
Thursday
January 12, 1984



Selected Subjects

- Air Pollution Control**
Environmental Protection Agency
- Aviation Safety**
Federal Aviation Administration
- Bridges**
Coast Guard
- Chemicals**
Environmental Protection Agency
- Civil Rights**
Environmental Protection Agency
- Coal Mining**
Surface Mining Reclamation and Enforcement Office
- Courts**
Defense Department
- Customs Duties and Inspection**
Customs Service
- Flood Insurance**
Federal Emergency Management Agency
- Handicapped**
Health and Human Services Department
- Highway and Roads**
Federal Highway Administration
- Imports**
Customs Service

CONTINUED INSIDE



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Selected Subjects

Investment Companies

Securities and Exchange Commission

Marine Mammals

National Oceanic and Atmospheric Administration

Marketing Agreements

Agricultural Marketing Service

Meat Inspection

Food Safety and Inspection Service

Organization and Functions (Government Agencies)

Customs Service

Transportation Department

Radio

Federal Communications Commission

Telephone

Federal Communications Commission

Contents

Federal Register

Vol. 49, No. 8

Thursday, January 12, 1984

- | | | | |
|------|--|------|---|
| | Agricultural Marketing Service | | Defense Department |
| | RULES | | <i>See also</i> Air Force Department; Navy Department. |
| 1467 | Oranges, grapefruit, tangerines, and tangelos grown in Fla. | | RULES |
| 1468 | Oranges (navel) grown in Ariz. and Calif. | 1490 | Service of process, acceptance |
| 1469 | Prunes (dried) produced in California; correction | | NOTICES |
| | | 1547 | Meetings:
Science Board task forces |
| | Agricultural Research Service | | |
| | NOTICES | | Education Department |
| 1543 | Meetings:
Soybean Research Advisory Institute | 1548 | NOTICES |
| | | | Meetings:
Indian Education National Advisory Council; agenda change |
| | Agriculture Department | | |
| | <i>See</i> Agricultural Marketing Service; Agricultural Research Service; Commodity Credit Corporation; Food Safety and Inspection Service; Forest Service; Soil Conservation Service. | | Energy Department |
| | | | <i>See</i> Energy Information Administration; Federal Energy Regulatory Commission. |
| | Air Force Department | | |
| | NOTICES | | Energy Information Administration |
| 1548 | Meetings:
Scientific Advisory Board | 1548 | NOTICES |
| | | | Agency information collection activities under OMB review |
| | Centers for Disease Control | | |
| | NOTICES | | Environmental Protection Agency |
| 1565 | Grants and cooperative agreements:
Tuberculosis control programs | | RULES |
| 1568 | Meetings:
Mine Health Research Advisory Committee (NIOSH) | 1491 | Air quality implementation plans; approval and promulgation; various States: |
| | | 1656 | Kansas |
| | Coast Guard | | Nondiscrimination in programs receiving Federal assistance |
| | PROPOSED RULES | | PROPOSED RULES |
| 1535 | Drawbridge operations:
New Jersey | 1536 | Toxic substances:
Mesityl oxide; preliminary assessment information |
| | NOTICES | | NOTICES |
| 1607 | Meetings:
Great Lakes registered pilotage | 1556 | Pesticide programs:
Dibromochloropropane (products containing); intent to cancel registration |
| | | | |
| | Commerce Department | | Federal Aviation Administration |
| | <i>See</i> International Trade Administration; National Oceanic and Atmospheric Administration. | | RULES |
| | | 1470 | IFR altitudes |
| | Commodity Credit Corporation | | |
| | NOTICES | | Federal Communications Commission |
| 1543 | Loan and purchase programs:
Peanuts | | RULES |
| | | | Communications equipment: |
| | Customs Service | 1512 | Radio frequency devices; cordless telephones; interim |
| | RULES | 1519 | Radio services, special:
Aviation services; transition period for removal of A3 class of emission (voice) from aeronautical radiobeacon stations; correction |
| 1482 | Articles conditionally free, subject to a reduced rate, etc.: | 1520 | Land mobile services, private; elevation of average terrain determinations |
| 1480 | Articles imported for physically or mentally handicapped persons; interim | 1520 | Land mobile services, private; high frequency spectrum use in special industrial, petroleum, telephone maintenance, and power radio services; correction |
| 1484 | Watches and watch movements; refund of duties | | |
| | Tariff classification of merchandise: | | |
| | Chocolate, bulk liquid | | |
| | PROPOSED RULES | | |
| 1530 | Merchandise, imported; examination | | |
| | Organization and functions; field organization, ports of entry, etc.: | | |
| | Noyes, Minn. | | |

	PROPOSED RULES		
	Common carrier services:		Federal Maritime Commission
1538	Interstate telecommunications service; rate integration policies for Alaska, Hawaii, Puerto Rico, and Virgin Islands		PROPOSED RULES
	NOTICES		Shipping in U.S./Venezuela trade; actions to adjust unfavorable conditions; withdrawn
	Hearings, etc.:	1609	NOTICES
1558	Chapman Broadcasting Co. et al.		Meetings; Sunshine Act
1562	Emert, Stanley G., Jr., et al.		Federal Railroad Administration
1560	Haynes Communications Co. et al. (2 documents)		RULES
1561	K-J Broadcasting, Inc., et al.	1521	Railroad noise emission compliance; correction
1562	Sheila Callahan and Friends et al.		Federal Reserve System
1563	Sterling Associates, Ltd., et al.		NOTICES
1557	Voyageur Broadcasting Co. et al.		Applications, etc.:
	Meetings:	1563	Banco Zaragozana, S.A., et al.
1560	North Atlantic facilities planning issues	1564	Broward Bancorp, et al.
	Federal Deposit Insurance Corporation	1564	First City Financial Corp.
	NOTICES	1564	Greencastle Bancorp, Inc., et al.
1608	Meetings; Sunshine Act (3 documents)		Bank holding companies; proposed de novo nonbank activities:
	Federal Election Commission	1565	United Financial Banking Companies, Inc., et al.
	NOTICES		Fish and Wildlife Service
1609	Meetings; Sunshine Act		NOTICES
	Federal Emergency Management Agency	1582	Agency information collection activities under OMB for review
	RULES		Food Safety and Inspection Service
	Flood elevation determinations:		RULES
1496	Alabama et al.	1469	Meat and poultry inspection:
1492	Arizona et al.		Fee increase for inspection service
	Federal Energy Regulatory Commission		Forest Service
	PROPOSED RULES		NOTICES
	Natural gas companies (Natural Gas Act) and Natural Gas Policy Act:		Environmental statements; availability, etc.:
1525	Termination of rulemaking dockets	1545	Land and resource management plans
	NOTICES		Health and Human Services Department
	Hearings, etc.:		See also Centers for Disease Control; National Institutes of Health.
1549	American Electric Power Service Corp.		RULES
1554	Arkansas Louisiana Gas Co. (2 documents)	1622	Nondiscrimination on basis of handicap; health care for handicapped infants, procedures and guidelines (Baby Doe Rule)
1549	Centel Corp.		Housing and Urban Development Department
1549	Detroit Edison Co.		NOTICES
1550	El Paso Electric Co. (2 documents)	1574	Agency information collection activities under OMB review
1550	Illinois Power Co.	1570	Privacy Act; systems of records
1551	Interstate Power Co.		Indian Affairs Bureau
1551	Kansas Power & Light Co.		NOTICES
1554	National Fuel Gas Supply Corp.		Indian tribes, acknowledgment of existence determinations, etc.:
1551,	Pacific Gas & Electric Co. (2 documents)	1575	North Fork Mono Band of Indians
1552			Interior Department
1552	Sierra Pacific Power Co.		See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service; Surface Mining Reclamation and Enforcement Office.
1552	Southern California Edison Co. (2 documents)		International Trade Administration
1555	Texas Eastern Transmission Corp.		NOTICES
1556	Transcontinental Gas Pipe Line Corp.		Countervailing duties:
1556	West Lake Arthur Corp.		Bricks from Mexico
	Natural Gas Policy Act:		
1612,	Jurisdictional agency determinations (2 documents)		
1616			
	Federal Highway Administration		
	RULES		
	Engineering and traffic operations:		
1485	Water supply and sewage treatment at safety rest areas		
	NOTICES		
	Environmental statements; availability, etc.:		
1607	Spokane County, Wash.; intent to prepare		
	Federal Home Loan Bank Board		
	NOTICES		
	Meetings; Sunshine Act	1547	

- Scientific articles; duty free entry:
1547 North Carolina Central University et al.
- Justice Department**
 See Parole Commission.
- Land Management Bureau**
 NOTICES
 Coal leases, exploration license, etc.:
1579 North Dakota
 Conveyance of public lands:
1581 Arizona
1581 Nevada
 Exchange of public lands for private land:
1581 Arizona
 Meetings:
1578 Coos Bay District Advisory Council
1578 Rock Springs District Advisory Council
 Oil and gas leases:
1579 Alaska (2 documents)
 Opening of public lands:
1578 Montana
 Sale of public lands:
1580 Utah
 Segregative effect, termination:
1575, Arizona (4 documents)
1577
 Withdrawal and reservation of lands:
1577 California
1579 Colorado; correction
- Minerals Management Service**
 NOTICES
 Meetings:
1583 Outer Continental Shelf Advisory Board
1582 Oil and gas leases; water depth criterion for granting longer primary lease terms; inquiry; extension of time
 Outer Continental Shelf; oil, gas, and sulphur operations; development and production plans:
1582 Exxon Co., U.S.A.
1583 Mobile Oil Exploration & Producing Southeast Inc.
1582 Samedan Oil Corp.
- Motor Carrier Ratemaking Study Commission**
 NOTICES
1583 Meetings; postponement
- National Highway Traffic Safety Administration**
 RULES
 Motor vehicle safety standards:
1521 Lamps, reflective devices, and associated equipment; semi-sealed headlamp with standardized replacement bulb, etc.; correction
- National Institutes of Health**
 NOTICES
 Meetings:
1569 National Cancer Institute (2 documents)
1568 National Institute of Environmental Health Sciences (2 documents)
- National Oceanic and Atmospheric Administration**
 RULES
 Whaling Commission, International:
1522 Convention schedule amendments
- NOTICES**
 Marine mammals:
1547 Dall's porpoise; proposed action plan
- Navy Department**
 NOTICES
 Meetings:
1548 Naval Research Advisory Committee
- Nuclear Regulatory Commission**
 NOTICES
 Applications, etc.:
1534 Carolina Power & Light Co.
1584, Commonwealth Edison Co. (2 documents)
1585
1586 Duke Power Co.
1587 Indiana & Michigan Electric Co.
1589 Kerr-McGee Chemical Corp.
1589 Power Authority of State of New York
1590 Export and import license applications for nuclear facilities or materials; correction
1609 Meetings; Sunshine Act
- Pacific Northwest Electric Power and Conservation Planning Council**
 NOTICES
 Meetings:
1590 Hydropower Assessment Steering Committee
- Parole Commission**
 PROPOSED RULES
 Federal prisoners; paroling and releasing, etc.:
1532 Revocation hearings for prisoners serving new State or local sentences; correction
 NOTICES
1609 Meetings; Sunshine Act
- Securities and Exchange Commission**
 RULES
 Investment companies:
1476 Exemptive relief for mutual funds underlying variable life insurance separate accounts
1477 Exemptive relief for separate accounts offering variable annuity contracts (Texas higher education institution employees), etc.
 NOTICES
1591 Agency information collection activities under OMB review
 Hearings, etc.:
1593 VMS Capital Corp.
1610 Meetings; Sunshine Act
 Self-regulatory organizations; proposed rule changes:
1591 American Stock Exchange, Inc.
1591 New York Stock Exchange, Inc.
- Small Business Administration**
 NOTICES
 Applications, etc.:
1594 Blackburn-Sanford Venture Capital Corp.
1595 Key Venture Capital Corp.
 Meetings:
1595 Small and Minority Business Ownership Presidential Advisory Committee
1595 President's Advisory Committee on Women's Business Ownership

Soil Conservation Service**NOTICES**

- Environmental statements; availability, etc.:
- 1546 Martin County Airport, RC&D Measure, N.C.
- 1546 Scaly Mountain Critical Area Treatment RC&D Measure, N.C.

Surface Mining Reclamation and Enforcement Office**RULES**

- Permanent program submission; various States:
- 1488 Oklahoma
- 1489 West Virginia

PROPOSED RULES

- Permanent program submission; various States:
- 1532 Alabama

Trade Representative, Office of United States**NOTICES**

- Generalized System of Preferences:
- 1595 Import information (January through October 1983)

Transportation Department

See also Coast Guard; Federal Aviation Administration; Federal Highway Administration; Federal Railroad Administration; National Highway Traffic Safety Administration.

RULES

- Organization, functions, and authority delegations:
- 1521 Federal Highway Administration; Railroad Bridges, use by other Railroad Companies

Treasury Department

See Customs Service.

Separate Parts in This Issue**Part II**

- 1612 Department of Energy, Federal Energy Regulatory Commission

Part III

- 1622 Department of Health and Human Services, Office of the Secretary

Part IV

- 1656 Environmental Protection Agency

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR		571.....	1522
905.....	1467		
907.....	1468	50 CFR	
993.....	1469	351.....	1522
9 CFR			
307.....	1469		
350.....	1469		
351.....	1469		
354.....	1469		
355.....	1469		
362.....	1469		
381.....	1469		
14 CFR			
95.....	1470		
17 CFR			
270 (2 documents).....	1476,		
	1477		
18 CFR			
Proposed Rules:			
157.....	1525		
271.....	1525		
282.....	1525		
284.....	1525		
19 CFR			
10 (2 documents).....	1480,		
	1482		
177.....	1484		
Proposed Rules:			
101.....	1530		
151.....	1531		
23 CFR			
650.....	1485		
28 CFR			
Proposed Rules:			
2.....	1532		
30 CFR			
936.....	1488		
948.....	1489		
Proposed Rules:			
901.....	1532		
32 CFR			
257.....	1490		
33 CFR			
Proposed Rules:			
117.....	1535		
40 CFR			
7.....	1656		
12.....	1656		
52.....	1491		
Proposed Rules:			
712.....	1536		
44 CFR			
67 (2 documents).....	1492,		
	1496		
45 CFR			
84.....	1622		
46 CFR			
Proposed Rules:			
508.....	1537		
47 CFR			
15.....	1512		
87.....	1519		
90 (2 documents).....	1520		
Proposed Rules:			
Ch. 1.....	1538		
49 CFR			
1.....	1521		
210.....	1521		

Rules and Regulations

Federal Register

Vol. 49, No. 8

Thursday, January 12, 1984

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Orange, Grapefruit, Tangerine and Tangelo Reg. 6, Amdt. 28]

Oranges, Grapefruit, Tangerine and Tangelos Grown in Florida; Amendment of Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This action: (1) lowers the minimum diameter requirement for domestic shipments of Florida pink seedless grapefruit and imports of pink seedless grapefruit from 3 $\frac{1}{16}$ inches to 3 $\frac{1}{8}$ inches; (2) lowers the minimum diameter requirement for domestic shipments for Florida tangelos from 2 $\frac{5}{16}$ inches to 2 $\frac{1}{8}$ inches and requires domestic and export shipments of Florida Tangelos to meet the requirements of U.S. No. 1 Golden; (3) lowers the minimum diameter of Florida Dancy and Robinson tangerines from 2 $\frac{1}{8}$ inches to 2 $\frac{1}{16}$ inches for domestic shipments only; and (4) lowers the minimum diameter for domestic and export shipments of Florida Honey tangerines from 2 $\frac{1}{8}$ inches to 2 $\frac{1}{16}$ inches and requires domestic and export shipments of Florida Honey tangerines to meet the grade requirements of Florida No. 1 Golden. The change in minimum size and grade of such fruit recognizes the grade and size composition of the remaining fruit supply and is consistent with the available crop in the interest of growers and consumers.

EFFECTIVE DATE: January 9, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, Chief, Fruit Branch,

F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION: This final action has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities.

The amendment is issued under the marketing agreement and Order No. 905 (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines and tangelos grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). This action is based upon the recommendation and information submitted by the Citrus Administrative Committee, and upon other available information. It is hereby found that the regulation of Florida pink seedless grapefruit, Dancy, Robinson, and Honey tangerines, and tangelos as hereinafter provided, will tend to effectuate the declared policy of the act.

