to 5:30 p.m., Monday through Friday. Persons wishing to have their comments acknowledged should send a stamped, self-addressed postcard with their comments. The docket clerk will return these postcards when the comments are docketed.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Office of the Assistant General Counsel for Regulation and Enforcement (C-50), Department of Transportation, 400 7th Street, SW, Room 10424, Washington, DC 20590, (202) 426-4723.

SUPPLEMENTARY INFORMATION:

Existing Provision

The Department's minority business enterprise (MBE) regulation (49 CFR Part 23) limits the credit toward goals that a recipient or contractor can obtain for purchasing materials and supplies from an MBE, women's business enterprise (WBE), or disadvantaged business enterprise (DBE) firm that does not manufacture the materials or supplies. Section 23.47(e) of the regulation provides as follows:

> (e) A recipient or contractor may count toward its MBE goals expenditures for materials and supplies obtained from MBE suppliers and manufacturers, provided that the MBEs assume the actual and contractual responsibility for the provision of the materials and supplies.
>
> (1) The recipient or contractor may count its entire expenditure to an MBE manufacturer (i.e., a supplier that produces goods from raw materials or substantially alters them before resale).
>
> (2) The recipient may count 20 percent of its expenditures to MBE suppliers that are not manufacturers, provided that the MBE supplier performs a commercially useful function in the supply process.

Subparagraph (e)(2), which limits credit for purchases of materials and supplies from non-manufacturing suppliers to 20 percent of the purchase price of the item, is the key portion of the provision. Two concerns underlay its inclusion in the rule. First, the Department was concerned that, unlike construction and service contractors or manufacturers, non-manufacturing suppliers add relatively little value to the product they supply. Second, the Department was concerned that, if contractors could count the total purchase price of supplies obtained from MBE suppliers toward their goals, opportunities for other minority firms could be reduced. That is, if recipients or contractors could meet most or all of their goals by purchasing supplies from minority suppliers, they would have less incentive to make use of other types of minority businesses.

The Department has now had four years of experience in working with the MBE rule, and we have noted a number of problems with or objections to the 20 percent provision. First, the provision may have an adverse effect on MBE suppliers, in that it provides less incentive for recipients and contractors to use their services than the services of other kinds of minority firms (which are counted at 100 percent of the value of their products or services).

This effect could be felt not only in direct use of supplier firms, but also in connection with the outreach and assistance portions of a recipient's programs. For example, it is likely to be more cost-effective for a recipient to use its resources to develop contacts with or provide technical assistance to a firm the use of which will result in 100 percent credit than one for which the "payoff" in terms of credit toward goals will be 20 cents on the dollar. As a result, the rule could unintentionally skew recipient's MBE programs toward construction contractors and other service providers and away from dealers and suppliers of products.

Second, the provision may make it more difficult for some recipients to meet goals than others. For example, Urban Mass Transportation Administration (UMTA) recipients of operating assistance must meet their DBE and WBE goals largely through procurements of materials and supplies (e.g., bus fuel, spare parts). Since these recipients can get only 20 percent credit for the use of the firms that provide these materials and supplies, the recipients will have a more difficult time meeting goals than those recipients (e.g., transit authorities or highway departments that do substantial amounts of construction contracting) 100 percent of the value of whose MBE contracts can be counted toward goals.

Third, the existing provision does not make clear the counting provisions applicable to contractors who are neither suppliers nor construction contractors. As a result, questions have arisen in program implementation concerning the proper credit to be awarded to such contractors as consultants, sales representatives, supply delivery services, and insurance and bonding services. Because of this uncertainty, recipients or contractors have sometimes sought to obtain MBE goal credit for 20 percent of the purchase price of a product when the MBE involved did not perform the function of a supplier, but only that, for example, of a transportation provider.

The Department believes that it is desirable to strengthen the regulation to prevent abuses resulting from testing as suppliers firms which do not perform a commercially useful function as suppliers. This change is important regardless of the specific change made to the 20 percent credit provision itself.

Consequently, the Department is proposing that, in order to obtain credit as a supplier, a firm would have to establish that it owns and operates a *bona fide* supply business and performs a commercially useful function with normal industry practice. Typically, a *bona fide* supplier would be one that maintains an inventory, sells goods to a number of contractors, carries goods manufactured by a number of different companies, and packages and ships goods. Minority firms acting in an exclusive arrangement with a particular non-minority firm generally would not meet this test. Interjection of passive

"conduits" or "brokers," inconsistent with normal business practices in the industry and/or unnecessary to a transaction, cannot properly result in the award of credit to a firm as a supplier.

The Proposed Amendment

In order to help solve these problems and to improve the regulation's ability to deal adequately with the complexities of the marketplace, the Department is proposing to alter §23.47(e). The amendment would replace the existing § 23.47(e) with a new §23.47 (e) and (f). The content of this proposed amendment is consistent with the regulations and practice of the Small Business Administration and General Services Administration in direct Federal procurement.

The operation of the proposed section must be understood in the context of the concept of "commercially useful function." According to §23.47(d), work performed by an MBE, DBE or WBE firm in a particular transaction can be counted toward goals only if the recipient determines that it involves a commercially useful function. That is, in light of industry practices and other relevant considerations, does the MBE, DBE or WBE firm have a necessary and useful role in the transaction, or is the firm's role a superfluous step added in an attempt to obtain credit toward goals? If, in the recipient's judgment, the firm (even though an eligible MBE, DBE or WBE) does not perform a commercially useful function in the transaction, no credit toward goals may be awarded, and the counting provisions of the regulation never come into play.

If the recipient determines that the firm is performing a commercially useful function, the recipient must then decide what that function is. The Department is proposing a definition of a "regular dealer," meaning a firm that is performing a *bona fide* commercially useful function as a supplier. Only if a firm is a "regular dealer" does the counting provision applicable to suppliers control.

A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which it keeps the materials or supplies in question in stock and sells them to the public in the usual course of business. The criterion of selling to the public is important in distinguishing a *regular* dealer from a firm with performs supplier-like functions on a *ad hoc* basis or for only one or two contractors with whom it has a special relationship.

A regular dealer, in other words, has a physical plant, an inventory, and a regular trade with a variety of customers. This standard would be modified somewhat for dealers in bulk products such as oil, steel, or cement, who need not maintain the product in stock but must own, operate or maintain distribution equipment and have as their principal business the distribution of the product or products in question.

On the other hand, if the commercially useful function being performed is not that of a regular dealer, but rather that of delivery of products, obtaining bonding or insurance, procurement of personnel, facilities, or materials, etc., the proposed counting rules of proposed §23.27(f) would apply. There are no *per se* rules for determining what, if any, commercially useful function is being performed in a given situation. Recipients must make these judgments on a case-by-case basis.

Proposed §23.47(f) would specify the credit allowable for firms providing a commercially useful function other than a supply function covered by paragraph (e) or a traditional function in DOT-assisted programs such as construction. In addition to clarifying these matters in the interest of better program implementation, the Department intends these provisions to ensure that firms providing services that do not fall into traditional contracting and supply categories can receive appropriate credit for their contributions.

These provisions would apply to direct procurements and prime contracts let by recipients as well as to subcontracts let by prime contractors. The proposal would provide that only services required by a DOT-assisted contract are eligible for credit; a DOT-assisted contract, for this purpose, can mean a direct purchase of goods or services by a transit authority as well as by a prime construction contractor under a highway contract.

Under paragraph (f), for example, a business that simply transfers title of a product from manufacturer to ultimate purchase (e.g., a sales representative who reinvoices a steel product from the steel company to the recipient or contractor) or a firm that puts a product into a container for delivery would not be considered regular dealers. The recipient or contractor would not receive credit based on a percentage of the cost of the product for working with such firms.

Subparagraph (f)(1) concerns the use of services that help the recipient or contractor obtain needed supplies, personnel, materials or equipment to perform a contract or program function. Only the fee received by the service provider could be counted toward goals. For example, use of a minority sales representative or distributor for a steel company, if performing a commercially useful function at all, would entitle the recipient or contractor receiving the steel to count only the fee paid to the representative or distributor toward its goal. No portion of the price of the steel would count toward the goal. This provision would also govern fees for professional and other services obtained expressly and solely to perform work relating to a specific contract or program function.

Subparagraph (f)(2) concerns transportation of delivery services. If an MBE, DBE or WBE trucking company picks up a product from a manufacturer or regular dealer and delivers the product to the recipient or contractor, the commercially useful function it is performing is not that of a supplier, but simply that of a transporter of goods. Unless the trucking company is itself the manufacturer of or a regular dealer in the product, credit cannot be given based on a percentage of the cost of the product. Rather, credit would be allowed for the cost of the transportation service.

Subparagraph (f)(3) applies the same principle to bonding and insurance matters. Contractors often are required to obtain bonding and insurance concerning their work in DOT-assisted contracts. When they obtain a bond or an insurance policy from an MBE, DBE, or WBE agent, the amount allowable toward goals is not any portion of the face value of the policy or bond or the total premium, but rather the fee received by the agent for selling the bond or insurance policy.

The Department is aware that the proposed regulatory language does not explicitly mention every kind of business that works in DOT financial assistance programs. In administering a final rule based on this proposal, the Department's operating administrations would, on a case-by-case basis, determine the appropriate regulatory provision to apply in a particular situation. For example, a recipient may work with an MBE travel agency to arrange business trips for the recipient's employees. The travel agency receives, in effect, a commission on the price of the airline tickets or other services purchased through the travel agency. To the extent that Federal funds participate in the travel costs, MBE credit would be available as provided in subparagraph (f)(3), which appears to be the closest analog to the situation of travel agencies.

The Department seeks comment on whether this administrative approach to dealing with businesses not specifically mentioned in the rule is appropriate, or

whether additional specificity in the regulation is desirable and possible.

In line with these other changes, the Department also proposes to change the 20 percent limitation itself. In proposing this change, the Department's premise is that a regular dealer is likely to have a sufficient investment in its business to merit treatment on a basis more similar to that of other contractors than the 20 percent provision would allow.

At the same time, however, the Department is not certain whether, in view of the original reasons for putting the 20 percent provision into place, is it advisable to allow recipients and contractors to count 100 percent of the cost of materials obtained from regular dealers toward MBE/WBE/DBE goals. Therefore, the Department, while proposing to change the 20 percent provision, is not proposing that 100 percent or any lesser percentage of the cost of materials obtained from regular dealers that recipients and contractors can count toward goals.

The Department seeks comments on what this percentage should be, and intends to "fill in the blank" in proposed paragraph (e) after considering these comments. The Department urges commenters not simply to "vote" for a given percentage, but also to explain, in as much depth as possible, the rationale for their suggestion. We also request commenters views on a number of related questions.

For example, to what degree is it appropriate for the Department to take "value added" considerations into account in making its decision on, allowable credit for suppliers? What percentage would provide the best and fairest balance among the interests of regular dealers in supplies and other sorts of contractors? What uses, or abuses, of suppliers have been made under the present rule, in commenters' own experience? How do these uses or abuses differ from those involving other types of firms? Do the proposed changes address the problems that exist? What problems, if any, would the proposal create for contractors other than suppliers, and how should the Department deal with these problems.

Regulatory Process Matters

This NPRM proposes an amendment to one provision of the Department's minority business rule. As such, it does not propose a major rule under Executive Order 12291 or a significant rule under the Department's Regulatory Policies and Procedures. The proposal could have a significant economic impact on a substantial number of small entities. The entities in question are small businesses who act as suppliers to DOT recipients and contractors. The technical changes in counting procedures will benefit regular dealers by increasing the credit that may be counted toward DBE/WBE goals for the purchase of supplies. For businesses that do not perform supply services, the proposal will clarify existing policy that only the fee for their service may be counted toward goals. The overall effect of the proposal will be to increase opportunities for participation in DOT financial assistance programs.

The consideration of the situation of these entities in the preamble to this NPRM constitutes the Regulatory Flexibility Analysis called for by the Regulatory Flexibility Act. The Department has no information concerning other potential effects of the proposal on small entities, but we will consider further any such effects brought to our attention by comments on the NPRM.

List of Subjects in 49 CFR Part 23

Administrative practice and procedure, Government contracts, Minority businesses.

Issued this 25th day of September 1985, at Washington DC.

Elizabeth Hanford Dole,

Secretary of Transportation.

PART 23—[AMENDED]

For the reasons set forth in the preamble, the Department of Transportation proposes to amend § 23.47 of Title 49, Code of Federal Regulations, as follows:

1. The authority citation for Part 23 is amended by adding the following citation:

Authority: * * * Sec. 105(f) of the Surface Transportation Assistance Act of 1982 (Pub. L. 97–424); 49 U.S.C. 322(a).

2. By revising paragraph (e) and adding a new paragraph (f), to read as follows:

§ 23.47 Counting MBE participation toward meeting MBE goals.

* * * * *

(e)(1) A recipient or contractor may count toward its MBE, DBE or WBE goals ——— percent of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE or WBE regular dealer, and 100 percent of such expenditures to an MBE, WBE, or DBE manufacturer.

(2) For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the recipient or contractor.

(3) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, but must own, operate or maintain distribution equipment and have, as its principal business, and in its own name, the purchase and sale of the products. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

(f) A recipient or contractor may count toward its MBE, DBE, or WBE goals the following expenditures to MBE, DBE, or WBE firms that are not manufacturers or regular dealers:

(1) The fees charged for providing a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the contract, provided that the fee is determined by the recipient to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies.

(3) The fees charged for providing any bonds or insurance specifically required for the performance of the contract.

[FR Doc. 85–23618 Filed 10–2–85; 8:45 am]

BILLING CODE 4910-62-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposal to List the Least Bell's Vireo as Endangered and to Designate Its Critical Habitat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Service reopens the comment period on a proposed rule to list the least Bell's vireo as endangered and designate its critical habitat.

DATES: The comment period is reopened until December 2, 1985.

ADDRESSES: Comments and other information concerning the proposal should be forwarded to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 N.E. Multnomah Street, Suite 1692, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97234 (503/231–6131 or FTS 429–6131).

SUPPLEMENTARY INFORMATION:

Background

The least Bell's vireo (*Vireo bellii pusillus*) is a small bird formerly nesting abundantly from north central California south to Baja California, Mexico. Its current range has been reduced and only several birds are presently known to exist. The least Bell's vireo is a small gray, migratory songbird dependent upon thickets along willow-dominated riparian habitats for nesting. The bird is endangered by habitat alterations and nest parasitism by the brown-headed cowbird. A proposal of endangered status with critical habitat for the least Bell's vireo was published in the **Federal Register** (50 FR 18968) on May 3, 1985. The original comment period closed July 2, 1985, and was reopened on July 9, 1985, (50 FR 27992) and closed on August 31, 1985.

All information received during this period will be considered. The Service hereby requests all interested parties to provide any additional information regarding the status or range of the least Bell's vireo or its critical habitat.

Authority: Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.; 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. 1255; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: September 27, 1985.

P. Daniel Smith,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85–23582 Filed 10–2–85; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 50, No. 192
Thursday, October 3, 1985

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Jurisdiction of Certain National Forest System Lands in California to the Department of the Interior and Adjustment of the Boundaries of the National Forests

Correction

In FR Doc. 85-21024 appearing on page 35849 in the issue of Wednesday, September 4, 1985, make the following correction: In the second column, under T.3.S., R. 20E., the second line should read: "NW¼SE¼, E½SE¼SW¼SE¼, and".

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

Agency Forms Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposals for collections of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35).

Agency: Bureau of the Census
Title: Questionnaire for Building Permit Official
Form Number: Agency—SOC-903; OMB—0607-0125
Type of Request: Revision of a currently approved collection
Burden: 835 respondents; 209 reporting hours
Needs and Uses: The information collected from local building permit officials is needed by interviewers to correctly list and sample permits for the Survey of Construction. Data on housing starts are obtained from these permits.
Affected Public: State or local governments
Frequency: Other
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Quarterly Summary of Federal, State, and Local Tax Revenue
Form Number: Agency—F-71, F-72, F-73; OMB—0607—0112
Type of Request: Extension of a currently approved collection
Burden: 5,254 respondents; 5,254 reporting hours
Needs and Uses: Census needs state and local tax data to publish benchmark statistics on public sector taxes; to provide data to the Bureau of Economic Analysis for GNP calculations and other economic indicators; and to provide data for economic research and comparative studies for governmental finances.
Affected Public: State or local governments
Frequency: Quarterly
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Business and Professional Classification Report
Form Number: Agency—B-625; OMB—0607-0189
Type of Request: Revision of a currently approved collection
Burden: 44,500 respondents; 11,125 reporting hours
Needs and Uses: This form is used to canvass firms which have been assigned Federal Employer Identification numbers. New firms entering business use this procedure to update their current retail, wholesale, and service surveys.
Affected Public: Businesses or other for-profit institutions; non-profit institutions and small businesses or organizations
Frequency: Other
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Monthly Retail Inventory Reports
Form Number: Agency—B-175(SR); OMB—0607-0078
Type of Request: Revision of a currently approved collection
Burden: 30,800 respondents; 3,000 reporting hours
Needs and Uses: This survey provides estimated dollar volume end-of-month inventories of retail stores. Changes in the value of the inventory levels are used by the Bureau of Economic Analysis in their calculations of gross national product and are not publicly available from nongovernment or other government sources.
Affected Public: Businesses or other for-profit institutions and non-profit institutions
Frequency: Monthly
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Construction Progress Reporting (Private Nonresidential)
Form Number: Agency—C-307, C-307A; OMB—0607-0489
Type of Request: Extension of a currently approved collection
Burden: 190 respondents; 95 reporting hours
Needs and Uses: This form will be used to gather information on construction activities from the member corporations of the Business Roundtable. The data will be used to evaluate the coverage of our sampling frames for large industrial construction.
Affected Public: Business or other for-profit institutions
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census
Title: Professional Skills Agriculture Demonstration Survey
Form Number: Agency—PS-AG 1; OMB—N/A
Type of Request: New collection
Burden: 600 respondents; 300 reporting hours
Needs and Uses: This survey will be used to train new employees in survey development, forms design, and enumeration skills. Data will be used internally to demonstrate the processing, development, analysis and presentation of tables. Respondents for each survey are usually farmers/ranchers in a judgementally selected county.
Affected Public: Individuals or households and farms
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395-4814

Agency: Bureau of the Census

Title: 1986 Farm and Ranch Identification Survey Pretest
Form Number: Agency—86–A4, 86–A5, 86–A6, 86–A4L1, 86–A6L3; OMB—N/A
Type of Request: New collection
Burden: 3,600 respondents; 360 reporting hours
Needs and Uses: These report forms are for test purposes in preparation for the 1987 Farm and Ranch Identification Survey. The 1987 survey will be used to screen nonagricultural related persons and duplicates from the final census of agriculture mailing list.
Affected Public: Farms
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: 1986 Pre-enumeration Survey of Los Angeles, California
Form Number: Agency—DP–1350L, DP–1353L; OMB—N/A
Type of Request: New collection
Burden: 4,500 respondents; 1,240 reporting hours
Needs and Uses: This survey is needed to test an alternate method of Census evaluation in case the Post Enumeration Survey proves to be too operationally difficult. Results will be used to test whether a Pre-enumeration survey is a viable means of evaluating a census.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Mandatory
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Income and Program Participation—Wave 8
Form Number: Agency—SIPP–4800, SIPP–4803; OMB—0607–0425
Type of Request: Revision of a currently approved collection
Burden: 32,760 respondents; 16380 reporting hours
Needs and Uses: This survey is needed to provide the executive and legislative branches with 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: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Questionnaire for Building Permit Official
Form Number: Agency—SOC–903; OMB—0670–0125
Type of Request: Revision of a currently approved collection
Burden: 835 respondents; 209 reporting hours
Needs and Uses: This questionnaire will be used to collect information from local building permit officials that is needed to correctly list and sample permits for the Survey of Construction.
Affected Public: State or local governments
Frequency: Other
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Quarterly Summary of Federal, State, and Local Tax Revenue
Form Number: Agency—F–71, F–72, F–73; OMB—0607–0112
Type of Request: Extension of a currently approved collection
Burden: 5,254 respondents; 5,254 reporting hours
Needs and Uses: The collected information is used to publish benchmark statistics on public sector taxes; to provide data to the Bureau of Economic Analysis for GNP calculations and other economic indictors; and to provide data for economic research and comparative studies of governmental finances.
Affected Public: State or local governments
Frequency: Quarterly
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Income and Program Participation 1986 Panel Wave 2 Prestest
Form Number: Agency—SIPP–62000(X), SIPP–6205L(X); OMB—0607–0425
Type of Request: New collection
Burden: 350 respondents; 175 reporting hours
Needs and Uses: This survey is used to pretest the Wave 2 topical module questions. These questions will be added to the SIPP 1986 Panel Wave 2 Questionnaire.
Affected Public: Individuals or households
Frequency: One time
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Agency: Bureau of the Census
Title: Survey of Income and Program Participation 1986 Core Waves 1–8
Form Number: Agency—SIPP–6100–6800, SIPP–6001, SIPP–6105
Type of Request: Revision of a currently approved collection
Burden: 29,400 respondents; 29,400 reporting hours
Needs and Uses: This survey is used to provide statistics, not previously available, for the Executive and Legislative Branches, such as multiple recipiency of benefits of major government programs, to support policy analyses, and monthly program participation.
Affected Public: Individuals or households
Frequency: Twice a year
Respondent's Obligation: Voluntary
OMB Desk Officer: Timothy Sprehe, 395–4814

Copies of the above information collection proposals can be obtained by calling or writing DOC Clearance Office, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washsington D.C. 20230.

Written comments and recommendations for the proposed information collections should be sent to Timothy Sprehe, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: September 26, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–23635 Filed 10–2–85; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–549–502]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand; Preliminary Determination of Sales at Less Than Fair Value

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: We have preliminarily determined that certain circular welded carbon steel pipes and tubes from Thailand are being, or are likely to be, sold in the United States at less than fair value, and have notified the U.S. International Trade Commission (ITC) of our determination. We have also directed the U.S. Customs Service to suspend the liquidation of all entries of certain circular welded carbon steel pipes and tubes from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the

"Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make a final determination by December 10, 1985.

EFFECTIVE DATE: October 3, 1985.

FOR FURTHER INFORMATION CONTACT: John J. Kenkel, 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) 377–4929.

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We have preliminarily determined that certain circular welded carbon steel pipes and tubes from Thailand are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (19 U.S.C. 1673b) (the Act). The weighted-average margin is listed in the "Suspension of Liquidation" section of this notice.

Case History

On February 28, 1985, we received a petition filed in proper form from the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports, on behalf of the U.S. industry producing certain circular welded carbon steel pipes and tubes. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleges that imports of the subject merchandise from Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673), and that these imports are materially injuring, or threatening material injury to, a U.S. industry.

After reviewing the petition, we determined that it contained sufficient grounds upon which to initiate an antidumping investigation. We initiated the investigation on March 20, 1985 (50 FR 12068), and notified the ITC of our action.

On April 15, 1985, the ITC found that there is a reasonable indication that imports of certain circular welded carbon steel pipes and tubes from Thailand are threatening material injury to a U.S. industry (U.S. ITC Pub. No. 1660, April 1985).

On July 16, 1985, the petitioners requested that we postpone the preliminary determination until September 26, 1985. They also alleged that critical circumstances exist. We postponed the preliminary determination on July 18, 1985 (50 FR 30493).

We investigated Saha Thai Steel Pipe Company, Ltd., and Thai Steel Pipe Industry Company, Ltd., the manufacturers who account for all Thai exports of the merchandise to the United States. We examined 100 percent of the sales made by these companies during the period of investigation.

Scope of Investigation

The products under investigation are: certain circular welded carbon steel pipes and tubes, also known as "standard pipe" or "structural tubing," as currently provided in items 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925 of the *Tariff Schedules of the United States Annotated*.

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price because the merchandise was sold prior to the date of importation to unrelated purchasers in the United States. We calculated the purchase price based on the FOB or C. + I. packed price. We made deductions, where appropriate, for foreign inland freight, inland and marine insurance, handling and brokerage charges. We increased the United States price by the amount of import duties imposed by Thailand which have been rebated by reason of the exportation of the merchandise pursuant to section 772(d)(1)(B) of the Act (19 U.S.C. 1677a(d)(1)(B).

Foreign Market Value

In accordance with section 773(a) of the Act, we calculated foreign market value based on home market sales, packed or unpacked, to unrelated purchasers. From these prices we deducted, where appropriate, inland freight and discounts. In accordance with *Color Television Receivers from Korea*, 49 FR 50420 (December 28, 1984), we also deducted from home market prices a business or sales tax which is levied on all domestic sales of pipe and tube at a 5.5 percent rate. We made adjustments, where appropriate, for differences in credit in accordance with § 353.15 of our Regulations (19 CFR 353.15). We also deducted, where appropriate, the home market packing cost and added the packing cost incurred on sales to the United States. Pursuant to § 353.56 of the Regulations, we made currency conversions at the rates certified by the Fedral Reserve Bank.

We made comparisons of "such or similar" merchandise based on grade, dimension, and end finish selected by Commerce Department industry experts. Differences in merchandise were not considered in the price to price analysis because they were insignificant for purposes of the preliminary determination. We will reconsider them in the final determination.

The petitioners alleged that sales in the home market were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. We found sufficient sales for both Saha Thai Steel Pipe Company and Thai Steel Pipe Industry Company above the cost of production to allow us to use their home market prices, in accordance with section 773(a)(1)(A) of the Act, to determine foreign market value.

Preliminary Negative Determination of Critical Circumstances

The petitioners alleged that imports of pipe and tube from Thailand present "critical circumstances." Under section 733(e) of the Act, critical circumstances exist if we have a reasonable basis to believe or suspect that (1) there is a history of dumping in the United States or elsewhere of the class or kind of the merchandise which is the subject of the investigation; or the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and (2) there have been massive imports of the class or kind of merchandise that is the subject of the investigation over a relatively short period.

In determining whether there is a history of dumping of the product under investigation, we ascertain whether there have been any prior investigations of this product in any other country. While Australia investigated this product, it made a negative final determination in February, 1985. The Department has not investigated this

product before. Therefore, we find that there is no history of dumping.

The second criterion is whether the importer knew, or should have known that the exporter was dumping the merchandise. We normally consider margins of 25 percent or more to constitute knowledge of dumping. Since the margins in this case do not meet or exceed this level, we find that knowledge of dumping cannot be imputed to the importers.

We therefore, did not need to consider whether there are massive imports over a relatively short period.

For the reasons described above, we preliminary determine that "critical circumstances" do not exist with respect to pipe and tube from Thailand.