The minimum grade and size requirements, specified herein, reflect the committee's and the Department's appraisal of the need to revise the size requirements applicable to Florida pink seedless grapefruit, the size requirements applicable to Florida Dancy and Robinson tangerines, and the grade and size requirements applicable to Florida Honey tangerines and tangelos in recognition of the recent freeze in Florida. The freeze has resulted in some fruit loss and increased market demand for the remaining fruit supply. Specification of these requirements assures that the available supply of such marketable fruit reaches the consumer.

Under Section 8e of the act (7 U.S.C. 608e-1), whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those in effect for the domestically produced commodity. Thus, size requirements for imported pink seedless grapefruit will also change to conform to the size requirements for domestic shipments of Florida pink seedless grapefruit.

It is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared purposes of the act. This amendment relieves restrictions on shipments of Florida pink seedless grapefruit, Dancy, Robinson and Honey tangerines, tangelos and imports of pink seedless grapefruit. Handlers have been apprised of such provisions and the effective dates.

List of Subjects in 7 CFR Part 905

Marketing Agreements and Orders, Florida, Grapefruit, Oranges, Tangelos, Tangerines.

PART 905—[AMENDED]

Accordingly, the provisions of § 905.306 are amended by revising the following entries in Table I paragraph (a), applicable to domestic shipments, and Table II paragraph (a), applicable to export shipments, to read as follows:

§ 905.306 Oranges, Grapefruit, Tangerine and Tangelo Regulation 6.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (in.)
(1)	(2)	(3)	(4)
Grapefruit Seedless, pink	1/9/84-8/19/84	Improved No. 2 (External)	3 $\frac{1}{16}$
		U.S. No. 1 (Internal)	
	On and after 8/23/84	Improved No. 2 (External)	3 $\frac{1}{8}$
		U.S. No. 1 (Internal)	
Tangelos	1/9/84-8/19/84	U.S. No. 1 Golden	2 $\frac{1}{8}$
	On and after 8/23/84	U.S. No. 1	2 $\frac{1}{16}$

TABLE I—Continued

Variety	Regulation period	Minimum grade	Minimum diameter (in.)
(1)	(2)	(3)	(4)
Tangerines:			
Dancy.....	1/9/84-8/19/84	U.S. No. 1	2½
	On and after 8/20/84	U.S. No. 1	2½
Robinson.....	1/9/84-8/19/84	U.S. No. 1	2½
	On and after 8/20/84	U.S. No. 1	2½
Honey.....	1/9/84-8/19/84	Fla. No. 1 Golden	2½
	On and after 8/20/84	Florida No. 1	2½

(b) * * *

TABLE II

Variety	Regulation period	Minimum grade	Minimum diameter (in.)
(1)	(2)	(3)	(4)
Tangolos.....	1/9/84-8/19/84	U.S. No. 1 Golden	2½
	On and after 8/20/84	U.S. No. 1	2½
Tangerines: Honey.....	1/9/84-8/19/84	Fla. No. 1 Golden	2½
	On and after 8/20/84	Florida No. 1	2½

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

Dated: January 9, 1984.

Russell L. Hawes,
Acting Deputy Director, Fruit and Vegetable
Division, Agricultural Marketing Service.

[FR Doc. 84-876 Filed 1-11-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Reg. 588; Navel Orange Reg. 587, Amdt. 1]

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona navel oranges that may be shipped to market during the period January 13-19, 1984, increases the quantity of such oranges that may be shipped during the period January 6-12, 1984. Such action is needed to provide for the orderly marketing of fresh navel oranges for the period specified due to the marketing situation confronting the orange industry.

DATES: This regulation becomes effective January 13, 1984, and the amendment is effective for the period January 6-12, 1984.

FOR FURTHER INFORMATION CONTACT: William J. Doyle, 202-447-5975.

SUPPLEMENTARY INFORMATION: Findings.

This rule has been reviewed under USDA procedures and Executive Order 12291 and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This regulation and amendment are issued under the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674). The action is based upon the recommendation and information submitted by the Navel Orange Administrative Committee and upon other available information. It is hereby found that these actions will tend to effectuate the declared policy of the Act.

These actions are consistent with the marketing policy for 1983-84. The marketing policy was recommended by the committee following discussion at a public meeting on September 27, 1983. The committee met again publicly on January 3, 1984 at Visalia, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of navel oranges deemed advisable to be

handled during the specified week. The committee reports the demand for navel oranges is steady.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the Federal Register (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation and amendment are based and the effective date necessary to effectuate the declared policy of the Act. Interested persons were given an opportunity to submit information on views on the regulation at an open meeting, and the amendment relieves restrictions on the handling of navel oranges. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 907

Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

PART 907—[AMENDED]

1. Section 907.888 is added as follows:

§ 907.888 Navel Orange Regulation 588.

The quantities of navel oranges grown in California and Arizona which may be handled during the period January 13, 1984, through January 19, 1984, are established as follows:

- (a) District 1: 1,500,000 cartons;
- (b) District 2: 28 cartons;
- (c) District 3: Unlimited cartons;
- (d) District 4: Unlimited cartons;

2. In § 907.887, *Navel Orange Regulation 587* (49 FR 848), paragraphs (a) through (d) are hereby revised to read:

§ 907.887 Navel Orange Regulation 587.

- (a) District 1: 1,200,000 cartons;
- (b) District 2: Unlimited cartons;
- (c) District 3: Unlimited cartons;
- (d) District 4: Unlimited cartons.

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

Dated: January 9, 1984.

Russell L. Hawes,
Acting Deputy Director, Fruit and Vegetable
Division, Agricultural Marketing Service.

[FR Doc. 84-608 Filed 1-11-84; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 993

Dried Prunes Produced in California; Changes in the Time for Filing Reports and Conforming Changes; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects wording contained in the final rule which changes the time requirements for handlers to file the monthly "New Crop Supply and Inbound Prune Report" and the "Report of Shipments". The rule was published in the December 29, 1983, issue of the Federal Register (48 FR 57260-57261).

FOR FURTHER INFORMATION CONTACT: Frank M. Grasberger, Acting Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, (202) 447-5053.

The following corrections are made in FR Doc. 83-34489 appearing on pages 57260-57261 in the issue of December 29, 1983:

1. On page 57261 at the top of column two, the phrase "prior to the 5th working day" contained in § 993.172(b) should be changed to read as follows: "not later than the 5th working day".

2. On page 57261 at the top of column two, the phrase "prior to the 5th working day" contained in § 993.172(d) should be changed to read as follows: "not later than the 5th working day".

* * * * *

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

Dated: January 6, 1984.

Russell L. Hawes,
Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 84-807 Filed 1-11-84; 8:45 am]

BILLING CODE 3410-02-1A

Food Safety and Inspection Service

9 CFR Parts 307, 350, 351, 354, 355, 362, and 381

[Docket No. 83-035F]

Fee Increase for Inspection Service

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat and poultry inspection regulations to increase fees charged by FSIS to provide overtime inspection, identification, certification, or laboratory services to meat and poultry establishments. The fees reflect the

increased costs of providing these services due to the increase for salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970.

EFFECTIVE DATE: January 22, 1984.

FOR FURTHER INFORMATION CONTACT: Ms. Eppie Daproza, Acting Director, Finance Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 382-0072.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This rule is issued in conformance with Executive Order 12291, and has been determined to be not a "major rule." It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effects on Small Entities

The Administrator, Food Safety and Inspection Service, has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because the fees provided for in this document are not new but merely reflect a minimal increase in the costs currently borne by those entities which elect to utilize certain inspection services.

Background

On December 2, 1983, The FSIS published a proposed rule in the Federal Register (48 FR 54361) to increase fees charged by FSIS to provide overtime inspection, identification, or certification services to meat and poultry establishments. The fees to be charged for these services are determined by an analysis of data on the current cost of these services coupled with the increase in that cost due to the increase for salaries of Federal employees allocated by Congress under the Federal Pay Comparability Act of 1970.

The comments received on the proposal provide generally that the Department should not increase fees for the affected inspection services at this time in light of current economic conditions affecting official establishments using these services. In that connection, it is noted that the

ordinary costs of providing inspection services under the requirements of the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) are borne by the Federal Government. However, the Department is required by the FMIA (21 U.S.C. 659) and the PPIA (21 U.S.C. 468) to recover the costs of overtime and holiday inspection services from those establishments which voluntarily elect to utilize such inspection services. The rates provided for in this document reflect only a minimal increase in the costs currently borne by those entities electing to utilize those and certain other voluntary inspection services.

List of Subjects

9 CFR Part 307

Meat inspection, Reimbursable services.

9 CFR Part 350

Meat inspection, Reimbursable services, Voluntary inspection, Certification service.

9 CFR Part 351

Meat inspection, Certification service, Reimbursable services.

9 CFR Part 354

Meat inspection, Reimbursable services.

9 CFR Part 355

Meat inspection, Reimbursable services.

9 CFR Part 362

Poultry products inspection, Reimbursable services.

9 CFR Part 381

Poultry products inspection, Reimbursable services.

The amendments to the Federal meat and poultry products inspection regulations are as follows:

PART 307—[AMENDED]

1. The authority citation for Part 307 reads as follows:

Authority: 41 Stat. 241, 7 U.S.C. 334; 34 Stat. 1264, as amended; 21 U.S.C. 621; 62 Stat. 334; 21 U.S.C. 695, 7 CFR 2.15(a), 2.92.

2. Section 307.5(a) is revised to read as follows:

§ 307.5 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service \$20.44 per hour per Program employee to reimburse the

Program for the cost of the inspection service furnished on any holiday as specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

PART 350—[AMENDED]

3. The authority citation for Part 350 reads as follows:

Authority: 41 Stat. 241, 7 U.S.C. 394; 60 Stat. 1087, as amended, 7 U.S.C. 1622; 60 Stat. 1090, as amended, 7 U.S.C. 1624; 34 Stat. 1264, as amended, 21 U.S.C. 621; 62 Stat. 334, 21 U.S.C. 695; 7 CFR 2.15(a) 2.92.

4. Section 350.7(c) is revised to read as follows:

§ 350.7 Fees and charges.

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of \$17.72 per hour for base time, \$20.44 per hour for overtime including Saturdays, Sundays, and holidays, and \$31.28 per hour for laboratory service, to cover the costs of the service and shall be charged for the time required to render such service. Where appropriate, this time will include but will not be limited to the time required for travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

PART 351—[AMENDED]

5. The authority citation for Part 351 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

6. Section 351.8 is revised to read as follows:

§ 351.8 Charges for surveys for plants.

Applicants for the certification service shall pay the Department for salary costs at the rate of \$17.72 per hour for base time, \$20.44 per hour for overtime, travel and per diem allowances at rates currently allowed by the Federal Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

7. Section 351.9(a) is revised to read as follows:

§ 351.9 Charges for examinations.

(a) The fees to be charged and collected by the Administrator for examination shall be \$17.72 per hour for base time and \$20.44 per hour for

overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14 and \$31.28 per hour for any laboratory service required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

PART 354—[AMENDED]

8. The authority citation for Part 354 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

9. Section 354.101 (b) and (c) is revised to read as follows:

§ 354.101 On a fee basis.

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be \$17.72 for base time and \$20.44 for overtime or holiday work.

(c) Charges for any laboratory analysis or laboratory examination of rabbits under this part related to inspection service shall be \$31.28 per hour.

PART 355—[AMENDED]

10. The authority citation for Part 355 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a), 2.92.

11. Section 355.12 is revised to read as follows:

§ 355.12 Charge for service.

The fees to be charged and collected by the Administrator shall be \$17.72 per hour for base time, \$20.44 per hour for overtime, including Saturdays, Sundays, and holidays, and \$31.28 per hour for laboratory services to reimburse the Service for the cost of the inspection service furnished.

PART 362—[AMENDED]

12. The authority citation for Part 362 reads as follows:

Authority: 60 Stat. 1087, as amended, 7 U.S.C. 1622, 60 Stat. 1090, as amended, 7 U.S.C. 1624; 7 CFR 2.15(a) 2.92.

13. Section 362.5(c) is revised to read as follows:

§ 362.5 Fees and charges.

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of \$17.72 per hour for base time, \$20.44 per hour for overtime including Saturdays, Sundays, and holidays, and \$31.28 per hour for laboratory service to cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

PART 381—[AMENDED]

14. The authority citation for Part 381 reads as follows:

Authority: 71 Stat. 447, 448, as amended, 21 U.S.C. 463, 468; 7 CFR 2.15(a) 2.92.

15. Section 381.38(a) is revised to read as follows:

§ 381.38 Overtime and holiday inspection service.

(a) The management of an official establishment, an importer, or an exporter shall pay the Food Safety and Inspection Service \$20.44 per hour per Program employee to reimburse the Program for the cost of the inspection service furnished on any holiday specified in paragraph (b) of this section; or for more than 8 hours on any day, or more than 40 hours in any administrative workweek Sunday through Saturday.

Done at Washington, D.C., on January 4, 1984.

Donald L. Houston,
Administrator, Food Safety and Inspection Service.

[FR Doc. 84-808 Filed 1-11-84; 8:45 am]
BILLING CODE 3410-DM-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 23844; Amdt. No. 95-314]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rule) altitudes and changeover points for

certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. These regulatory actions are needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: November 24, 1983.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures Standards Branch (AFO-230), Air Transportation Division, Office of Flight Operations, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 95 of the Federal Aviation Regulations (14 CFR Part 95) prescribes new, amended, suspended, or revoked IFR altitudes governing the operation of all aircraft in IFR flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in Part 95. The specified IFR altitudes, when used in conjunction with the prescribed

changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference.

The reasons and circumstances which create the need for this amendment involve matters of flight safety, operational efficiency in the National Airspace System, and are related to published aeronautical charts that are essential to the user and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment is unnecessary, impracticable, and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

List of Subjects in 14 CFR Part 95
Aircraft, Airspace.

Adoption of the Amendment

Accordingly and pursuant to the authority delegated to me by the Administrator, Part 95 of the Federal Aviation Regulations (14 CFR Part 95) is amended as follows effective at 0901 GMT November 24, 1983.

(Secs. 307 and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348 and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 23, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C. on November 23, 1983.

Kenneth S. Hunt,
Director of Flight Operations.
BILLING CODE 4310-13-M

FROM	TO	MEA	FROM	TO	MEA
\$95.1001 DIRECT ROUTES-U.S. —Continued					
IS AMENDED TO READ IN PART					
APPLETON, OH VORTAC	TIVERTON, OH VORTAC	18000 #AAA-45000	GRAND RAPIDS, MI VOR/ DME	BEJAE, MI FIX	2700
BOWLING GREEN, KY VORTAC	LEXINGTON, KY VORTAC	18000	GRAND RAPIDS, MI VOR/ DME	OSEGO, MI FIX	3000
CINCINNATI, OH VORTAC	YORK, KY VORTAC	#AAA-41000 18000	KALAMAZOO, MI VOR *2300 - MCCA	LINGS, MI FIX	*2950
DAYTON, OH VORTAC	APPLETON, OH VORTAC	#AAA-41000	LANSING, MI VORTAC	BEJAE, MI FIX	2700
DAYTON, OH VORTAC	APPLETON, OH VORTAC	18000	\$95.6001 VOR FEDERAL AIRWAY 1		
DAYTON, OH VORTAC	FORT WAYNE, IN VORTAC	18000	IS AMENDED TO READ IN PART		
DAYTON, OH VORTAC	FORT WAYNE, IN VORTAC	18000	JACKSONVILLE, FL VORTAC	*STARY, GA FIX	*4000
FORT WAYNE, IN VORTAC	GUNNE, OH FIX	18000	*5000 - MRA		
FORT WAYNE, IN VORTAC	KALAMAZOO, MI VOR	18000	*1400 - MCCA		
GRAND ISLAND, NE VORTAC	SALINA, KS VORTAC	#AAA-43500 18000	*1200 - MCCA		
GUNNE, OH FIX	TIVERTON, OH VORTAC	18000	*3000 - MRA		
KALAMAZOO, MI VOR	GRAND RAPIDS, MI VOR/ DME	18000	*1100 - MCCA		
LEXINGTON, KY VORTAC	BLUEFIELD, WV VORTAC	18000	*3000 - MRA		
LEXINGTON, KY VORTAC	WHITESBURG, KY VORTAC	18000	*ROOF5, SC FIX		2000
LONDON, KY VORTAC	HOLSTON MOUNTAIN, TN VORTAC	18000	*ROOF5, SC FIX		2000
SALEA, MI VORTAC VIA 5VA VORTAC 073	U S CAJADIAN BORDER	#AAA-43000	*ROOF5, SC FIX		2000
TIVERTON, OH VORTAC	AKRON, OH VORTAC	18000	*3000 - MRA		2000
TIVERTON, OH VORTAC	WILM0, OH FIX	18000	\$95.6002 VOR FEDERAL AIRWAY 2		
UNBAR, MI FIX	SALEM, MI VORTAC	18000	IS AMENDED TO READ IN PART		
WICHITA, KS VORTAC	WALNUT RIDGE, AR VORTAC	18000	JAMESTOWN, ND VOR/DME	*CHAFÉ, ND FIX	3000
WICHITA, KS VORTAC	OKLAHOMA CITY, OK VORTAC	#AAA-45000 *6000	*5700 - MRA		
WILM0, OH FIX	AKRON, OH VOR/DME	18000	\$95.6003 VOR FEDERAL AIRWAY 3		
IS AMENDED TO READ IN PART					
SOUTH BEND, IN VORTAC	LITCHFIELD, MI VORTAC CDZ 49 SEN	#18000 #AAA-41000	ORLAND BEACH, FL VORTAC	BRUNSWICK, GA VORTAC	*2000
#MAXIMUM CROSSING ALT 58N 073/49 33000.					
IS AMENDED TO DELETE					
BATTLE CREEK, MI VORTAC	VENTU, MI FIX	2700	JACKSONVILLE, FL VORTAC	FOLKS, GA FIX	*2000
BATTLE CREEK, MI VORTAC	KALAMAZOO, MI VOR	*2600	FOLKS, GA FIX	PAFFO, GA FIX	*4000
BATTLE CREEK, MI VORTAC	GEEBÉ, MI FIX	*2800	*1400 - MCCA		
			PAFFO, GA FIX	ALVA, GA VORTAC	2000
			ALVA, GA VORTAC	DUCLIN, GA VORTAC	2000
			\$95.6012 VOR FEDERAL AIRWAY 12		
			IS AMENDED TO READ IN PART		
			TUCUMCARI, NVA VORTAC	*VEGGE, TX FIX	6000
			*6500 - MRA		