Verification

As provided in section 776(a) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of certain circular welded carbon steel pipes and tubes from Thailand that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice in the **Federal Register**. The United States Customs Service shall require a cash deposit or the posting of a bond equal to the estimated weighted-average amounts by which the foreign market value of the merchandise subject to this investigation exceeds the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o product . . . shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act, which prohibits assessing dumping duties on the portion of the margin attributable to export subsidies. In the final countervailing duty determination on certain circular welded carbon steel pipes and tubes from Thailand, we found export subsidies (50 FR 32751). Since dumping duties cannot be assessed on the portion of the margin attributable to export subsidies, there is no reason to require a cash deposit or bond for that amount. Thus, the amount of the export subsidies, 1.79 percent *ad valorem*, will be subtracted for deposit or bonding purposes from the dumping margin.

Manufacturer/producer/exporter	Weighted-average margin percentage
Saha Thai Steel Pipe Co.	1.17
Thai Steel Pipe Industry Co.	8.71
All Others	1.90

ITC Notification

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonconfidential information relating to this investigation. We will allow the ITC access to all privileged and confidential information in our files, provided 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 determine whether these imports materially injure, or threaten material injury to, a U.S. industry before the later of 120 days after we make our preliminary affirmative determination or 45 days after we make our final affirmative determination.

Public Comment

In accordance with §353.47 of our regulations (19 CFR 353.47), if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on November 7, 1985, at the United States Department of Commerce, Room 1851, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, within 10 days of the publication of this notice. Requests should contain: (1) party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending; and (4) a list of the issues to be discussed.

In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by November 4, 1985. Oral presentations will be limited to issues raised on the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of this notice's publication, at the above address and in at least 10 copies.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary for Import Administration.

September 26, 1985.

[FR Doc. 85-23524-Filed 10-2-85; 8:45 am]

BILLING CODE 3510-DS-M

Petitions by Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance; Caribbean Die Casting Corp. et al.

Petitions have been accepted for filing on the dates indicated from the following firms: (1) Caribbean Die Casting Corporation, Calle D, Number 86, Bayamon, Puerto Rico 00619, producer of window hardware (August 21, 1985); (2) Herkimer Wood Products Company, Inc., P.O. Box 135, Herkimer, New York 13350, producer of wood pallets, crates and boxes (August 23, 1985); (3) The Zeller Corporation, P.O. Box 278, Defiance, Ohio 43512, producer of automotive parts (August 23, 1985); (4) Greenview Manufacturing Company, 2557 North Greenview Avenue, Chicago, Illinois 60614, producer of window and floor cleaning squeegees (August 27, 1985); (5) The May Apparel Group, Inc., P.O. Box 190, Mebane, North Carolina 27302, producer of girls' dresses, tops, slacks and shorts (August 28, 1985); (6) Scherer, Inc., 3777 NW. 46th Street, Miami, Florida 33166, producer of apparel belts, aprons, doll clothes and handbags (August 28, 1985); (7) Olympic Mills Corporation, P.O. Box 1669, Guaynabo, Puerto Rico 00657, producer of men's and boys' T-shirts, shorts, and pajamas; and women's dresses (August 29, 1985); (8) Leader Dyeing & Finishing Company, Inc., 94 Madison Avenue, Paterson, New Jersey 07509, producer of fabric (August 29, 1985); (9) Marijon Dyeing and Finishing Company, Inc., P.O. Box 242, East Rutherford, New Jersey 07073, producer of fabric (August 30, 1985); (10) Shapes of Clay, Inc., 25717 126th Avenue East, Graham, Washington 98338, producer of giftware (August 30, 1965); (11) North Side Lumber Company, P.O. Box 311, Philomath, Oregon 97370, producer of softwood lumber (September 3, 1985); (12) Troytown Shirt Corporation, P.O. Box 139, Cohoes, New York 12047, producer of women's blouses and men's shirts (September 6, 1985); (13) Contextural Design, Inc., P.O. Box 17105, Raleigh, North Carolina 27619, producer of wood chairs and tables (September 6, 1985); (14) Troutlodge, Inc., P.O. Box 11, McMillin, Washington 98352, producer of trout eggs and live trout (September 6, 1985); (15) Eugene Doll and Novelty Company, Inc., 4012 2nd Avenue, Brooklyn, New York 11232, producer of dolls (September 6, 1985); (16) Columbian Rope Company, P.O. Box 270, Guntown, Mississippi 38849, producer of cordage (September 9, 1985); (17) United Gasket Corporation, 1633 South 55th Avenue, Cicero, Illinois 60650, producer of gaskets and gasket

materials (September 9, 1985); (18) Koszegi Products, Inc., P.O. Box 1277, South Bend, Indiana 46624, producer of cases, bags and covers for equipment and instruments (September 10, 1985); (19) Circuit systems, Inc., 1120 Fullerton Avenue, Addison, Illinois 60101, producer of printed circuit boards (September 10, 1985); (20) Platt Bros. & Company, 2670 South Main Street, Waterbury, Connecticut 06721, producer of zinc wire, rod, strip and eyelets (September 10, 1985); (21) Carbide Engineering Specialists, Inc., 1529 North Seymour Road, Flushing, Michigan 48433, producer of machine tool components (September 11, 1985); (22) Chapnik & Company, 230 West 38th Street, New York, New York 10018, producer of women's suits (September 11, 1985); (23) Noel Industries, Inc., 350 Fifth Avenue, New York, New York 10118, producer of men's and children's jeans and tops (September 11, 1985); (24) F & G Manufacturing, Inc., 69 Anderson Avenue, Moonachie, New Jersey 07074, producer of copying machine parts (September 11, 1985); (25) Jackl 'N Hides Corporation, 413 South 12th Street, Omaha, Nebraska 68102, producer of office and commercial furniture (September 11, 1985); (26) Omaha Steel Castings Company, 4601 Farnam Street, Omaha, Nebraska 68132, producer of steel castings (September 11, 1985); (27) Paramount Coat Company, Inc., 143 Albany Street, Cambridge, Massachusetts 02139, producer of women's blazers (September 12, 1985); (28) L.E. Jones Company, 1200 34th Avenue, Menominee, Michigan 49856, producer of gasoline and diesel engine components (September 13, 1985); (29) Warwick Dyeing Corporation, P.O. Box 267, West Warwick, Rhode Island 02903, producer of fabric (September 13, 1985); (30) Susquehanna Broadcasting Company, 140 East Market Street, York, Pennsylvania 17401, producer of earthenware (September 16, 1985); (31) Bayview Manufacturing, Inc., P.O. Box 101, North Dartmouth, Massachusetts 02747, producer of women's slacks and skirts (September 16, 1985); (32) Serotta Cycle Corporation, Route 1 Box 43, Greenfield, New York 12833, producer of bicycle frames (September 16, 1985); (33) Electromech, Inc., 528 Elm Street, Kearny, New Jersey 07032, producer of electrical transformers and linear power supplies (September 16, 1985); (34) Roico, Inc., 15 Park Road, Tinton Falls, New Jersey 07724, producer of stampers, stamping sets, inks & pads (September 16, 1985); (35) Leon Clothing Manufacturing, Inc., 660 Summer Street, Boston, Massachusetts 02116, producer of men's coats (September 17, 1985); (36) Amendola General Woodwork Company, Inc., 529 Sherman Avenue, Hamden, Connecticut 06514, producer of wood furniture parts (September 18, 1985); and (37) H.M. Quackenbush, Inc., 220 Prospect Street, Herkimer, New York 13350, producer of nutcrackers, nutpicks and other plated metal articles (September 23, 1985).

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (Pub. L. 93-618). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Certification Division, Office of Trade Adjustment Assistance, Room 4015A, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.309, Trade Adjustment Assistance. Inasfar as this notice involves petitions for the determination of eligibility under the Trade Act of 1974, the requirements of Office of Management and Budget Circular No. A-95 regarding review by clearinghouses do not apply.

Jack W. Osburn, Jr.,

Director, Certification Division, Office of Trade Adjustment Assistance.

[FR Doc. 85-23634 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-DR-M

Minority Business Development Agency

Solicitation of Applications; Minority Business Development Center; Illinois

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $523,529 for the project performance of April 1, 1986, to March 31, 1987. The MBDC will operate in the Chicago, Illinois Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $445,000 in Federal funds and a minimum of $78,529 in non-Federal funds which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-86002-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addresssing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is November 8, 1985. Applications must be postmarked on or before November 8, 1985.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development [Catalog of Federal Domestic Assistance])

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 85-23661 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-21-M

Solicitation of Applications; Minority Business Development Center; Michigan

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $552,941 for the project performance of April 1, 1986, to March 31, 1987. The MBDC will operate in the Detroit, Michigan Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $470,000 in Federal funds and a minimum of $82,941 in non-Federal funds which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-86004-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is November 8, 1985. Applications must be postmarked on or before November 8, 1985.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/313-0182

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director,Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development [Catalog of Federal Domestic Assistance])

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 85-23659 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-21-M

Solicitation of Applications; Minority Business Development Program; Missouri

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $270,588 for the project performance of April 1, 1986, to March 31, 1987. The MBDC will operate in the Kansas City, Missouri, Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $230,000 in Federal funds and a minimum of $40,588 in non-Federal funds which can be a combination of cash, in-kind contribution and fees for services). The award number will be 07-10-86005-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is November 8, 1985. Applications must be postmarked on or before November 8, 1985.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding

information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 85-23658 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-21-M

Solicitation of Applications; Minority Business Development Center; Ohio

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $270,588 for the project performance of February 1, 1986, to January 31, 1987. The MBDC will operate in the Cincinnati, Ohio Metropolitan Statistical Area (MSA) with a satellite office in Dayton, Ohio. The first year cost for the MBDC will consist of $230,000 in Federal funds and a minimum of $40,588 in non-Federal funds which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-10-86001-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is November 8, 1985. Applications must be postmarked on or before November 8, 1985.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 85-23662 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-21-M

Solicitation of Applications; Minority Business Development Center; Ohio

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $341,176 for the project performance of April 1, 1986, to March 31, 1987. The MBDC will operate in the Cleveland, Ohio Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of $290,000 in Federal funds and a minimum of $51,176 in non-Federal funds which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05-12-86003-01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continue funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is November 8, 1985. Applications must be postmarked on or before November 8, 1985.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353-0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 85-23660 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Western Pacific Fishery Management Council's Spiny Lobster Plan Development Team will convene a public meeting, October 2, 1985, from 1 p.m. to 4 p.m., at the Western Pacific Fishery Management Council's office, 1164 Bishop Street, Room 1405, Honolulu, HI, to review data recently collected by the NOAA Ship *Townsend Cromwell* as a means for evaluating the effects of fishing mortality on the lobster population and to determine the associated spawning stock biomass. The team also will discuss economic conditions of the fishery. For further information contact Kitty M. Simonds, Executive Director, Caribbean Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813; telephone: (808) 523-1368.

Dated: September 30, 1985.

Joseph W. Angelovic,

Deputy Assistant Administrator for Science and Technology, National Marine Fisheries Service.

[FR Doc. 85-23621 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Dr. Steven D. Feldkamp

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the Fur Seal act of 1966 (16 U.S.C. 1151-1187).

a. Name: Dr. Steven D. Feldkamp (P372), Institute of Marine Sciences.

b. Address: University of California, Santa Cruz, Santa Cruz, CA 95064.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: North Pacific Fur Seal (*Callorhinus ursinus*), 5.

4. Type of Take and location of activity: Up to five (5) northern fur seal pups will be collected from Saint Paul Island, Alaska or San Miguel Island, California and transported to Long Marine Laboratory, University of California, Santa Cruz to assess the increased metabolic effort associated with entanglement in net fragments.

5. Period of activity: 3 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Adminstrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731;

Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way, NE., Seattle, Washington 98115.

Dated: September 27, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85-23649 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-22-M

[Modification No. 1 To Permit No. 434]

Marine Mammals: Modification of Permit; Wometco Miami Seaquarium

Notice is hereby given that pursuant to the provisions of § 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), Public Display Permit No. 434 issued to Wometco Miami Seaquarium, 4400 Rickenbacker Causeway, Key Biscayne, Florida 33149, on September 15, 1983 (48 FR 43369), is modified as follows:

Section B-5 is modified by substituting the following:

5. "This Permit is valid with respect to the authorized taking until December 31, 1987."

This modification became effective September 24, 1985.

The Permit as modified and documentation pertaining to the modification are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, DC, and Regional Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: September 25, 1985

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation.

[FR Doc. 23648 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-22-M

United States Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1976) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on October 29, 1985 at 9:30 a.m., in Room 4830, Main Commerce Building, Washington, DC 20230.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and

provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

I. Call to Order

II. Approval of the Minutes

III. Old Business

A. USTTA Cooperative Marketing Program

IV. New Business

A. Expanded Tourism Trade with Israel
B. Current Research Projects
1. Inventory of Federal Travel and Tourism Related Information Sources
2. 1986 Outlook for International Tourism

V. Miscellaneous

VI. Adjournment

A limited number of seats will be available to observers from the public and the press. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation or oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865, U.S. Department of Commerce, Washington, DC 20230 (telephone: 202–377–0140) will respond to public requests for information about the meeting.

Donna Tuttle,

Under Secretary for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 85–23611 Filed 10–2–85; 8:45 am]

BILLING CODE 3510–11–M

International Trade Administration

Antidumping Duty or Countervailing Duty Order, Finding, or Suspension Agreement; Opportunity to Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping Duty or Countervailing Duty Order, Finding, or Suspension Agreement.

Background

Each year during the anniversary month of the publication of an antidumping duty or countevailing duty order, finding, or suspension agreement, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with §§ 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping duty or countervailing duty order, finding, or suspension agreement.

Opportunity to Request a Review

Not later than October 31, 1985, interested parties may request administrative review of the following orders, findings, or suspension agreements, with anniversary dates in October, for the following periods:

	Review period
Antidumping duty proceeding:	
Barium Chloride from the People's Republic of China	10–84–09–85
Pressure Sensitive Plastic Tape from Italy	10–84–09–85
Shop Towels of Cotton from the People's Republic of China	10–84–09–85
Steel Wire Rope from Japan	10–84–09–85
Countervailing duty proceeding:	
Certain Iron-Metal Castings from India	01–84–12–84
Deformed Steel Bars for Concrete Reinforcement from South Africa	07–83–09–84
Tuna from the Philippines	01–84–12–84

A request must conform to the Department's interim final rule published in the **Federal Register** (50 FR 32556) on Ausust 13, 1985. Five copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B–099, U.S. Department of Commerce, Washington, D.C. 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for all requests received by October 31, 1985.

If the Department does not receive by October 31, 1985, a request for review of entries covered by an order or finding listed in this notice and for a period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, from consumption and to continue to collect the cash deposit previously ordered.

Dated: September 30, 1985.

Gilbert B. Kaplan,

Acting Deputy Assistant Secretary, Import Administration.

[FR Doc. 85–23845 Filed 10–2–85; 9:09 am]

BILLING CODE 3510–05–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjusting Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Mexico

September 30, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 4, 1985. For further information contact Ann Fields, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212.

Background

The Governments of the United States and Mexico have agreed to further amend their Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of February 26, 1979, as amended and extended, to increase the consultation levels for Categories 336 (cotton dresses), 433 (men's and boys' wool suit-type coats), 442 (wool skirts), 443 (men's and boys' wool suits), 444 (women's, girls' and infants' wool suits), 632 (man-made fiber hosiery), 637 (man-made fiber playsuits), and 645 (men's and boys' sweaters), produced or manufactured in Mexico and exported during 1985. The letter to the Commissioner of Customs which follows this notice implements these increases and controls the levels for Categories 442, 637 and 645 for the first time in 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1985.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of

December 9, 1984, which directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1985 and extends through December 31, 1985.

Effective on October 4, 1985, the directive of December 9, 1984 is hereby amended to increase the following levels:

Category	Amended Twelve-Month Level [1]
336	35,000 dozen.
433	10,000 dozen.
443	6,000 dozen.
444	2,500 dozen.
632	1,000,000 dozen pairs.

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1984.

Also effective on October 4, 1985, the directive of December 9, 1984 is hereby further amended to include the following levels:

Category	Amended Twelve-Month Level [1]
442	8,000 dozen.
637	40,000 dozen.
645	25,000 dozen.

[1] The levels have not been adjusted to reflect any imports exported after December 31, 1984.

Textile products in Categories 442, 637 and 645 which have been exported to the United States prior to January 1, 1985 shall not be subject to this directive.

Textile products in Categories 442, 637 and 645 which been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreement.

[FR Doc. 85-23633 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-DR-M

Requesting Public Comment on Bilateral Textile Consultations With the Government of the People's Republic of China Concening Category 361 (Cotton Sheets)

September 30, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 4, 1985. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

On September 3, 1985, pursuant to the terms of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China, the Government of the United States requested consultations concerning imports into the United States of cotton textile products in Category 361, produced or manufactured in China and exported to the United States.

A summary market statement concerning this category follows this notice.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Anyone wishing to comment or provide data or information regarding the treatment of Category 361 under the agreement with the People's Republic of China, or on any other aspect thereof, or to comment on domestic production or availability of textile products included in these categories, is invited to submit such comments or information in ten copies to Mr. Walter C. Lenahan, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the consultations is not yet certain, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC, and may be obtained upon written request.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 533(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Pursuant to the terms of the bilateral agreement, the People's Republic of China is obligated under the consultation provision to limit its exports to the United States of cotton textile products in Category 361 during the ninety-day period which began on September 3, 1985 and extends through December 1, 1985 to 821,999 numbers.

The People's Republic of China is also obligated under the bilateral agreement, if no mutually satisfactory solution is reached during consultations to limit its exports to the United States during the twelve-months following the ninety-day consultation period to 2,469,092 numbers (December 2, 1985—December 1, 1986).

The United States Government has decided, pending a mutually satisfactory solution, to control imports of textile products in Category 361 exported during the ninety-day period at the level described above. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register.**

In the event the limit established for Category 361 for the ninety-day period is exceeded, such excess amounts, if allowed to enter at the end of the restraint period, shall be charged to the level defined in the agreement for the subsequent twelve-month period.

SUPPLEMENTARY INFORMATION: On December 28, 1984 a letter to the Commissioner of Customs was published in the **Federal Register** (49 FR 50432) from the Chairman of the Committee for the Implementation of Textile Agreements which established restraint limits for certain categories of cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during 1985. The notice which preceded that letter referred to the consultation mechanism which applies to categories of textile products under the bilateral agreement, such as Category 361 which are not subject to specific ceilings and for which levels may be established during the year. In the letter to the Commissioner of Customs which follows this notice a

ninety-day level is established for this category.

William C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

China.—Market Statement

Category 361—Cotton Sheets

August 1985.

Summary and Conclusions

United States imports of cotton sheets from China were 2,137,742 sheets during the year ending June 1985. This compares with 561,837 sheets a year earlier. China was the largest supplier of cotton sheets during the first half of 1985 when it accounted for 24 percent of the total imports. Imports from China during the January-June 1985 period were 1,088,816 sheets, four times the quantity imported during the first half of 1984.

The substantial increase in imports of Category 361 from China is a major factor in the disruption occurring in the U.S. market for cotton sheets. Continuation of the increases in imports threaten to increase the market disruption.

U.S. Production and Market Share

There was substantial U.S. market growth for Category 361 in recent years; however, the import growth was greater and domestic production declined. Domestic production of cotton sheets declined from 1,086,000 dozens in 1982 to 874,000 in 1984. The trend continued downward during the first quarter of 1985 when production was 214,000 dozens, down 10 percent from the same period in 1984.

The market for domestically produced and imported cotton sheets increased from 1,232,000 dozens in 1982 to 1,577,000 in 1984. First quarter 1985 market was strong, 407,000 dozens compared with 329,000 dozens during January-March 1984. However, the domestic producers share of this market dropped from 88 percent in 1982 to 53 percent during the first quarter of 1985.

Imports and Import Penetration

U.S. imports of Category 361 increased more than geometrically, increasing from 146,000 dozens in 1982 to 307,000 dozens in 1983 to 703,000 dozens in 1984. Imports for the first half of 1985 were 382,000 dozen (4,582,000 sheets) up 123 percent from the 171,000 dozen (2,056,000 sheets) imported during January-June 1984. This substantial global import growth coupled with a severe decline in domestic production resulted in an increase of the ratio of imports to domestic production from 13.4 percent in 1982 to 90.2 percent during the first quarter of 1985.

Duty-Paid Values and U.S. Producer Prices

Approximately 45 percent of the January-June 1985 Category 361 imports from China were entered under TSUSA No. 363.3018—carded white sheets. About 49 percent were entered under TSUSA No. 323.3038—combed white sheets. These sheets are entering the United States at duty-paid landed values well below the U.S. producer prices for comparable sheets.

Committee for the Implementation of Textile Agreements

September 30, 1985.

Commissioner of Customs,

Department of the Treasury, Washington, D.C.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding international Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977 and December 22, 1981; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on October 4, 1985, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Category 361, produced or manufactured in the People's Republic of China and exorted during the ninety-day period which began on September 3, 1985 and extends through December 1, 1985, in excess of the 821,999 number.[1]

Textile products in Category 361 which have been exported to the United States prior to September 3, 1985 shall not be; subject to this directive.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1985).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-23632 Filed 10-2-85; 8:45 am]

BILLING CODE 3510-DR-M

[1] The level has not been adjusted to reflect any imports exported after September 2, 1985.

COMMODITY FUTURES TRADING COMMISSION

Exchange Proposal To Trade Commodity Options; Commodity Exchange, Inc.

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions for the application of the Commodity Exchange, Inc. for trading commodity options on copper futures contracts.

SUMMARY: The Commodity Exchange, Inc. ("Comex") has submitted an application to trade options on copper futures contracts under the three-year pilot program adopted by the Commodity Futures Trading Commission ("Commission"). The Commission believes that public comment on the proposal is in the public interest and is consistent with its option regulations and with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before November 4, 1985.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Reference should be made to the Comex copper option contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Commission has previously adopted regulations to govern a three-year pilot program under which options on certain commodity futures contracts are permitted to be traded on domestic boards of trade designated by the Commission as contract markets for option trading (46 FR 54500 (November 3, 1981)).[1] Initially, the pilot program provided that each board of trade would be approved for trading in no more than one futures option contract. These regulations were subsequently amended to permit domestic boards of trade to be designated as contract markets for up to five options on certain futures contracts

[1] The commodities which are eligible for the initial pilot program are commodities which are not enumerated in section 2(a)(1)(A) of the Commodity Exchange Act. The enumerated commodities are generally agricultural products which are produced in this country. Copper is not an enumerated commodity.

(49 FR 33641 (August 24, 1984)).[2] The Comex has been designated as a contract market in options on gold and silver futures contracts.

Comex has applied for contract market designation, pursuant to section 4c(C) of the Commodity Exchange Act, 7 U.S.C. 6c(C) (1982) ("Act"), and Commission Regulation 33.5, to trade options on copper futures contracts.

A copy of the terms and conditions of the proposed Comex option on copper futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Copies of these materials 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 Comex in support of its application for contract market designation 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 (1985)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. 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 terms and conditions of the proposed option contract, or with respect to other materials submitted by Comex in support of its application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, by November 4, 1985.

Issued in Washington, D.C., on September 27, 1985.

Jean A. Webb,

Secretary of the Commission,

[FR Doc. 85–23579 Filed 10–2–85; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Women in the Services (DACOWITS); Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the DACOWITS is to assist and advise the Secretary of Defense on matters relating to women in the services. The Committee meets semi-annually.

DATE: October 27–31, 1985 (Detailed agenda follows).

ADDRESS: Sheraton Royal Scandinavian Inn, 400 Alisal Road, Solvang, California unless otherwise noted in detailed agenda.

Agenda: Sessions will be conducted daily as indicated and will be open to the public. The agenda will include the following meetings and discussions:

Sunday, 27 October 1985

11:00 a.m.–4:00 p.m.: Registration
12:00 noon–1:00 p.m.: Executive Committee Meeting
1:00 p.m.–2:30 p.m.: "Get Acquainted" Luncheon (DACOWITS Members Only)—MilRep Luncheon (MilReps and Liaison Officers Only)
2:30 p.m.–3:00 p.m.: Chairman's Procedural Session for DACOWITS Members
3:00 p.m.–6:00 p.m.: Subcommittee Meetings (Evaluation and disposition of Service responses)
7:00 p.m.–8:30 p.m.: "No Host" Social Buffet

Monday, 28 October 1985

8:15 a.m.–9:00 a.m.: OSD Official Coffee
9:00 a.m.–9:30 a.m.: Official Opening
9:45 a.m.–10:45 a.m.: Briefing: Army of Excellence
10:45 a.m.–11:45 a.m.: Briefing: Update on Direct Combat Probability Coding
12:00 noon–1:30 p.m.: Official Department of Defense Luncheon (by invitation only)
1:45 p.m.–2:15 p.m.: Briefing: Women Billets in the Naval Reserve
2:15 p.m.–3:15 p.m.: Briefing: Status of Women in the National Guard
3:30 p.m.–5:30 p.m.: Subcommittee Meetings (Evaluation of Briefings and Sunday resolutions)
7:00 p.m.–10:30 p.m.: Official Department of Defense Reception and Dinner (By invitation only) Officers' Club—Vandenberg AFB

Tuesday, 29 October 1985

7:15 a.m.–6:30 p.m.: Field Trip to First Strategic Aerospace Divisions, Vandenberg Air Force Base (By invitation only)

Wednesday, 30 October 1985

8:30 a.m.–9:30 a.m.: Briefing: Women Marine Officer Classification and Deployment Policies
9:45 a.m.–10:45 a.m.: Briefing: 1980 Service Academy Graduates
10:45 a.m.–11:15 a.m. Presentations by Members of the Public
11:30 a.m.–1:30 p.m.: "No-Host" Luncheon (Reports by DACOWITS Members on Visits to Military Installations and ROTC Detachments)
1:45 p.m.–6:00 p.m.: Subcommittee Meetings

Thursday, 31 October 1985

8:00 a.m.–11:00 a.m.: General Business Session Adjournment
11:00 a.m.–12:00 noon.: Executive Committee Meeting

FOR FURTHER INFORMATION CONTACT: Major Marilla J. Brown, Executive Secretary, DACOWITS, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, D.C. 20301–4000; telephone (202) 697–2122.

SUPPLEMENTARY INFORMATION: The following rules and regulations will govern the participation by members of the public at the meeting: .

(1) Members of the public will not be permitted to attend the Official Department of Defense Luncheon or Dinner.

(2) All business sessions, to include the Executive Committee Meetings, will be open to the public.

(3) Interested persons may submit a written statement for consideration by the Committee and/or make an oral presentation of such during the meeting.

(4) Persons desiring to make an oral presentation or submit a written statement to the Committee must notify the point of contact listed above no later than October 7, 1985.

(5) Length and number of oral presentations to be made will depend as the number of requests received from the members of the public.

(6) Oral presentations by members of the public will be permitted only from 10:45 a.m. to 11:15 a.m. on Wednesday, 30 October 1985, before the full Committee.