FROM	TO	MEA	FROM	TO	MEA	FROM	TO	MEA	FROM	TO	MEA
\$95.6012 VOR FEDERAL AIRWAY 12—Continued			\$95.6073 VOR FEDERAL AIRWAY 73—Continued			\$95.6123 VOR FEDERAL AIRWAY 123—Continued			\$95.6157 VOR FEDERAL AIRWAY 157—Continued		
VERGE TX FIX ANTHONY, KS VORTAC WICHITA, KS VORTAC	AMARILLO, TX VORTAC WICHITA, KS VORTAC EMPORIA, KS VORTAC	6000 3600 3600	WICHITA, KS VORTAC	HUTCHINSON, KS VORTAC	3600	ROBBINSVILLE, NJ VORTAC LUSSA NY FIX	LUSSA NY FIX LA GUARDIA NY VOR/ DINE	*2000 2700	ROBBINSVILLE NJ VORTAC COLTS NECK NJ VORTAC ELLIS NJ FIX KINGSTON, NY VORTAC	*2000 3000	
\$95.6019 VOR FEDERAL AIRWAY 19 IS AMENDED TO READ IN PART			\$95.6077 VOR FEDERAL AIRWAY 77 IS AMENDED TO READ IN PART			LA GUARDIA, NY VOR/DINE STAMUS, CT FIX	CARMAEL NY VORTAC	*2500 *2500	\$95.6161 VOR FEDERAL AIRWAY 161 IS AMENDED TO READ IN PART		
SANTA FE, NH VORTAC *LAS VEGAS, NHA VORTAC *10000 - NCA LAS VEGAS VORTAC, N BND *11300 - NCA LAS VEGAS VORTAC, W BND		12500	PIONEER, OK VORTAC WICHITA, KS VORTAC *FLOSS, KS FIX *WILSY, KS FIX	WICHITA, KS VORTAC *FLOSS, KS FIX *WILSY, KS FIX	3600 3600 **5000	CAPE GIRARDEAU MO VOR ENGEH, IL FIX		3500	INTERNATIONAL FALLS, MN U S CANADIAN BORDER VORTAC	3000	
\$95.6023 VOR FEDERAL AIRWAY 23 IS AMENDED TO READ IN PART			\$95.6095 VOR FEDERAL AIRWAY 95 IS AMENDED TO READ IN PART			\$95.6125 VOR FEDERAL AIRWAY 125 IS AMENDED TO READ IN PART			\$95.6172 VOR FEDERAL AIRWAY 172 IS AMENDED TO READ IN PART		
YUBBA, CA FIX *GRIDD CA FIX		**4000	LAZON CO FIX N BND S BND BAUFL CO FIX N BND S BND TRES, CO FIX	FOWES, CO FIX N BND S BND BAUFL CO FIX N BND S BND TRES, CO FIX	15000 16100 16200 12500 16200	TULSA, OK VORTAC *FRYER OK FIX		2700	AENOL, IA FIX *2800 - MOCA	*4000	
\$95.6037 VOR FEDERAL AIRWAY 37 IS AMENDED TO READ IN PART			\$95.6104 VOR FEDERAL AIRWAY 104 IS AMENDED TO READ IN PART			\$95.6140 VOR FEDERAL AIRWAY 140 IS AMENDED TO READ IN PART			\$95.6190 VOR FEDERAL AIRWAY 190 IS AMENDED TO READ IN PART		
JACKSONVILLE, FL VORTAC ERLINGSWICK GA VORTAC		2000	BURKINGHAM VT VORTAC ARCHERLIER, VT VOR/ DINE		6000	IRRAWADDI MI VORTAC KELLSBURN, MI VORTAC		3700	LAS VEGAS, NV VORTAC DANHART TX VORTAC *8000 - MOCA	*9000	
\$95.6045 VOR FEDERAL AIRWAY 45 IS AMENDED TO READ IN PART			\$95.6106 VOR FEDERAL AIRWAY 106 IS AMENDED TO READ IN PART			\$95.6148 VOR FEDERAL AIRWAY 148 IS AMENDED TO READ IN PART			\$95.6198 VOR FEDERAL AIRWAY 198 IS AMENDED TO READ IN PART		
SEKS AFD FIX *1000 - ARA *1200 - MOCA CURBS AFD FIX *1000 - ARA *1200 - MOCA	*CURBS AFD FIX *AVES AFD FIX	**3000 **3000	KUCEN PA FIX *1000 - MOCA	RACHE PA FIX	*2000	TOLUCA, CA VORTAC *2000 - MOCA		2700	TAYLOR, IL VORTAC JACKSONVILLE FL VORTAC	2100	
\$95.6051 VOR FEDERAL AIRWAY 51 IS AMENDED TO READ IN PART			\$95.6121 VOR FEDERAL AIRWAY 121 IS AMENDED TO READ IN PART			\$95.6151 VOR FEDERAL AIRWAY 151 IS AMENDED TO READ IN PART			\$95.6213 VOR FEDERAL AIRWAY 213 IS AMENDED TO READ IN PART		
OPWEND FLASH IL VORTAC *1000 - ARA *1200 - MOCA CULU FL FIX *1000 - ARA *1200 - MOCA ASTER FL FIX	*CULU FL FIX *ASTER FL FIX JACKSONVILLE FL VORTAC WAYCROSS GA VORTAC ALMA GA VORTAC	**2000 **2000 2000 2000 2000	FORT JENIS CA VORTAC *1000 - ARA *1000 - MOCA	*DAVIS CR FIX	**10000	WHEELS BLK FIX *2000 - MOCA SHEPHERD AFD FIX *1000 - MOCA WYLER AFD FIX *1000 - MOCA REDFIELD VT VORTAC CUMMINGTON VT VORTAC	WIRAWAY AFD FIX WYLER AFD FIX REDANON MI VORTAC CUMMINGTON VT VORTAC	*2700 *4000 4000 2000	WHEELS BLK FIX *2000 - MOCA SHEPHERD AFD FIX *1000 - MOCA WYLER AFD FIX *1000 - MOCA REDFIELD NJ VORTAC	*2000 *2000	
\$95.6073 VOR FEDERAL AIRWAY 73 IS AMENDED TO READ IN PART			\$95.6123 VOR FEDERAL AIRWAY 123 IS AMENDED TO READ IN PART			\$95.6153 VOR FEDERAL AIRWAY 153 IS AMENDED TO READ IN PART			\$95.6233 VOR FEDERAL AIRWAY 233 IS AMENDED TO READ IN PART		
FRANKS OK FIX *3000 - MOCA	WICHITA, KS VORTAC	*6000	ATEN AFD FIX *2000 - MOCA SWANNY AFD FIX *1000 - MOCA TAKES AFD FIX	SWANNY AFD FIX TAKES AFD FIX WELLSBORO NH VORTAC	*3000 *2000 *3000	LAKE HURRY PA VORTAC MANICK NY VORTAC		4000	GAYLORD MI VORTAC *1000 - ARA	*2000	
			WAGONVILLE IL VORTAC WAYCROSS GA VORTAC ALMA GA VORTAC	CEBUS NJ FIX REDFIELD NJ VORTAC	2000 *2000	BAILO VA FIX *1000 - MOCA DUNN, CA VORTAC AULIA NJ FIX *1000 - MOCA	ROCKFORD, VA VORTAC AULIA, NJ FIX REDFIELD NJ VORTAC	*2000 *2000 *2000	JACKSONVILLE, FL VORTAC WAYCROSS GA VORTAC	2000	

§95.8005 JET ROUTES CHANGEOVER POINTS

FROM	TO	MEA	MAA	AIRWAY SEGMENT	CHANGEOVER POINTS
§95.7002 JET ROUTE NO. 2					
TALLAHASSEE, FL VORTAC	TAYLOR, FL VORTAC	18000	45000		
IS AMENDED TO READ IN PART					
§95.7536 JET ROUTE NO. 536					
IS AMENDED TO READ IN PART					
SISTERS ISLAND, AK VORTAC	U.S. CANADIAN BORDER	#18000	45000	SISTERS ISLAND, AK VORTAC	97 SISTERS ISLAND
#MEA IS ESTABLISHED WITH A GAP IN NAVIGATION SIGNAL COVERAGE.					
[FR Doc. 84-705 Filed 1-11-84; 8:45 am] BILLING CODE 4810-13-C					

§95.8003 VOR FEDERAL AIRWAYS CHANGEOVER POINTS

AIRWAY SEGMENT	TO	DISTANCE	FROM	CHANGEOVER POINTS
JACKSONVILLE, FL VORTAC	CHARLESTON, SC VORTAC	95	JACKSONVILLE	
IS AMENDED TO READ IN PART				
V-1				
JACKSONVILLE, FL VORTAC	CHARLESTON, SC VORTAC	95	JACKSONVILLE	
IS AMENDED TO READ IN PART				
V-23				
FORT JONES CA VORTAC	MEDFORD, OR VORTAC	25	FORT JONES	
IS AMENDED TO READ IN PART				
V-37				
SAINTE PETERBURG, FL VORTAC	TALLAHASSEE, FL VORTAC	97	SAINTE PETERBURG	
IS AMENDED BY ADDING				
V-248				
INDIAN HEAD, PA VORTAC	HAGERSTOWN, MD VOR	50	INDIAN HEAD	
IS AMENDED BY ADDING				
V-278				
MC CALL, ID VORTAC	DUBOIS, ID VORTAC	105	MC CALL	
IS AMENDED TO READ IN PART				
V-330				
LEWISTON, ID VOR/DME	SALMON, ID VOR/DME	53	LEWISTON	
IS AMENDED TO READ IN PART				

SECURITIES AND EXCHANGE
COMMISSION

17 CFR Part 270

[Release No. IC-13688]

Exemptive Relief for Mutual Funds
Underlying Variable Life Insurance
Separate AccountsAGENCY: Securities and Exchange
Commission.

ACTION: Final rule amendment.

SUMMARY: The Commission is adopting amendments to the general exemptive rule under the Investment Company Act of 1940 regarding insurance company separate accounts offering variable life insurance contracts that will make available to mutual funds underlying such separate accounts relief from the Act's minimum net worth requirement and three related provisions of the Act. The amended rule will provide mutual funds underlying variable life trust accounts with relief comparable to that provided to mutual funds underlying variable annuity trust accounts in a companion release.

EFFECTIVE DATE: January 12, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lemke, Special Counsel (202-272-2081), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is adopting amendments to Rule 6e-2 (17 CFR 270.6e-2) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("Act"), the general exemptive rule relating to insurance company separate accounts ("separate accounts") offering scheduled premium variable life insurance contracts ("variable life"). The amendments would make available to mutual funds underlying separate accounts registered under the Act as unit investment trusts ("trust accounts") exemptive relief from the minimum net worth requirement of section 14(a) of the Act (15 U.S.C. 80a-14(a)), and related relief from sections 15(a), 16(a), and 32(a) of the Act (15 U.S.C. 80a-15(a), 80a-16(a), and 80a-31(a)), comparable to that presently provided to the trust accounts themselves by rule 6e-2. This relief is similar to that being provided to mutual funds underlying variable annuity trust accounts in a companion

release¹ adopting amendments to rule 14a-2 under the Act (17 CFR 270.14a-2).²

Discussion

Rule 6e-2 under the Act provides extensive exemptions from various provisions of the Act to variable life separate accounts. Paragraph (b)(6) thereunder exempts such separate accounts from the minimum net worth requirement of section 14(a) of the Act,³ provided certain conditions are satisfied.⁴ This relief is similar to the relief amended rule 14a-2 under the Act⁵ provides to variable annuity separate accounts, and to mutual funds underlying variable annuity trust accounts.

In the case of mutual funds underlying variable annuity trust accounts, extending the relief existing rule 14a-2 provides is appropriate because (1) such mutual funds are sponsored by insurance companies having a certain level of capital and surplus and subject to extensive state regulation and (2) the securities of such funds will be offered only to trust accounts of qualifying insurance companies, and thus it is unlikely that the abuses section 14(a) is intended to eliminate will occur.⁶ For

¹ Investment Company Act Rel. No. 13687 (Dec. 23, 1983).

² Rule 14a-2, as originally adopted in Investment Company Act Rel. No. 5738 (July 10, 1983) (34 FR 12695, July 14, 1983), generally exempts any separate account from section 14(a) with respect to a public offering of tax-benefited variable annuity contracts if at the commencement of the offering the account's sponsoring insurance company has a certain minimum net worth. In Investment Company Act Rel. No. 12745 (Oct. 18, 1982) (47 FR 47860, Oct. 28, 1982), the Commission proposed to amend rule 14a-2 in order to make the relief therein, and thus the relief provided by related rules 15a-3, 16a-1, and 32a-2 (17 CFR 270.15a-3, 270.16a-1, and 270.32a-2), available to any separate account offering variable annuity contracts, regardless of the tax treatment accorded such contracts by the Internal Revenue Code. As discussed in the companion release, the Commission, in response to comment, has determined to expand rule 14a-2 further by making the relief therein, and the relief provided by the related rules, available to the mutual funds established by the sponsoring insurance company to serve as the underlying investment media for trust accounts.

³ Section 14(a) generally prohibits any registered investment company from making a public offering of its securities unless it has a net worth of at least \$100,000.

⁴ Rule 6e-2(b)(6) exempts a variable life separate account from section 14(a) provided generally that until it has total assets of at least \$100,000 the sponsoring life insurance company shall have not less than \$1,000,000 of combined capital and surplus, if a stock company, or of unassigned surplus, if a mutual company.

⁵ See note 2, *supra*.

⁶ The legislative history of section 14(a) indicates that it was intended to ensure that an investment company has a certain degree of financial responsibility prior to offering its securities. See, e.g., S. Rep. No. 1775, 76th Cong., 3d Sess. 13 (1940).

the same reasons, and because this is an area where life insurance separate accounts and variable annuity separate accounts should not be subject to disparate regulation, the Commission is amending rule 6e-2 in order to extend the relief therein from section 14(a) to mutual funds underlying variable life trust accounts. The amendments also will make available to such mutual funds relief from sections 15(a), 16(a), and 32(a) of the Act equivalent to that amended rule 14a-2⁷ provides mutual funds underlying variable annuity trust accounts.