(7) Each person desiring to make an oral presentation or submit a written statement must provide the DACOWITS Executive Secretariat with a copy of the presentation or 60 copies of the statement by 14 October 1985.

(8) Persons submitting a written statement only for inclusion in the minutes of the meeting must submit one (1) copy either before or during the meeting or within five (5) days after the close of the meeting.

(9) Other new items from members of the public may be presented in writing to any DACOWITS member for

[2] In addition, the Commission has amended its regulations to permit each board of trade to be designated in up to two options on domestic agricultural futures contracts in addition to the five permissible option designations noted above (49 FR 2752 (January 23, 1984)).

transmittal to the DACOWITS Chair or Executive Secretary to consider, as feasible.

(10) Members of the public will not be permitted to enter into oral discussion conducted by the Committee members at any of the sessions; however, they will be permitted to reply to questions directed to them by the members of the Committee.

(11) Members of the public will be permitted to orally question the scheduled speakers if recognized by the Chair and if time allows after the official participants have asked questions and/or made comments.

(12) Questions from the public will not be accepted during the Subcommittee Sessions, the Executive Committee Meetings, or the Business Session on Thursday, 31 October 1985.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1985.

[FR Doc. 85-23674 Filed 10-2-85; 8:45 am]

BILLING CODE 3810-01-M

President's Blue Ribbon Commission on Defense Management; Meeting

AGENCY: Office of the Secretary, DOD.

ACTION: Notice of Closed Meeting.

SUMMARY: The President's Blue Ribbon Commission on Defense Management announces a forthcoming meeting beginning at 8:00 a.m. on October 8 and 9, 1985, at 736 Jackson Place, NW., Washington, D.C. 20503.

Discussions during the meeting will include classifed matters of national security and other matters which cannot be addressed in open forum throughout. Such discussions cannot reasonably be segregated for separate open and closed sessions without defeating the effectiveness and purpose of the overall meeting. Accordingly, consistent with section 10(d) of Pub. L. 92-463, the "Federal Advisory Committee Act," and section 552b(c)(1), (c)(4), (c)(7), and (c)(9)(B) of Title 5, United States Code, this meeting will be closed to the public. It is recognized that this notice does not meet the "timely notice" requirement for closed meetings under Pub. L. 92-463. However, in view of the importance of the meeting to national security, the difficulty in coordinating Commission members' schedules, and the short deadline which the President has placed on submission of a report, it has been determined that the meeting must be held as scheduled. In the future, every effort will be made to provide timely notice for all meetings.

Agenda: The Commission will meet in task force, planning, and executive sessions to consider the defense acquisition process and defense management policies and procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Herb Hetu, 1201 Pennsylvania Avenue, N.W., Suite 700A, Washington, D.C. 20004. Telephone: (202) 638-0799 or (202) 395-3198.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1985.

[FR Doc. 85-23675 Filed 10-2-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of the Army, DOD.

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Description of Vessels/Description of Operations, ENG 3931 and 3931A.

Statistical general use data is collected as required by 42 Stat. 1043 on freight and passenger vessels operating in U.S. Waters, under American flag.

Commercial vessel operators.

Responses: 2,000

Burden Hours: 2,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, telephone number (202) 746-0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Herbert F. Ewert, DAIM-ADI-M, Room IC638, The Pentagon, Washington, DC 20310-0700, telephone (202) 604-0754.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

September 30, 1985.

[FR Doc. 85-23673 Filed 10-2-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Navy Resale System Advisory Committee; Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Navy Resale System Advisory Committee will meet on October 28, 1985, in the Savoy Room, Plaza Hotel, 768 Fifth Avenue, New York, New York. The meeting will consist of two sessions: the first from 8:00 a.m. to 8:50 a.m.; and the second from 9:00 a.m. until 3:45 p.m. The purpose of the meeting is to examine policies, operations, and organization of the Navy Resale System and to submit recommendations to the Secretary of the Navy. The agenda will include discussions of the organization of the Resale System, planning, financial management, merchandising, field support, and industrial relations.

The Secretary of the Navy has determined in writing that the public interest requires that the second session of the meeting be closed to the public because it will involve discussions of information pertaining solely to trade secrets and confidential commercial or financial information. These matters fall within the exemptions listed in subsections 552(b) (c) (4) and (9)(B) of title 5, United States Code. Therefore, the second session will be closed to the public.

For further information concerning this meeting, contact: Commander R. F. Hendricks, SC, USN, Naval Supply Systems Command, NAVSUP 09B, Room 516, Crystal Mall, Building No. 3, Arlington, Virginia 22202. Telephone number: (202) 695-5457.

Dated: September 20, 1985.

William F. Roos, Jr.,

Lieutenant, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.

[FR Doc. 85-23578 Filed 10-2-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

Office of Educational Research and Improvement

Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program; Application Notice for New Awards for Fiscal Year 1986

AGENCY: Department of Education.

ACTION: Application Notice for New Awards under The Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program for Fiscal Year 1986.

Programmatic and Fiscal Information

Applications are invited for new projects for Basic Grants authorized under sections 5(c)(1) and 5(d)(1) and Title IV of the Library Services and Construction Act, as amended by Pub. L. 98-480 (20 U.S.C. 351 *et seq.*).

The Secretary awards Basic Grants to (1) eligible Indian tribes that propose projects designed to establish or improve public library services for Indians residing on or near reservations, and (2) organizations primarily serving and representing Hawaiian natives, recognized by the Governor of Hawaii, that propose projects designed to establish or improve public library services for Hawaiian natives. After consultation with the Secretary of the Interior, the Secretary has determined that, for purposes of this program, an Indian tribe means an Indian tribe, band, nation, or other organized group or community certified by the Secretary of the Interior as being eligible for Federal special programs and services.

The Department of Education has not requested funds for the Basic Grants to Indian Tribes and Hawaiian Natives Program for fiscal year (FY) 1986. However, in the event that funds are appropriated for the program, applications are invited to allow for sufficient time to evaluate applications and complete processing prior to the end of the fiscal year.

In FY 1985 two percent ($2,360,000) of the appropriation for LSCA Titles I, II, and III, was set aside for LSCA Title IV, Library Services for Indian Tribes and Hawaiian Natives Program ($1,770,000 for Indian Tribes and $590,000 for Hawaiian Natives).

In FY 1985 The Secretary awarded 131 basic grants. These grants were intended for use between October 1, 1985 and September 30, 1986. The average basic grant award was $3,498 per eligible Indian tribe. One grant in the amount of $590,000 was awarded to serve Hawaiian natives.

The number and amounts of basic grants awarded in FY 1985 do not bind the U.S. Department of Education to a specific number of grants or to the amount of any grant in FY 1986, unless that amount is otherwise specified by statute or regulations.

Closing Date for Transmittal of Applications

Applications for new awards must be mailed or hand delivered on or before December 6, 1985.

Applications sent by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: (CFDA No. 84.163), 400 Maryland Avenue, SW., Washington, D.C. 20202.

Each late applicant will be notified that its application will not be considered.

Applications that are hand delivered must be taken to the U.S. Department of Education, Application Control Center, Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, D.C.

The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

Applicable Regulations

Regulations applicable to this program include the following:

(a) The regulations governing the Library Services and Construction Act Basic Grants to Indian Tribes and Hawaiian Natives Program in 34 CFR Part 771 (50 FR 33183).

(b) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 78, and 79.

Intergovernmental Review

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

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review of and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A-95.

Transactions with nongovernmental entities, including State post-secondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The State of Hawaii has established a process, has designated a single point of contact, and has selected this program for review.

Immediately upon receipt of this notice, applicants that are governmental entities, including local educational agencies, must contact Hawaii's single point of contact to find out about, and to comply with, the State's process under the Executive Order. The single point of contact for Hawaii is included in the application package for this program.

Any State process recommendation and other comments submitted by a State single point of contact and any comments from State, areawide, regional, and local entities must be mailed or hand delivered by February 6, 1986 to the following address:

The Secretary, U.S. Department of Education, Room 4181, CFDA 84.163, 400 Maryland Avenue, SW., Washington, D.C. 20202. Proof of mailing will be determined on the same basis as applications.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Application Forms

Application forms and program information packages are expected to be available by October 22, 1985. These may be obtained by writing to the Library Education, Research and Resources Branch, U.S. Department of Education, 400 Maryland Avenue, SW., Room 725, Brown Building, Washington, D.C. 20202-1630, Attention: LSCA Title IV.

Further Information

For further information contact Frank A. Stevens, Chief, or Beth P. Fine, Education Program Specialist, Division of Library Programs, Library Education, Research and Resources Branch, Room 725, Brown Building, 400 Maryland

Avenue, SW., Washington, D.C. 20202-1630. Telephone: (202) 254-5090.

Program Authority:

20 U.S.C. 351 *et seq.*

(Catalog of Federal Domestic Assistance Number 84.163, Basic Grants to Indian Tribes and Hawaiian Natives Program)

Dated: September 30, 1985.

Chester E. Finn, Jr.,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 85-23643 Filed 10-2-85; 8:45 am]

BILLING CODE 4000-01-M

Office of Management

Membership of Performance Review Board

AGENCY: Notice of Membership of the Performance Review Board.

ACTION: Notice is hereby given of the names of members of the Department of Education Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Martha C. Brooks, Director, Executive Resources Division, Office of Personnel Resource Management Service, Office of Management, Department of Education, (Room 1085, FOB 6), 400 Maryland Avenue, SW., Washington, D.C. 20202, Telephone: (202) 472-3567.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C. requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Linda M. Combs, Chairperson; Lawrence Davenport; Ralph J. Olmo; Joan Standlee; Frances M. Norris; Dick W. Hays; Emerson J. Elliott; Thomas P. Skelly; Burton M. Taylor; John C. Yazurlo; Paul V. Delker; Theodore Sky; Earl G. Ingram; Charles J. O'Malley; Franmarie Kennedy-Keel; Carol P. Whitten; C. Ronald Kimberling; John D. Klenk; Mary Jean LeTendre; Leroy A. Cornelsen; Allen D. Jackson; Carol A. Cichowski; Bruce M. Carnes.

Dated: September 30, 1985.

Linda M. Combs,

Deputy Under Secretary for Management.

[FR Doc. 85-23642 Filed 10-2-85; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Texfel Petroleum Corporation and IU International Oil & Gas, Inc.; Proposed Consent Order

AGENCY: Economic Regulatory Administration, Energy.

ACTION: Notice of Proposed Consent Order and Opportunity for Comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces a proposed Consent Order for $975,000 with Texfel Petroleum Corporation and IU International Oil & Gas, Inc. and provides an opportunity for public comment on the terms and conditions of the proposed Consent Order.

DATES: Comments by: November 4, 1985.

ADDRESS: Send comments to: Texfel Consent Order Comments, Office of Special Counsel, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Alan R. Fedman, Office of Administrative Litigation, Economic Regulatory Administration, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Copies of the proposed Consent Order may be obtained free of charge by writing or calling this office (202/252-2856).

SUPPLEMENTARY INFORMATION: On September 6, 1985, the ERA executed a proposed Consent Order with Texfel Petroleum Corp. and IU International Oil & Gas, Inc. Under 10 CFR 205.199J(b), a proposed Consent Order which involves the sum of $500,000 or more, excluding interest and penalties, becomes effective no sooner than thirty (30) days after publication of a notice in the Federal Register requesting comments concerning the proposed Consent Order. Although ERA has signed and tentatively accepted the proposed Consent Order, the ERA may, after consideration of the comments it receives, withdraw its acceptance and, if appropriate, attempt to negotiate a modification of the Consent Order, or issue the Consent Order as signed.

I. Background

From November 16, 1973 through December 31, 1975 (audit period) Texfel Petroleum Corporation (Texfel) and IU International Oil and Gas, Inc. (IU) produced crude oil from the McKittrick-McNeil Lease in McKittrick Field, Kern County, California. Texfel operated the property and Texfel and IU each owned a fifty percent working interest. Throughout the audit period, Texfel and IU carried out a steam injection-soaking secondary recovery operation on the lease. Pursuant to this operation, 20-25% of the crude oil produced on the McKittrick property was consumed as "lease fuel" in order to generate steam for injection into the producing formations to encourage further production. In determining the property's eligibility for the stripper well property exemption, Texfel and IU calculated the average daily production (ADP) for the property by excluding from calculation of the property's gross production all volumes consumed as "lease fuel." Based on this method of calculating ADP, Texfel and IU treated production from the lease as exempt stripper well crude oil.

ERA determined that, because "lease fuel" was crude oil that had been produced on a property, it must be included as production for purposes of determining eligibility for the stripper well exemption. Following an audit of sales from the McKittrick lease, ERA concluded that the exclusion of such production from the calculation of the ADP had caused Texfel and IU to erroneously sell production from the McKittrick property at stripper well prices. Therefore, a Notice of Probable Violation ("NOPV") was issued to Texfel and IU on May 25, 1978. On April 20, 1979, ERA issued a Proposed Remedial Order ("PRO") to Texfel and IU in which ERA alleged that the firms had caused overcharges in the amount of $647,927.29 attributable to sales of crude oil produced from the McKittrick property during the audit period. The PRO proposed that the firms refund that amount plus interest. After considering briefs and oral argument by ERA and the two firms, DOE's Office of Hearings and Appeals (OHA) upheld ERA's position and issued the PRO as a Remedial Order, with certain minor modifications, on June 15, 1984. The firms have appealed that decision to the Federal Energy Regulatory Commission (FERC).

Throughout the foregoing proceedings, Texfel and IU have claimed that, since the lease fuel generated from the

McKittrick property was used exclusively in lease operations, and was never sold, it could be excluded in determing ADP for the property under the provisions of the stripper well exemption. Based on an analysis of the firms' arguments and the entire record in this proceeding, and in light of the expense to the government associated with any additional litigation, it is the opinion of the ERA that a payment of $975,000 is a satisfactory compromise of the issues raised in this audit. This amount includes interest.

II. The Consent Order

The proposed Consent Order has been entered into in order to resolve all civil and administrative disputes, claims, and causes of action by DOE relating to Texfel and IU's compliance with the federal petroleum price and allocation regulations during the period November 16, 1973 through December 31, 1975. Although Texfel and IU contend that in all respects they correctly construed and applied the applicable regulations, Texfel and IU have entered into this proposed Consent Order to avoid the expense of litigation and the disruption of business. DOE believes the proposed Consent Order is in the public interest and provides a satisfactory resolution of the issues raised by the audit.

III. Refunds

Under the terms of the proposed Consent Order, Texfel and IU shall pay to DOE the sum of $975,000, in a single payment to be made within ten days of the date the Consent Order becomes final. The refund will be deposited in a suitable account for appropriate distribution by DOE.

IV. Submission of Written Comments

Interested persons are invited to submit written comments concerning the terms and conditions of the proposed Consent Order to the address given above. The ERA will consider all comments it receives by 4:30 P.M., local time, on the 30th day after the date of publication of this notice. Any information or data considered confidential by the person submitting it must be identified as such in accordance with the procedures in 10 CFR 205.9(f).

Issued in Washington, D.C., on the 16th day of September 1985.

Milton C. Lorenz,

Special Counsel, Economic Regulatory Administration.

[FR Doc. 85-23598 Filed 10-2-85; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA-FC-85-031 OFP Case No. 61054-9283-20-24]

Acceptance of Petition For Exemption and Availability of Certification by Carson Energy, Inc.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of Acceptance of Petition for Exemption and Availability of Certification by Carson Energy, Inc.

SUMMARY: On August 12, 1985, Carson Energy, Inc. (Carson), filed a petition with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) requesting a permanent cogeneration exemption for a proposed electric powerplant to be located at the ICE HAUS II facility located in Carson, California, from the prohibitions of Title II of the Powerplant and Industrial Fuel Use Act of 1978 (42 U.S.C. 8301 *et seq.*) ("FUA" or "the Act"). Title II of FUA prohibits both the use of petroleum and natural gas as a primary energy source in any new powerplant and the construction of any such facility without the capability to use an alternate fuel as a primary energy source. Final rules setting forth criteria and procedures for petitioning for exemptions from the prohibitions of Title II of FUA are found in 10 CFR Parts 500, 501, and 503. Final rules governing the cogeneration exemption were revised on June 25, 1982 (47 FR 29209, July 6, 1982), and are found at 10 CFR 503.37. The proposed powerplant for which the petition was filed is an approximately 43.1 MW (net) combined cycle cogeneration facility consisting of (1) a gas turbine generator, (2) a waste heat recovery steam generator, (3) a steam extraction turbine generator and (4) ancillary equipment. The plant will burn only natural gas. It is expected that more than 50 percent of the net annual electric power produced by the cogenerator will be sold to Southern California Edison (SCE), making the cogeneration facility an electric powerplant pursuant to the definitions contained in 10 CFR 500.2. The facility will produce approximately 79,000 pounds of high pressure steam per hour and 24,000 pounds per hour of low pressure steam which will provide thermal energy for an absorption refrigeration system at Mountain Water Ice Company, Carson, California. Carson will operate the facility.

ERA has determined that the petition appears to include sufficient evidence to support an ERA determination on the exemption request and it is therefore accepted pursuant to 10 CFR 501.3. A review of the petition is provided in the **SUPPLEMENTARY INFORMATION** section below.

As provided for in sections 701(c) and (d) of FUA and 10 CFR 501.31 and 501.33, interested persons are invited to submit written comments in regard to this petition and any interested person may submit a written request that ERA convene a public hearing.

The public file containing a copy of this Notice of Acceptance and Availability of Certification as well as other documents and supporting materials on this proceeding is available upon request through DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW, Room 1E-190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m., except Federal holidays.

ERA will issue a final order granting or denying the petition for exemption from the prohibitions of the Act within six months after the end of the period for public comment and hearing, unless ERA extends such period. Notice of any such extension, together with a statement of reasons therefor, would be published in the **Federal Register.**

DATES: Written comments are due on or before November 18, 1985. A request for a public hearing must be made within this same 45-day period.

ADDRESSES: Fifteen copies of written comments or a request for a public hearing shall be submitted to: Case Control Unit, Coal and Electricity Office, Room GA-045, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

Docket No. ERA-FC-85-031 should be printed on the outside of the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT:

George G. Blackmore, Coal and Electricity Office, Economic Regulatory Administration, 1000 Independence Avenue, SW., Room GA-045, Washington, DC 20585, Telephone (202) 252-1774

Steven E. Ferguson, Esq., Office of General Counsel, Department of Energy, Forrestal Building, Room 6A-113, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone (202) 252-6947.

SUPPLEMENTARY INFORMATION: Carson proposes to install a cogeneration system at ICE HAUS II, Carson, California, which will (1) generate electrical power for sale to SCE, and (2) produce steam to meet Mountain Water Ice Company's requirements. The proposed cogeneration system will be operated by Carson. The system will consist of a gas turbine generator which will produce electric power, a waste

heat recovery system, and an extraction steam turbine which will produce steam and additional electric power for sale to SCE.

The cogeneration facility is classified as an electric power plant under FUA because more than 50 percent of its net annual electric generation will be sold.

Section 212(c) of the Act and 10 CFR 503.37 provide for a permanent cogeneration exemption from the prohibitions of Title II of FUA. In accordance with the requirements of § 503.37(a)(1), Carson has certified to ERA that:

1. The oil or gas to be consumed by the cogeneration facility will be less than that which would otherwise be consumed in the absence of the cogeneration facility, where the calculation of savings is in accordance with 10 CFR 503.37(b); and

2. The use of a mixture of petroleum or natural gas and an alternate fuel in the cogeneration facility, for which an exemption under 10 CFR 503.38 would be available, would not be economically or technically feasible.

In accordance with the evidentiary requirements of § 503.37(c) (and in addition to the certification discussed above), Carson has also included as part of its petition:

1. Exhibits containing the basis for the certifications described above; and

2. An environmental impact anaylysis, as required under 10 CFR 503.13.

In processing this exemption request, FRA will comply with the requirements of the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's implementing regulations, 40 CFR Part 1500 *et seq.*; and DOE's guidelines implementing those regulations, published at 45 FR 20694, March 28, 1980. NEPA compliance may involve the preparation of (1) an Environmental Impact Statement (EIS); (2) an Environmental Assessment; or (3) a memorandum to the file finding that the grant of the requested exemption would not be considered a major Federal action significantly affecting the quality of the environment. If an EIS is determined to be required, ERA will publish a Notice of Intent to prepare an EIS in the **Federal Register** as soon as practicable. No final action will be taken on the exemption petition until ERA's NEPA compliance has been completed.

The acceptance of the petition by ERA does not constitute a detemination that Carson is entitled to the exemption requested. That determination will be based on the entire record of this proceeding, including any comments received during the public comment period provided for in this notice.

Issued in Washington, DC, on September 25, 1985.

Robert L. Davies,

Director, Coal and Electricity Office, Economic Regulatory Administration.

[FR Doc. 85-23686 Filed 10-2-85; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Energy Research Advisory Board Civilian Nuclear Power Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Civilian Nuclear Power Panel of the Energy Research Advisory Board (ERAB).

Date and Time: October 25, 1985—9:00 a.m.–5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 8E-089, Washington, DC 20585.

Contact: Charles E. Cathey, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 252-2263.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and Development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The Civilian Nuclear Power Panel is a subgroup of ERAB and reports to the parent Board. The purpose of the Panel is to review the Strategic Plan for Civilian Reactor Research and Development now being prepared by the Department of Energy.

Tentative agenda:

- Organization of the Panel and future meeting dates
- Discussion of the Plan, including a briefing by the Acting Assistant Secretary for Nuclear Energy
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Charles Cathey at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Issued at Washington, DC on September 26, 1985.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs Staff, Office of Energy Research.

[FR Doc. 85-23597 Filed 10-2-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER85-787-000 et al.]

Electric Rate and Corporate Regulation Filings; Arkansas Power & Light Co. et al.

Take notice that the following filings have been made with the Commission:

1. Arkansas Power & Light Company

[Docket No. ER85-787-000]

September 26, 1985.

Take notice that Arkansas Power & Light Company (AP&L) filed on September 23, 1985, a proposed Peaking Power Agreement which is a supplement to the Power Coordination Interchange and Transmission Agreement between City of Osceola, Arkansas and Arkansas Power & Light Company dated December 22, 1982. The agreement provides for the sale of the City of 10 MW of Peaking capacity and 2,400 MWH of Peaking Energy during the months of May through September.

The proposed Peaking Power Agreement will effect a savings of apporximately $561,000 per year for the City of Osceola based on the actual billings for the twelve month period ended July 31, 1985.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

2. Central Vermont Public Service Corporation

[Docket No. ER85-775-000]

September 23, 1985.

Take notice that on Central Vermont Public Service Corporation ("Central Vermont") on Sept. 19, 1985 tendered for filing a transmission tariff for service over its facilities rated 34 and 46 KV and below. The proposed tariff replaces the following individual transmission agreements with the affected customers:

Customer	Rate schedule No.
Vermont Electric Cooperative, Inc.	89
Lyndonville Electric Department	93
Village of Ludlow Electric Light Department	97
Allied Power and Light Company	101
Rochester Electric Light and Power Company	102
Village of Johnson Water and Light Department	107
Village of Hyde Park Water and Light Department	110

Under the proposed tariff, the annual update of transmission charges will be performed on a more current basis than under the individual agreements. The filing is made in two steps. The Step A Common equity return is 13.96%. Step B of the filing proposes to increase the common equity return to 16.6%. Central

Vermont states that the other changes are not significant. The Company is proposing that Step A be made effective on November 1, 1985 and that Step B become effective on November 2, 1985, and therefore requests a waiver of the Commission's 60-day notice requirement so that service may begin on the termination date of the superseded contracts.

Central Vermont states that a copy of the filing has been mailed to each of the customers affected by the proposed changes and the Vermont Public Service Board.

Comment date: October 4, 1985, in accordance with Standard Paragraph E at the end of this notice.

3. Commonwealth Electric Company

[Docket No. ER85-781-000]

September 26, 1985.

Take notice that on September 20, 1985 Commonwealth Electric Company ("Commonwealth") filed, pursuant to section 205 of the Federal Power Act and the implementing provisions of § 35.13 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 6 (previously designated as Supplement No. 12 of Rate Schedule FERC No. 34).

Said change in rate under Commonwealth's Rate Schedule FERC No. 6 has been computed according to the provisions of section 6(b) of its Rate Schedule FERC No. 6. Such change is proposed to become effective January 1, 1985, thereby superseding the 23KV Wheeling Rate in effect during calendar 1984. Commonwealth has requested that the Commission's notice requirements be waived pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1985.

Copies of this filing have been served upon Boston Edison Company and the Massachusetts Department of Public Utilities.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

4. Detroit Edison Company

[Docket No. ER85-784-000]

September 26, 1985.

Take notice that on September 23, 1985, Detroit Edison Company tendered for filing six copies of Amendment No. 8 dated August 1, 1985 to the Operating Agreement dated March 1, 1966 among Consumers Power Company, The Detroit Edison Company and the Toledo Edison Company.

The Operating Agreement dated March 1, 1966 was amended July 28, 1975, August 1, 1979, July 1, 1980, May 1, 1981, March 1, 1982, June 1, 1982, and April 1, 1983 by Amendments Nos. 1, 2, 3, 4, 5, 6 and 7 respectively.

The Commission has previously designated the March 1, 1966 Operating Agreement as the Detroit Edison Company Rate Schedule FERC No. 11, Consumers Powers Company Rate Schedule FPC No. 22 and the Toledo Edison Company Rate Schedule FERC No. 4.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

5. Indiana & Michigan Electric Company

[Docket No. ER85-779-000]

September 26, 1985.

Take notice that American Electric Power Service Corporation (AEP) on September 20, 1985 tendered for filing on behalf of its affiliate Indiana & Michigan Electric Company (I&ME), which is an AEP affiliated operating subsidiary, Amendment No. 27 dated August 1, 1985 to the Operating Agreement dated March 1, 1966 among Consumers Power Company (Consumers), The Detroit Edison Company (Detroit) sometimes collectively referred to as the Michigan Companies, and I&ME. The Committee has previously designated the 1966 Agreement as I&ME's Rate Schedule FERC No. 68 and Michigan Companies Rate Schedule FERC No. 12.

Section 1 and 2 of Amendment No. 27 increased the transmission demand rate for Emergency Energy to 2.75 mills per kilowatthour when I&ME is the supplying party and to 2.1 mills per kilowatthour when Michigan Companies are the supplying party. In addition, Section 3 revises the provisions for Economy Energy by adding a 3.75 mill per kilowatthour minimum to I&ME's multi-party Economy Energy rate and a 3.1 mill per kilowatthour minimum to Michigan Companies' multi-party Economy Energy Rate. Section 5 of this Amendment updates the provisions for Non-Displacement Power and Energy by adding a 2.75 mill per kilowatthour demand charge for multi-party transmission when I&ME is the supplying party and a 2.1 mill per kilowatthour demand charge when Michigan Companies are the supplying party. AEP requests an effective date of September 15, 1985.

I&ME's rates in this Amendment are consistent with the charges associated with the transmission demand rates I&ME presently has in effect for Transmission Service, Limited Term Power, and Short Term Power services. These rates have previously been submitted and accepted for filing by the Commission for filing in numerous other I&ME filings.

Copies of the filing were served upon Consumers Power Company, The Detroit Edison Company, Public Service Commission of Indiana, and Michigan Public Service Commission.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

6. New York State Electric & Gas Corporation

[Docket No. ER85-788-000]

September 26, 1985.

Take notice that New York Electric & Gas Corporation (NYSEG), on September 23, 1985, tendered for filing Supplement No. 2 to its Agreement with Consolidated Edison Company of New York, Inc. (Con Edison), designated Rate Schedule FERC No. 87. The proposed changes would decrease revenues by $24,516 based on the twelve month period ending April 14, 1986.

This rate filing, Supplement No. 2, is made pursuant to Sections 1 (e) and (f) and 2 (e), (f), and (g) of Article III of the August 23, 1983 Facilities Agreement—Rate Schedule FERC No. 87. The annual charges for routine operation and maintenance and general expenses, as well as revenue and property taxes are revised based on data taken from NYSEG's Annual Report to the Federal Energy Regulatory Commission (FERC Form 1) for the twelve months ended December 31, 1984. In addition, Con Edison's pro rata share of the total annual carrying charges associated with the firm supply system is calculated based on the rate of Con Edison's one hour demand at Mohansic pluc estimated NYSEG and Con Edison one hour peak input at Wood Street. Also, the charges are based on calculations that include the cost of an additional capital project and the replacement of a project chargeable to Con Edison. Finally, the levelized annual carrying charges included in the calculation have been revised to reflect a 15.50 percent return on equity which was approved by the New York State Public Service Commission's Opinion 85-8 in Case 28824 and effective April 15, 1985.

NYSEG requests an effective date of April 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing were served upon Consolidated Edison Company of New York and on the Public Service Commission of the State of New York.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company

[Docket No. ER85-782-000]

September 26, 1985.

Take notice that Northern States Power Company, on September 23, 1985, tendered for filling Assignment of Transmission Service Agreement Between Renville-Sibley Cooperative Power Association and Northern States Power Company (NSP) (Assignment Agreement).

The Assignment Agreement, dated June 28, 1985, assigns all rights and obligations of Renville-Sibley Cooperative Power Association (Renville-Sibley) to East River Electric Power Cooperative, Inc. (East River). The Assignment Agreement pertains to the Transmission Service Agreement between Renville-Sibley and NSP, dated August 31, 1966, designated as Rate Schedule FERC No. 331. Renville-Sibley has become a member of East River, and therefore, East River will furnish Renville-Sibley its electric power requirements.

NSP requests an effective date of June 15, 1985, and therefore requests waiver of the Commission's notice requirements.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

8. Ohio Edison Company

[Docket No. ER85-763-000]

September 26, 1985.

Take notice that Ohio Edison Company ("Ohio Edison") on September 23, 1985 tendered for filing Supplement No. 16 dated June 6, 1985 to the Interconnection Agreement dated January 1, 1952, between Ohio Edison Company and Ohio Power Company, designated Ohio Edison Rate Schedule FERC No. 9 and Ohio Power Rate Schedule No. 25. Supplement No. 16 provides for a new interconnection point between the Parties and a revision to the metering arrangement. It is submitted to comply with Commission regulation 35.1(c) and 35.2(b).

Pursuant to § 35.11 of the Commission's regulations, Ohio Edison respectfully requests that the Commission permit this Supplement No. 16 to become effective as of the date enacted.

Copies of this filing were sent to Ohio Power Company and The Public Utilities Commission of Ohio.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

9. Ohio Power Company, Appalachian Power Company, Wheeling Electric Company

[Docket No. ER85-778-000]

September 26, 1985.

Take notice that American Electric Power Service Corporation (AEP) on September 20, 1985 tendered for filing on behalf of its affiliates Appalachian Power Company (Appacachian), Ohio Power Company (Ohio Power), and Wheeling Electric Company (Wheeling, sometimes collectively referred to as the AEP Parties) Modification No. 17 dated August 30, 1985 to the Operating Agreement dated June 1, 1971 among Ohio Power, Wheeling, Appalachian, Monongahela Power Company (Monongahela), and West Penn Power Company (West Penn). Monongahela and West Penn are members of the Allegheny Power System (APS) and are sometimes collectively referred to as the APS Parties. The Commission has previously designated the 1971 Agreement as Applachian's Rate Schedule FERC No. 55, Ohio Power's Rate Schedule FERC No. 73, Wheeling's Rate Schedule FERC No. 5, Monongahela's Rate Schedule FERC No. 31, and West Penn's Rate Schedule FERC No. 28.

Section 1 of Modification No. 17 increased the transmission demand rate for Emergency Energy to 2.75 mills per kilowatthour. In addition, section 2 revises the provisions for Economy Energy by adding a 3.75 mill per kilowatthour minimum to the AEP Parties' multi-party Economy Energy rate. Section 3 of this Modification updates the provisions for Non-Displacement Power and Energy by adding a 2.75 mill per kilowatthour demand charge for multi-party transmission. AEP requests an effective date of September 20, 1985.

The AEP Parties' rates in this Modification are consistent with the charges associated with the transmission demand rates the AEP Parties presently have in effect for Transmission Service, Limited Term Power, and Short Term Power services. These rates have previously been submitted and accepted for filing by the Commisison for filing in numerous other AEP filings.

Copies of the filing were served upon the APS Parties, the Virginia State Corporation Commission, Public Service Commission of Ohio, Public Service Commission of West Virginia and the Pennsylvania Public Utility Commission.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Gas and Electric Company

[Docket No. ER85-780-000]

September 26, 1985.

Take notice that on September 20, 1985, Pacific Gas and Electric Company (PG and E) tendered for filing proposed changes to its electic resale Rate Schedules R-2, FPC No. 53, FPC No. 72, FPC No. 84, FPC No. 85, FPC No. 88, and FPC No. 90. The proposed changes would increase revenues from jurisidictional sales and service by 1.9 million dollars based on the 12-month period ending December 31, 1985.

PG and E states that the proposed rate changes are prescribed by settlement agreements reached between PG and E and each of the affected customers in FERC Docket Nos. ER84-186, ER84-6, ER83-683, and ER84-665.

PG and E requests that the proposed increase in rates be made effective as of January 1, 1985, subject to refund.

Copies of the filing were served upon the utility's jurisdictional customers, the California Public Utilities Commission, and the Public Service Commission of the State of Nevada.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER85-786-000]

September 26, 1985.

Take notice that Portland General Electric Company (PGE) on September 23, 1985 tendered for filing a Sales Agreement with the Northern California Power Agency which provides for the sale during a one-month period in September, 1985, of 180 MW of firm energy surplus deliverable at rates not in excess of 25 MW per hour to PGE. The contract rate for energy to be sold is based upon its incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Sales Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a short period of time when such thermal resources are not required for its system loads.

PGE requests an effective date of September 1, 1985, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the Northern California Power Agency, and the Oregon Public Utility Commissioner.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

12. Utah Power & Light Company

[Docket No. ER85-777-000]

September 24, 1985.

Take notice that on September 17, 1985, Utah Power and Light Company (UP&L) tendered for filing Appendix 1 to the Residential Purchase and Sale Agreement between UP&L and the Bonneville Power Administration. In addition, UP&L tendered for filing a BPA report dated August 28, 1985 pertaining to the above filing.

Comment date: October 7, 1985, in accordance with Standard Paragraph E at the end of this notice.

13. Gulf States Utilities Company

[Docket No. EC85-23-000]

September 26, 1985.

Take notice that on September 20, 1985, Gulf States Utilities Company (GSU) tendered for filing pursuant to 18 CFR Part 33 an application for approval of a sale of electrical transmission facilities.

GSU states that this application is being made for the disposition by sale of four substations and three 138 Kv transmission lines constructed by Gulf States located in Orange County, Texas to wit: DuPont-Sabine complex.

GSU further requests authorization to convey to the E.I. DuPont De Nemours & Company (DuPont) the DuPont-Sabine Complex for a total consideration of $3,099,464.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

14. The Washington Water Power Company

[Docket No. ER85-776-000]

September 23, 1985.

Take notice that on September 19, 1985, The Washington Power Company (Washington) tendered for filing copies of an agreement applicable to what Washington refers to as a Short-Term Thermal Storage Agreement between Washington and Bonneville Power Administration (BPA) for the period December 18, 1985 through June 30, 1985. Washington states that the Agreement provided for BPA to store energy in Washington's fuel supply for later return to BPA with the possibility for BPA to make simultaneous sales of its returned energy to WWP. Washington also states that the Agreement has expired by its own terms and has not been renewed, and therefore has issued a Notice of Cancellation to BPA and the Federal Energy Regulatory Commission.

Washington requests that the requirements of prior notice be waived, that the effective date be December 18, 1984, for the filing and that the Agreement be accepted and simultaneously cancelled in consideration of the foregoing paragraph.

Comment date: October 4, 1985, in accordance with Standard Paragraph E at the end of this notice.

15. Wisconsin Electric Power Company

[Docket No. ER85-785-000]

September 26, 1985.

Take notice that Wisconsin Electric Power Company on September 23, 1985, tendered for filing executed Supplements to the Service Agreement for Transmission Service between the Company and Wisconsin Public Power, Inc. System (the WPPI System). The supplements set forth specific firm transmission transactions under which Wisconsin Electric will provide electric service to the WPPI System. Supplement Nos. 2, 3 and 5 have effective dates of June 1, 1985. Supplement Nos. 4 and 6 have effective dates of January 1, 1988 and January 1, 1986, respectively.

Wisconsin Electric requests waiver of the Commission's sixty-day notice requirement in order to allow the effective date of June 1, 1985 for Supplement Nos. 2, 3 and 5. Wisconsin Electric also requests deferral of efective date of effective date for Supplement No. 6 until January 1, 1988.

Copies of the filing have been served on the WPPI System, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: October 8, 1985, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. 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 and 385.214). All such motions or protests should be filed on or before the comment date. 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. 85-23864 Filed 10-2-85; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-42011B; TSH-FRL 2888-6]

2-Chlorotoluene; Decision Not To Test

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing a decision not to require further testing of 2-chlorotoluene (2-CT, CAS No. 95-49-8) for health and environmental effects and chemical fate under TSCA section 4(a)(1)(A). Data have been received that adequately characterize 2-CT for these effects.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, Toll Free: (800-424-9065), In Washington, DC: (554-1404), Outside the U.S.A.: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: The Agency is publishing a decision not to require additional testing of 2-chlorotoluene for health or environmental effects or chemical fate.

I. Introduction

A. Background

In the Eighth Report of the Interagency Testing Committee (ITC), the committee designated 2-chlorotoluene (2-CT) for testing consideration (see the **Federal Register** of May 22, 1981 (46 FR 28138)). The committee recommended that 2-CT be tested for carcinogenicity, mutagenicity, chronic effects, reproductive effects, and teratogenicity in mammals; for bioconcentration and chronic effects in fish and aquatic invertebrates; and for environmental fate. In the **Federal Register** of April 28, 1982 (47 FR 18172), EPA issued a notice of a negotiated testing agreement (NTA) between EPA and Hooker Chemical and Plastics Corp. (Occidental Chemical Corp.) for 2-CT. The testing program outlined a multitiered series of health effects tests designed to answer the concerns expressed by the ITC. In addition, Hooker agreed to test 2-CT in a set of

two acute and two chronic aquatic toxicity tests. The specific details of the NTA are presented in the April 28, 1982 **Federal Register** notice. The testing program developed in the NTA has been completed, and EPA has announced receipt of the test results in the **Federal Register.** These notices are included in the public docket for this notice.

On August 24, 1984, the U.S. District Court, Southern District of New York, ruled that negotiated testing agreements were not a legal substitute for rulemaking under section 4 of TSCA (*NRDC* v. *EPA*, 595 F. Supp. 1255 (S.D.N.Y.) 1984). In its final order the court required that EPA publish a notice of proposed rulemaking for 2-CT or reason for not initiating rulemaking by October 1985. This notice is being published in response to the court's mandate and announces the Agency's decision not to require additional health effects, chemical fate, or environmental effects testing for 2-CT.

B. Approach to Rulemaking

Under section 4(a) of TSCA, the Administrator shall by rule require testing of a chemical substance to develop appropriate test data if the Agency finds that:

(A)(i) the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk or injury to health or the environment.

(ii) there are insufficient data and experience upon which the effects of such manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data; or

(B)(i) a chemical substance or mixture is or will be produced in substantial quantities, and (I) it enters or may reasonably be anticipated to enter the environment in substantial quantities or (II) there is or may be significant or substantial human exposure to such substance or mixture.

(ii) there are insufficient data and experience upon which the effects of the manufacture, distribution in commerce, processing, use, or disposal of such substance or mixture or of any combination of such activities on health or the environment can reasonably be determined or predicted, and

(iii) testing of such substance or mixture with respect to such effects is necessary to develop such data.

In making section 4(a)(1)(A) findings, EPA considers both exposure and toxicity information to make the finding that the chemical may present an unreasonable risk. For the second finding under section 4(a)(1)(A), EPA examines toxicity and fate studies to determine whether existing information is adequate to reasonably determine or predict the effects of human exposure to or environmental release of the chemical. In making the third finding that testing is necessary, EPA considers whether any ongoing testing will satisfy the information needs for the chemical and whether testing which the Agency might require would be capable of developing the necessary information.

EPA's approach to determining when these findings are appropriately made is described in detail in EPA's first and second proposed test rules as published in the **Federal Register** of July 18, 1980 (45 FR 48528) and June 5, 1981 (46 FR 30300). The section 4(a)(1)(A) findings are discussed at FR 45 48528 and 46 FR 30300, and the section 4(a)(1)(B) findings are discussed at 46 FR 30300.

II. Profile

A. Manufacture and Use

2-Chlorotoluene (CAS No. 95-49-8) is a colorless aromatic liquid with a boiling point of 15.2° C. It has a low solubility in water, is soluble in most organic solvents and its log octanol/water partition coefficient is 3.42 (Ref. 22).

Between 8 and 60 million pounds of 2-CT is produced annually in the United States for use as a herbicide carrier (50 percent), textile dye carrier (20 to 25 percent), general solvent (10 to 15 percent), paint stripper and general cleaner (10 percent), *o*-dichlorobenzene extender, and component in solvent text printing (10 percent). 2-CT is produced captively as a single isomer or as part of a mixture of monochlorotoluenes used as an agricultural solvent (Ref. 31).

B. Exposure and Release

2-CT waste generated during manufacture is incinerated, and little or no 2-CT is expected to enter ambient waters as a result of its manufacture. Monitoring data collected at the Hooker Chemical Plant in Niagara Falls, NY, by the New York Department of Environmental Conservation (NYDEC) indicated no 2-CT was present in the process-related effluent from the Hooker Plant (Ref. 17). However, NYDEC's survey identified 2-CT as being present in the municipal outfall, located below the falls on the Niagara River (Ref. 17). EPA estimates as much as 100 pounds of 2-CT per day may enter the Niagara River from nonprocess-related sources such as ground water contamination from agricultural or other uses. 2-CT concentrations may reach 0.10 micrograms (μg) per liter (parts per billion) at this discharge point (Ref. 17).

Chlorotoluene (unspecified isomers) has been identified in the Torresdale Water Treatment Plant, Philadelphia (1 out of 7 samples) (Ref. 26; in the Delaware River in winter, but not in summer (Refs. 19, 24, and 28); in trace quantities in drinking water around Niagara Falls and Buffalo, NY; at up to 12 $\mu g/m^3$ in the air of these cities (Ref. 27); in effluent-monitoring samples from organic chemical manufacturing and plastics plants (Ref. 32); and in sediment samples from the Niagara River (Ref. 16). Only the NYDEC and effluent-monitoring samples specifically identify 2-CT. The other surveys only identified the presence of monochlorotoluene and did not separate the three possible monochlorotoluene isomers. 2-CT has not been observed in ambient water samples (Ref. 25), in municipal sludge (9 cities) (Ref. 23), in air and water near industrial sites (Ref. 29), or in the Ground Water Supply survey (0.5 mg/l detection limit) conducted by EPA (see FR 24330, June 12, 1984).

Workplace exposure to 2-CT is thought to be primarily by inhalation. Hooker (Occidental) estimated 200 workers are exposed either daily or occasionally during manufacture (Ref. 33). Hooker also estimated approximately 2,000-3,000 workers may be exposed during use of use of 2-CT (Ref. 33). Current recommended Threshold Limit Values (TLV) for 2-CT in workplace air are 50 ppm (250 mg/m^3) Time-Weighted Average (TWA) and 75 ppm (375 mg/m^3) Short-Term Exposure Limit (STEL) (Ref. 36).

C. Health Effects

1. *Mutagenicity.* No additional mutagenicity testing is being proposed because available data are sufficient to reasonably predict that 2-CT is unlikely to produce either gene mutations or chromosomal aberrations. 2-CT tested in the Ames test in strains TA-100, TA-1537, TA-1538, and TA-1535 at 0.02-1.7 μl per plate, both with and without metabolic activation, produced valid negative results (Refs. 14 and 15).

A mouse lymphoma forward mutation assay testing 2-CT's ability to induce forward mutation in both inactivated and activated mouse lymphoma L5178Y cells using 1.95 to 31.3 nl/ml and 10 to 60 nl/ml, respectively, did not produce positive results (Ref. 12).

In vitro chromosomal aberration testing of Chinese hamster ovary cells, both with and without activation, exposed to 0.083 to 833 nl/ml produced valid negative results (Ref. 10). An *in vivo* rat bone marrow cytogenetic assay, at 30, 100, or 300 mg/kg in five acute daily doses, produced valid negative

results (Ref. 13). A cell transformation assay without activation at 27.7 to 110.8 nl/ml also produced valid negative results (Ref. 11).

2. *Developmental toxicity.* No additional developmental toxicity testing is being proposed. Data developed under the negotiated testing agreement are adequate to indicate 2-CT does not cause developmental toxicity.

New Zealand White rabbits were exposed to 0, 1.5, 4, or 10 mg/l 2-CT in air, 6 hours per day, during days 6 through 28 of gestation. No significant fetal toxicity was observed even at maternally toxic doses (Ref. 4).

Rats were exposed to 0, 1, 3, or 9 mg/l 2-CT in the air for 6 hours per day during days 6 through 19 of gestation. Statistically significant embryotoxicity was observed only at the maternally toxic 9 mg/l dose (Ref. 3).

3. *Chronic Effects.* Chronic effects testing is not being proposed. Subchronic testing in two species, rat and dog, has been performed. In 100-day gavage studies in rats, 2-CT (20, 80 or 320 mg/kg-day) produced no treatment-related effects on survival, blood chemistry, urine chemistry, organ weights or pathology (Ref. 18). Beagles given 2-CT in capsules (5, 20 or 80 mg/kg-day) for three months were unaffected (Ref. 18).

In the range-finding study for the teratology studies cited above, rats and rabbits were exposed to 2-CT by inhalation for 14 and 23 consecutive days, respectively, for six hours per day (Ref. 37). For rats, the doses were 4.0, 7.7, 11.4, and 15.3 mg/l and for rabbits 4.0, 7.8, 11.5 and 15.6 mg/l. Both species showed dose-related weight loss. In rats only, dose-related increase in liver weight and decrease in splenic weight was observed. EPA does not believe these data indicate a need for further chronic effects testing.

4. *Reproductive Effects.* Reproductive effects testing is not being proposed. The mutagenicity and developmental toxicity data received from the negotiated testing program indicate 2-CT does not induce mutagenic effects in mammalian cells, nor does it produce embryotoxic effects in rats and rabbits at nonmaternally toxic doses. There were no effects on the reproductive organs in any of the long-term tests described above, and no other evidence that exposure to 2-CT may present a reproductive hazard. Therefore, further reproductive effects testing is not being proposed.

5. *Oncogenicity.* Oncogenicity testing is not being proposed for 2-CT. As previously discussed, 2-CT is not mutagenic under the conditions of the studies conducted by Occidental. In addition, Occidental submitted the results of two metabolism studies in rats (Refs. 2 and 5). In one study the rats were given oral doses of 1 mg/kg ring-labeled 2-CT, and in the other study 0.7 mg/kg ring-labeled 2-CT was injected intravenously (i.v.). In the i.v. study 14 to 18 percent of the 2-CT was exhaled unchanged; only 1–4 percent was exhaled in the oral experiment. $^{14}CO_2$ was an insignificant component of the volatile metabolites in both studies, less than one percent of the applied dose in the oral study and less than 0.04 percent of the applied dose in the i.v. study. This indicates a stability of the aromatic ring to exhaustive metabolic degradation. Urinary elimination accounted for 69 to 81 percent (i.v.) and 85 to 92 percent (oral) of the original ^{14}C dose. Fecal elimination accounted for 5 to 8 percent (oral) and 1 to 3 percent (i.v.). The metabolites identified for the i.v. and oral studies included the mercapturic acid derivative of 2-chlorotoluene (22 to 23 percent, 21 to 28 percent), the glucuronide of 2-chlorobenzyl alcohol (13 to 20 percent, 34 to 42 percent), and 2-chlorohippurate (7 to 11 percent, 20 to 23 percent). An unidentified polar metabolite (11 percent of urinary ^{14}C) was also eluted with the uninary metabolites from the i.v. study (Ref. 2). Within four days, less than 1 percent of the administered dose remained in the carcass for either the i.v. or oral studies. The results from these two studies indicate that rat metabolizes 2-CT in a consistent pattern, whether it passes through the digestive system (oral) or is introduced directly into the circulatory system (i.v.). Since the mercapturic acid was shown to derive from methyl oxidation and not ring oxidation, there are no major metabolites indentified from metabolism of 2-CT that would suggest direct-alkylating intermediates (i.e. arene oxides) and thus oncogenic potential. Although the unidentified metabolite could be a ring-oxidation product such as a phenol, such identification would be insufficient to establish an arene oxide pathway. In any case, the fact that 2-CT metabolism proceeds largely, if not entirely, via methyl oxidation and, more importantly, the lack of activity in four mutagenicity studies lead the Agency to conclude that there is no basis to find that exposure to 2-CT may present an unreasonable risk of oncogenicity. Therefore, EPA is not proposing an oncogenicity testing requirement for 2-CT.

D. Chemical Fate and Environmental Effects

Additional environmental toxicity and chemical fate testing is not needed because data received from the negotiated testing agreement are sufficient to reasonably predict the toxic behavior of 2-CT in aquatic environments and 2-CT is not predicted to persist in the environment long enough to cause toxic effects.

2-CT is expected to enter aquatic environments as a result of its manufacture and use. The Agency predicts that volatilization is the primary route of 2-CT removal from ambient waters, with an expected volatility half-life of less than five days (Refs. 22, 34, and 35). At the current levels of release, 2-CT is expected to leave the ambient waters, producing steady-state concentrations too low to cause concern from chronic effects on aquatic organisms. EPA finds no need for further chemical fate testing at this time.

Aquatic toxicity testing provided 96-hour LC_{50} values for trout and fathead minnows of 2.3 mg/l and 7.5 mg/l. The 96-hour NOEL's were 0.76 mg/l and 1.8 mg/l, respectively (Refs. 6 and 7). An embryo-larva test in fathead minnows provided a maximum acceptable toxicant concentration range of 1.4 to 2.9 mg/l with a NOEL of less than or equal to 1.4 mg/l (Ref. 8). Fathead minnows exposed to a measured concentration of 0.011 (±0.0029) mg/l of 2-CT for 22 days reached a steady-state tissue concentration plateau within seven days. The tissue concentration of 2-CT then decreased until day 22 when exposure to 2-CT was discontinued. During the 14-day depuration phase of the study, 87 percent depuration was observed. Ninety-five percent depuration was calculated to occur at 40 to 45 days (Ref. 20). Tissue analysis of minnows at day 22 showed that 63–78 percent of the radioactivity was present as 2-CT (Ref. 21). The bioconcentration factor was calculated to be 890 ± 340 under the conditions of this study (Ref. 1). Acute, flow-through testing of *Daphnia magna* at 0.33, 0.45, 0.72, 1.4, or 4.5 mg/l of 2-CT provided LC_{50} values of 1.0 mg/l and 1.1 mg/l at 24 and 48 hours, respectively (Ref. 9). The no-discernible-effect-concentration through 48 hours was calculated to be 0.45 mg/l (Ref. 9). Occidental also is conducting a 21-day chronic *Daphnia* study. Results from this study should be available by the time this Notice is published and will be added to the public record.

III. Decision not to Initiate Rulemaking

The health effects testing submitted to the Agency by Occidental pursuant to the NTA has been reviewed. The Agency finds that these data are adequate to predict the effects on human health of activities involving 2-

CT and that additional testing need not be required at this time.

The bulk of the 8 to 60 million pounds of 2–CT produced annually in the U.S. is employed in non-consumptive uses (e.g., solvent,herbicide carrier, dye carrier) and will ultimately be released to the environment. Much of this release is expected to volatilize to air at a relatively rapid rate. Once in the atmosphere, 2–CT is expected to be rapidly degraded by photooxidation. EPA concludes that sufficient data are available to reasonably predict the chemical fate of expected releases of 2–CT.

Monitoring data provide evidence of law (ppb) concentrations of 2–CT in some ambient waters. Although existing data show that 2–CT can be bioconcentrate in fish, EPA concludes that even allowing for such bioconcentration the levels of 2–CT likely to be achieved by aquatic species will be far too low to lead to acute or chronic toxicity. Furthermore, available data indicate that fish chronically exposed to 2–CT at a concentration of roughly 10 ppb are able to metabolically adapt and within 10 to 12 days begin to effectively remove 2–CT without effects on normal behavior. EPA therefore finds that data are sufficient to reasonably predict 2–CT's aquatic toxicity and chemical fate and is not proposing additional environmental toxicity or chemical fate testing at this time.

IV. Public Record

EPA has established a public record for this decision (docket number OPTS–42011B). This record includes the background information considered by the Agency during the development of the NTA and copies of the reports submitted by Occidental Chemical Corp. pursuant to the testing program identified in the NTA.

The record includes the following information:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this decision consisting of:

(a) Notice containing the ITC designation of 2–CT to the Priority List (46 FR 28138; May 22, 1981).

(b) Notice of request for public comment on 2–CT NTA (47 FR 3596; January 26, 1982) (Document No. 40–8235001).

(c) Notice of final action on 2–CT NTA (47 FR 18172; April 28, 1982) Document No. 40–8235002).