Final Rulemaking

1. Amended Rule 6e-2

Rule 6e-2(b)(15)(v) provides that any registered management investment company established by the insurer and described in paragraph (b)(15) of the rule shall be exempt from section 14(a) of the Act provided that until such company has total assets of at least \$100,000 the sponsoring life insurance company shall have at least the minimum net worth prescribed by rule 6e-2(b)(6). Rule 6e-2(b)(15)(vi) provides that any such company shall be exempt from sections 15(a), 16(a), and 32(a) of the Act, to the extent prescribed by rules 6e-2(b)(7)(i), 6e-2(b)(8)(i), and 6e-2(b)(14), provided that such company complies with the conditions set forth in those paragraphs as if it were a separate account.⁸

⁷ As relevant here, section 15(a) of the Act requires that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by a vote of a majority of the outstanding voting securities of the registered investment company; section 16(a) requires a similar vote for persons serving as directors of such company; and section 32(a) requires a similar vote ratifying the selection of the company's independent public accountant. In the companion release, the Commission is amending rule 14a-2 in order to make available to mutual funds underlying variable annuity trust accounts the relief from these sections provided by existing rules 15a-3, 16a-1, and 32a-2 under the Act. The amendments herein would extend similar relief provided by rules 6e-2(b)(7), 6e-2(b)(8), and 6e-2(b)(14) to mutual funds underlying variable life trust accounts.

⁸ For example, an underlying mutual fund qualifying for the relief provided by rule 6e-2(b)(15)(v) would, pursuant to rule 6e-2(b)(15)(vi), be exempt from the requirements of section 15(a) of the Act, as prescribed by rule 6e-2(b)(7)(i), to the extent this section requires that the initial written contract pursuant to which the investment adviser serves or acts shall have been approved by the vote of a majority of the outstanding voting securities of the fund. This relief would be available provided, as required by rule 6e-2(b)(7)(i) (A) and (B), that such investment adviser is selected and a written contract entered into before the effective date of the fund's registration statement under the Securities Act of 1933 and that a written contract is submitted to a vote of security holders at their first meeting, which shall take place within one year of the effective date of such registration statement.

2. Adoption of Amendments Without Prior Notice or Delay

The Administrative Procedure Act (5 U.S.C. 551 *et seq.*) ("APA") generally requires that any agency publish a notice of proposed rulemaking that provides adequate opportunity for comment by interested persons. Section 553(b)(B) of the APA provides an exception from this requirement in situations where the agency for good cause finds that prior notice and comment are "impractical, unnecessary, or contrary to the public interest." These standards are incorporated in rule 4(b) of the Commission's Rules of Practice (17 CFR 201.4(b)), which requires publication and prior notice of proposed rule amendments "[e]xcept where the Commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest."

The purpose of these amendments is to expand the availability of certain relief from the Act. The Commission believes that these amendments would have no detrimental impact on the rights of companies subject to the rule. In addition, the Commission believes that there is little, if any, likelihood that any interested person would have reason to object to their adoption. Accordingly, the Commission has determined that prior notice and comment are unnecessary. Further, the Commission finds, pursuant to section 553(d)(1) of the APA, that a 30 day delay in effectiveness is not required because these amendments grant exceptions. Therefore, these amendments to rule 6e-2 will become effective January 12, 1984.

List of Subjects in Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Amended Rule 6e-2(b)(15)

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

By adding new paragraphs (b)(15) (v) and (vi) to § 270.6e-2 to read as follows:

§ 270.6e-2 Exemptions for certain variable life separate accounts.

* * * * *

(b) * * *
(15) * * *

(v) Any registered management investment company established by the insurer and described in this paragraph (b)(15) shall be exempt from Section 14(a) provided that until such company

has total assets of at least \$100,000 the life insurer shall have at least the minimum net worth prescribed in paragraph (b)(6) above; and

(vi) Any registered management investment company established by the insurer and described in this paragraph (b)(15) shall be exempt from Sections 15(a), 16(a), and 32(a)(2) of the Act, to the extent prescribed by paragraphs (b)(7)(i), (b)(8)(i), and (b)(14), provided that such company complies with the conditions set forth in those paragraphs as if it were a separate account.

* * * * *

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that adoption of the amendments set forth herein will not have a significant economic impact on a substantial number of small entities. This certification, including the reasons therefor, is attached to this release.

Paperwork Reduction Act

The rule amendments are not subject to the Act because they do not impose an information collection requirement.

Statutory Authority

The amendments to rule 6e-2 are promulgated pursuant to the provisions of sections 6(c) and 38(a) of the Act (15 U.S.C. 80a-6(c) and 80a-37(a), respectively). For the reasons set forth above, the rule amendments will become effective January 12, 1984.

By the Commission.

Dated: December 23, 1983.

George A. Fitzsimmons,
Secretary.

Regulatory Flexibility Act Certification

I, John S. R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that adoption of the amendments to rule 6e-2 under the Investment Company Act of 1940 will not have a significant economic impact on a substantial number of small entities. The reason for the certification is that there are few, if any, mutual funds underlying registered insurance company separate accounts that, when considered in conjunction with their sponsoring separate account and insurance company, qualify as "small entities" as that term has been defined in the Commission's rules.

Dated: December 22, 1983.

John S. R. Shad,
Chairman.

[FR Dec. 84-035 Filed 1-11-84, 8:45 am]
BILLING CODE 8910-01-M

17 CFR Part 270

[Release No. IC-13687; File No. S7-949]

Exemptive Relief for Separate Accounts That Offer Variable Annuity Contracts to Certain Employees of Texas Institutions of Higher Education and From the Act's Minimum Net Worth and Certain Other Requirements

AGENCY: Securities and Exchange Commission.

ACTION: Final rule and rule amendments.

SUMMARY: The Commission is adopting a rule and amendments to a rule providing certain exemptions from the Investment Company Act of 1940 for registered insurance company separate accounts offering variable annuity contracts. The rule codifies standards developed by the Commission in connection with individual applications filed by separate accounts seeking exemptive relief to the extent necessary to permit them to comply with applicable Texas law in connection with the offer and sale of their variable annuity contracts to certain employees of Texas institutions of higher education, thereby eliminating the need for such applications. The rule amendments expand the availability of the exemptive relief from the Act's minimum net worth requirement provided by an existing exemptive rule and the availability of related exemptive relief provided by three other existing rules. The Commission also is adopting related technical amendments to one of the general rules under the Act.

EFFECTIVE DATE: January 12, 1984.

FOR FURTHER INFORMATION CONTACT: Thomas P. Lemke, Special Counsel (202-272-2061) or Jay S. Neuman, Attorney (202-272-2067), Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today announced the adoption of rule 6c-7 [17 CFR 270.6c-7] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 *et seq.*] ("Act") and amendments to rule 14a-2 under the Act [17 CFR 270.14a-2], which will provide registered insurance company separate accounts, and any depositor of or principal underwriter for such accounts (collectively, "separate accounts"), with exemptive relief from various provisions of the Act with respect to variable annuity contracts.¹

¹ As used herein, the term "variable annuity contract," as defined in rule 0-1(e) [17 CFR 270.0-

participating in such separate accounts. Rule 6c-7 codifies the conditions under which the Commission has granted individual exemptive applications to separate accounts to the extent necessary to permit them to comply with applicable Texas law in connection with the offer and sale of their variable annuity contracts to certain employees of Texas institutions of higher education. Amended rule 14a-2 expands the availability of the exemptive relief from the minimum net worth requirement of section 14(a) of the Act [15 U.S.C. 80a-14(a)] provided to separate accounts by that rule and the availability of related exemptive relief from certain requirements of sections 15(a), 16(a), and 32(a) of the Act [15 U.S.C. 80a-15(a), 80a-16(a), and 80a-31(a)] provided by existing rules 15a-3, 16a-1, and 32a-2 under the Act [17 CFR 270.15a-3, 270.16a-1, and 270.32a-2]. In response to comments, the Commission also has determined to make the relief provided by rule 14a-2, and the relief provided by rules 15a-3, 16a-1, and 32a-2, available to mutual funds underlying separate accounts registered under the Act as unit investment trusts. Finally, the Commission is adopting related technical amendments to rule 0-1(e) [17 CFR 270.0-1(e)] of the General Rules and Regulations under the Act.

The rule and rule amendments being adopted today are among several rules the Commission has adopted codifying the standards developed in connection with certain types of applications filed by separate accounts for so-called "start-up" exemptions² and for the relief under the Act.³ The background and reasons for the proposals are set forth in Investment Company Act Release No. 12745 (October 18, 1982) [47 FR 47860, October 28, 1982].

Discussion

In response to its request for comments, the Commission received five comment letters. The main points raised by the commentators and any

1(e)), includes any variable accumulation or annuity contract, any portion thereof, or any units of interest or participation therein pursuant to which the value of the contract, either prior or subsequent to annuitization, or both, varies according to the investment experience of the separate account in which the contract participates. See Investment Company Act Rel. No. 13408 (July 28, 1983) [48 FR 36097, Aug. 9, 1983].

² For a variety of reasons, separate accounts must obtain "start-up" exemptive relief from various provisions of the Act prior to offering their variable annuity contracts to the public.

³ See Investment Company Act Rel. No. 13407 (July 28, 1983) [48 FR 36243, Aug. 10, 1983] (rule 11a-2 [17 CFR 270.11a-2]); Investment Company Act Rel. No. 13408 (July 28, 1983) [48 FR 36097, Aug. 9, 1983] (rule 6c-8 [17 CFR 270.6c-8]).

changes made to the proposals are discussed below.

1. Rule 6c-7—Texas Optional Retirement Program Relief

Four persons submitted comments on proposed rule 6c-7. Three commentators generally supported adoption of the rule as proposed, although one suggested that the final rule be expanded so as to provide relief in any situation "resembling" that arising under Texas law. The fourth commentator supported adoption of rule 6c-7 on the condition that the relief provided therein, which as proposed would have been available only for separate accounts offering variable annuity contracts in the relevant Texas market, be expanded to provide comparable relief to traditional mutual funds desiring to offer their shares in that market.

The Commission has determined not to incorporate these suggestions and to adopt rule 6c-7 as proposed. With respect to both suggested expansions of the rule, the Commission notes that no exemptive applications requesting similar relief have been filed. Accordingly, neither the Commission nor applicants have considered, in the context of specific factual settings, the issues involved in order to determine the appropriate conditions under which relief should be granted. The Commission believes that it would be premature to grant exemptive relief by rule in such situations. Of course, if a specific application is filed relating to either of the commentators' suggestions, the Commission's experience leading to the adoption of rule 6c-7 should expedite consideration of the issues involved.⁴

2. Amendments to Rule 14a-2—Relief from Minimum Net Worth Requirement

All three commentators on proposed amended rule 14a-2 supported its adoption, although one commentator urged the Commission to expand further the availability of the relief. As proposed, the amended rule would have provided relief from the Act's minimum net worth requirement to insurance company separate accounts registered under the Act both as management investment companies ("management accounts") and as unit investment trusts ("trust accounts"). In the case of trust accounts, however, the proposed amended rule would not have provided

⁴ The exemptive relief afforded by rule 6c-7 is available only so long as Texas law is interpreted by the Texas Attorney General as imposing restrictions upon the redeemability of variable annuity contracts offered or sold in the relevant market that are inconsistent with pertinent provisions of the Act.

relief to the mutual funds established by the insurance company to serve as the underlying investment media for such accounts. The commentator urged the Commission to provide relief to such underlying funds, noting that the basis for exempting trust accounts—namely, that the account is sponsored by an insurance company which meets the minimum net worth requirement of rule 14a-2 and is subject to extensive state regulation—is equally applicable to exempting underlying mutual funds sponsored by the insurance company. Furthermore, the commentator pointed out that the adequacy of protection to investors provided by a qualifying sponsoring insurance company is indistinguishable in the case of management and trust accounts, yet the practical effect of the proposed amended rule would be to treat them differently.

The Commission believes that it is appropriate to make the relief provided by rule 14a-2 available to underlying mutual funds (1) where such funds are sponsored by an insurance company that (i) meets the minimum net worth requirement of rule 14a-2 and (ii) is subject to extensive state regulation aimed at preserving the sponsoring company's solvency and (2) where such funds make their securities available only to trust accounts of qualifying insurance companies. In such circumstances, there appears to be little possibility that the kind of abuses section 14 is intended to deter will occur. Accordingly, a new paragraph (b) has been added to the rule, extending the rule's relief to underlying mutual funds established by a qualifying insurance company which offer their securities to trust accounts of the sponsoring insurance company. The relief also is available to such underlying funds, if, in addition to offering their securities to trust accounts of the sponsoring insurance company, they offer their securities to trust accounts of other insurance companies, provided that such other sponsoring insurance companies are qualifying insurance companies for purposes of paragraph (a) of the rule.⁵ The expanded

⁵ One commentator suggested that rule 14a-2 amended further to extend relief to separate accounts offering variable life insurance contracts. Since this relief already is provided to both management and trust accounts by rule 6c-2(b)(6) under the Act [17 CFR 270.6c-2(b)(6)], no changes have been made in this regard. See also rules 6c-2(b)(7) (relating to section 15(a)), 6c-2(b)(8) (relating to section 16(a)), and 6c-2(b)(14) (relating to section 32(a)) [17 CFR 270.6c-2(b)(7), 270.6c-2(b)(8), and 270.6c-2(b)(14)]. In a companion release (Investment Company Act Rel. No. 13688 (Dec. 23, 1983)) the

Continued

relief is not available to underlying mutual funds whose securities are available for purchase by members of the public other than through purchase of an insurance product offered by a trust account.

The Commission believes it is also appropriate to expand the availability of the relief provided by related rules 15a-3, 16a-1, and 32a-2 to underlying mutual funds. As discussed in the proposing release, these rules were necessitated by the exemptive relief included in rule 14a-2, and their availability is conditioned in part upon a separate account qualifying for the relief provided by rule 14a-2. Thus, in making the relief provided by rule 14a-2 available to underlying mutual funds—and thereby eliminating the initial capital requirement for such companies—it also is appropriate to make available the relief provided by the related rules since there will be no shareholders initially eligible to take the actions addressed by these rules. Accordingly, a new paragraph (c) has been added to the rule extending the relief contained in rules 15a-3, 16a-1, and 32a-2 to underlying mutual funds,⁶ provided that they qualify for the relief provided by rule 14a-2(b) and comply with the conditions set forth in the related rules as if they were separate accounts.⁷

Commission is adopting amendments to rule 6e-2(b)(15) in order to provide relief from section 14(a) to mutual funds underlying variable life trust accounts comparable to that being provided by amended rule 14a-2 to mutual funds underlying variable annuity trust accounts. Those amendments also will provide mutual funds underlying variable life trust accounts with relief from sections 15(a), 16(a), and 32(a) of the Act comparable to that being provided to variable annuity trust accounts by amended rule 14a-2(c) (see discussion in text accompanying note 6, *infra*).

⁶The Commission has determined, pursuant to section 553(b)(B) of the Administration Procedure Act, that there is no need to republish proposed amended rule 14a-2 to obtain comment on its decision to expand the availability of rules 14a-2, 15a-3, 16a-1, and 32a-2 to underlying mutual funds since that issue was raised by, and in fact was commented upon in, the proposed rulemaking. Moreover, the Commission believes this action is appropriate because expanding the availability of these rules would have no detrimental impact on the rights of companies subject to these rules or of investors, and there appears to be little, if any, likelihood that any interested person would have reason to object to this action.

⁷For example, an underlying mutual fund qualifying for the relief provided by rule 14a-2(b) would, pursuant to rule 14a-2(c), be exempt from the requirements of section 16(a) of the Act, as prescribed by rule 16a-1, that persons serving as the directors of such fund shall, prior to the first meeting of security holders, be elected by the holders of outstanding voting securities of such fund at an annual or special meeting called for that purpose. This relief would be available provided, as required by rules 16a-1(2) and (3), that such persons have been appointed directors of such fund by the fund's establishing insurance company and that election of fund directors shall be held at the first

3. Amendments to rule 0-1(e)

As proposed, the Commission is amending rule 0-1(e) of the General Rules and Regulations under the Act, which defines various terms used in those rules and regulations, including the term "separate account," and sets forth conditions for availability of exemptive relief for separate accounts pursuant to various of those rules, to include rule 6c-7 as one of the rules listed therein.

List of Subjects in Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule 6c-7 and Amendments to Rules 14a-2 and 0-1(e)

PART 270—[AMENDED]

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended as follows:

1. By revising paragraphs (e) introductory text and (e)(2) of § 270.0-1 to read as follows:

§ 270.0-1 Definition of terms used in this part.

* * * * *

(e) Definition of separate account and conditions for availability of exemption under §§ 270.6c-6, 270.6c-7, 270.6c-8, 270.11a-2, 270.14a-2, 270.15a-3, 270.16a-1, 270.22d-3, 270.22e-1, 270.27a-1, 270.27a-2, 270.27a-3, 270.27c-1, and 270.32a-2 of this chapter.