(d) Receipt of data notices (47 FR 36958, August 24, 1982; 47 FR 54160, December 1, 1982; 48 FR 12124, March 23, 1983; 48 FR 23132, May 4, 1983; 48 FR 34119, July 27, 1983; 48 FR 53159, November 25, 1983; 49 FR 5187, February 10, 1984; 49 FR 18779, May 2, 1984; 50 FR 5421, February 6, 1985).

(e) Notice of proposed rulemaking for National Primary Drinking Water Regulations: Volatile Synthetic Organic Chemicals (49 FR 24330; June 12, 1984).

(2) Communications consisting of:

(a) Written public and intra-agency memoranda and comments.

(b) Summaries of telephone conversations.

(c) Summaries of meetings.

(d) Reports—published and unpublished factual materials, including contractors' reports.

B. References

(1) Springborn Bionomics, Inc. "Accumulation and elimination of ^{14}C-residues by fathead minnows (*Pimephales promelas*) exposed to ^{14}C-2-Chlorotoluene." January 1984 (Document #40-8435119).

(2) Zoecon Corp. "Metabolism of 2-Chloro[U-Ring-^{14}C]toluene by rats intravenously." October 13, 1983. (Document #40–8335096).

(3) Huntingdon Research Centre. "Effect of 2-chlorotoluene vapor on pregnancy of the rat" (Final). August 6, 1983 (Document #40-8335095).

(4) Huntingdon Research Centre. "Effect of 2-chlorotoluene vapor on pregnancy of the New Zealand White Rabbit." (Final). August 3, 1983 (Document #40–8335094).

(5) Zoecon Corp. "2-Chlorotoluene metabolism by rats." January 14, 1983 (Document #40–8335077).

(6) EG&G Bionomics. "Acute toxicity of *o*-chlorotoluene to rainbow trout (*Salmo gairdneri*)." June 1982 (Document #40–8235089).

(7) EG&G Bionomics. "Acute toxicity of *o*-chlorotoluene to fathead minnow (*Pimephales promelas*)." June 1982 (Document #40–8235068).

(8) EG&G Bionomics. "The toxicity of *o*-chlorotoluene to fathead minnow (*Pimephales promelas*) embryos and larvae." July 1982 (Document #40–8235090).

(9) EG&G Bionomics. "Acute toxicity of *o*-chlorotoluene to water flea (*Daphnia magna*)." July 1982 (Document #40–8235069).

(10) Litton Bionetics, Inc. "Mutagenicity evaluation of *ortho*-chlorotoluene in an *in vitro* cytogenetic assay measuring chromosome aberration frequencies in Chinese hamster ovary (CHO) cells." (Final Report). June 1982 (Document #40–8235064).

(11) Litton Bionetics, Inc. "Evaluation of *ortho*-chlorotoluene in the *in vitro* transformation of BALB/3T3 cells assay." (Final Report). June 1982 (Document #40–8235066).

(12) Litton Bionetics, Inc. "Mutagenicity evaluation of *ortho*-chlorotoluene (OCT) in the Mouse Lymphoma Forward Mutation Assay." (Final Report). July 1982 (Document #40–8235071).

(13) Litton Bionetics, Inc. "Mutagenicity Evaluation of *ortho*-Chlorotoluene (OCT) in the Rat Bone Marrow Cytogenetic Assay." (Final Report). July 1982 (Document #40–8235067).

(14) Litton Bionetics, Inc. "Mutagenicity evaluation of *ortho*-chlorotoluene in Ames *Salmonella/* microsome Plate Test." (Final Report). March 1982 (Document #40–8235088).

(15) Litton Bionetics, Inc. "Mutagenicity evaluation of *ortho*-chlorotoluene (OCT). A composition of 2-chlorotoluene (96.5 percent), 4-chlorotoluene (3.4 percent), and toluene (0.1 percent) in the Ames *Samonella/*microsome plate test: amendment to the Final Report." April 1982 (Document #40–8235088).

(16) Rockwell, D.C., R.E. Claff, and D. Kuel. 1981 Buffalo, New York, Area Sediment Survey (BASS). U.S. Environmental Protection Agency. April 1984 (Document #40–8435122).

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(22) Occidental Chemical Corp. Letter: Sam Gelfand to John Helm, U.S. Environmental Protection Agency, Washington, D.C. January 8, 1985.

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(34) Occidental Chemical Corporation. Letter from Samuel Gelfand, Occidental Chem. Corp. to John Helm, E.P.A. U.S. Environmental Protection Agency, Test Rules Development Branch, Washington, D.C. January 8, 1985.

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(36) ACGIH. American Conference of Governmental Industrial Hygienists. *o*-Chlorotoluene. Threshold limit values for chemical substances in work room air. pg. 95-96. 1984.

(37) Huntingdon Research Centre. "2-Chlorotoluene, a preliminary inhalation study in the rat and rabbit." January 13, 1983 (Document #40-8335092).

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, will be made available for inspection in the OPTS Reading Room, Rm. E-107, 401 M St., SW., Washington, D.C. from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. The Agency will supplement the record periodically with additional relevant information received.

(15 U.S.C. 2603)

Dated: September 27, 1985.

John A. Moore,

Assistant Administrator for Pesticides and Toxic Substances

[FR Doc. 85-23624 Filed 10-2-85; 8:45 am]

BILLING CODE 6560-50-M

FARM CREDIT ADMINISTRATION

[FCA Order No. 859]

Authority Delegations: Authorization of the Assistant to the General Counsel, Assistant to the Governor and Senior Deputy Governor, and Secretary to the Governor and Senior Deputy Governor, to Authenticate Documents, Certify Official Records, and Affix Seal (Revocation of FCA Order No. 821)

AGENCY: Farm Credit Administration.

ACTION: Notice.

SUMMARY: The Governor of the Farm Credit Administration issued Order No. 859 authorizing certain employees to authenticate documents, certify official records, and affix seal. The text of the Order is as follows:

1. Loretta M. Gascon, Assistant to the General Counsel, Mildred K. Dickens, Assistant to the Governor and Senior Deputy Governor, and Katherine S. Wilson, Secretary to the Governor and Senior Deputy Governor, individually, are authorized and empowered:

a. To execute and issue under the seal of the Farm Credit Administration, statements: (1) Authenticating copies of, or excerpts from, official records and files of the Farm Credit Administration; (2) certifying, on the basis of the records of the Farm Credit Administration, the effective periods of regulations, orders, instructions, and regulatory announcements; and (3) certifying, on the basis of the records of the Farm Credit Administration, the appointment, qualification, and continuance in office of any officer or employee of the Farm Credit Administration, or any conservator or receiver acting under the supervision or direction of the Farm Credit Administration.

b. To sign official documents and to affix the seal of the Farm Credit Administration thereon for the purpose of attesting the signature of officials of the Farm Credit Administration.

2. The provisions of this order shall be effective October 2, 1985, and on that date shall supersede Farm Credit Administration Order No. 821, dated December 11, 1979 (44 FR 72648, December 14, 1979).

Donald E. Wilkinson,

Governor.

[FR Doc. 85-23683 Filed 10-2-85; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL COMMUNICATIONS COMMISSION

KOB-TV, Inc., et al; Hearing Designation Order

In re applications of:	MM Docket No. 85-286.
KOB-TV, Inc	File No. BPCT-850411KP.
KOAT Television, Inc.	File No. BPCT-850607KT.

For construction permit for new television station, Silver City, New Mexico.

Adopted: September 17, 1985.

Released: September 27, 1985.

By the Chief, Video Services Division.

1. The Commission, by the Chief, Video Services Division, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station on Channel 10, Silver City, New Mexico.

2. The effective radiated visual power, antenna heights above average terrain and other technical data submitted by each applicant indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, the areas and populations which would be within the predicted 56 dBu (Grade B) contour, together with the availability of other television service of Grade B or greater intensity, will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

3. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since the applications are mutually exclusive, the Commission is unable to make the statutory finding that their grant will serve the public interest, convenience, and necessity. Therefore, the applications must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place be specified in a subsequent Order, upon the following issues:

(1) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(2) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, That to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

6. It is further ordered, That the applicants herein shall, pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 85-23628 Filed 10-2-85; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Family Federal Savings and Loan Association, Springfield, VA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owner's Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Family Federal Savings and Loan Association, Springfield, Virginia on September 27, 1985.

Dated: September 30, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-23668 Filed 10-2-85; 8:45 am]

BILLING CODE 6720-01-M

Golden Pacific Savings and Loan Association, Windsor, CA; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B) (1982), the Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation as sole receiver for Family Federal Savings and Loan Association, Windsor, California, on September 27, 1985.

Dated: September 30, 1985.

Jeff Sconyers,

Secretary.

[FR Doc. 85-23667 Filed 10-2-85; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-008493-015

Title: Trans-Pacific American Flag Berth Operators Agreement

Parties:

American President Lines, Ltd.
Lykes Bros. Steamship Co., Inc.
Sea-Land Service, Inc.
United States Lines, Inc.

Synopsis: The proposed amendment would restate the agreement to comply with the Commission's regulations concerning form and format. It would make certain non-substantive changes to the wording of the agreement as well as changes to the agreement's provisions concerning cancellation, neutral body policing, independent action, breach of agreement and independent action.

Agreement No.: 213-010601-004

Title: Neptune Orient Lines, Ltd. (NOL), Orient Overseas Container Line, Inc. (OOCL), and Yamashita-Shinnihon Steamship Co., Ltd. (YSL) Sailing Agreement.

Parties:

Neptune Orient Lines, Ltd.
Orient Overseas Container Line, Inc.
Yamashita-Shinnihon Steamship Co., Ltd.

Synopsis: The proposed amendment would modify the agreement to (1) add Yamashita-Shinnihon Steamship Co., Ltd. as a party to the agreement with respect to the Pacific Service; (2) enlarge the scope of the agreement to include transhipments to and from ports and points in Burma; (3) permit YSL to operate 5 vessels and participate with NOL and OOCL in space chartering in the Pacific Service only; and (4) permit the parties to determine the number of vessels to be operated by each of them and the ports of call.

Agreement No.: 202-010676-008

Title: Mediterranean/U.S.A. Freight Conference

Parties:

Atlanttrafik Express Services, Ltd.
Achille Lauro
C.I.A. Venezolana de Navegacion
Compania Trasatlantica Espanola, S.A.
Costa Line
d'Amico Societa di Navigazione per Azioni
Farrell Lines, Inc.
Flota Mercante Grancolombiana S.A.
"Italia" di Navigazione, S.P.A.
Jugolinija
Jugooceanija
Lykes Bros. Steamship Co., Ltd.
Med-America Express Service
Nedlloyd Lines
Nordana Line/Dannebrog Lines AS
Sea-Land Service, Inc.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed amendment would establish a new self-policing committee for the conference.

Dated: September 30, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-23670 Filed 10-2-85; 1:29 pm]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Meetings; Correction

This notice corrects a document that was published on September 26, 1985, in the **Federal Register**, Volume 50, Issue 187, Pages 39041-39046, as follows:

The Clinical and Treatment Subcommittee of the Alcohol Psychosocial Research Review Committee will meet on October 16-17, 1985, beginning at 1:30 p.m. instead of beginning at 9:00 a.m.

The Prevention and Epidemiology Subcommittee of the Alcohol Psychosocial Research Review

Committee will meet on October 17–18, 1985, instead of on October 16–18, 1985. The open portion of the meeting has been changed to October 17, 1985–9:00–10:00 a.m.

The Biochemistry, Physiology and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee will meet on October 29–30, 1985, instead of October 28–30, 1985. The open portion of the meeting has been changed to October 29, 1985–9:00–10:00 a.m.

The Neuroscience and Behavior Subcommittee of the Alcohol Biomedical Research Review Committee will meet on October 30–31, 1985, instead of October 30–November 1, 1985. The open portion of the meeting has been changed to October 30–9:00–10:00 a.m.

Dated: September 30, 1985.

Robin I. Kawazoe,

Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 85–23631 Filed 10–2–85; 8:45 am]

BILLING CODE 4160–20–M

Centers for Disease Control

Board of Scientific Counselors, National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting, which will be open to the public for observation and participation, limited only by the space available:

The NIOSH Board of Scientific Counselors Subcommittee for Scientific Review of Notification for Retrospective Cohort Mortality Studies

Date: October 18–19, 1985.

Place: Civic Center Holiday Inn, 50 Eighth Street, San Francisco, California 94103.

Time:

8:30 a.m. to 5:00 p.m., October 18, 1985

8:30 a.m. to 12:00 noon, October 19, 1985

Contact Person: Elliott S. Harris, Ph.D., Executive Secretary, NIOSH Board of Scientific Counselors, NIOSH, CDC, Building 1, Room 3007, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephones: Commerical—404/329–3773. FTS—236–3773.

Purpose: The National Institute for Occupational Safety and Health (NIOSH) has proposed a "decision logic" to select cohorts for the notification of individual workers who participated in retrospective cohort mortality studies that NIOSH conducted. The NIOSH Board of Scientific Counselors, consistent with its charter, will advise the Director of NIOSH on the scientific quality of the proposed "decision logic." The results of this review will be used in a program to notify workers, companies, employee representatives, union headquarters, the Department of Labor, and appropriate State agencies.

NIOSH requests that the subcommittee of the Board of Scientific Counselors review the scientific validity and consistency of the NIOSH "decision logic."

The Board is requested to comment to the Director of NIOSH, and to recommend any appropriate changes in the "decision logic."

Dated: September 25, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–23644 Filed 10–2–85; 8:45 am]

BILLING CODE 4160–19–M

Computer Applications in Project Areas; Open Meeting

The Center for Prevention Services (CPS), Centers for Disease Control (CDC), Atlanta, Georgia, will sponsor a meeting to provide an opportunity for local, State, and Federal staff to demonstrate a variety of software applications relevant to one or more CPS programs and to discuss ways in which the use of computers in the field can be enhanced. The results of the meeting will be used by CPS to develop and sustain computer capacity in project areas.

Attendees will include CPS field and headquarters staff and State and local staff working in relevant programs. The meeting will be open to the public for observation and participation, limited only by the space available.

Date: October 29–31, 1985.

Time: 8:30 a.m.—5:00 p.m., Tuesday, October 29.

8:30 a.m.—5:00 p.m., Wednesday, October 30.

8:30 a.m.—Noon, Thursday, October 31.

Place: Viscount Hotel at Executive Park, 2061 North Druid Hills Road, NE., Atlanta, Georgia 30329 (404) 321–4174.

Additional information may be obtained from: Susan B. Toal, Planning and Evaluation Officer, CPS, CDE, Room 309, 1600 Clifton Road, NE., Atlanta, Georgia 30333. Telephones: FTS: 236–1804; Commercial: (404) 329–1804.

Dated: September 25, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 85–23645 Filed 10–2–85; 8:45 am]

BILLING CODE 4160–19–M

Mine Health Research Advisory Committee; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control (CDC) announces the following National Institute for Occupational Safety and Health (NIOSH) committee meeting:

Name: Mine Health Research Advisory Committee (MHRAC).

Date: November 14–15, 1985.

Place: Governor's Ballroom 1, Sheraton Lakeview Conference Center, Route 6, Morgantown, West Virginia 26505.

Time and type of meeting:

Open: 1:00 p.m. to 4:30 p.m.—November 14

Closed: 4:30 p.m. to 5:00 p.m.—November 14

Open: 8:30 a.m. to 12:30 p.m.—November 15

Contact person: Robert E. Glenn, Executive Secretary, MHRAC, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephone: Commercial: (304) 291–4474 FTS: 923–4474.

Purpose: The Committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research.

Agenda: Agenda items for the meeting will include announcements; consideration of minutes of the previous meeting and future meeting dates; discussion of the Board of Scientific Counselors' report and the MHRAC subgroup's report of the x-ray surveillance program for underground coal miners; and an overview of the NIOSH musculoskeletal program.

Beginning at 4:30 p.m. through 5:00 p.m., November 14, the Committee will be performing the final review of the mine health research grant applications for Federal assistance. This portion of the meeting will not be open to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination of the Director, Centers for Disease Control, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

The portion of the meeting so indicated is open to the public for observation and participation. Anyone wishing to make an oral presentation should notify the contact person listed above as soon as possible before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the presentation. Oral presentations will be scheduled at the discretion of the Chairperson and as time permits. Anyone wishing to have a question answered by a scheduled speaker during the meeting should submit the question in writing, along with his or her name and affiliation, through the Exective Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: September 25, 1985.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 23646 Filed 10–2–85; 8:45 am]

BILLING CODE 4160–19–M

Food and Drug Administration

[Docket No. 83N-0308]

International Drug Scheduling; Convention of Psychotropic Substances; Stimulant and/or Hallucinogenic Drugs; Notice of Public Meeting; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the document that requested comments considering recommendations from the World Health Organization that the Commission on Narcotic Drugs of the United Nations impose international manufacturing and distribution restrictions, pursuant to international treaty, on certain stimulant and/or hallucinogenic drugs. In the original document, a page was inadvertently omitted. This document corrects that omission.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-21372 appearing on page 36486 in the issue of Friday, September 6, 1985, on page 36491 the following is added at the end of the first column:

On the basis of the data outlined above, it was the consensus of the Committee that 5-methoxy-3,4-methylenedioxyamphetamine meets the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since it has no known therapeutic use, the Committee recommended that it be placed in Schedule I.

17. 3,4-Methylenedioxymethamphetamine

This substance is commonly known as MDMA. In mice MDMA increased locomotor activity and produced analgesia. In dogs and monkeys the substance has a pharamacological profile similar to other substances already controlled under the convention on Psychotropic Substances. Reports in man are contradictory as to whether MDMA has hallucinogenic activity. The substance is a potent serotonin releaser in rat whole brain synaptosomes. The toxicological properties in animals have been studied extensively. The acute toxicity of MDMA is about twice that of mescaline. No pharmacokinetic data is available.

MDMA has discriminative stimulus effects in common with amphetamine but not DOM. No data are available concerning its clinical abuse liability, the nature and magnitude of public health and social problems or the epidemiology of the use and abuse of this substance. The substance is under national control in Canada and the United Kingdom and it has been proposed for control in the USA.

There is no well defined therapeutic use but claims of its value as a psychotherapeutic agent have been put forward by a number of clinicians in the USA. No data is available concerning its licit production. Evidence for some illicit traffic with MDMA has been reported from Canada and there have been extensive seizures in the United States.

On the basis of the data outlined above, it was the consensus of the Committee that 3,4-Methylenedioxymethamphetamine met the criteria of Article 2, para. 4 for control under the Convention on Psychotropic Substances. Since there is insufficient evidence to indicate that the substance has therapeutic usefulness, the Committee recommended that it be placed in Schedule I.[1]

It should be noted that the Committee held extensive discussions concerning the reported therapeutic usefulness of MDMA. While the Committee found the reports intriguing, it was felt that the studies lacked the appropriate methodological design necessary to ascertain the reliability of the observations. There was, however, sufficient interest expressed to recommend that investigations be encouraged to follow up these preliminary findings. To this end, the Committee urges nations to use the provisions of Article 7 of the Convention on Psychotropic Substances to facilitate research on this interesting substance.

Dated: September 30, 1985

William L. Jackson,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-23700 Filed 10-1-85; 10:15 am]

BILLING CODE 4160-01-M

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees of the national Institute of Allergy and Infectious Diseases for October, 1985.

These meetings will be open to the public to discuss administrative details relating to committee business and for program review. Attendance by the public will be limited to space available. Portions of these meetings will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual grant applications and contract proposals. These applications, proposals, and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lynn Trible, Office of Research Reporting and Public Response, National Institute of allergy and Infectious Diseases, Building 31, Room 7A-32, National Institutes of Health, Bethesda, Maryland 20892, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the committee members.

Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each committee.

Name of committee: Microbiology and Infectious Diseases Research Committee.

Executive secretary: Dr. M. S. Quaraishi, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20892 Telephone: (301) 496-7465.

Dates of meeting: October 10, 1985.

Place of meeting: Building 31C, Conference Room 8, National Institutes of Health 9000, Rockville Pike, Bethesda, MD 20892.

Open: October 10, 1985, 8:00 a.m.—9:05 a.m.

Agenda: Administrative business of the Committee and comments from Program staff.

Closed: October 10, 1985, 9:20 a.m.—adjournment.

Closure reason: To review grant applications and contract proposals.

Name of committee: Transplantation Biology and Immunology, Subcommittee of the Allergy, Immunology, and Transplantation Research Committee.

Executive secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health,

[1] Professor Grof felt that the decision on the recommendation should be deferred awaiting in particular, the data on the substance's potential therapeutic usefulness and that at this time international control is not warranted.

Bethesda, MD 20832. Telephone: (301) 496–7966.
Date of meeting: October 24, 1985.
Place of meeting: Dumbarton Room, Gerogetown Holiday Inn, 2101 Wisconsin Avenue, NW Washington, D.C.
Open: October 24, 1985, 8:30 a.m.—9:15 a.m.
Agenda: Administrative business of the Committee and comments from Program staff.
Closed: October 24, 1985, 9:15 a.m.—adjournment.
Closure reason: To review grant applications and contract proposals.
Name of committee: Allergy and Clinical Immunology Subcommittee of the Allergy, Immunology, and Tranplantation Research Committee.
Executive secretary: Dr. Nirmal Das, Room 706, Westwood Building, National Institutes of Health, Bethesda, MD 20892. Telephone: (301) 496–7966.
Date of meeting: October 30, 1985.
Place of meeting: building 31C, Conference Room 8, National Institute of Health, 9000 Rockville Pike, Bethesda, MD 20892.
Open: October 30, 1985, 8:30 a.m.—9:15 a.m.
Agenda: Administrative business of the committee and comments from Program staff.
Closed: 9:15 a.m.—adjournment.
Closure reason: To review grant applications and contract proposals.

(Catalog of Federal Domestic Assistant Programs Nos. 13.855, Pharmacological Sciences; 13.856, Microbiology and Infectious Diseases Research, National Institute of Health).

Dated: September 24, 1985.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 85–23705 Filed 10–2–85; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases; Meeting, Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Arthitis, Diabetes, and Digestive and Kidney Diseases (NIADDK), October 17, 18, and 19, 1985, National Institutes of Health, Building 2, Room 102, Bethesda, Maryland 20205.

This meeting will be open to the public from 8:00 p.m. to 10:00 p.m. on October 17, from 9:00 a.m. to 12:05 p.m. and from 2:05 p.m. to 4:25 p.m. on October 18, from 9:00 a.m. to 10:30 a.m. on October 19. The open portion of the meeting will be devoted to scientific presentations by various laboratories of the NIADDK Intramural Research Program. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of P.L. 92–463, the meeting will be closed to the public from 7:30 p.m. to 8:00 p.m. on October 17, from 12:05 p.m. to 2:00 p.m. and 4:25 p.m. to adjournment on October 18, and from 10:30 a.m. to adjournment on October 19, for the review, discussion and evaluation of individual intramural programs and projects conducted by the NIADDK, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of the meeting and rosters of the members will be provided by the Committee Management Office, National Institute of Arthritis, Diabetes, and Digestive and Kidney Diseases, Building 31, Room 9A46, Bethesda, Maryland 20205. Further information concerning the meeting may be obtained by contacting the office of Dr. Jesse Roth, Executive Secretary, Board of Scientific Counselors, National Institutes of Health, Building 10, Room 9N–222, Bethesda, Maryland 20205, (301) 496–4128.

Dated: September 27, 1985.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 85–23706 Filed 10–2–85; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Availability of Preliminary Draft Environmental Analyses for Remanded and Restored Utah BLM Wilderness Study Areas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: As a result of instructions from the Interior Board of Land Appeals (IBLA) and a decision of the Eastern District Court of California, the boundaries of three Utah BLM wilderness study areas (WSAs) have been modified, and nine small areas have been restored to WSA status.

In response to the requests of interested parties, copies of the Preliminary Draft Environmental Analysis for the twelve WSAs, prepared in conjunction with the Utah BLM Statewide Wilderness EIS, are available for review at the BLM Utah State Office, 324 South State (Public Room—4th floor), Salt Lake City, Utah and at the noted district offices:

	District office
WSA, Restored WSAs:	
Red Butte	Cedar City District Office, 1579 North Main Street, Cedar City, Utah 84720.
Spring Creek Canyon	Cedar City District Office
The Watchman	do
Taylor Creek Canyon	do
Goose Creek Canyon	do
Bear Trap Canyon	do
Fremont Gorge	Richfield District Office, 150 East 900 North, Richfield, Utah 84701.
Lost Spring Canyon	Moab District Office, 82 East Dogwood, Moab, Utah 84532.
Daniels Canyon	Vernal District Office, 170 South 500 East, Vernal, Utah 84078.
IBLA Remand Areas:	
Mt. Ellen-Blue Hills	Richfield District Office
Mt. Pennell	do
Fiddler Butte	do

EFFECTIVE DATE: September 30, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Gregory F. Thayn, Wilderness EIS Team Leader, BLM Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111–2303 (801–524–3135).

Dated: September 27, 1985.

Kemp Conn,

Acting State Director.

[FR Doc. 85–23575 Filed 10–2–85; 8:45 am]

BILLING CODE 4310–DQ–M

[Utah 54824]

Salt Lake District; Realty Action for Lands in Tooele County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: This is a Notice of a competitive sale of 430 acres of public land in Tooele County, Utah in accordance with existing law.

DATE: The date of the sale is December 2, 1985.

ADDRESS: Comments concerning the sale will be accepted for a period of 45 days from the date of this notice by the: District Manager, Salt Lake District, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Terry Catlin, Pony Express Realty Specialist, (801) 524–6773.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and identified as suitable for disposal by sale under

section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713) or FLPMA:

Legal description	Acreage	Appraised value of tract
Tract 1:		
T. 6 S., R. 5 W., SLM, UT, Sec. 6, E½SW¼,N½SW¼, SW¼SE¼, W½SE¼SE¼, SE¼SE¼SE¼		
Sec. 5, SW¼NW¼, E½SW¼	350 acres	$52,500
Tract 2:		
T. 6 S., R. 5 W., SLM, UT Sec. 5, NW¼SW¼, NW¼SE¼.	80 acres	12,000

The subject public lands are interspersed with private lands and as such are difficult and uneconomic to manage. Tract 1 has legal and physical access; Tract 2 has physical access, but no legal access, unless purchased by the same buyer as Tract 1 or by an adjacent landowner. The lands have potential for agricultural and residential development and would fulfill a need for additional lands for these uses in the community of Rush Valley. This objective could not be achieved on other lands, nor do the public lands have more important public values than for agricultural and residential development.

The sale is consistent with the Bureau of Land Management's planning system and with Tooele County planning and zoning.

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action.

Terms and conditions applicable to the sale are:

1. The sale of the tracts is subject to all valid existing rights, including right-of-way U–47296 to the town of Rush Valley on Tract 1.

2. The sale of the tracts will be subject to grazing use by grazing permittees until May 4, 1987.

3. A right-of-way will be reserved in each tract for ditches and canals constructed by the authority of the United States of the Act of August 30, 1890 (43 U.S.C. 945; 26 Stat. 391).

4. All minerals are reserved to the United States, together with the right to prospect for, mine and remove the minerals. The sale will be conducted by competitive sealed bid with no oral bidding. Bids may be made by a principal or duly qualified agent. Qualified bidders include: citizens of the United States 18 years of age or over; a corporation subject to the laws of any state or of the United States; a state, state instrumentality or political subdivision authorized to hold property; and any entities legally capable of holding lands or interests therein under the laws of the state within which the lands to be conveyed are located. Entities include but are not limited to associations, partnerships, and other legal entities.

All bids must conform to the following conditions:

1. All bids must be delivered to the Salt Lake District, Bureau of Land Management at the above address by 1:00 p.m. on December 2, 1985.

2. Each bid must be contained in a sealed envelope, one bid per envelope. The envelope must be clearly identified as a sealed bid and must display the tract number to which it applies as follows: "Bid for Public Sale, Serial U–54824, Tract —, Tooele County."

3. Each bid must identify the name and address of the bidder and if applicable, his or her agent's name and address.

4. Each bid must identify the tract number and the amount of the bid and must include all the lands in a tract. No bid will be accepted for less than the appraised fair market value of the tract.

5. A certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management for not less than 20 percent of the amount of the bid must be included with the bid.

6. Each bid must include a statement certifying that the bidder is a U.S. citizen, or that a business is under the legal jurisdiction of a U.S. state.

7. The bid must be signed and dated by the bidder. All bids will be opened on the sale date of December 2, 1985, at 1:00 p.m. at the BLM Salt Lake District Office Conference Room, 2370 South 2300 West, Salt Lake City, Utah. The highest bid over fair market value establishes the sale price and the apparent high bidder for each tract. If two or more envelopes are received containing valid bids of the same amount, the determination of which is to be considered the high bid will be by drawing. The apparent high bidder will be notified of such by certified mail. No preference right will be given to adjoining landowners.

The apparent high bidder must submit the remainder of his or her bid within 180 days of the sale. If the remainder of the bid price has not been received from the high bidder within 180 days, the deposit will be forfeited and disposed of as other receipts of sale. The tract will then be offered for sale to the next highest bidder in succession until the tract is sold. If a tract remains unsold, it will be offered for sale by sealed bid anytime after the original sale. The sealed bids will be opened at 7:45 a.m. on the first Monday of each month. This will continue until all parcels are sold or until the appraisal is no longer valid. All bids will be returned, accepted or rejected, within 30 days of the sale date. Patents will be issued by mail.

The authorized officer may reject the highest qualified bid and release the bidder from his or her obligation and withdraw the tract for sale, if he determines that consummation of the sale would be inconsistent with the provisions of any existing law, or collusive or activities have hindered or restrained free and open bidding, or consummation of the sale would encourage or promote speculation in public lands.

Detailed information concerning the sale including the planning documents and environemntal assessment is available for review at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determiantion. In the absence of any action by the District Manager, this realty action will become the final determination of the Department of the Interior.

John Stephenson,

Associate District Manager.

[FR Doc. 85–23574 Filed 10–2–85; 8:45 am]

BILLING CODE 4310–DQ–M

Colorado; Craig District Advisory Council Meeting

In accordance with Pub. L. 94–579, notice is hereby given that there will be a meeting of the Craig District Advisory Council on October 23, 1985.

The meeting will begin at 10 a.m. at the Craig District Office, 455 Emerson Street, Craig, Colorado.

Agenda will include: Omnibus Range Bill:
Legislation for the Grazing Fees, general discussion and consequences of;
How it will affect the Stewardship Program;
Who is on Grazing Boards;
Riparian Habitat; and Wild Horses.

The meeting will be open to the public and interested persons may make oral statements to the Council beginning at 10:30 a.m. The District Manager may establish a time limit for oral statements, depending on the number of people wishing to speak. Anyone wishing to address the Council or file a written statement, should notify the District Manger, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625, by October 18, 1985.

Summary minutes of the Council Meeting will be maintained in the Craig District Office and will be available for

public inspection and reproduction during regular business hours.

Dated: September 27, 1985.

William J. Pulford,
District Manager.

[FR Doc. 85-23591 Filed 10-2-85; 8:45 am]
BILLING CODE 4310-JB-M

[A-21023]

Arizona; Conveyance of Public Land

September 25, 1985.

Notice is hereby given that, pursuant to sections 203 and 209 of the Act of October 21, 1976 (90 Stat. 2750, 2757; 43 U.S.C. 1713, 1719), the following described land has been transferred out of Federal Ownership by non-competitive sale:

Gila and Salt River Meridian, Arizona

T. 41 N., R. 15 W.,
Sec. 33, lots 2, 3, 6;
containing 43.86 acres.

The purpose of the notice is to inform the public and interested State and local governmental officials of the transfer of land out of Federal ownership.

John T. Mezes,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-23593 Filed 10-2-85; 8:45 am]
BILLING CODE 4310-32-M

[A-21055, A-20346-I]

Federal Minerals Exchange, Pinal and Pima Counties, AZ

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action-Exchange, Federal Minerals in Pinal and Pima Counties, Arizona.

SUMMARY: The following described Federal mineral estate may be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716. All or part of the following subject sections are affected by this proposal.

Gila and Salt River Meridian, Arizona

T. 15 S., R. 9 E.,
Sec. 13, 14, 15, 25, 26, 27, 28, 29, 31, 33, 34, 35.
T. 16 S., R. 9 E.,
Sec. 1, 3, 4, 6, 12, 13, 23, 24, 25.
T. 15, S., R. 10 E.,
Sec. 15, 23, 24, 25, 26, 29, 35.
T. 16 S., R. 10 E.,
Sec. 6, 8, 9, 14, 17, 18, 19, 20, 21, 25, 26, 27, 28, 31.
T. 17 S., R. 10 E.,
Sec. 4, 6, 9.
T. 18 S., R. 10 E.,
Sec. 33, 34.
T. 19 S., R. 10 E.,
Sec. 3, 4.
T. 16 S., R. 11 E.,
Sec. 5, 6, 7, 8, 9, 17, 18, 19, 20, 21, 28, 29.
T. 8 S., R. 14 E.,
Sec. 12, 17, 18, 19, 20, 23, 24, 26, 27, 28, 29, 30, 31, 33, 34, 35.
T. 6 S., R. 15 E.,
Sec. 4, 5, 6, 9, 13, 14, 15, 17, 18, 21, 22, 23, 24, 26, 27, 34, 35.

Comprising 49,479.02 acres, more or less.

In exchange for this federal mineral estate, the United States will select an equal number of acres of State-owned minerals located under federal surface.

The purpose of the exchange is to unite State and Federal split estates, thereby eliminating surface management difficulties and providing for the consolidation of surface/mineral ownership.

The purpose of this Notice of Realty Action is two-fold. First, this action will provide a response period of forty-five (45) days during which public comments will be accepted. Secondly, this action, as provided in 43 CFR 2201.1 (b), shall segregate the federal minerals, as described in this Notice, to the extent that they will not be subject to appropriation under the mining laws, subject to any prior valid rights. The segregative effect shall terminate either upon publication in the Federal Register of a termination of the segregation or two years from the date of this publication, whichever comes first. This action is necessary to avoid the occurrence of nuisance mining claims that could encumber the federal minerals while the preparation of an environmental assessment and mineral report are ongoing.

Upon completion of the environmental assessment, a final Notice of Realty Action will be published. The Notice will provide a final description of the Federal and State minerals to be transferred, including reservations.

SUPPLEMENTARY INFORMATION: Detailed information concerning the exchange, may be obtained from the Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

For a period of forty-five (45) days, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Dated: September 26, 1985.

Marlyn V. Jones,
District Manager.

[FR Doc. 85-23595 Filed 10-2-85; 8:45 am]
BILLING CODE 4310-32-M

[M-60120]

Montana; Realty Action—Exchange

AGENCY: Bureau of Land Management—Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-60120—Exchange of public and private lands, in Blaine County, Montana.

SUMMARY: This exchange will be between the United States of America and the Fort Belknap Tribal Council. The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Principal Meridian Montana

T. 27 N., R. 21 E.,
Sec. 24, SW¼SW¼;
Sec. 25, S½NE¼, SE¼NW¼;
Sec. 26, NE¼SE¼;
Sec. 27, NW¼;
Sec. 34, S½NW¼, N½SW¼, N½SE¼, SE¼SE¼.
T. 27 N., R. 22 E.,
Sec. 20, SE¼NW¼;
Sec. 31, NW¼SE¼.

Aggregating 720 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described land:

Prinicpal Meridian Montana

T. 26 N., R. 21 E.,
Sec. 11, SE¼SE¼;
Sec. 12, SW¼;
Sec. 13, N½NW¼, NW¼NE¼.
T. 26 N., R. 22 E.,
Sec. 17, S½,SW¼;
Sec. 19, E½SE¼;
Sec. 20, W½NE¼, E½NW¼, S½.

Aggregating 960 acres.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management, at the address below. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of Interior.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange, including the environmental assessment and land report is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates public lands described above from settlement, sale, location and entry under the public land laws, including the mining laws but not from exchange

pursuant to section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945.

2. The reservation to the United States of all minerals in the lands being transferred out of Federal ownership. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove minerals. A more detailed description of this reservation, which will be incorporated in the patent document is available for review at this BLM office.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Cash equalization payment of $145.00 will be paid by the Fort Belknap Tribal Council.

5. The exchange must meet the requirements of 43 CFR 4110.4–2(b).

This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with local officials. The public interest will be served by completion of this exchange as we will be acquiring public access, and title to lands having historical value as well as expanding wildlife management capability.

Dated: September 27, 1985.

David E. Little,

Acting District Manager.

[FR Doc. 85–23596 Filed 10–2–85; 8:45 am]

BILLING CODE 4310-DN-M

Phoenix District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting of The Phoenix District Advisory Council.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets November 6, 1985, in Phoenix, Arizona. The meeting will start at 9 a.m. in the Phoenix District Office, 2015 W. Deer Valley Road.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1976, and the Public Rangelands Improvement Act of 1978.

The Agenda for the meeting includes:
Wild Horse and burro adoption program
BLM land exchanges, private and State
Interchange of lands, BLM/Forest Service
Navajo acquisitions
Eastern Arizona grazing EIS
BLM land payments for CAP rights-of-way
BLM Management updates
Business from the floor
Public comments and statements
Future meetings and agenda topics

SUPPLEMENTARY INFORMATION: This is a public meeting and BLM welcomes the presentation of oral statements or the submission of written statements that address the issues on the meeting agenda or related matters.

Marlyn V. Jones,

District Manager.

[FR Doc. 85–23594 Filed 10–2–85; 8:45 am]

BILLING CODE 4310-32-M

Salmon District, Lemhi Draft Resource Management Plan and Environmental Impact Statement, Public Hearing and DRMP/DEIS Availability

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability of the Draft Resource Management Plan/ Environmental Impact Statement; Proposed Wilderness Suitability Recommendation and Associated Public Hearing.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and section 202 of the Federal Land Policy and Management Act of 1976, the Department of the Interior has prepared a Draft Resource Management Plan (DRMP) and Environmental Impact Statement (EIS) for proposed management of public lands in the Lemhi Resource Area. Included in the draft plan is a suitability recommendation for the Eighteenmile Wilderness Study Area. This notice, therefore, is also issued pursuant to section 3(d)1A and B of the Wilderness Act of 1964. The Draft RMP and EIS describes and analyzes seven alternatives for managing 459,566 acres of public land.

Alternative A—represents the existing situation. The present level of management on the public lands would be continued. The Eighteenmile Wilderness Study Area (WSA) would not be recommended for wilderness designation. As defined by BLM policy, Alternative A is the proposed action for livestock grazing.

Alternative B—emphasizes livestock grazing managmenet. It represents an optimistic outlook for livestock grazing, given present and anticipated future budget levels. This alternative recommends 14,796 acres for wilderness designation.

Alternative C—emphasizes wildlife and fisheries habitat enhancement, wilderness and recreational values, cultural resource management, and watershed protection. Wilderness values would be emphasized by recommending the Eighteenmile WSA (24,922 acres) for wilderness designation.

Alternative D—emphasizes mineral development on the public lands. The objective is to manage the federal mineral estate to allow optimum exploration and development, while minimizing unnecessary impacts to other resources. The Eighteenmile WSA would not be recommended for wilderness designation.

Alternative E—emphasizes intensive management on 30,309 acres of commercial forest land for sustained yield production. There would be 20,100 acres of noncommercial forest lands that would be available for limited harvest of sawtimber, fuelwood, and other minor forest products. The Eighteenmile WSA would be recommended as nonsuitable for wilderness designation.

Alternative F—is BLM's Preferred Alternative. This alternative represents a mix of resource uses that takes a balanced approach to public land management. Production and use of commodity resources and commercial use authorizations would occur, but fragile resources, wildlife habitat, cultural values, and other nonconsumptive resource uses would be protected. Part of the Eighteen-mile WSA (14,796 acres) would be recommended as suitable for wilderness designation.

Alternative G—is identical to Alternative F with one exception: it provides for Congress not designating the 14,796 acres recommended as suitable for wilderness designation. Management actions would be identical to those proposed under Alternative F for lands, range, wildlife, watershed and fisheries, and cultural resources.

Copies of the Draft RMP/EIS are available for review at the following locations:

Salmon District Office, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467, Telephone: (208) 756–2201

Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706, Telephone: (208) 334–1770

Public Affairs, Bureau of Land Management, Interior Building, 18th and C Street, Washington, D.C. 20240, Telephone: (202) 343–4435

DATES: Written comments on the Draft RMP/EIS are invited and should be submitted by January 13, 1986. A public hearing will be held to receive written and oral comment on the Draft RMP/EIS. The hearing will be held on November 20, 1985 at 7:30 p.m. in the basement of the Salmon Public Library, 204 Main Street, Salmon, Idaho. The hearing is required for the wilderness recommendation, but testimony on other resource recommendations and the adequacy of the draft RMP/EIS is encouraged.

ADDRESS: Written comments should be submitted to: District Manager, Attn: Lemhi RMP/EIS, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467.

FOR FURTHER INFORMATION CONTACT: Jerry A. Wilfong, Bureau of Land Management, P.O. Box 430, Salmon, Idaho 83467, Telephone: (208) 756-2201.

SUPPLEMENTARY INFORMATION: Individuals wishing to testify may do so by appearing at the hearing place previously specified. Persons wishing to give testimony may be limited to 10 minutes with written submissions encouraged.

Dated: September 25, 1985.

Kenneth G. Walker,

District Manager.

[FR Doc. 85-23600 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-GG-M

Prioritization of Processing of Record Title and Operating Rights Assignments of Onshore Oil and Gas Leases; Clarification

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of clarification of prioritization for processing of record title and operating rights assignments of onshore oil and gas leases.

SUMMARY: This Notice provides additional information and clarification to the **Federal Register** Notice published on August 23, 1985 (50 FR 34204), on the certificate of title which may accompany an assignment of operating rights for submission to the Bureau of Land Management (BLM) for priority ranking of the assignment for processing.

A certificate of title accompanying an operating rights assignment must contain full disclosure of all interests in the lease lands as defined in the onshore oil and gas leasing regulations at 43 CFR 3000.0-5(1). The certificate of title is to be prepared by a person, association or corporation fully knowledgeable in the proper preparation of an accurate and complete certificate of title. The authority for a person or firm to prepare a certificate of title is not limited solely to those authorized by the laws of the State/county in which the lands are located. Such a person, association or corporation may be an attorney, landman, or title or abstract company. No specific form is required for the certificate of title, however, the certificate must state that it is accurate and fully complete as to all instruments of conveyance of record affecting interests in the subject lease lands as reflected by the records of the Bureau of Land Management and the appropriate recording office in the State/county where the lands are located. A suggested format for a certificate of title may be obtained from any BLM State Office. The certificate of title must bring the chain of title forward as discussed in the **Federal Register** Notice of August 23, 1985, for each interest holder and type of interest. The interest holder's Bureau identification number is either the Internal Revenue Service number or social security number or, if an interest holder has chosen not to disclose this number to the Bureau, a BLM-assigned number. This number is used by the BLM to ensure that the name and address of the applicant is entered in the same manner on all Bureau records. This minimizes mistaken identification and reduces the cost and time of making name and address changes, transferring rights to the request of applicants, and locating records associated with persons and firms doing business with the Bureau.

A certificate of title is not required for applications for approval of assignments of record title. All such record title assignments are prioritized as Category 1.

The Bureau of Land Management will not adjudicate the qualifications of the person, association or corporation that prepares a certificate of title. The responsibility for a complete and accurate certificate of title is that of the assignee requesting approval by the BLM of the operating rights assignment. A certificate will be returned to the assignee for corrective action when it is not accurate with respect to the identity of all interests in the lands involved and not complete with an originally executed copy, or copy thereof certified by the legal custodian of the records in the appropriate State/county recorder's office, of each lease assignment not yet filed with or approved by the Bureau. A change in the priority ranking of the assignment, for example from Category 1 to Category 2, will occur until such time as the corrected certificate with all necessary attached exhibits is returned to the proper BLM office.

EFFECTIVE DATE: August 23, 1985, publication of Notice (50 FR 34204).

FOR FURTHER INFORMATION CONTACT: Lois Mason, Division of Fluid Mineral Leasing, Bureau of Land Management, Washington, DC 20240 Telephone (202) 653-2190.

Robert F. Burford,

Director.

[FR Doc. 85-23606 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-84-M

[LA 0121385 WR, LA 0146120 WR, LA 0164624 WR]

California; Proposed Continuation of Withdrawals

September 25, 1985.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of the Army, Corps of Engineers, proposes that three land withdrawals affecting approximately 615,062 acres at Fort Irwin National Training Center continue for an additional 25 years. The lands will remain closed to surface entry and mining. A portion of the land totalling 2,560 acres would be opened to mineral leasing subject to the consent of the Department of the Army. The remaining 612,502 acres have been and will remain open to mineral leasing.

DATE: Comments should be received by January 2, 1986.

ADDRESS: Comments should be sent to: Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office, 2800 Cottage Way (Room E-2841), Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Sonia Santillan, California State Office (916) 978-4815.

The Department of the Army proposes that three existing land withdrawals made by Executive Order (EO) No. 8507 of August 8, 1940, as amended by EO No. 9098 of March 14, 1942 and Public Land Order (PLO) No. 1750 of November 5, 1958, and PLO No. 3082 of May 14, 1963, and PLO No. 2940 of February 15, 1963, be continued for a period of 25 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714.

The lands involved lie in the Upper Mohave Desert about 37 miles northeast of the City of Barstow in San Bernardino County, affecting certain lands in the following townships and ranges, some of which are unsurveyed and partially surveyed:

San Bernardino Meridian

Tps. 14, 15, 16, 17, 18 N., R. 1 E.;
Tps. 12, 13, 14, 15, 16, 17, 18 N., R. 2 E.;
Tps. 12, 13, 14, 15, 16, 17, 18 N., R. 3 E.;
Tps. 12, 13, 14, 15, 16, 17, 18 N., R. 4 E.;
Tps. 12, 13, 14, 15, 16, 17 N., R. 5 E.;
Tps. 13, 14, 15, 16, 17 N., R. 6 E.

The purpose of the withdrawals is to provide protection for lands in support of various military training functions. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws. One of the withdrawals further segregates 2,560 acres from operation of the mineral leasing laws. No change is proposed in the purpose of segregative effect of the withdrawal except that the 2,560 acres would be opened to mineral leasing subject to the provisions of section 6 of the Defense Withdrawals Act of February 28, 1958 (72 Stat. 30; 43 U.S.C. 158), which provides that consultation shall be made with the Secretary of Defense regarding the disposition of or exploration for minerals in the land.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Sharon N. Janis,

Chief, Branch of Lands & Minerals Operations.

[FR Doc. 85-23652 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-40-M

Emergency Closure of Vehicle Routes Within Wilderness Study Area 355A, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure Notice for Unauthorized Roads Within Picacho Peak Wilderness Study Area #355A, Imperial County, California.

SUMMARY: This closure notice affects recently bladed dirt roads within the Picacho Peak WSA #355A under the administrative responsibility of the El Centro Resource Area, California Desert District. The affected roads are located in section 23 and 24 of T. 13 S., R. 21 E., SBM and are hereby closed in order to control erosional and visual impacts due to vehicluar access and to prevent impairment of wilderness suitability. This closure is consistent with section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) which requires the Secretary of the Interior to manage such lands so as not to impair their suitability for preservation as wilderness.

The routes affected by this notice are being closed under the authority of 43 CFR 8364.1. This closure order was effective September 17, 1985 and shall remain in effect until the roads have been reclaimed to the point of being substantially unnoticeable, to the satisfaction of the BLM Authorized Officer. Closed routes will be barricaded and posted with red posts bearing the legend "Closed Route". Vehicular access beyond the points of closure will be permitted only to public service, law enforcement officials, Bureau employees while acting on official duty and other specifically authorized persons. Maps showing the exact location of roads affected by this closure notice are available from the El Centro Resource Area, 333 South Waterman Avenue, El Centro, California 92243.

Any person who knowingly and willfully violates this closure order may be subject to a $1,000 fine or imprisonment for not longer than 12 months, or both, under authority of 43 CFR 8364.21.

Dated: September 25, 1985.

H.W. Riecken,

Acting District Manager.

[FR Doc. 85-23654 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-40-M

Casper District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board Meeting.

SUMMARY: The Casper District Grazing Advisory Board will meet at 10:00 a.m. on November 5, 1985. The meeting will convene at the Buffalo Savings and Loan Building in Buffalo, Wyoming. The agenda will include a discussion on range improvement projects, allotment management plans, stock driveways, and a brief legislative report on current range issues.

DATE: November 5, 1985; 10:00 a.m.

ADDRESS: To request summary minutes or time on the agenda, contact: Bureau of Land Management, Casper District Office, 951 North Poplar, Casper, WY 82601.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with Pub. L. 92-463 and 94-579. The meeting is open to the public. Time will be available for public statements to the Board. Interested persons may testify or submit written statements for Board consideration. Anyone wishing to make an oral statement should notify the district manager by November 5, 1985. Depending on the number of persons wishing to make statements, a per person time limit may be imposed by the district manager.

Summary minutes of the Board meeting will be maintained in the district office and be available for public inspection within 30 days following the meeting.

FOR FURTHER INFORMATION CONTACT: Bruce Daughton, (307) 261-5575.

Leslie A. Olver,

Acting District Manager.

[FR Doc. 85-23650 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-22-M

[CA 10388]

Order Opening Lands Acquired in an Exchange of Public and Private Lands in Tehama County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

In an exchange of lands made under provisions of sec. 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716), the following described land has been reconveyed to the United States:

Mount Diablo Meridian, California

T. 28 N., R. 3 W.,
Sec. 22, Lot 2;
Containing 27.05 acres.

Upon acceptance of title to such land, the land became public land subject to administration by the Bureau of Land Management.

At 10:00 a.m. on November 4, 1985, the land shall be open to operation of the public land laws generally, subject to valid existing rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on November 4, 1985, shall be

considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10:00 a.m. on November 4, 1985, the land shall be open to applications under the United States mining laws and mineral leasing laws.

Inquires concerning the land should be addressed to the Bureau of Land Management, Room E-2841, 2800 Cottage Way, Sacramento, California 95825.

Dated: September 25, 1985.

Sharon N. Janis,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 85-23653 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-40-M

Realty Action—Exchange; Public Lands in Malheur and Wheeler Counties for State Land in Lincoln County, OR

September 25, 1985.

The following described public lands have been examined and determined to be suitable for transfer out of Federal ownership by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2756; 43 U.S.C. 1716) and section 119 of the Act of March 5, 1980 (94 Stat. 71; 43 U.S.C. 1783):

Willamette Meridian, Oregon

T. 8 S., R. 25 E.,
Sec. 31 NE¼SW¼SE¼.
T. 18 S., R. 45 E.,
Sec. 19, portion of SW¼SE¼.

Containing 10.00 acres in Wheeler County and 1.28 acres, more or less, in Malheur County.

In exchange for these lands the United States will acquire the following described land from the State of Oregon:

Willamette Meridian, Oregon

T. 10 S., R. 11 W.,
Sec. 29, portion of SW¼NW¼.

Containing 5.80 acres, more or less in Lincoln County.

The purpose of the exchange is to facilitate the resource management program of the Bureau of Land Management and to improve the highway construction and maintenance program of the State of Oregon, by and through its Department of Transportation.

The public lands that will be exchanged are not needed for any Federal programs and are well suited for use and development as road maintenance stations by the State of Oregon.

The state-owned land that will be acquired lies within the Yaquina Head Outstanding Natural Area established by Act of Congress on March 5, 1980. This law directs the Secretary of the Interior to administer the public lands within the area for the conservation and development of the scenic, natural and historic values. It directs the Secretary to acquire all or any part of the non-Federal lands within the area and limits the method of acquisition of state-owned land to only gift or exchange. The parcel to be acquired is the only non-Federal land remaining within the area.

The exchange has been discussed with county officials and has been given public exposure. No opposition was expressed. The public interest will be well served by making this exchange.

The fair market value of the lands involved are not equal since the value of the state-owned parcel exceeds the combined value of the public lands; however, the State of Oregon will waive the equalization payment required of the United States.

The Wheeler County parcel of public land will be subject to a reservation to the United States for a right-of-way for ditches or canals under the Act of August 30, 1890.

The Malheur County parcell of public land will not be subject to any reservations.

The state land to be acquired by the United States will be subject to a reservation of an easement to use the existing road (portion of Vacated County Road No. 39) for access to a communications site.

Publication of this notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregative effect of this notice will terminate upon issuance of patent or in two years, which ever comes first.

Detailed information concerning this exchange, including the environmental assessment and the record of public discussions, is available for review at the Salem District Office, P.O. Box 3227 (1717 Fabry Rd. SE), Salem, Oregon 97302.

For a period of 45 days from the date of this notice, interested parties may submit comments to the Salem District Manager at the above address. Any adverse comments will be evaluated by the Oregon State Director, Bureau of land Management, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Joseph C. Dose,

Salem District Manager.

[FR Doc. 85-23651 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-33-M

Minerals Management Service

Outer Continental Shelf Advisory Board—Policy Committee; Notice and Agenda for Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463, 5 U.S.C. App. 1 and the Office of Management and Budget's Circular No. A-63, Revised.

The Policy Committee of the Outer Continental Shelf (OCS) Advisory Board will meet from 8:30 a.m. to 5:00 p.m., November 6, 1985, and from 8:00 a.m. to 5:15 p.m., November 7, 1985 at Marriott's Grand Hotel, Point Clear, Alabama (205-928-9201).