* * * * *

(2) As conditions to the availability of exemptive Rules 6c-6, 6c-7, 6c-8, 11a-2, 14a-2, 15a-3, 16a-1, 22d-3, 22e-1, 27a-1, 27a-2, 27a-3, 27c-1, and 32a-2, the separate account shall be legally segregated, the assets of the separate account shall, at the time during the year that adjustments in the reserves are made, have a value at least equal to the reserves and other contract liabilities with respect to such account, and, at all other times, shall have a value approximately equal to or in excess of such reserves and liabilities; and that portion of such assets having a value equal to, or approximately equal to, such reserves and contract liabilities shall not be chargeable with liabilities arising out of any other business which the insurance company may conduct.

2. By adding § 270.6c-7 to read as follows:

security holder meeting, which shall take place within one year of the effective date of the fund's registration statement under the Securities Act of 1933 [15 U.S.C. 77a et seq.].

§ 270.6c-7 Exemptions from certain provisions of sections 22(e) and 27 for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program.

A registered separate account, and any depositor of or underwriter for such account, shall be exempt from the provisions of sections 22(e), 27(c)(1), and 27(d) of the Act (15 U.S.C. 80a-22(e), 80a-27(c)(1), and 80a-27(d), respectively) with respect to any variable annuity contract participating in such account to the extent necessary to permit compliance with the Texas Optional Retirement Program ("Program"). *Provided*, That the separate, account, depositor, or underwriter for such account:

(a) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in each registration statement, including the prospectus, used in connection with the Program;

(b) Includes appropriate disclosure regarding the restrictions on redemption imposed by the Program in any sales literature used in connection with the offer of annuity contracts to potential Program participants;

(c) Instructs salespeople who solicit Program participants to purchase annuity contracts specifically to bring the restrictions on redemption imposed by the Program to the attention of potential Program participants;

(d) Obtains from each Program participants who purchases an annuity contract in connection with the Program, prior to or at the time of such purchase, a signed statement acknowledging the restrictions on redemption imposed by the Program; and

(e) Includes in Part II of the separate account's registration statement under the Securities Act of 1933 a representation that this section is being relied upon and that the provisions of paragraphs (a)-(d) of this section have been complied with.

3. By revising § 270.14a-2 to read as follows:

§ 270.14a-2 Exemption from section 14(a) of the Act for certain registered separate accounts and their principal underwriters.

(a) A registered separate account, and any principal underwriter for such account, shall be exempt from section 14(a) of the Act (15 U.S.C. 80a-14(a)) with respect to a public offering of variable annuity contracts participating in such account if, at the commencement of such offering, the insurance company establishing and maintaining such separate account shall have (1) a combined capital and surplus, if a stock

company, or (2) an unassigned surplus, if a mutual company, of not less than \$1,000,000 as set forth in the balance sheet of such insurance company contained in the registration statement or any amendment thereto relating to such contracts filed pursuant to the Securities Act of 1933.

(b) Any registered management investment company which has as a promoter an insurance company meeting the requirements of paragraph (a) of this section and which offers its securities to separate accounts of such insurance company registered under the Act as unit investment trusts ("trust accounts"), and any principal underwriter for such investment company, shall be exempt from section 14(a) with respect to such offering and to the offering of such securities to trust accounts of other insurance companies meeting the requirements of paragraph (a) of this section.

(c) Any registered management investment company exempt from section 14(a) of the Act pursuant to paragraph (b) of this section shall be exempt from sections 15(a), 16(a), and 32(a)(2) of the Act (15 U.S.C. 80a-15(a), 80a-16(a), and 80a-31(a)(2)), to the extent prescribed in rules 15a-3, 16a-1, and 32a-2 under the Act (17 CFR 270.15a-3, 270.16a-1, and 270.32a-2), provided that such investment company complies with the conditions set forth in those rules as if it were a separate account.

Paperwork Reduction Act

The information collection required by rule 6c-7 has been approved by the Office of Management and Budget for use through January 31, 1986 (OMB No. 3235-0276).

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Chairman of the Commission has certified that the rule and rule amendments adopted herein will not have a significant economic impact on a substantial number of small entities. The Commission did not receive any comments on that certification.

Statutory Authority

Rule 6c-7 and the amendments to rule 14a-2 are promulgated pursuant to the provisions of sections 6(c) and 38(a) of the Act (15 U.S.C. 80a-6(c) and 80a-37(a), respectively). The amendments to rule 0-1(e) are promulgated pursuant to the provisions of section 38(a) of the Act (15 U.S.C. 80a-37(a)). Because this rulemaking is exemptive in nature, the Commission finds, pursuant to section 553(d)(1) of the Administrative

Procedure Act (5 U.S.C. 553(d)(1)), that the 30 day delay in effectiveness is not required and, accordingly, the rule and rule amendments will become effective immediately upon publication in the Federal Register.

By the Commission.

George A. Fitzsimmons,
Secretary.

December 23, 1983.

[FR Doc. 84-804 Filed 1-11-84; 8:45 am]

BILLING CODE 8010-01

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 10

[T.D. 84-16]

Refund of Duties on Imported Watches and Watch Movements

AGENCY: Customs Service, Treasury.

ACTION: Interim regulation.

SUMMARY: This document amends the Customs Regulations to reflect a new incentive designed by the Congress to stimulate watch assembly activity in the U.S. insular possessions. The new incentive is in the form of a production incentive certificate entitling the holder (or another party to which it has transferred some or all of its entitlement) to secure the refund of duties paid to Customs on specified watches, watch movements (including solid state watches and watch movements), and watch parts entered into the United States during a 3-year period beginning 2 years before the issue date of the certificate of entitlement. This incentive will be administered jointly by the Department of Commerce and Interior and by Customs.

DATES:

Effective date: January 12, 1984.

Comments: Because the statute upon which this regulation is based became effective on January 27, 1983, the amendment is being published as an interim regulation, effective on January 12, 1984. However, written comments received by Customs before March 12, 1984 will be considered in determining whether any changes to the regulation are required before a final rule is published.

ADDRESS: Comments (preferably in triplicate) may be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Betty L. Colburn, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5307)

or

Richard Seppa or Frnak Creel, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230 (202-377-1660).

SUPPLEMENTARY INFORMATION:

Background

Pub. L. 97-446, an Act "to reduce certain Customs duties, to suspend temporarily certain duties, to extend certain existing suspensions of duties, and for other purposes," was approved on January 12, 1983.

The Act provides a new incentive designed to stimulate watch assembly activity in the United States insular possessions (i.e., U.S. Virgin Islands, Guam, American Samoa). Since 1959, the watch and watch movement industry has been a significant factor in the economy and in employment opportunities in the U.S. insular possessions. This has been, in part, due to tariff incentives provided under the Tariff Schedules of the United States (TSUS, 19 U.S.C. 1202), which previously afforded duty-free entry to watches and watch movements which did not contain foreign materials to the value of more than 70 percent of their total value.

According to the legislative history of Pub. L. 97-446 (See H.R. 4566, section 115, page 14), the industry provided more than 1,300 jobs at its peak. However, since 1980, over half the industry has closed down and employment, at the time of enactment, was under 100 people. This is largely due to a market shift away from mechanical watches and toward quartz digital watches. Producers in the insular possessions have not refitted to accommodate this market shift.

Import levels from the U.S. insular possessions are low as compared to quotas against which they are monitored. The U.S. Virgin Islands, for example, shipped 2.6 million units in 1981 against a quota of just over 7 million units.

The intent of the Act is to spur production in the insular possessions and to encourage those producers who are there to stay and those producers who have left, to return.

Section 110 of the Act amended the TSUS by eliminating the foreign content

value limitation set out in General Headnote 3(a), TSUS. Prior to the Act, General Headnote 3(a), TSUS, provided that watches and watch movements manufactured in and imported from the insular possessions could enter the United States free of duty if they did not contain foreign materials to the value of more than 70 percent of their total value. Former law also provided a quantitative restriction on such imports equal to one-ninth of apparent U.S. consumption.

The Act changes the tariff schedules as follows: (1) Eliminates the limit of 70 percent content from foreign countries; (2) establishes the annual limit on duty-free entry at 7 million units in 1984 and at 10 million units or one-ninth of apparent U.S. consumption (whichever is greater) in subsequent years; (3) provides authority to the Secretaries of Commerce and Interior to redistribute the annual limit among the territories; and (4) provides a duty rebate for the industry which would reflect the amount of local labor content in the watches.

However, the Act forbids the extension of General Headnote 3(a), TSUS, privileges and benefits to any articles containing materials to which rates of duty set forth in Column 2 (products of Communist countries as defined in General Headnote 3(f), TSUS) apply and limits the size of the 1983 calendar year allocation of watch quotas to 3,000,000 units produced or manufactured in the U.S. Virgin Islands, 1,200,000 units in Guam, and 600,000 units in American Samoa. In 1984 and thereafter, the Departments of Commerce and Interior will have the authority to adjust the size of the allocation downward by no more than 10 percent or upward by no more than 20 percent in any one year.

The new incentive created by the Act is in the form of a production incentive certificate which can be used to secure the refund of duties paid on specified watches, watch movements, and watch parts entered during a 3-year period beginning 2 years before the issue date of the certificate. This certificate is to be issued to eligible producers by March 1 of each calendar year.

The incentive will be administered jointly by the Departments of Commerce and Interior and by Customs. Copies of International Trade Administration, Form ITA-360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements, will be issued by Commerce/Interior and kept by the insular producers on their premises or at another location approved in advance by the Departments. Form ITA-361, A Request for Refund of Duties on Watches and Watch Movements, will be presented by

the certificate holder (or, because the certificate entitlements are transferable, another party legally entitled to a portion or all of the entitlement) to a Customs official at the port of entry where the articles were entered. The documentation accompanying the request form shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

The Form ITA-360 certificate expires 1 year from its date of issuance. A refund request made by either the insular producer itself or by a transferee named by the insular producer on Form ITA-361 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA-360 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

A request for refund on Form ITA-361 must be filed at the port where the watch import entry was originally filed, then forwarded to the appropriate Customs regional office of that port for payment, and finally, together with payment, sent back to the originating port. Every effort will be made to expedite the processing of these refunds. A fee of 5 percent will be deducted from each refund request as reimbursement to salaries and expenses of those Customs personnel processing the request. This fee may later be reduced if actual costs are less than the 5 percent amount.

This document amends Part 10, Customs Regulations (19 CFR Part 10), by adding a new § 10.181 to provide a procedure to secure the refund of duties on watches and watch movements for watch producers in the U.S. insular possessions.

Comments

Before adopting the regulation as a final rule, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. to 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

As discussed in the legislative history of Pub. L. 97-446, due to the state of the

watch industry in the U.S. insular possessions, the need for immediate action to stimulate watch assembly activity in these areas, and the fact that the Act became effective on January 27, 1983, it has been determined that, pursuant to 5 U.S.C. 553(b)(3), notice and public procedure are impracticable, unnecessary, and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), it has been determined that good cause exists for dispensing with a delayed effective date.

E.O. 12291

Inasmuch as Customs does not believe that the amendment meets the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, a regulatory impact analysis has not been prepared.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601-612) are inapplicable. However, any comments submitted with regard to the economic impact of this regulation will be considered before a final rule is issued.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from the Departments of Commerce and Interior and other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports.

Amendments to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended by adding a new center heading and new § 10.181 to read as follows:

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

Watches and Watch Movements From U.S. Insular Possessions

§ 10.181 Watches and Watch Movements From U.S. Insular Possessions.

(a) The issuance of an International Trade Administration Form ITA-360, Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements, by the Department of Commerce, authorizes a producer of

watches in the U.S. insular possessions to file requests with Customs for the refund of duties paid on imports of watches, watch movements (including solid state watches and watch movements), and watch parts (excepting separate watch cases and any articles containing any materials to which rates of duty set forth in Column 2, Tariff Schedules of the United States (19 U.S.C. 1202) apply). The amount of the refund requested may be up to the value specified in the certificate, provided that the articles for which refunds are requested were entered during a 3-year period beginning 2 years before the date of issuance of the Form ITA-360 certificate from the Department of Commerce.

(b) The Form ITA-360 may not be used to secure refunds. To secure a refund, the party requesting the refund of duties (claimant) must present to Customs Form ITA-361, Request for Refund of Duties on Watches and Watch Movements, properly executed, and authenticated by Department of Commerce.

(c) By completing Form ITA-361, the insular producer may either:

- (1) Transfer its entitlement, in whole or in part, to any other party for any consideration agreed to by the insular producer and the transferee, or
- (2) Request the refund of duties to itself.

(d) A claimant must file Form ITA-361 with Customs at the same port where the watch import entry was originally filed and duties paid. The documentation accompanying Form ITA-361 shall include a copy of the import entry, providing proof that duty was paid on the watches and watch movements.

(e) When requesting the refund of duties on Form ITA-361, the claimant also must complete and submit to Customs the declaration on the form which reads as follows:

"I declare that the information given above is true and correct to the best of my knowledge and belief; that no notices of exportation of articles with benefit of drawback were filed upon exportation of this merchandise from the United States; that no liquidated refunds on the articles relating to the present claim have been paid; and that no protest or request for litigation for refund of duties paid and herewith claimed has been made."

(f) A fee of 5 percent will be deducted from each refund request as reimbursement to salaries and expenses of those Customs personnel processing the request.

(g) Form ITA-360 expires 1 year from its date of issuance. Any refund request on Form ITA-361 made by either the

insular producer itself or any transferee named on Form ITA-360 must be filed within this 1-year period. This expiration date applies equally to all refund requests, whether a single request for the entire amount specified in the Form ITA-360 certificate or multiple requests for partial amounts. Refund requests will be accepted until either the amount specified in the certificate is depleted or until the certificate expires 1 year from its date of issuance.

(h) Customs will process only those refund requests made in accordance with the joint rules of the Department of Commerce and the Interior governing the issuance and handling of certificates and the transfer of entitlements as contained in 15 CFR Part 303.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 (5 U.S.C. 301, 19 U.S.C. 66, 1202, 1624 (Gen. Hdnte. 11, TSUS)))

William von Raab,
Commissioner of Customs.

Approved: December 14, 1983.

John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 84-826 Filed 1-11-84; 8:45 am]
BILLING CODE 4820-02-M

19 CFR Part 10

[T.D. 84-17]

Elimination of Duty on Articles Imported for Physically or Mentally Handicapped Persons

AGENCY: Customs Service, Treasury.

ACTION: Interim regulation.

SUMMARY: This document amends the Customs Regulations to provide a procedure for the duty-free treatment of imported articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons. Many articles for the blind, and some for other handicapped individuals, already are entitled to duty-free entry under existing law. This document describes a new law which expands coverage to encompass most articles specially designed or adapted for use by the handicapped other than articles solely for the blind.

EFFECTIVE DATE: January 12, 1984.

Comments: Because the statute upon which this regulation is based became effective on February 11, 1983, the amendment is being published as an interim regulation, effective on January 12, 1984. However, written comments received by Customs before March 12, 1984 will be considered in determining whether any changes to the regulation

are required before a final rule is published.

ADDRESS: Written comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, Room 2426, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20223.

FOR FURTHER INFORMATION CONTACT: Herbert Geller, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229 (202-566-5307) or Richard Seppa or Frank Creel, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230 (202-377-1660).

SUPPLEMENTARY INFORMATION:

Background

The Agreement on the Importation of Educational, Scientific and Cultural Materials, known as the Florence Agreement, is an international agreement providing for duty-free trade among its 80 signatories in specified categories of articles. These categories are: (1) Books, publications, and documents; (2) works of art and collector's pieces; (3) visual and auditory materials; (4) scientific instruments and apparatus; and (5) articles for the blind.

A Protocol to the Florence Agreement, enacted into law as Pub. L. 97-446 and known as the Nairobi Protocol, broadens the scope of the Florence Agreement by removing some of its restrictions on articles otherwise entitled to duty-free status, and by expanding the Agreement to embrace technologically new articles and previously uncovered works of art and film. One major new category of articles is all materials specially designed for the education, employment, and social advancement of physically or mentally handicapped persons. Thus, the Protocol is intended to afford duty-free treatment for articles not only for the blind, but for all other handicapped persons without regard to the source of their affliction.

Many articles for the blind, and some for other handicapped individuals, already are entitled to duty-free entry under existing statutes. The Protocol expands coverage to encompass most articles specially designed or adapted for use by other handicapped individuals. Consequently, Part 4 of Schedule 9, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), has been amended by inserting item numbers 960.10, 960.12, and 960.15, "Articles Specially Designed or Adapted for the Use or Benefit of the Blind or

other Physically or Mentally Handicapped Persons." Part 4, TSUS, headnotes and item numbers 960.10, 960.12, and 960.15, TSUS, provide as follows:

Part 4 Headnote:

1. An article described in any of the provisions of this part, if entered during the period specified in the last column, is classifiable in said provision, if the conditions and requirements thereof and of any applicable regulations are met. The provisions of this part shall prevail over any provision describing such article in schedules 1 to 8, inclusive.