The meeting will cover the following principle subjects: November 6, 1985—

- Gulf of Mexico: Recent Finds and Resources
- Conflict Resolution: New Perspectives; Options and Approaches
- Conflict Resolution: California Preliminary Agreement; Background and Current Status
- MMS Updates

November 7, 1985—

- 5-Year Program Status Overview
- Analyses of Area-wide Leasing and Bidding Approaches
- Offshore Technology and Resources
- BAST and Well Control
- NAS Study: Fates and Effects
- Ocean Incineration

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the committee. Such requests should be made no later than October 25, 1985, to the OCS Policy Committee, Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, contact the Executive Secretary, Michele Tetley at 202/343-9314.

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Minerals Management Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240.

Dated: September 26, 1985.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 85-23647 Filed 10-2-85; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701-TA-225, 227, 228, 230, and 231 (Final) and 731-TA-219 (Final)]

Certain Carbon Steel Products From Austria and Sweden

Determinations

On the basis of the record [1] developed in the subject countervailing duty investigations, the Commission determines,[2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)), that an industry in the United States is materially injured by reason of imports from Austria and Sweden of cold-rolled carbon steel plates and sheets, provided for in item 607.83 of the Tariff Schedules of the United States (TSUS), which have been found by the Department of Commerce to be subsidized by the Governments of Austria and Sweden (investigations Nos. 701-TA-230 and 231 (Final), respectively.

The Commission further determines [3] that industries in the United States are not materially injured or threatened with material injury, and the establishment of industries in the United States is not materially retarded, either by reason of imports from Sweden of carbon steel plates, provided for in TSUS item 607.66, which have been found by the Department of Commerce to be subsidized by the Government of Sweden (investigation No. 701-TA-225 (Final)), or by reason of imports from Austria and Sweden of hot-rolled carbon steel sheets, provided for in TSUS items 607.67 and 607.83, which have been found by the Department of Commerce to be subsidized by the Governments of Austria and Sweden (investigations Nos. 701-TA-227 and 228 (Final), respectively).

On the basis of the record developed in the subject antidumping investigation, the Commission determines,[4] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Austria of hot-rolled carbon steel sheets, provided for in TSUS items 607.67 and 607.83, which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV) (investigation No. 731-TA-219 (Final).

Background

The Commission instituted the countervailing duty investigations effective March 20, 1985, and the antidumping investigation effective June 3, 1985, following preliminary determinations by the Department of Commerce that imports of certain carbon steel products from Austria and Sweden were being subsidized within the meaning of section 701 of the Act (19 U.S.C. 1671) and/or were being sold at LTFV within the meaning of section 731 of the Act (19 U.S.C. 1673). Notices of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the *Federal Register* of April 24, 1985, and June 27, 1985, (50 FR 16164, 50 FR 26636, and 50 FR 26637). The hearing was held in Washington, DC, on August 20, 1985, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on September 25, 1985. The views of the Commission are contained in USITC Publication 1759 (September 1985), entitled "Certain Carbon Steel Products from Austria and Sweden: Determinations of the Commission in Investigations Nos. 701-TA-225, 227, 228, 230, and 231 (Final) . . . [and] 731-TA-219 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By order of the Commission.

Issued: September 30, 1985.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-23607 Filed 10-2-85; 8:45 am]

BILLING CODE 7020-02-M

[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Vice Chairman Liebeler dissenting.

[3] Commissioner Eckes dissenting.

[4] Commissioner Eckes dissenting.

[Investigation No. 731-TA-287 (Preliminary)]

In-Shell Pistachio Nuts From Iran

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-287 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Iran of pistachio nuts, not shelled, provided for in item 145.26 of the Tariff Schedules of the United States, which are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by November 12, 1985.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 26, 1985.

FOR FURTHER INFORMATION CONTACT: Bruce Cates (202-523-0369), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on September 26, 1985, by counsel on behalf of the California Pistachio Commission, Blackwell Land Co., California Pistachio Orchards, Keenan Farms, Inc., Kern Pistachio Hulling & Drying Co-Op, Los Ranchos de Poco Pedro, Pistachio Producers of California, and T.M. Duche Nut Co., Inc.

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairwoman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on October 18, 1985, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Parties wishing to participate in the conference should contact Bruce Cates (202-523-0369) not later than October 17, 1985, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 22, 1985, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

Issued: September 30, 1985.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 85-23608 Filed 10-2-85; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-248X]

Hardeman County Railroad Co., Inc., the Industrial Development Board of Hardeman County, TN, and Bolivar Southern Railroad Co.—Abandonment and Discontinuance of Service Exemption—in Hardeman County, TN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts with respect to 19.5 miles of track between milepost 517, north of Grand Junction, TN, and milepost 497.5, north of Bolivar, TN, in Hardeman County, TN, (1) the acquisition by The Industrial Development Board of Hardeman County, the lease by Hardeman County Railroad Company, Inc. and operation by Bolivar Southern Railroad Company from the prior approval requirement of 49 U.S.C. 10901, *nunc pro tunc*, and (2) the abandonment by The Industrial Development Board of Hardeman County, TN, and discontinuance of service by Hardeman County Railroad Company, Inc., and Bolivar Southern Railroad Company from the prior approval requirements of 49 U.S.C. 10903 *et seq.*

DATES: This exemption will be effective on date of service, October 2, 1985. Petitions to reopen must be filed by October 23, 1985.

ADDRESSES: Send pleadings referring to Docket No. AB-248X.

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Edward G. Grogan, Suite 2000, First Tennessee Building, Memphis, TN 38103

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Bldg., Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: September 19, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboly and Strenio. Commissioner Sterrett did not participate in the disposition of this proceeding.

James H. Bayne,

Secretary.

[FR Doc. 85-23613 Filed 10-2-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on October 17, at the Ponte-Vedra Inn, Terrace Room A South, 200 Ponte Vedra Blvd., Ponte Vedra Beach, Florida 32082—near Jacksonville. The Meeting is open to the public and will begin at 9:00 a.m.

The agenda for this meeting will include a review of a draft standard for the regulation of asbestos in the construction industry, and a general discussion of construction safety and health matters.

Written data, views or comments may be submitted preferably with 20 copies to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of

time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation.

Oral presentations will be scheduled at the discretion of the Chairman depending on the extent to which time permits. Communications may be mailed to Ken Hunt, Committee Management Officer, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3662, Washington, DC 20210: Telephone: (202) 523–8024.

Materials provided to members of the Committee are available for inspection and copying at the above address.

Signed at Washington, DC, the 1st day of October 1985.

Patrick R. Tyson,

Acting Assistant Secretary of Labor.

[FR Doc. 85–23762 Filed 10–2–85; 8:45 am]

BILLING CODE 4510-26-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Safety Philosophy, Technology, and Criteria; Meeting; Time Change

The Federal Register published Tuesday, September 24, 1985 (50 FR 38730) contained notice of a meeting of the ACRS Subcommittee on Safety Philosophy, Technology, and Criteria to be held on October 9, 1985, Room 1167, 1717 H Street, NW., Washington, DC. The starting time for the meeting has been changed to 3:00 p.m. All other items regarding this meeting remain the same as previously announced.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Dr Richard Savio (telephone 202/634–3267) between 8:15 a.m. and 5:00 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occured.

Dated: September 30, 1985.

Morton W. Libarkin,

Assistant Executive Director for Project Review.

[FR Doc. 85–23680 Filed 10–2–85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–412]

Duquesne Light Company et al., Beaver Valley Unit 2; Environmental Assessment and Finding of No Significant Impact;

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an Exemption from a portion of the requirements of General Design Criterion (GDC) 4 (10 CFR Part 50, Appendix A) to the applicants [1] for Beaver Valley Unit 2, located at the applicants' site in Beaver County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action: The Exemption would permit the applicants not to install the pipe whip restraints and jet impingement shields and not to consider the dynamic effects associated with postulated pipe breaks in the Beaver Valley Unit 2 primary coolant system, on the basis of advance calculational methods for assuring that piping stresses would not result in rapid piping failure; i.e., pipe breaks.

Need for Proposed Action: The proposed Exemption is needed in order for the applicants not to consider the dynamic loading effects associated with the postulated full flow circumferential and longitudinal pipe ruptures in the main loop primary coolant system. These dynamic loading effects include pipe whip, jet impingement, asymmetric pressurization transients and break associated dynamic transients in unbroken portions of the main loop and connected branch lines. Therefore, the applicants would not be required to install protective devices such as pipe whip restraints and jet impingement shields related to postulated break locations in the primary coolant loops. Analysis shows that the pipe breaks, which these devices are designed to protect against, are extremely unlikely. On the other hand, the presence of these devices increase inservice inspection time in the containment and their elimination would lessen the occupational doses to workers and facilitate inservice inspections.

GDC 4 requires that structures, systems and components important to safety shall be appropriately protected against dynamic effects including the effects of discharging fluids that may result from equipment failures, up to and including a double-ended rupture of the largest pipe in the reactor coolant system (Definition of LOCA). In recent submittals the applicants have provided information to show by advanced fracture mechanics techniques that the detection of small flaws by either inservice inspection or leakage monitoring systems is assured long before flaws in the piping materials can grow to critical or unstable sizes which could lead to large break areas such as the double-ended guillotine break or its equivalent. The NRC staff has reviewed and accepted the applicants' conclusion. Therefore, the NRC staff agrees that double-ended guillotine break in the primary pressure coolant loop piping, and its associated dynamic effects, need not be required as a design basis accident for pipe whip restraints and jet shields; i.e., the restraints and jet shields are not needed. Accordingly, the NRC staff agrees that a partial exemption from GDC 4 is appropriate.

Environmental Impact of the Proposed Action: The proposed Exemption would not affect the environmental impact of the facility. No credit is given for the restraints and shields to be eliminated in calculating accident doses to the environment. While the jet impingement barriers and pipe whip restraints would minimize the damage from jet forces and whipping from a broken pipe, the calculated limitation on stresses required to support this Exemption assures that the probability of pipe breaks which could give rise to such forces are extremely small; thus, the pipe whip restraints and jet shield would ahve no significant effect on the overall plant accident risk.

The Exemption does not otherwise affect radiological plant effluents. Likewise, the relief granted does not affect non-radiological plant effluents, and has no other environmental impact. The elimination of the pipe whip restraints and jet impingement shields would tend to lessen the occupational doses to workers inside containment. Therefore, the Commission concludes that there are no significant radiological or non-radiological impacts associated with the Exemption.

The proposed Exemption involves design features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect plant non radioactive effluents and has no other environmental impact. Therefore, the Commission concludes that there are no nonradiological impacts associated with this proposed Exemption.

Since we have concluded that there are no measurable negative environmental impacts associated with this Exemption, any alternatives would not provide any significant additional protection of the environment. The

[1] The applicants are Duquesne Light Company, Ohio Edison Company, the Cleveland Illuminating Company, and the Toledo Edison Company.

alternative to the exemption would be to require literal compliance with GDC 4.

Alternative Use of Resources: This action does not involve the use of resources not previously considered in the Final Environmental Statement (Operating License) for Beaver Valley Unit 2.

Agencies and Persons Contacted: The NRC staff reviewed the applicants' request and applicable documents referenced therein that support this Exemption for Beaver Valley Unit 2. The NRC did not consult other agencies or persons.

Finding of no Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the requests for exemption dated February 24, May 31, July 16, and November 5, 1984, and July 9, 1985. These documents, utilized in the NRC staff's technical evaluation of the exemption request, are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Local Public Document Room at the B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. The staff's technical evaluation of the request will be published with the exemption (if the exemption is granted) and will also be available for inspection at both locations listed above.

Dated at Bethesda, Maryland, this 26th day of September, 1985.

For the Nuclear Regulatory Commission.

Thomas M. Novak,

Assistant Director for Licensing, Division of Licensing.

[FR Doc. 85-23684 Filed 10-2-85; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-320]

General Public Utilities Nuclear Corp.; Revision to Environmental Assessment and Notice of Finding of No Significant Environmental Impact

On September 20, 1985, the U.S. Nuclear Regulatory Commission (the Commission) provided notice (50 FR 38234) of a planned issuance of an exemption relative to the Facility Operating License No. DPR-73, issued to General Public Utilities Nuclear Corporation (the licensee), for operation of the Three Mile Island Nuclear Station, Unit 2 (TMI-2), located in Londonderry Township, Dauphin County, Pennsylvania. Specifically, the notice stated that the Commission was considering an exemption from certain requirements of 10 CFR 20.311(b) and 20.311(d)(1), (2) and (3) for classifying TMI-2 EPICOR II solid waste liners. Since the issuance of the aforementioned notice (50 FR 38234), the Commission has determined that exemption from certain requirements of 10 CFR 20.311 is unnecessary but that exemption from certain requirements of 10 CFR 61.55 is appropriate. While the environmental impacts associated with the considered exemption from 10 CFR 61.55 are no different from the impacts previously described (50 FR 38234) for exemption from 10 CFR 20.311, the Commission is nonetheless providing the following revised Environmental Assessment to correctly describe the action being considered (i.e., exemption from certain requirements of 10 CFR 61.55).

Environmental Assessment

Identification of Proposed Action: The action being considered by the Commission is an exemption from certain requirements of 10 CFR 61.55 for classifying TMI-2 EPICOR II solid waste liners. Specifically 10 CFR 61.55 requires, in part, that the classification of waste for near surface disposal be in accordance with the radionuclide concentration limits provided in Tables 1 and 2 of § 61.55(a)(3) and (4). For Sr-90, the concentration limit for Class A waste is 0.04 curies per cubic meter. The licensee has received a variance from the State of Washington to permit the burial, as Class A waste, of EPICOR II resin liners containing Sr-90 concentrations up to 1.0 curies per cubic meter. In order to implement this variance, the licensee requires an exemption from the requirements of 10 CFR 61.55 for classifying EPICOR II resin liners. This action does not involve any other exemptions and the EPICOR II resin liners will be packaged and transported in accordance with applicable Commission and Department of Transportation regulations.

The Need for the Action: The licensee has received from the State of Washington a variance to the Class A waste criteria of 10 CFR 61.55 regarding the TMI-2 EPICOR II solid waste liners to increase the upper Class A limit for Sr-90 from 0.04 uCi/cc to 1.0 uCi/cc. In order to implement this variance, the licensee requires an exemption from 10 CFR 61.55 as discussed above. Without the variance, the waste volume for disposal would significantly increase and there would be corresponding increases in occupational exposure resulting from additional waste handling without any benefit to public health and safety at the burial site.

Environmental Impacts of the Proposed Actions: The staff has evaluated the subject exemption and concluded that it will not result in significant increases in airborne radioactivity inside facility buildings or in corresponding releases to the environment. There are also no nonradiological impacts to the environment as a result of this action.

Alternative to this Action: Since we have concluded that the environmental effects of the proposed action and exemption are negligible, any alternatives with equal or greater environmental impacts need not be evaluated. Denial of this exemption would not reduce environmental impacts of plant operations and would result in the application of overly restrictive regulatory requirements when considering the unique conditions of TMI-2.

Agencies and persons Consulted: The NRC staff reviewed the licensee's request and consulted with the Department of Social and Health Services, State of Washington.

Alternate Use of Resources: This action does not involve the use of resources not previously considered in connection with the Final Programmatic Environmental Impact Statement for TMI-2 dated March 1981.

Finding of No Significant Impact: The Commission has determined not to prepare an environmental impact statement for the subject Exemption. Based upon the foregoing environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action see: (1) Letter to J. J. Barton, Metropolitan Edison Co., from B. J. Snyder, USNRC, Evaluation of EPICOR II liner disposal conditions, dated October 22, 1981; (2) Letter to L. Gronemyer, State of Washington, from B. K. Kanga, GPUNC, 10 CFR Part 61 Exemption, dated October 26, 1983; (3) Letter to B. J. Snyder, USNRC, from F. R. Standerfer, GPUNC, 10 CFR 20.311 Exemption Request, dated June 25, 1985; and (4) Letter to B. K. Kanga, GPUNC, from J. Stohr and M. J. Elsen, State of Washington, dated July 17, 1985.

The above documents are available for inspection at the Commission's Public Local Document Room 1717 H Street, NW., Washington, DC, and at the Commission's Local Public Document Room at the State Library of Pennsylvania, Government Publications Section, Education Building.

Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

For the Nuclear Regulatory Commission.

Bernard J. Snyder,

Program Director, Three Mile Island Program Office, Office of Nuclear Reactor Regulation.

[FR Doc. 85-23685 Filed 10-2-85; 8:45 am]

BILLING CODE 7590-01-M

Reduction of Unirradiated High Enriched Uranium (HEU) Fuel Holdings at Non-Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Order to Show Cause why excess HEU fuel should not be removed from research and test reactors and critical experiment facilities.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued Orders to show cause that require the removal of excess unirradiated HEU fuel elements from research and test reactors and critical experiment facilities. The Orders were issued because the Commission believes it prudent to reduce possession of unirradiated HEU fuel in excess of operational needs. This will result in a decrease of the potential for any adverse consequences from HEU fuel to the common defense and security and public health and safety.

FOR FURTHER INFORMATION CONTACT: Donald J. Kasun or Donald M. Carlson, Safeguards Reactor and Transporation Licensing Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-427-4771 or 301-427-4712.

SUPPLEMENTARY INFORMATION: In order to expedite the removal of excess unirradiated HEU fuel, licensees have been allowed 30 days to show cause why the excess fuel should not be removed to a secure facility away from the reactor or critical experiment sites. The Department of Energy (DOE) staff has stated that certain of their facilities are willing to store the excess fuel for the universities. Management personnel of commerical facilities are expected to make arrangements with either the DOE or NRC fuel cycle licensees who are presently protecting formula quantities of strategic special nuclear material.

The following Order is typical of those sent to each of the affected licensees listed below:

Facility	Docket No.
GA Technologies, Inc	50-163
General Electric Co	50-73
Georgia Institute of Technology	50-160
Iowa State University	50-116
Manhattan College	50-199
Massachusetts Institute of Technology	50-20
National Bureau of Standards	50-184
North Carolina State University	50-297
Ohio State University	50-150
Oregon State University	50-243
Pennsylvania State University	50-5
Purdue University	50-182
Rensselaer Polytechnic Institute	50-225
Rhode Island Atomic Energy Commission	50-193
Texas A&M University	50-128
Cintichem, Inc	50-54
University of California, Santa Barbara	50-433
University of Florida	50-83
University of Kansas	50-148
University of Lowell	50-223
University of Michigan	50-2
University of Missouri, Columbia	50-186
University of Missouri, Rolla	50-123
University of Virginia (UVAR)	50-62
University of Virginia (Cavalier)	50-396
University of Washington	50-139
University of Wisconsin	50-156
Virginia Polytechnic Institute	50-124
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Westinghouse Electic Corporation	50-87
Worcester Polytechnic Institute	50-134

In the Matter of the University of Missouri, Rolla, Missouri 65401, Docket No. 50-123, Facility Operating License No. R-79.

Order to Show Cause

I

The University of Missouri, Rolla ("the licensee") is the holder of Facility Operating License No. R-79 issued by the Nuclear Regulatory Commission ("the Commission"). The license authorizes the operation of a research reactor at Rolla, Missouri.

II

Recognizing that many non-power reactor facilities[1] have on hand unirradiated high enriched uranium (HEU) fuel that is not needed for current operations, the Commission believes it prudent to take reasonable steps to decrease the potential for any adverse consequences that might occur as a result of licensee's possessing excess HEU. Therefore, the Commission is suspending the right to possess HEU inventories in excess of quantities required for the maintenance of normal operations or for the replacement of depleted fuel and failed elements. This step has been taken because the Commission has found it desirable to protect the public health and safety and common defense and security to requiring all excess HEU fuel to be removed to a secure facility away from the reactor site.

[1] Includes research, test, and critical experiment facilities.

III

Accordingly, pursuant to sections 104, 161b, and 161i of the Atomic Energy Act of 1954, as amended, and § 2.202 of 10 CFR Part 2 and § 50.54(h) of 10 CFR Part 50, it is hereby ordered that the licensee shall show cause why the licensee's authority to possess HEU fuel should not be suspended in accordance with the following provisions:

(1) The licensee shall, by *(Leave blank for date)*, move to a secure facility all unirradiated HEU fuel presently on-site except for that needed to replace one failed element for each different type element in the core. Thereafter, the licensee may possess unirradiated HEU fuel on-site only in that quantity necessary to replace one failed element for each different type element in the core. For purposes of this condition, a secure facility is a Department of Energy facility or a U.S. Nuclear Regulatory Commission licensed fuel cycle facility that is protecting formula quantities of strategic special nuclear material.

(2) Facilities that require replacement elements for refueling may also maintain an inventory of not more than the amount of fuel depleted in a 90-day period of normal operation.

(3) The Commission may relax the above requirements in writing for good cause shown.

IV

Within 30 days of the date of this Order, the licensee may show cause why the provisions specified in Section III should not be ordered, by filing a written answer under oath or affirmation that sets forth the matters of fact and law on which the licensee relies. The licensee may answer this Order, as provided in 10 CFR 2.202(d), by consenting to the entry of an order in substantially the form proposed in this Order to Show Cause. Upon the licensee's consent to the provisions set forth in Section III of this Order or failure to answer or request a hearing on this Order within the specified time period, the provisions set forth in Section III will become effective without further order. If the licensee files an answer opposing the Order proposed in Section III or if a hearing is requested, the provisions set forth in Section III will become effective on the date specified in an order issued following further proceedings on this Order.

The licensee or any other person whose interest is adversely affected by this Order may request a hearing on this Order. Any answer to this Order or request for hearing must be sent within 30 days of the date of this Order to the

Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy also sent to the Executive Legal Director at the same address.

If a hearing is to be held, the Commission will issue an order designating the time and place of the hearing. The issue, if a meeting is held, well be confined to the question of whether the provisions set forth in Section III of this Order should be sustained.

Dated at Washington, DC this 27th day of September, 1985.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 85-23681 Filed 10-2-85; 8:45 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Mainstem Passage Advisory Committee; Meeting

AGENCY: The Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting.

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Mainstem Passage Advisory Committee of the Mainstem Passage Advisory Committee to be held pursuant to the Federal Advisory Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Estimating smolt survival at Corps projects on Lower Columbia River.
- Consultation on losses information.
- Selection of passage objectives to be modeled.
- Determining costs of spill plan-Corps & BPA.
- Other.
- Public comment.

DATE: October 3, 1985, 9:00 a.m.

ADDRESS: The meeting will be held in Room 210, Customs House, Corps of Engineers, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Peter Paquet, 503-222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-23576 Filed 10-2-85; 8:45 am]

BILLING CODE 0000-00-M

PENSION BENEFIT GUARANTY CORPORATION

Public Information Collection Request Submitted for OMB Review

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of information request submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act and its implementing regulations, 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 of such a submission. The effect of this notice is to advise the public that the PBGC has requested OMB approval of the collection of information on Form 5310 that would notify the PBGC that a single-employer pension plan is terminating and enable the PBGC to determine if the plan requires PBGC guarantees.

ADDRESSES: All written comments should be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503. The information request will be available for public inspection, and copying, at the PBGC Communications and Public Affairs Department, Suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Corporate Policy and Regulations Department, Code 611, 2020 K Street, NW., Washington, DC 20006; telephone 202-254-4856 (202-254-8010 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) establishes policies and procedures for controlling the paperwork burdens imposed by Federal agencies on the public. The Act vests the Office of Management and Budget (OMB) with regulatory responsibility over these burdens, and that agency has promulgated rules for obtaining OMB clearance of information requests.

Pursuant to those rules, the PBGC is seeking approval by OMB of the collection of information on Form 5310 (IRS/PBGC Form 5310, Application for Determination Upon Termination; Notice of Merger, Consolidation or Transfer of Plan Assets or Liabilities; Notice of Intent to Terminate). Form 5310 is used by plan administrators to notify the PBGC of an intention to terminate a plan and to provide the PBGC with information needed to determine whether the plan has assets sufficient to pay for benefits or whether the plan will require PBGC guarantees and, if so, in what amount. This information collection is pursuant to 29 CFR Part 2616 and section 4041 of the Employee Retirement Income Security Act of 1974, as amended.

Issued at Washington, D.C., this 27th day of September 1985.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 23609 Filed 10-2-85; 8:45 am]

BILLING CODE 7708-01-M

POSTAL RATE COMMISSION

[Docket No. A85-31; Order No. 637]

Croydon, Utah 84018 (Lanette Toone et al., Petitioners); Notice and Order Accepting Appeal and Establishing Procedural Schedule

Issued: September 27, 1985.

Before Commissioners: Janet D. Steiger, Chairman; Henry R. Folsom, Vice-Chairman; John W. Crutcher; Bonnie Guiton; Patti Birge Tyson.

Docket Number: A85-31

Name of affected post office: Croydon, Utah 84018

Name(s) of petitioner(s): Lanette Toone, *et al.*

Type of determination: Closing

Date of filing of appeal papers: September 24, 1985

Categories of issues apparently raised:

1. Effect on postal services [39 U.S.C. 404(b)(2)(A)].
2. Effect on the community [39 U.S.C. 404(b)(2)(C)].

Other legal issues may be disclosed by the record when it is filed; or conversely, the determination made by the Postal Service may be found to dispose of one or more of these issues.

In the interest of expedition within the 120-day decision schedule [39 U.S.C. 404(b)(5)] the Commission reserves the right to request of the Postal Service memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request; a copy shall be served on the Petitioners. In a brief or motion to dismiss or affirm, the Postal Service may incorporate by reference any such memorandum previously filed.

The Commission orders

(A) The record in this appeal shall be filed on or before October 4, 1985.

(B) The Secretary shall publish this Notice and Order and Procedural Schedule in the Federal Register.

By the Commission.

Cyril J. Pittack,

Acting Secretary.

Appendix—Docket No. A85-31, Croydon, Utah 84018

Sept. 24, 1985—Filing of petition
Sept. 27, 1985—Notice and order of filing of appeal
Oct. 21, 1985—Last day of filing of petitions to intervene [*see* 39 CFR 3001.111(b)]
Oct. 31, 1985—Petitioners' participant statement or initial brief [*see* 39 CFR 3001.115 (a) and (b)]
Nov. 20, 1985—Postal Service answering brief [*see* 39 CFR 3001.115(c)]
Dec. 5, 1985—(1) Petitioners' reply brief should petitioners choose to file one [*see* 39 CFR 3001.115(d)]
Dec. 12, 1985—(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interest of prompt and just decision may require, in scheduling or dispensing with oral argument [*see* 39 CFR 3001.116]
Jan. 20, 1986—Expiration of 120-day decisional schedule [*see* 39 U.S.C. 404(b)(5)]

[FR Doc. 85-23577 Filed 10-2-85; 8:45 am]

BILLING CODE 7715-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 09/09-5361]

Jeanjoo Finance, Inc.; Issuance of a Small Business Investment Company License

On May 8, 1985, a notice was published in the Federal Register (Vol. 50, No. 89) stating that an application has been filed by Jeanjoo Finance, Inc., with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business June 10, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(d) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-5361 on September 20, 1985, to Jeanjoo Finance, Inc. to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: September 25, 1985.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 85-23614 Filed 10-2-85; 8:45 am]

BILLING CODE 8025-01-M

[License No. 09/09-03571]

Latigo Capital Partners, II; Issuance of a Small Business Investment Company License

On January 11, 1985, a notice was published in the Federal Register (50 FR 1664) stating that an application has been filed by Latigo Capital Partners, II, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1985)) for a license as a small business investment company.