2. For the purposes of items 960.10, 960.12, and 960.15—

(a) The term "*physically or mentally handicapped persons*" includes any person suffering from a permanent or chronic physical or mental impairment which substantially limits one or more major life activities, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(b) These items do not cover—

(i) articles for acute or transient disability;

(ii) spectacles, dentures, and cosmetic articles for individuals not substantially disabled;

(iii) therapeutic and diagnostic articles; and

(iv) medicines or drugs.
Articles specially designed or adapted for the use or benefit of the blind or other physically or mentally handicapped persons (however provided for in schedules 1 to 7):

Articles for the blind:

960.10 Books, music, and pamphlets, in raised print, used exclusively by or for them.

960.12 Braille tablets, cubarithms, and special apparatus, machines, presses, and types for their use or benefit exclusively.

960.15 Other.

The articles added by these new provisions became eligible for duty-free treatment for the period beginning February 11, 1983, and ending August 11, 1985. During this period, the policy of treating these articles as duty-free will be reviewed by the President. Instructions regarding the duty-free treatment of these articles have already been issued to Customs field officers by memoranda dated February 22, 1983, and July 13, 1983. Articles have been entered duty-free under this new policy since February 11, 1983. However, it is noted that item numbers 826.10 and 826.20, TSUS, already provide permanent duty-free treatment for those articles covered by the new provisions 960.10 and 960.12, TSUS, on a temporary basis. Therefore, there is no time limit

applicable to duty-free treatment of these particular articles.

Pursuant to the authority in section 165 of Pub. L. 97-446, this document amends Part 10, Customs Regulations, (19 CFR Part 10), to provide a procedure for the duty-free treatment of articles specially designed or adapted for the use or benefit of physically or mentally handicapped persons other than articles solely for the blind. Therefore, the interim regulations proposed in this document apply only to articles covered under item 960.15, TSUS.

Those articles claimed under item 960.15, TSUS, may be admitted duty-free by Customs with the entry summary or with the entry when the entry summary is filed at the time of entry, upon the submission of a Department of Commerce International Trade Administration Form ITA-362P, "Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty under Pub. L. 97-446 (other than Articles for the Blind)", providing specified information about the articles to be imported.

The requirement for the Form ITA-362P is limited to articles entered under item 960.15, TSUS. This form may not be treated, in accordance with § 141.66 (19 CFR 141.66), as a missing document. A bond may not be given to Customs for the production of this form at the time of entry. This prohibition fulfills the requirements of the implementing legislation to monitor the articles' entry. The Form ITA-362P must be presented at the time entry summary is filed following release of the articles. A duty-free entry summary will be rejected and appropriate estimated duties required if Form ITA-362P is not presented at the time of entry summary filing.

In accordance with the intent of the legislation, an insignificant adaptation would not result in duty-free treatment for a relatively expensive article. Otherwise, this special tariff category would create incentives for commercially motivated tariff-avoidance schemes and pre-import and post-entry manipulation. Rather, for an entire modified article to be accorded duty-free treatment, the modification or adaptation must be significant, so as to render the article clearly for use by handicapped persons. Whether a modification is significant will depend on Customs' consideration of such criteria as the relative cost and permanence of the adaptation and the degree to which the imported article with the adaptation is dedicated to use by the handicapped. For example, an automobile fitted with special hydraulic seats and modified to be operated primarily with hand controls would not

be used under normal circumstances by the non-handicapped, and such a modification represents a considerable expense to the user. This special automobile would qualify for duty-free treatment. On the other hand, special attachments to permit a handicapped individual to operate the foot brake or gas pedal of an otherwise conventional automobile are inexpensive modifications relative to the cost of the automobile and can be readily removed after importation. This type of adaptation is insufficient to alter the basic character of the conventional automobile and render it eligible for duty-free entry. (The part used in the modification, though, might qualify if the modified part is entered separately.)

Customs cannot in this document answer all questions concerning this matter. Such questions should be submitted to the Director, Entry, Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in accordance with the ruling procedures set forth in Part 177, Customs Regulations (19 CFR Part 177).

This document amends Part 10, Customs Regulations (19 CFR Part 10), by adding a new section 10.182 to provide a procedure to secure the duty-free entry of certain articles for physically or mentally handicapped persons other than articles solely for the blind.

Comments

Before adopting the regulation as a final rule, Customs will give consideration to any written comments (preferably in triplicate) timely submitted to the Commissioner. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Customs Service Headquarters, Room 2426, 1301 Constitution Avenue NW., Washington, D.C. 20229.

Inapplicability of Notice and Delayed Effective Date Provisions

The Department of State listed the Nairobi Protocol as one of the few international agreements for which there is an urgent need. The Protocol will serve to promote a freer exchange of ideas and cultural articles and foster greater international understanding and peace, while benefitting handicapped individuals. Therefore, it has been determined that, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are impracticable, unnecessary, and

contrary to the public interest. For the same reasons a delayed effective date is being dispensed with, pursuant to 5 U.S.C. 553(d)(3).

E.O. 12291 and Regulatory Flexibility Act

Because the amendment does not meet the criteria for a "major rule" within the meaning of section 1(b) of E.O. 12291, Customs has not prepared a regulatory impact analysis.

Because of the need to expedite the issuance of this regulation, Customs has not yet been able to determine if the regulation will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601-612). However, Customs will continue to review this matter and will consider any comments submitted before issuing a final rule.

Paperwork Reduction Act

The International Trade Administration, U.S. Department of Commerce, submitted Form ITA-362P, the form used to request duty-free treatment for articles specially designed or adapted for use by the handicapped, to the Office of Management and Budget for approval. Form ITA-362P was approved and its OMB approval number is 0625-0118, which expires March 31, 1985.

Drafting Information

The principal author of this document was James S. Demb, Regulations Control Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from the Department of Commerce and other Customs offices participated in its development.

List of Subjects in 19 CFR Part 10

Customs duties and inspection, Imports.

Amendment to the Regulations

Part 10, Customs Regulations (19 CFR Part 10), is amended by adding a new center heading and new section 10.182 to read as follows:

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

Articles Specially Designed or Adapted for Use by Handicapped Persons Other Than Articles Solely for the Blind

§ 10.182 **Articles Specially Designed or Adapted for Use by Handicapped Persons Other Than Articles Solely for the Blind.**

(a) Articles specially designed or adapted for use by handicapped persons other than articles solely for the blind

claimed to be entitled to free entry under temporary tariff item 960.15, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202), may be admitted free of duty by Customs upon the submission of an International Trade Administration Form ITA-362P, "Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty under Pub. L. 97-446 (other than Articles for the Blind)," providing specified information about the articles to be imported.

(b) The requirement for the Form ITA-362P is limited to merchandise entered under item 960.15, TSUS. This form may not be treated, in accordance with § 141.66 (19 CFR 141.66), as a missing document. A bond may not be given to Customs for the production of this form at the time of entry. The Form ITA-362P must be presented with the entry summary or with the entry when the entry summary is filed at the time of entry. A duty-free entry summary will be rejected and appropriate estimated duties required if Form ITA-362P is not presented at the time of entry summary filing. The effective period for duty-free treatment of these articles extends until August 11, 1985, unless extended by the President.

(R.S. 251, as amended, sec. 624, 46 Stat. 759, 77A Stat. 14 [5 U.S.C. 301, 19 U.S.C. 66, 1202 (Gen. Hdnt. 11), 1624])

William Green,
Acting Commissioner of Customs.

Approved: December 21, 1983.
John M. Walker, Jr.,
Assistant Secretary of the Treasury.

[FR Doc. 84-825 Filed 1-11-84; 8:45 am]
BILLING CODE 4820-02-M

19 CFR Part 177

[T.D. 84-15]

Tariff Classification of Bulk Liquid Chocolate

AGENCY: Customs Service, Treasury.
ACTION: Continuation of position.

SUMMARY: This document advises the public that after consideration of numerous public comments and extensive review, Customs has determined to continue its current position regarding the tariff classification of certain bulk chocolate imported in liquid form for further manufacturing. The chocolate will be classified for Customs purposes under the provision for sweetened chocolate in any other form, in item 156.30, Tariff Schedules of the United States (TSUS). A proposed change of position, which was published in response to a public

petition and would have resulted in the classification of this merchandise under the tariff provision for sweetened chocolate in bars or blocks weighing 10 pounds or more each, has not been adopted.

EFFECTIVE DATE: January 12, 1984.

FOR FURTHER INFORMATION CONTACT: Lee C. Seligman, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

On March 22, 1983, a notice was published in the Federal Register (48 FR 11956), advising the public that, as a result of a request for a tariff classification ruling, Customs was reviewing its current position of classifying certain bulk liquid chocolate under the provision for other sweetened chocolate in item 156.30, Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). Customs requested comments on the proposal to reclassify that merchandise under the provision for sweetened chocolate in bars or blocks weighing 10 pounds or more each in item 156.25, TSUS. Comments were to have been received by May 23, 1983. However, the comment period was extended to June 22, 1983, by notice published in the Federal Register on May 20, 1983 (48 FR 22747).

The requestor represented to Customs that the most economical method of transporting the chocolate from Canada to the United States is in 40,000 pound loads in temperature controlled tank trucks. If left at room temperature, the chocolate would harden. However, the trucks contemplated for use in transporting the chocolate would maintain sufficient heat during transit to keep the chocolate in a molten state during transportation and transfer in order to facilitate unloading and further processing in the United States. Transport of the chocolate in other than molten form would substantially increase the costs of the contemplated operation and probably create a result which would be economically unfeasible.

It was also represented to Customs that the legislative history of item 156.25, TSUS, clearly shows that Congress intended the lower rate of duty to apply to all bulk imports of sweetened chocolate for manufacturing use and that the specification of "bars or blocks weighing 10 pounds or more each" merely reflected Congress' understanding of the form in which chocolate in bulk for further

manufacturing was transported at the time this provision was originally enacted.

Customs sought public comment on the proposal, especially on the following issues:

(1) Does the legislative history of item 156.25, TSUS, clearly reveal a Congressional intent to prescribe a lower rate of duty for all bulk shipments of sweetened chocolate and not just those "in bars and blocks weighing 10 pounds or more each"?

(2) If the answer to the previous question is affirmative, is it proper for Customs to ignore the phrase "in bars or blocks weighing 10 pounds or more each" in considering whether liquid chocolate may be classified under item 156.25, TSUS?

(3) If so, how should chocolate in bulk form for further manufacturing be defined?

Although no uniform and established practice has been found to exist (within the meaning of § 177.10(c), Customs Regulations (19 CFR 177.10(c)), Customs' decision in this matter could have had a substantial impact upon both importers and domestic manufacturers. Merchandise subject to this decision could be exempt from the quota restraints of items 950.15 and 950.16, TSUS.

Analysis of Comments and Findings

Numerous comments were received in response to the published notice. Replies were received from members of the general public, members of the trade, and several members of Congress.

Of the comments received from the general public, 38 favored the change of position, 35 favored the present classification scheme, and 31 expressed either an alternative position, such as averaging the duty rates at issue, or did not clearly set forth a position.

The comments from members of the trade were almost unanimous in their opposition to the proposed change.

Our review of the petition, the comments, and the language of the provisions at issue leads us to believe that Customs' current classification is correct. We believe that the language set forth in items 156.25, TSUS, and 156.30, TSUS, is clear and unambiguous and, therefore, resort to the limited legislative history is unnecessary. *C. J. Tower & Sons v. United States*, 41 CCPA 195, C.A.D. 550 (1953).

Absent the clear indication that Congress intended a commercial or trade definition to prevail, it is a common and permissible practice to resort to standard dictionary and encyclopedic definitions to gain an understanding of tariff terms. Our

reading of these standard sources uniformly indicates that the expression "bars or blocks weighing 10 or more pounds each" intends a *solid* mass, usually rectangular in shape, or a compact *solid* piece of material.

Even assuming that sufficient ambiguity exists to require reference to the limited legislative history available, the petition still should be denied. Our reading of the relevant legislative floor debate surrounding amendment of the predecessor provision leads to the conclusion that Congress intended a lower rate of duty *only for small* quantities of *high quality* chocolate from Switzerland which was not domestically available and which was shipped in "bars or blocks of 10 or more pounds each (emphasis provided)." Chocolate not meeting these strict requirements in both form and quantity was to be, and has been, classified under the provision for chocolate in *any other form* (emphasis provided). Congress, by enactment of the amendment to the tariff schedules of 1929 (and the carrying forward of the identical language to date), expressly provided for *certain* sweetened chocolate (i.e., "in bars or blocks of 10 or more pounds each" in paragraph 777 (now item 156.25, TSUS)) to be dutiable at one rate and, *if in any other form*, at a second higher rate (emphasis provided). (71 Con. Rec. 5672, 5673 (November 16, 1929)).

Furthermore, Congress, being charged with knowledge of trade practice, common meaning, and the position taken by Customs regarding the application of these provisions, has never modified or expanded the coverage of this provision. Indeed, ratification of Customs position by failure to modify these provisions, even during total revision culminating in the Tariff Classification Act of 1982, indicates that the provisions in question were and are being administered in accordance with Congressional intent. (Pub. L. 87-456, 76 Stat. 72 (May 24, 1962)).

Continuation of Position

After careful analysis of all comments received and a thorough review of this matter, the proposal to classify liquid bulk chocolate under the provision for sweetened chocolate in bars or blocks weighing 10 pounds or more each in item 156.25, TSUS, has not been adopted. Accordingly, Customs will continue its current position of classifying the liquid bulk chocolate in question under item 156.30, TSUS.

Drafting Information

The principal author of this document was Larry L. Burton, Office of

Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: November 18, 1983.

William Green,

Acting Commissioner of Customs.

[FR Doc. 84-027 Filed 1-11-84; 8:45 am]

BILLING CODE 4320-02-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

Water Supply and Sewage Treatment at Safety Rest Areas

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the FHWA's existing regulation concerning water supply and sewage treatment at highway safety rest areas (23 CFR Part 650). These revisions incorporate certain changes made by the Federal-Aid Highway Act of 1981 affecting the participation of Federal-aid highway funds in Interstate safety rest area projects. Further, the revisions update certain provisions to expressly recognize the Environmental Protection Agency's (EPA) regulations implementing the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA) as part of FHWA policies and procedures for providing safe and adequate water supply and sewage treatment facilities at safety rest areas constructed with Federal-aid funds.

EFFECTIVE DATE: February 13, 1984.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Baumgardner, Office of Engineering (HNG-31), (202) 472-7690, or Mr. Jerry Boone, Office of the Chief Counsel (HCC-10), (202) 426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: This rule amends the FHWA's existing regulation concerning water supply and sewage treatment at highway safety rest areas (23 CFR Part 650). These revisions incorporate certain changes made by the Federal-Aid Highway Act of 1981 (Pub. L. 97-134, 95 Stat. 1693) affecting the participation of Federal-aid highway funds in Interstate safety rest area projects. Further, the revisions update certain provisions to expressly recognize EPA's regulations

implementing the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as part of FHWA policies and procedures for providing safe and adequate water supply and sewage treatment facilities at safety rest areas constructed with Federal-aid funds.

The Federal-Aid Highway Act of 1981 restructured the Interstate Highway Program by reducing the cost to complete the Interstate System and by expanding the Interstate 3R Program (resurfacing, restoration and rehabilitation) to a 4R Program through the addition of reconstruction as an eligible item. To achieve the reduced Interstate cost-to-complete, § 4(b) of the Act limited the obligation of Interstate construction funds by providing a new definition for Interstate completion. This provision limits funding of Interstate construction projects in a variety of ways and to those features necessary to provide a minimum level of acceptable service. Section 4 (b) generally further limits funding for Interstate construction to previously approved work included in the 1981 Interstate Cost Estimate (ICE), which was approved by the Act as well.

As a result of the Act, many features previously eligible for Interstate construction funding are no longer eligible, but may be funded with Interstate 4R funds. The only safety rest area work eligible for Interstate construction funds is that (1) included in the 1981 ICE and (2) necessary to replace existing similar services, impacted by otherwise eligible roadway work, on gap sections or on incorporated segments with approved major upgrading. Other Interstate highway rest area work is eligible for Interstate 4R funds.

Accordingly, the principal change made by this revision is to set forth the eligibility limitations for Interstate construction funding of water supply and sewage treatment facilities at safety rest areas. Paragraph 650.515(a), the operative provision, provides that work to upgrade existing safety rest area water supply and sewage facilities, or to construct new facilities, is to be funded with Interstate 4R funds or primary funds, rather than Interstate construction funds. An exception to this change, as described above, is allowed for certain safety rest areas.