Interested parties were given until close of business February 10, 1985, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 09/09-0357 on September 20, 1985, to Latigo Capital Partners, II to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: September 25, 1985.

[FR Doc. 85-23677 Filed 10-2-85; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Application of Air Specialties Corp. d/b/a Total Air for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause, (Order 85-9-60) Docket 43064.

SUMMARY: The Department is directing all interested persons to show cause why it should not issue an order finding Total Air fit and awarding it a certificate of public convenience and necessity to engage in scheduled interstate and overseas air transportation of persons, property, and mail.

Persons wishing to file objections shall do so no later than October 14, 1985; and answers to objections shall be filed no later than October 21, 1985.

ADDRESS: Objections and answers to objections should be filed in Docket 43064 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, and should be served upon the persons listed in Attachment B to the order.

FOR FURTHER INFORMATION CONTACT: Michael K. Nolan, Aviation Enforcement and Proceedings (C-70, Room 4116), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-7631.

SUPPLEMENTARY INFORMATION: The complete text of Order 85-9-60 is available from the Documentary Services Division, whose address is provided above. Persons outside the metropolitan area may send a postcard request for Order 85-9-60 to that address.

Dated: September 27, 1985.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 85-23617 Filed 10-2-85; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 85-074]

Rules of the Road Advisory Council; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Rules of the Road Advisory Council. The meeting will be held on Thursday and Friday, November 7 and 8, 1985 at the Lincoln Hotel, 4860 West Kennedy Blvd., at Urban Center, Tampa, Florida. On both days the meeting is scheduled to begin at 8:30 a.m. and end at 4:30 p.m. The agenda for the meeting consists of the following items:

1. International Maritime Organization and COLREG Matters.

(a) Status report on activities of 31st session of the Navigation Sub-Committee.

2. Coast Guard Status Reports and Information Items:

(a) The Secretary's Diving Safety Report to the Congress.

(b) Operation of Channel 22 for marine broadcasts in U.S. ports.

(c) Channel 13, Vessel Bridge-to-Bridge Radiotelephone on the Great Lakes.

(d) Tennessee Tombigbee Waterway and Western Rivers provisions.

(e) Vertical Sector Light Requirements for Unmanned Barges.

3. National Transportation Safety Board (NTSB) Review of a towboat and tankship collision and resulting recommendations. (NTSB March-85/04)

4. Dayshape and Restricted in Ability to Maneuver Lights proposed changes (U.S. Navy Report).

5. Any matters properly brought before the Council.

Attendance is open to the public. With advance notice, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director no later than the day before the meeting. Any member of the public may present a written statement to the Council at any time.

Additional information may be obtained from Lieutenant Commander Charles K. Bell, Executive Director, Rules of the Road Advisory Council, U.S. Coast Guard (G-NSR-3), Washington, DC 20593, Telephone (202) 426-1950.

Dated: September 25, 1985.

W.J. Brogdon, Jr.,

Captain, U.S. Coast Guard, Acting Chief, Office of Navigation.

[FR Doc. 85-23657 Filed 10-2-85; 8:45 am]

BILLING CODE 4910-14-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 192
Thursday, October 3, 1985

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FARM CREDIT ADMINISTRATION

Federal Farm Credit Board; Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Federal Farm Credit Board scheduled to be held on the first Monday of October 1985, as specified in 12 CFR 604.325(a).

DATES AND TIMES: The regular meeting of the Federal Farm Credit Board is scheduled to be held in McLean, Virginia, on October 7, 1985, 8:30 a.m. to 4:30 p.m.; and October 8, 1985, 8:30 a.m. to 4:30 p.m.

ADDRESS: Farm Credit Administration, Federal Board Room, 1501 Farm Credit Drive, McLean, VA 22102-5090.

FOR FURTHER INFORMATION CONTACT: Kenneth J. Auberger, Secretary to the Federal Farm Credit Board, 1501 Farm Credit Drive, McLean, VA 22102-5090 (703-883-4010).

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Federal Farm Credit Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The matters to be considered at the meeting are:

Monday, October 7, 1985

*1. Executive Session
2. Approval of Minutes
3. Review of Agenda
4. Reports of Board Members
5. Governor's Report
***(a) Supplemental Gallagher Report
**(b) Status of Litigation Cases Involving the FCA
***6. Status Report on Contingency Planning

Tuesday, October 8, 1985

7. FCA Budget for Fiscal Year 1987
(a) Report of Federal Board Budget Committee
(b) Proposed Budget
8. Office of Examination and Supervision Report
***(a) Status Report on Serious Problem Banks
***(b) FCA Supervisory Reports
(c) Farm Credit Banks' Chief Executive Officer Compensation Program
9. Regulation Changes
Final
Section 611.1150—Incorporation of Service Corporations
Section 614.4330—Loan Participations, General
Proposed
Part 606—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the FCA
10. Office of Administration Report
(a) Status Report on Leadership Agenda Items
(b) Economic Report
(c) Legislative Report
(d) Budget Performance Report
11. FCS Building Association
12. Other items
(a) Approval of Dates of August 1986 Meeting and Special Meetings with Baltimore and Texas District Boards

*Closed Session—exempt pursuant to 5 U.S.C. 552b(c)(2)
**Closed Session—exempt pursuant to 5 U.S.C. 552b(c)(10)
***Closed Session—exempt pursuant to 5 U.S.C. 552b(c) (8) and (9)

Dated: September 30, 1985.

Donald E. Wilkinson,

Governor.

[FR Doc. 85-23682 Filed 10-1-85; 8:59 am]

BILLING CODE 6705-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 1:15 p.m. on Thursday, September 26, 1985, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to adopt a resolution making funds available for the payment of insured deposits made in The Sedan State Bank, Sedan, Kansas, which was closed by the State Bank Commissioner for the State of Kansas on Wednesday, September 25, 1985.

In calling the meeting, the Board determined, on motion of Director Irvine H. Sprague (Appointive), seconded by Mr. Michael A. Mancusi, acting in the place and stead of Director H. Joe Selby (Acting Comptroller of the Currency), that Corporation business required its consideration of the matter on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matter in a meeting open to public observation; and that the matter could be considered in a closed meeting pursuant to subsections (c)(8) and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8) and (c)(9)(B)).

Dated: September 26, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-23718 Filed 10-1-85; 11:17 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Monday, October 7, 1985, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Application for consent to merge and establish three branches:

BankEast, Manchester, New Hampshire, an insured State nonmember bank, for consent to merge, under its charter and title, with First Citizens National Bank, Newport, New Hampshire, and to establish the three offices of First Citizens National Bank as branches of the resultant bank.

Reports of committees and officers:

Minutes of actions approved by the standing committees of the Corporation pursuant to authority delegated by the Board of Directors.

Reports of the Division of Bank Supervision with respect to applications, requests, or

actions involving administrative enforcement proceedings approved by the Director or an Associate Director of the Division of Bank Supervision and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Report of the Director, Division of Liquidation:

Memorandum re: Report Under Delegated Authority Status of Approved Committee Cases

Reports of the Director, Office of Corporate Audits and Internal Investigations:

Summary Audit Report re:
- Heritage Bank, Anaheim, California, SR-465 (Memo dated September 17, 1985)
- Garden Grove Community Bank, Garden Grove, California, AP-392 (Memo dated September 18, 1985)
- Bank of Irvine, Irvine, California, AP-389 (Memo dated September 16, 1985)
- West Coast Bank, Los Angeles (Encino) California, SR-473 (Memo dated September 18, 1985)
- Halifax National Bank of Port Orange, Port Orange, Florida, AP-446 (Memo dated September 17, 1985)
- Metropolitan Bank and Trust Company, Tampa, Florida, AP-298 (Memo dated September 16, 1985)
- United of America Bank, Chicago, Illinois, SR-471 (Memo dated September 18, 1985)
- Peoples State Bank of Clay County, Poland, Indiana, AP-404 (Memo dated September 19, 1985)
- The Farmers National Bank of Aurelia, Aurelia, Iowa, AP-397 (Memo dated September 18, 1985)
- The Tingley State Savings Bank, Mount Ayr, Iowa, AP-405 (Memo dated September 18, 1985)
- The Farmers State Bank, Selden, Kansas, AP-434 (Memo dated September 18, 1985)
- The Strong City State Bank, Strong City, Kansas, AP-430 (Memo dated September 18, 1985)
- University Bank of Wichita, Wichita, Kansas, AP-433 (Memo dated September 18, 1985)
- First National Bank of Prior Lake, Prior Lake, Minnesota, AP-391 (Memo dated September 18, 1985)
- Guaranty State Bank of Saint Paul, St. Paul, Minnesota, AP-400 (Memo dated September 18, 1985)
- The Mississippi Bank, Jackson, Mississippi, AP-386 (Memo dated September 16, 1985)
- The Bank of Cody, Cody, Nebraska, AP-425 (Memo dated September 19, 1985)
- State Bank of Dannebrog, Dannebrog, Nebraska, SR-532 (Memo dated September 18, 1985)
- Uehling State Bank, Uehling, Nebraska, SR-404 (Memo dated September 19, 1985)
- The Farmers and Merchants Bank, Tecumseh, Oklahoma, AP-420 (Memo dated September 19, 1985)
- American State Bank, Thomas, Oklahoma, AP-424 (Memo dated September 19, 1985)
- Coast Community Bank, Harbor, Oregon, AP-436 (Memo dated September 19, 1985)
- Farmers State Bank, Lyons, South Dakota, AP-394 (Memo dated September 18, 1985)
- Citizens Fidelity Bank, Bristol, Tennessee, AP-440 (Memo dated September 19, 1985)
- Golden Spike State Bank, Tremonton, Utah, AP-431 (Memo dated September 16, 1985)
- Western National Bank of Casper, Casper, Wyoming, AP-383 (Memo dated September 18, 1985)
- Citizens State Bank, Edgerton, Wyoming, SR-531 (Memo dated September 17, 1985)
- State Bank of Mills, Mills, Wyoming, AP-384 (Memo dated September 18, 1985)
- Audit of Cash Funds and, Undeposited Collections (Memo dated August 28, 1985)
- First Financial Management, Corporation System, Knoxville Consolidated Office (Memo dated September 9, 1985)
- Atlanta Regional Office, Cost Center 3100 (Memo dated September 16, 1985)
- Knoxville Consolidated Office, Liquidation, Cost Center 3110 (Memo dated September 16, 1985)
- Oaklawn Sub-Regional Office, Liquidation, Cost Center 3210 (Memo dated September 19, 1985)
- Decimus Asset Management System, Costa Mesa Consolidated Office (Memo dated September 16, 1985)
- Follow-up Recommendations Contained in the Audit Report of the New York Regional Office (Memo dated September 30, 1985)

Discussion Agenda:

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 30, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Executive Secretary.

[FR Doc. 85-23719 Filed 10-2-85; 11:17 am]

BILLING CODE 6714-01-M

4

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Monday, October 7, 1985, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b(c)(2), (c)(6), (c)(8), and (c)(9)(A)(ii) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendation regarding the Corporation's assistance agreement with an insured bank pursuant to section 13 of the Federal Deposit Insurance Act.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Request for reconsideration of a previous denial of a request for relief from reimbursement for violations under Regulation Z:

Name and location of bank authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: September 30, 1985.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 85-23720 Filed 10-1-85; 11:17 am]

BILLING CODE 6714-01-M

5

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: September 26, 1985, 50 FR 39070.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: October 1, 1985, 1:00 p.m.

CHANGE IN THE MEETING: Withdrawal of the following item from the open session:

1. Consideration of a draft proposed rule concerning retroactive provisions in agreements subject to the Shipping Act of 1984.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-23769 Filed 10-1-85; 12:49 pm]

BILLING CODE 6730-01-M

6

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, October 8, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC

STATUS: This Meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, October 10, 1985, 10:00 a.m.

PLACE: 1325 K Street, NW., Washington, DC. (Fifth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates of Future Meetings
Correction and Approval of Minutes
Draft AO 1985-27
  Loren D. McManus, on behalf of R.J. Reynolds Industries, Inc.
Proposed Regulations Governing Standards of Conduct for Commissioners and employees
Fiscal Year 1986 Management Plan
Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 85-23757 Filed 10-1-85; 12:25 pm]

BILLING CODE 6715-01-M

7

NATIONAL TRANSPORTATION SAFETY BOARD

(NM-85-10)

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 50 FR 38740, September 24, 1985.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 1 p.m., Tuesday, October 1, 1985.

CHANGE IN MEETING: A majority of the Board determined by recorded vote that the business of the Board required changing the agenda of this meeting and that no earlier announcement was possible. The following item was deleted from the agenda:

Aircraft Accident Report: Vieques Air Link, Inc., Britten-Norman BN-2A-6 Islander, N589SA, Vieques, P.R., August 2, 1984.

CONTACT PERSON FOR MORE INFORMATION: Catherine T. Kaputa.

Catherine T. Kaputa,

Federal Register Liaison Officer.

September 30, 1985.

[FR Doc. 85-23671 Filed 9-30-85; 8:45 am]

BILLING CODE 7533-01-M

8

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL (NORTHWEST POWER PLANNING COUNCIL)

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: October 10, 1985, 9:00 a.m.

PLACE: Village Red Lion, 100 Madison, Missoula, Montana.

MATTERS TO BE CONSIDERED:

- Council Consideration of Comments on Scoping for BPA's EIS on its Power Sales Contracts.
- Public Comment on Draft Compilation of Information on Salmon and Steelhead Losses.
- Public Comment on Modified Model Conservation Standards Proposed Amendments.
- Council Business.
- Public Comment will follow each item.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 85-2319 Filed 10-1-85; 10:55 am]

BILLING CODE 0000-00-M

9

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

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 October 7, 1985.

A closed meeting will be held on Tuesday, October 8, 1985, at 10:00 a.m. An open meeting will be held on Thursday, October 10, 1985, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(1) and (10).

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, October 8, 1985, at 10:00 a.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.
Institution of injunctive action.
Regulatory matters regarding financial institutions.

The subject matter of the open meeting scheduled for Thursday, October 8, 1985, at 10:00 a.m., will be:

Consideration of whether to propose amendments to Rule 10b-6, 17 CFR 240.10b-6, under the Securities Exchange Act of 1934. The proposed amendments pertain to such matters as solicited brokerage transactions, exchange-traded call options, and the rule's applicability to affiliates of broker-dealers. For further information, please contact Nancy J. Burke at (202) 272-2848.

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: Ida Wurczinger at (202) 272-2014.

John Wheeler,

Secretary.

September 27, 1985.

[FR Doc. 85-23759 Filed 10-12-85; 12:49 pm]

BILLING CODE 8010-01-M

federal register

Thursday
October 3, 1985

Part II

Department of Education

Office of Special Education and Rehabilitative Services

Handicapped Children's Early Education Program; New Applications and Proposed Annual Funding Priorities; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

Handicapped Children's Early Education Program; Closing Date for Transmittal of New Applications for Fiscal Year 1986 Awards

AGENCY: Department of Education.

ACTION: Application notice establishing the closing date for transmittal of new applications for fiscal year 1986 awards.

Applications are invited for new projects under the Handicapped Children's Early Education Program.

Authority for this program is contained in Section 623 of Part C of the Education of the Handicapped Act, as amended by Pub. L. 98–199, the Education of the Handicapped Act Amendments of 1983.

(20 U.S.C. 1423)

Applications may be submitted by public or nonprofit private agencies, organizations, or institutions.

The purpose of this program is to support experimental preschool and early education programs for handicapped children. These programs are intended to promote a comprehensive service delivery system to meet the special needs of handicapped children from birth through eight years of age. Demonstration projects assist in developing and implementing innovative and experimental practices that establish specific strategies and products worthy of dissemination and replication.

Closing Date for Transmittal of Applications: An application for a new project must be mailed or hand delivered on or before January 20, 1986.

Applications Delivered by Mail: An application sent by mail must be addressed to the Department of Education, Application Control Center, Attention: 84.029, 400 Maryland Avenue, SW., Washington, D.C. 20202.

An applicant must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipped label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) a private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Applications Delivered by Hand: An application that is hand delivered must be taken to the Department of Education, Application Control Center, Room 5673, Regional Office Building 3, 7th and D Streets SW., Washington, D.C.

The Application Control Center will accept hand delivered applications between 8:00 a.m. and 4:00 p.m. (Washington, D.C. time) daily, except Saturdays, Sundays, and Federal holidays.

An application for a new project that is hand delivered will not be accepted by the Application Control Center after 4:00 p.m. on the closing date.

Available Funds: It is estimated that approximately $2,035,000 will be available for support of 20 new projects in fiscal year 1986. These estimates of funding levels do not bind the Department to a specific number of grants, or to the amount of any grant, unless that amount is otherwise specified by statute or regulations.

Intergovernmental Review: On June 24, 1983, the Secretary published in the **Federal Register** final regulations (34 CFR Part 79, published at 48 FR 29158 *et seq.*) implementing Executive Order 12372, entitled "Intergovernmental Review of Federal Programs." The regulations took effect on September 30, 1983.

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

The Executive Order—

- Allows States, after consultation with local officials, to establish their own process for review and comment on proposed Federal financial assistance;
- Increases Federal responsiveness to State and local officials by requiring Federal agencies to accommodate State and local views or explain why those views will not be accommodated; and
- Revokes OMB Circular A–95.

Transactions with nongovernmental entities, including State postsecondary educational institutions and federally recognized Indian tribal governments, are not covered by Executive Order 12372. Also excluded from coverage are research, development, or demonstration projects that do not have a unique geographic focus and are not directly relevant to the governmental responsibilities of a State or local government within that geographic area.

The following is a current list of States that have established a process, designated a single point of contact, and have selected this program for review:

Alabama	New Mexico
Arizona	New York
Arkansas	Northern Mariana Islands
California	North Dakota
Connecticut	Ohio
Delaware	Oklahoma
Florida	Oregon
Guam	Pennsylvania
Hawaii	Puerto Rico
Indiana	South Carolina
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Trust Territory
Maine	Utah
Massachusetts	Vermont
Michigan	Virgin Islands
Missouri	Virginia
Montana	Washington
Nebraska	West Virginia
Nevada	Wisconsin
New Hampshire	
New Jersey	

Immediately upon receipt of this notice, applicants which are governmental entities, including local educational agencies, must contact the appropriate State single point of contact to find out about, and to comply with, the State's process under the Executive Order. Applicants proposing to perform activities in more than one State should, immediately upon receipt of this notice, contact the single point of contact for each State and follow the procedures established in those States under the Executive Order. A list containing the single point of contact for each State is included in the application package for this program.

In States that have not established a process or chosen this program for review, State, areawide, regional and local entities may submit comments directly to the Department.

All comments from State single points of contact and all comments from State, areawide, regional, and local entities must be mailed or hand delivered by ——— to the following address:

The Secretary, U.S. Department of Education, Room 4181 (84.024), 400 Maryland Avenue, SW., Washington, D.C. 20202. (Proof of mailing will be determined on the same basis as applications).

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH

THE APPLICANT SUBMITS ITS APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Priorities for Funding: A notice of proposed annual funding priorities for this program is published in this issue of the **Federal Register.** Prospective applicants are advised that the proposed annual funding priorities are subject to modification in response to public comments submitted within 30 days of publication. In the event any substantive changes are made in any of the priorities or other requirements for new projects, applicants will be given the opportunity to amend or resubmit their applications. The priority areas are listed in the table following. For further information on each selected area, applicants may consult the regulations and proposed annual funding priorities.

PRIORITY AREAS—HANDICAPPED CHILDREN'S EARLY EDUCATION PROGRAM, FISCAL YEAR 1986

Priority No.	Priority areas	Anticipated	
		Funding levels	No. of awards
84.024T	Community involvement demonstrations.	$500,000	5
84.024L	Severely handicapped infants demonstrations.	935,000	9
84.024R	Least restrictive environment.	600,000	6

Application Forms: Application forms and program information packages for new applications are scheduled to be available for mailing on November 18, 1985. These materials may be obtained by writing to the Handicapped Children's Early Education Program (HCEEP), Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building Room 3511—M/S 2313) Washington, D.C. 20202–2313.

Applications must be prepared and submitted in accordance with the regulations, instructions, and forms included in the program information package. However, the program information package is intended only to aid applicants in applying for assistance. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or performance requirements beyond those imposed under the statute and regulations.

The Secretary strongly urges that the narrative portion of the application not exceed twenty (20) pages in length. The Secretary further urges that applicants submit only the information that is requested.

(Approved by the Office of Management and Budget under Control Number 1820–0028)

Applicable Regulations: Regulations applicable to this program include the following:

(a) The final regulations governing the Handicapped Children's Early Education Program were published in the **Federal Register** on July 11, 1984, 49 FR 28350, and will be codified at 34 CFR Part 309.

(b) The Education Department General Administrative Regulations (EDGAR) (34 CFR Parts 74, 75, 77, 78, and 79).

For Further Information Contact: Dr. Thomas E. Finch, Chief, Program Development Branch, Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 3511—M/S 2313), Washington, D.C. 20202. Telephone: (202) 732–1084.

(20 U.S.C. 1423)

(Catalog of Federal Domestic Assistance No. 84.024; Handicapped Children's Early Education Program)

Dated: September 30, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85–73639 Filed 10–2–85; 8:45 am]

BILLING CODE 4000–01–M

Handicapped Children's Early Education Program; Proposed Annual Funding Priorities

AGENCY: Department of Education.

ACTION: Notice of Proposed Annual Funding Priorities.

SUMMARY: The Secretary proposes to establish annual funding priorities for the Handicapped Children's Early Education Program. These proposed priorities would support applications which: (a) Stress community involvement and cooperation of agencies at State and local levels for handicapped children age birth through five; (b) address the needs of unserved and underserved populations age birth through two, especially those children with severe or multiple handicaps; or (c) demonstrate provision of comprehensive services in the least restrictive environment for handicapped children age three through five.

DATE: Comments must be received on or before November 4, 1985.

ADDRESS: Comments should be addressed to: Dr. Thomas E. Finch, Early Childhood Branch, Division of Innovation and Development, Special Education Programs, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3511—M/S 2313), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas E. Finch. Telephone: (202) 732–1084.

SUPPLEMENTARY INFORMATION: The Handicapped Children's Early Education Program (HCEEP) was established under Pub. L. 91–230 on April 13, 1970, and is currently authorized by section 623 of Part C of the Education of the Handicapped Act, as amended by Pub. L. 98–199. The purpose of the program is to support experimental preschool and early childhood education projects and early childhood State Plan projects. These projects are intended to demonstrate improved program models for handicapped children from birth through eight years of age. The focus of this competition is on the development of model demonstration projects to assist in developing and implementing innovative and experimental practices that establish specific strategies and products worthy of dissemination and replication. Awards will be made in all priority areas described below. The Secretary may award grants or cooperative agreements.

Priorities

In accordance with the Education Department General Administrative Regulations at 34 CFR 75.105(b)(2) and 75.105(c)(3)(i), and subject to available funds, the Secretary proposes to give an absolute preference to each application which provides satisfactory assurance that the recipient will use funds made available to conduct the following activities:

(a) *Community Involvement Demonstrations.* This priority would support projects which stress community involvement and cooperation of agencies at State and local levels which serve handicapped children from birth through age five (0–5). Five grants are anticipated to be awarded for a total of $500,000.

(b) *Severely Handicapped Infants Demonstrations.* This priority would support projects which address the needs of unserved and underserved handicapped infants from birth through two years (0–2), especially those who are severely and multiply handicapped. Nine grants are anticipated to be awarded for a total of $935,000.

(c) *Least Restrictive Environment.* This priority would support projects which provide comprehensive services for handicapped children aged three through five (3–5) in the least restrictive environment which facilitate entry into the regular classroom. Projects would focus on the development of an integrated service delivery model to

support innovative practices and methods which reflect consideration of child development, involvement of medical, social, education and other related services, and which includes parent participation. Six grants are anticipated to be awarded for a total of $600,000.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79 (48 FR 29158; June 24, 1983). The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document provides early notification of the Department's plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding the proposed annual funding priorities.

All comments submitted in response to these proposed priorities will be available for public inspection, during and after the comment period, in Room 4621, Switzer Building, 330 C Street, SW., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

(20 U.S.C. 1423)

(Catalog of Federal Domestic Assistance Number 84.024; Handicapped Children's Early Education Program)

Dated: September 30, 1985.

William J. Bennett,

Secretary of Education.

[FR Doc. 85-23640 Filed 10-2-85; 8:45 am]

BILLING CODE 4000-01-M

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Vol. 50, No. 192

Thursday, October 3, 1985

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List of Public Laws

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 368 / Pub. L. 99-103

Making continuing appropriations for the fiscal year 1986, and for other purposes. (Sept. 30, 1985; 99 Stat. 471) Price: $1.00

S. 1514 / Pub. L. 99-104

To approve the Interstate Cost Estimate and Interstate Substitute Cost Estimate. (Sept. 30, 1985; 99 Stat. 474) Price: $1.00

S. 817 / Pub. L. 99-105

To authorize appropriations under the Earthquake Hazards Reduction Act of 1977 for fiscal years 1986 and 1987, and for other purposes. (Sept. 30, 1985; 99 Stat. 475) Price: $1.00

S.J. Res. 127 / Pub. L. 99-106

To grant the consent of Congress to certain additional powers conferred upon the Bi-State Development Agency by the States of Missouri and Illinois. (Sept. 30, 1985; 99 Stat. 477) Price: $1.00

H.R. 3452 / Pub. L. 99-107

"Emergency Extension Act of 1985". (Sept. 30, 1985; 99 Stat. 479) Price: $1.00

S. 1671 / Pub. L. 99-108

To amend title 38, United States Code, to provide interim extensions of the authority of the Veterans' Administration to operate a regional office in the Republic of the Philippines, to contract for hospital care and outpatient services in Puerto Rico and the Virgin Islands, and to contract for treatment and rehabilitation services for alcohol and drug dependence and abuse disabilities; and to amend the Emergency Veterans' Job Training Act of 1983 to extend the period for entering into training under such Act. (Sept. 30, 1985; 99 Stat. 481) Price: $1.00

H.R. 3414 / Pub. L. 99-109

To provide that the authority to establish and administer flexible and compressed work schedules for Federal Government employees be extended through October 31, 1985. (Sept. 30, 1985; 99 Stat. 482) Price: $1.00