Issuance of existing Part 650 in October 1974 preceded enactment of the SDWA which became law in December 1974. The SDWA established national primary drinking water standards. It is the primary law protecting groundwater purity for domestic use. The EPA has implemented the SDWA at 40 CFR Parts 141 and 142. Part 141 delineates

maximum contaminant levels for specified microbiological and chemical contaminants in water provided by a public water system. Part 142 seeks to implement these primary drinking water standards.

The CWA established permit and control procedures for discharges of pollutants into bodies of water. When existing Part 650 was issued, the effluent limitations promulgated pursuant to the CWA were in proposed form. The proposed limitations were adopted as final in 1977.

When highway construction and operation result in the possible discharge of a pollutant from a point source, a permit is required under the National Pollution Discharge Elimination System (NPDES). The NPDES program includes discharges of treated sewage effluent from safety rest areas. The EPA regulations for the NPDES program are set forth in 40 CFR Parts 121-125. Also, pursuant to the CWA, 40 CFR Part 133 provides information on the level of effluent quality attainable through the application of secondary treatment.

The revisions made by this final rule are consistent with the SDWA and CWA and pertinent EPA implementing regulations, at 40 CFR Parts 141 and 142 and Parts 125 and 133, respectively, and incorporate such EPA regulations as part of FHWA's policies and procedures for providing safe and adequate water supply and sewage treatment facilities at safety rest areas.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory policies and procedures. Notice and opportunity for comment are not required under the DOT regulatory policies and procedures because this action merely makes technical changes and changes required by statute and because it is not anticipated that publication for comment would result in the receipt of useful information. A notice of proposed rulemaking is not required under the Administrative Procedure Act because the matters affected relate to grants, benefits or contracts pursuant to 5 U.S.C. 553(a)(2). It is not anticipated that this action will have a significant economic effect since it is merely intended to improve the internal operations of the highway program. Therefore, a full regulatory evaluation is not required. For the foregoing reason and because these changes will only affect State highway agencies, under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a

significant economic impact on a substantial number of small entities.

In consideration of the foregoing, Subpart E of Part 650 of Chapter I, Title 23, Code of Federal Regulations, is amended to read as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 650

Grant programs—Transportation, Highways and roads, Safety rest areas, Water and sewage treatment.

Issued on: January 5, 1984.

L. P. Lamm,

Deputy Administrator, Federal Highway Administration.

Part 650 is amended by revising Subpart E to read as follows:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

Subpart E—Water Supply and Sewage Treatment at Safety Rest Areas

Sec.	Purpose.
650.501	Purpose.
650.503	Applicability.
650.505	Definitions.
650.507	Policy.
650.509	Site selection.
650.511	Water supply facilities.
650.513	Sewage treatment facilities.
650.515	Federal-aid participation in construction costs.

Authority: 23 U.S.C. 109(h), 315, 319; 49 CFR 1.48(b); Pub. L. 97-134, 95 Stat. 1699.

Subpart E—Water Supply and Sewage Treatment at Safety Rest Areas

§ 650.501 Purpose.

The purpose of this regulation is to prescribe Federal Highway Administration (FHWA) policies and procedures for providing safe and adequate water supply and sewage treatment facilities at safety rest areas constructed with Federal-aid funds.

§ 650.503 Applicability.

The provisions of this regulation shall apply to safety rest areas constructed with Federal-aid funds with existing or proposed drinking water supply and sewage treatment facilities.

§ 650.505 Definitions.

(a) *Designated sole source aquifer*—an aquifer, as established in 40 CFR Part 149 pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f, 300h-3(e), which represents the major source of a community's water supply.

(b) *Effluent limitations*—the standards governing the discharge quality of treated sewage as established by the Environmental Protection Agency (EPA) in 40 CFR Part 133 pursuant to the Clean Water Act, 33 U.S.C. 1311.

(c) *Federal drinking water standards*—the standards for assessing the physical, chemical, biological, and radiological characteristics of water for drinking as established by EPA in 40 CFR Part 141 pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f, which delineate the maximum permissible level of a contaminant in water provided by a public water system.

(d) *National pollutant discharge elimination system (NPDES)*—the regulatory permit program that controls the quality of treated sewage discharged from sewage treatment plants as established in 40 CFR Part 125 pursuant to the Clean Water Act, 33 U.S.C. 1342.

(e) *Receiving water quality standards*—the standards for maintaining or improving water quality in bodies of water and streams as set forth in the Clean Water Act, 33 U.S.C. 1313, and 40 CFR Part 120—Water Quality Standards.

(f) *Safety rest area*—a roadside facility safely removed from the traveled way with parking and such facilities for the motorist deemed necessary for rest, relaxation, comfort and information. The term is synonymous with "rest and recreation areas" as described in 23 U.S.C. 319.

§ 650.507 Policy.

It is the policy of FHWA:

(a) That drinking water supply systems shall be designed, constructed, and maintained to provide water which meets drinking water standards established by EPA in 40 CFR Part 141 promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*, as amended, or State standards, whichever are more stringent;

(b) That onsite sewage treatment facilities shall be designed, constructed, and operated to meet:

(1) Effluent limitations established by EPA in 40 CFR Part 133 promulgated pursuant to the Clean Water Act, 33 U.S.C. 1311 *et seq.*, as amended, or State standards, whichever are more stringent,

(2) The receiving water quality standards, and

(3) Requirements for any sole source aquifer as established in 40 CFR 141 promulgated pursuant to the Safe Drinking Water Act, 42 U.S.C. 330f *et seq.*, as amended, or State standards, whichever are more stringent; and

(c) That sewage systems not covered by paragraph (b) of this section shall be designed, constructed, and operated to meet the applicable State standards.

§ 650.509 Site selection.

Adequate information shall be obtained in the site selection process to insure that the following conditions can be met:

(a) The availability of a drinking water supply source in adequate quantity and quality, including water from public water supply systems.

(b) The capability to dispose of sewage generated by the safety rest areas in a manner consistent with these regulations, including any potential impact to sole source aquifers. Where a public sewage system is to be utilized, the system's ability to adequately treat and dispose of the sewage shall be ascertained.

§ 650.511 Water supply facilities.

The following factors shall apply to the design of water supply facilities for safety rest areas:

(a) In the interest of conserving energy and underground water resources, reduced-flow fixtures shall be considered for the safety rest area building.

(b) Water treatment shall be accomplished at the site as may be necessary to meet drinking water standards.

(c) Onsite storage, auxiliary supplies or recirculating units shall be provided as may be necessary to obtain a water supply that will meet peak demands.

(d) The safety rest area's drinking water supply, regardless of source, shall be monitored in accordance with State regulatory agency standards.

§ 650.513 Sewage treatment facilities.

The following factors shall apply to the design of sewage treatment facilities for safety rest areas:

(a) The permit required under the National Pollution Discharge Elimination System (NPDES) shall be obtained prior to approval of Plans, Specifications and Estimate (PS&E) and authorization for the advertisement of bids.

(b) Sewage treatment shall be accomplished at the site as may be necessary to meet effluent limitations. Any effluent shall be monitored in accordance with the standards established by the NPDES permit.

§ 650.515 Federal-aid participation in construction costs.

(a) *New safety rest areas.* (1) Federal-aid projects may be approved for the construction of drinking water supply

and sewage treatment facilities that will meet the requirements of § 650.507.

(2) Federal-aid participation in the cost to connect to public facilities may include participation in the State highway agency's share of the cost to construct, expand or improve the public facility to assure adequate water supply or sewage treatment. Participation in amounts expended for capital improvements to the public facility will be limited to the lesser of:

(i) The appropriate pro rata share of the highway project's contribution to the need for the improvements;

(ii) The present worth of the capital investment, maintenance and operation costs of an onsite facility.

(3) Federal-aid Interstate (FAI) construction funds may be used for safety rest areas on the Interstate System if the work is necessary to replace existing similar services on gap sections or as part of the approved major upgrading of an incorporated segment. The FAI construction funds are limited to costs for speed change lanes, entrance and exit roadways, circulatory roads, parking areas, walkways, curbs, lighting installation, replacement of other existing similar services, and corresponding preliminary engineering and right-of-way costs.

(4) For Interstate projects, the work described in paragraphs (a) (1) and (2) of this section that is not eligible for FAI construction funds shall be eligible for funding with Interstate 4R funds or primary funds. This would include the costs for both construction and completion of improvement of safety rest areas and the costs of any upgrading of water supply facilities, sewage treatment facilities or provisions to serve the handicapped.

(b) *Existing safety rest areas.*—(1) *Quantity requirements.* Federal-aid funds other than FAI construction funds may be used to expand or improve water supply and sewage systems at existing safety rest areas without regard for the design year for the original construction.

(2) *Quality requirements.* (i) The use of Federal-aid funds other than FAI construction funds may be approved to improve or replace existing water supply systems which fail to meet existing or new and more stringent drinking water quality standards imposed pursuant to Federal or State law.

(ii) Where safety rest area sewage effluent quality does not meet effluent limitations, the use of Federal-aid funds other than FAI construction funds in sewage treatment facility replacement or improvements to meet those

standards may be authorized for projects where the construction of these facilities was authorized prior to the date of this regulation, subject to the following:

(A) Evidence of a failure of existing treatment facility to meet effluent standards established by field investigation and appropriate testing of influent and effluent samples.

(B) Failure to meet effluent standards is not a result of inadequate maintenance or plant operation. If plant operation is deficient, such steps as increased operator training or certification should be accomplished.

(C) Receipt of an engineering report describing the characteristics, volumes, and rates of sewage flows. The report should also contain design computations and a discussion of modifications required to meet the standards.

(c) *Procedures.* Project proposals, which incorporate sophisticated processes or involve difficult design problems should be forwarded to the Regional Federal Highway Administrator for review and comment. The Washington Headquarters office is available for consultation upon request.

[FR Doc. 84-793 Filed 1-11-84; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Extension of Public Comment Period on the status of the Oklahoma Permanent Regulatory Program

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

ACTION: Extension of public comment period.

SUMMARY: On May 25, 1983, the Director, OSM, announced that he had reason to believe that Oklahoma may not be implementing, administering, maintaining or enforcing its approved program to regulate surface coal mining and reclamation operations (48 FR 23414). Following a June 15, 1983, informal conference between OSM and the Oklahoma Department of Mines, the Director gave notice that he still had reason to believe that Oklahoma is not adequately implementing, administering, maintaining or enforcing its approved program (48 FR 52299, November 17, 1983). By that notice, the Director scheduled a public hearing and public comment period to provide an opportunity for interested persons to

express their concerns on the implementation of the Oklahoma program in accordance with the provisions of 30 CFR 733.12(d). The public hearing was held on December 21, 1983, in Muskogee, Oklahoma. The public comment period announced in the Director's notice extended through December 30, 1983.

Because OSM requested the Oklahoma Department of Mines to provide additional information in response to questions raised at the hearing, the Director has decided to give the State until January 11, 1984, to submit the requested information and the public until January 19, 1984, to provide comments on this and all other information contained in the administrative record.

DATE: Public comments must be received before 4:00 p.m. on January 19, 1984, in order to be considered in the Director's findings on the status of the Oklahoma permanent regulatory program.

ADDRESSES: Written comments should be sent to: Office of Surface Mining, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103.

Copies of Administrative Record documents referenced in this notice are available for public inspection and copying during normal business hours at:

Office of Surface Mining, Administrative Record Office, Room 5315, 1100 L Street, NW., Washington, D.C. 20240, Telephone: (202) 343-4728

Office of Surface Mining, Tulsa Field Office, 333 West Fourth Street, Room 3432, Tulsa, Oklahoma 74103, Telephone: (918) 581-7927

Oklahoma Department of Mines, 4040 N. Lincoln, Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521-3659.

FOR FURTHER INFORMATION CONTACT: Carl C. Close, Special Assistant to the Assistant Director, Program Operations and Inspection, Office of Surface Mining, 1951 Constitution Avenue, NW., Washington, D.C. 20240; Telephone: (202) 343-4225; Robert L. Markey, Tulsa Field Office, Director, Office of Surface Mining, Room 3432, 333 West Fourth Street, Tulsa, Oklahoma 74103; Telephone: (918) 581-7927.

SUPPLEMENTARY INFORMATION:

I. Background

On March 10, 1983, the Director, OSM, notified the Oklahoma Department of Mines (ODOM) that he had reason to believe that the State may not be implementing, administering, maintaining or enforcing its approved program to regulate surface coal mining

and reclamation operations (see OK-458). The Director cited problems in Oklahoma's program implementation in several areas including the designation of lands as unsuitable for mining, permitting, inspection and enforcement, administrative procedures and records, and Oklahoma's ability to meet its conditions of approval. A more detailed account of the Director's concerns over the status of Oklahoma's implementation of its program can be found in the May 25, 1983 Federal Register at 48 FR 23414.

On April 14, 1983, ODOM responded to the Director's March 10, 1983 letter by providing additional written information (OK-461). On April 17, 1983, ODOM requested an informal conference with OSM under the provisions of 30 CFR 733.12(c). See OK-465. The Director agreed to Oklahoma's request, notified the public on May 25, 1983 (48 FR 23414), and subsequently held an informal conference with Oklahoma officials on June 15, 1983 in Oklahoma City. A transcript of the informal conference has been placed in the Administrative Record (OK-483).

At the informal conference, OSM requested ODOM to provide additional information on many of OSM's concerns. ODOM submitted additional information on July 14, 1983 (OK-521), August 25, 1983 (OK-508) and November 8, 1983 (OK-522).

Meetings were held between OSM and the State on October 5 and 12, 1983, to discuss OSM's concerns and the State's progress in resolving problems (OK-517 and OK-520).

On November 10, 1983, the Director notified the Governor of Oklahoma that he still had reason to believe that the State is not adequately implementing, administering, maintaining or enforcing its approved program and that for these reasons OSM would hold a public hearing and public comment period in accordance with the procedures contained in 30 CFR 733.12(d). OK-526. The Director's letter was followed by a Federal Register notice published on November 17, 1983 (48 FR 52298) and a letter from OSM to the Oklahoma Department of Mines detailing the remaining areas of concern and topics to be discussed at the public hearing. See OK-528 and OK-529.

OSM held a public hearing on December 21, 1983, in Muskogee, Oklahoma and provided the public an opportunity to comment through December 30, 1983, on the status of Oklahoma's program implementation.

A transcript of the testimony received at the public hearing, together with all written information submitted for the

record at that time will be placed in the administrative record shortly.

The Director's November 17, 1983, Federal Register notice stated that subsequent to the public hearing and the review of all available information including the hearing transcript, written presentations and written comments, the Director will publish his findings on the status of Oklahoma's program implementation in accordance with the provisions of 30 CFR 733.12(e).

II. Extension of Public Comment Period

During the public hearing, OSM requested ODOM to provide additional information in response to questions raised. The Deputy Chief Mine Inspector, ODOM, requested at the hearing that the State be given additional time to submit the required information. The Director finds the State's request to be reasonable and in the public interest in order to ensure consideration by the Director of all available information in reaching his findings. Accordingly, the Director hereby gives Oklahoma until January 11, 1984, to provide the requested material. In order to provide the public an opportunity to comment on the additional material in the context of all other information contained in the administrative record, the Director hereby extends the public comment period from December 30, 1983 to January 19, 1984. All public comments should be submitted to the location shown above under "ADDRESSES" by that date in order to be included in the Director's findings on the status of Oklahoma's program implementation.

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

Dated: December 29, 1983.

William B. Schmidt,
Assistant Director, Program Operations and Inspection.

[FR Doc. 84-811 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 948

Permanent State Regulatory Program of West Virginia; Preemption and Supersession of Certain Provision of State Law

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

ACTION: Final rule.

SUMMARY: This document amends 30 CFR Part 948 to preempt and supersede a specific provision of West Virginia's law which provides that a permittee, his

authorized agent or employees and State inspectors are not liable for any injury sustained by a citizen accompanying an inspector during an inspection.

This action is being taken because the Director has determined that this provision is inconsistent with section 521(a)(1) of the Surface Mining Control and Reclamation Act of 1977.

EFFECTIVE DATE: January 12, 1984.

FOR FURTHER INFORMATION CONTACT: David H. Halsey, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301. Telephone: (304) 347-7158.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1983, the Secretary of the Interior approved amendments to West Virginia's permanent regulatory program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and removed some of the conditions of approval on the State's program (48 FR 52034-52054). Also, in the November 16, 1983 Federal Register, the Director of OSM announced and sought public comment on a proposal to preempt and supersede a provision of West Virginia's law which provides that a permittee, his authorized agent or employees and state inspectors are not liable for any injury sustained by a citizen accompanying an inspector onto a mine site. The public comment period on the proposal closed on December 16, 1983 (48 FR 52092-52093).

Director's Finding

Pursuant to section 505(b) of SMCRA and 30 CFR 730.11(a), the Director has decided to preempt and supersede specific wording in Section 20-6-15(g) of the West Virginia Surface Coal Mining and Reclamation Act (WV SCMRA).

The complete text of Section 20-6-15(g) of WV SCMRA is as follows:

(g) Whenever on the basis of available information, including reliable information from any person, the director has cause to believe that any person is in violation of this article, any permit condition or any regulation promulgated under this article, the director shall immediately order state inspection of the surface-mining operation at which the alleged violation is occurring unless the information is available as a result of a prior state inspection. The director shall notify any person who supplied such reliable information when the state inspection will be carried out. Such person may accompany the inspector during the inspection: *Provided*, that except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip. Any such person

accompanying an inspector on an inspection shall be responsible for supplying any safety equipment required for his use.

The specific wording of Section 20-6-15(g) that is being preempted and superseded by the Director is as follows:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip.

This action is being taken because the Secretary has determined that this provision is inconsistent with section 521(a)(1) of SMCRA. This determination is based on the reasons cited under Finding 27 of the Secretary's decision concerning amendments to the West Virginia permanent regulatory program which were published in the Federal Register on November 16, 1983 (48 FR 52042). As set forth in that notice, the Secretary disapproved the above-cited provision of Section 20-6-15(g) of WV SCMRA and removed condition (24) of his approval of the West Virginia program.

Public Comments

On November 16, 1983, the Director solicited public comments on his proposal to preempt and supersede the aforementioned provision of Section 20-6-15(g) of WV SCMRA. The public comment period closed at 4:00 p.m. on December 16, 1983, and no comments were received on the proposal.

Preemption Supersession of State Provision

Inasmuch as the Secretary has disapproved a portion of Section 20-6-15(g) of WV SCMRA and removed condition (24) of his approval of the West Virginia program and no objections were received on the Director's proposal to preempt and supersede that portion of State law, the Director is hereby setting forth that provision of WV SCMRA which will be superseded by Federal law as required by 30 CFR 730.11(a) and section 505(a) of SMCRA. The specific wording of Section 20-6-15(g) of WV SCMRA to be preempted and superseded is as follows:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be held civilly liable for any injury to such person during the inspection trip.

Additional Information

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that pursuant to the Section 702(d) of SMCRA, 30

U.S.C. 1292(d), no environmental impact statement need be prepared on this rule-making.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of state regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

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

List of Subjects in 30 CFR Part 948

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

Accordingly, 30 CFR Part 948 is amended as set forth herein.

Dated: January 6, 1984.

James R. Harris,

Director, Office of Surface Mining.

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*

PART 948—WEST VIRGINIA

1. Part 948 is amended by adding a new § 948.13 as set forth below.

§ 948.13 State program provisions set aside.

The following portion of Section 20-6-15(g) of the West Virginia Surface Coal Mining and Reclamation Act concerning liability for injuries sustained by citizens during inspections is inconsistent with the Federal provisions and is hereby set aside under the provisions of Section 505(b) of the Surface Mining Control and Reclamation Act of 1977. The specific wording of Section 20-6-15(g) that is preempted and superseded is as follows:

Provided, That except for deliberate and willful acts, the permittee, his authorized agent or employees, and the inspector whom such person is accompanying, shall not be

held civilly liable for any injury to such person during the inspection trip.

[FR Doc. 84-913 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-05-11

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 257

[DoD Directive 5530.1]

Acceptance of Service of Process

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This final rule is revised to redesignate officials of the Department of Defense who are authorized to accept service of process on behalf of their Component. Issuance of this rule is necessary because of changes in the officials who may accept service of process. This rule is intended to facilitate service of process in actions against officials of the Department of Defense who are sued in their official capacities.

EFFECTIVE DATE: This rule was approved and signed by the Deputy Secretary of Defense on August 22, 1983, and is effective as of that date.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul S. Koffsky, Office of the Assistant General Counsel (Manpower and Health Affairs), Department of Defense, Washington, D.C. 20301, Telephone 202-695-3657.

SUPPLEMENTARY INFORMATION: In FR Doc. 67-5125 appearing in the Federal Register on May 9, 1967 (32 FR 7019), the Office of the Secretary of Defense published Part 257 designating certain DoD officials to receive service of process in court litigation. Subsequently, 2 amendments were issued that appeared on November 28, 1970 (35 FR 18195), and July 15, 1980 (45 FR 47424). This rule revises the entire Part 257.

List of Subjects in 32 CFR Part 257

Courts.

Accordingly, 32 CFR Part 257 is revised as follows:

PART 257—ACCEPTANCE OF SERVICE OF PROCESS

Sec.

- 257.1 Purpose.
- 257.2 Applicability.
- 257.3 Definition.
- 257.4 Policy.
- 257.5 Responsibilities.

Authority: 5 U.S.C. 301, 133.

§ 257.1 Purpose.

This rule updates DoD policy governing acceptance of service of process served on the Secretary of Defense and the Secretaries of the Military Departments.

§ 257.2 Applicability.

This rule applies to the Office of the Secretary of Defense (OSD) and the Military Departments.

§ 257.3 Definition.

Service of Process. When applied to the filing of a court action against an officer or agency of the United States, service of process refers to the delivery or, when appropriate, receipt by mail, of a summons and complaint made in accordance with Rule 4, Federal Rules of Civil Procedure by serving the United States and by serving a copy of the summons and complaint by registered or certified mail to such officer or agency. It further signifies the delivery of a subpoena requiring a witness to appear and give testimony or of a subpoena requiring production of documents, or delivery of a subpoena for any other reason whether or not the matter involves the United States.

§ 257.4 Policy.

It is DoD policy to accept service of process directed to the Secretary of Defense or a Secretary of a Military Department in his official capacity. Acceptance of service of process will not constitute an admission or waiver with respect to the jurisdiction or to the propriety of service.

§ 257.5 Responsibilities.

The following responsibilities may not be redelegated:

(a) The *General Counsel, Department of Defense*, shall accept service of process for the OSD.

(b) The *Secretary of the Army*, or his designee, the *Chief, Litigation Division*, Office of the Judge Advocate General, shall accept service of process for the Department of the Army.

(c) The *Secretary of the Navy*, or his designee, the *General Counsel*, shall accept service of process for the Department of the Navy.

(d) The *Secretary of the Air Force*, or his designee, the *Chief, General Litigation Division*, Office of the Judge Advocate General, shall accept service

of process for the Department of the Air Force.

M. S. Healy,
OSD Federal Register Liaison Officer,
Department of Defense.

January 6, 1984.
[FR Doc. 84-832 Filed 1-11-84; 8:45 am]
BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA No. 866; A-7-FRL 2504-5]

Approval and Promulgation of Implementation Plans; State of Kansas

AGENCY: Environmental Protection Agency.

ACTION: Notice of final rulemaking.

SUMMARY: On October 9, 1981, the State of Kansas submitted draft regulations to revise portions of the new source permitting regulations and to adopt a regulation controlling volatile organic compound (VOC) emissions from tank trucks serving bulk terminals. A notice of receipt was published in the Federal Register on March 26, 1982 (47 FR 12965). Final regulations were adopted and submitted to EPA on June 15, 1982. These regulations were adopted to satisfy conditions placed on the state's Part D plan revision (46 FR 20164, April 3, 1981). The State of Kansas included in the June 15, 1982 submittal certain regulatory revisions which were not required by the SIP conditions. EPA proposed to approve most of these regulations on March 10, 1983 (48 FR 10081).

The purpose of today's action is to approve most of the revised new source permitting regulations and the regulation controlling VOC emissions from tank trucks and remove the conditions of April 3, 1981 (46 FR 20164). Action on the regulatory changes related to the definition of source will be deferred to a later date for reasons discussed below.

EFFECTIVE DATE: This action is effective March 12, 1984.

ADDRESSES: Copies of the state submission are available during normal business hours at the following locations:

Environmental Protection Agency,
Region VII, Air Branch, 324 East 11th
Street, Room 1415, Kansas City, MO
64106.

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

The Office of the Federal Register, 1100
L St., NW., Room 8401, Washington,
D.C. 20460.

FOR FURTHER INFORMATION CONTACT:
Robert J. Chanslor, Environmental
Protection Agency, 324 East 11th Street,
Kansas City MO 64108 at (816) 374-3791,
(FTS 758-3791).

SUPPLEMENTARY INFORMATION: On April 3, 1981, EPA conditionally approved certain portions of the Kansas SIP with regard to the requirements of Part D of the Clean Air Act, as amended. The conditions were specific regarding section 172(b)(2), section 172(b)(10), and section 173(3). A detailed discussion of that action may be found in the Federal Register published on that date (46 FR 20164). Today's action removes the remaining conditions from that action, codified at 40 CFR 52.875.

To satisfy one of the conditions, the State adopted amendments revising its new source permitting regulations to comply with section 173(3) of the Act. The condition required that the state adopt statutory amendments by April 30, 1981, file the revised regulations as temporary amendments with the Revisor of Statutes by July 1, 1981, and adopt the revised regulations as permanent amendments to the Kansas air quality regulations by May 1, 1982. The state satisfied this condition.

In order to satisfy the two remaining conditions, the state adopted and filed with the Revisor of Statutes a regulation controlling VOC emissions from tank trucks serving bulk petroleum terminals by July 1, 1981, and adopted the revised regulations as permanent regulations by May 1, 1982. The state's submittal of June 15, 1982, satisfied these conditions.

Today's action approves regulations 28-19-70 and 28-19-62 which are applicable to VOC emissions from tank trucks. The EPA has received no comments on the March 10, 1983, proposal to approve these regulations.

The March 10, 1983, proposed rulemaking proposed approval of K.A.R. 28-16-61h. This was a typographical error. The regulation which should have been referenced is K.A.R. 28-19-16h. That regulation is among those discussed below on which action is being deferred.

In addition to the regulations discussed above, the State of Kansas submitted certain other revisions not required by the April 3, 1981, conditions. These regulations are 28-19-16 and definitions in 28-19-16a, 28-19-16b, 28-19-16c, 28-19-16f, 28-19-16g, 28-19-16h, and 28-19-16i. The March 10, 1983, Federal Register publication proposed to approve portions of the above regulations and defer action on the

remainder. Some of the Kansas revisions were made to be consistent with the EPA regulatory revision that eliminated the dual source definition [see 40 CFR 51.18(j)(1) (i) and (ii)]. The remainder of the revisions in 28-19-16 were made for the purpose of clarification and style.

On August 7, 1980 (45 FR 52676), EPA defined "source" as it would apply under certain circumstances to new source review in nonattainment areas as both an industrial plant and each individual piece of process equipment. The major effect of this "dual source" definition was to subject each new piece of process equipment that emitted certain levels of pollutants to new source review. For sources locating in attainment areas, the prevention of significant deterioration (PSD) regulations defined source as an entire plant or related operations. The "plant-wide" definition used in the PSD regulations allows sources to avoid new source review by balancing emission increases and decreases so that net plant-wide emissions do not increase. This option was not available in nonattainment areas.

On October 14, 1981 (46 FR 50763), EPA deleted the dual source definition and defined "source" as only an entire industrial plant consistent with the PSD definition. Under this new definition, the new source review requirements could be avoided for an individual piece of process equipment if a counterbalancing decrease in emissions occurred elsewhere in a plant. Under the October 14, 1981 source definition, more modifications to major existing sources could avoid new source procedures if there were commensurate emissions reductions over the entire plant. In the October 14, 1981, rulemaking, EPA deleted the reconstruction rule that required new source review procedures where reconstruction costs were 50 percent or more of the original cost of the facility.

On August 17, 1982, in *NRDC vs. Gorsuch*, No. 81-2203, the Circuit Court for the District of Columbia vacated the EPA revised source definition and deletion of the reconstruction rule. Subsequently EPA made a commitment to the court that it would not approve any SIP revision containing those provisions. The affected Kansas regulatory revisions are:

1. Regulation 28-19-16a(d) which defines Building, Structure, Facility, or Installation;
2. Deletion of Regulation 28-19-16a(v) "Reconstruction;"
3. Deletion of the term Reconstruction in Regulations 28-19-16, 28-19-16b, 28-

19-16c, 28-19-16f, 28-19-16h, and 28-19-16i; and

4. Deletion of Regulation 28-19-16a(o) which defines "Installation".

The language of 28-19-16a(x) defining "Stationary Source", has not been explicitly revised, but the definition of "Installation" has been revised by deleting the old definition at 28-19-16a(o) and adding the term to Regulation 28-19-16a(d). Because the terms "Building", "Structure", "Facility", or "Installation", are used in the definition of "Stationary Source", the effect is to alter the Kansas source definition for new source review in nonattainment areas.

Today's rulemaking approves those regulations which are not affected by the *NRDC vs. Gorsuch* ruling. EPA defers action on those affected revisions. EPA approves the revision of Regulation 28-19-16a(g) which defines contemporaneous in a manner consistent with the EPA approved definition in comparable Missouri regulations.

Other changes that are approved appear at 28-19-16a(a), 28-19-16a(b), 28-19-16a(c), 28-19-16a(d), 28-19-16a(e), 28-19-16a(k), and 28-19-16a(o). These changes were made for the purpose of clarification and style.

EPA also approves renumbering of subsections from 28-19-16a(o) through 28-19-16a(x); the title change of 28-19-16g; deletion of old paragraph (a) and addition of new paragraphs (a) through (c). EPA approves deletion of Regulation 28-19-51 regarding fugitive dust.

Comments Received

The Natural Resources Defence Council (NRDC) submitted the only public comment on the March 10, 1983 proposed rulemaking by letter of March 22, 1983. The comment was limited to the EPA proposal to defer action on the revised Kansas source definition. The letter states that deferral is an inadequate response to the court action in *NRDC vs. Gorsuch*; and that EPA should promptly disapprove the change in the Kansas source definition so that Kansas can promptly get on with the job of revising the SIP to conform the "source" definition and the "reconstruction" rule to the requirements of the law.

Response to Comments

As EPA explained in the proposed rulemaking, the existing approved Kansas SIP contains provisions conforming to the "dual definition". The effect of EPA's deferral of action on the Kansas plant-wide source definition revision is to retain that existing definition. Therefore, the Kansas SIP

conforms to the Circuit Court ruling. The effect on the SIP would be the same were EPA to disapprove the revised Kansas rule. EPA does not agree that it is necessary to disapprove the rule to be consistent with the court's opinion. Finally, EPA has appealed the Circuit Court ruling to the Supreme Court. EPA will take final action on the revised Kansas source definition after the Supreme Court has ruled on the appeal.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate Circuit by (60 days from today). This action may not be challenged later in proceedings to enforce its requirements.

This notice of final rulemaking is issued under authority of section 110 and Part D of the Clean Air Act, as amended.

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

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons; Intergovernmental relations.

Dated: January 4, 1984.
William D. Ruckelshaus,
Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. Section 52.870 is amended by adding a new paragraph (c)(15) to read as follows:

§ 52.870 Identification of plan.

* * * * *

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

* * * * *

(15) New regulations 28-19-70 and 28-19-62 applicable to tank trucks operating at bulk gasoline terminals were submitted by the Kansas Department of Health and Environment on June 15, 1982. State regulation 28-19-51 is revoked. Revised regulations 28-19-16, 28-19-16a, 28-19-16b, 28-19-16c, 28-19-16f, 28-19-16g, 28-19-16h, and 28-19-16i, applicable to new sources in nonattainment areas were included with the June 15, 1982 submittal. Action is deferred on the following regulations: 28-19-16a(d), 28-19-16a(v), 28-19-16, 28-19-16b, 28-19-16c, 28-19-16f, 28-19-

16h, 28-19-16i, and 28-19-16a(o). The remainder of the provisions are approved.

§ 52.875 [Removed]

2. Section 52.875 is removed.

§ 52.870 [Removed]

3. Section 52.870 currently contains two paragraphs designated as (c)(13). This document corrects § 52.870 by redesignating the second (c)(13), which reads in part, "(13) Letter and supporting documents submitted on September 15, 1981 * * *" as new paragraph "(c)(14)".

[FR Doc. 84-801 Filed 1-11-84; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

National Flood Insurance Program; Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

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

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance Administration, Washington, D.C. 20472 (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of

1968 (Pub. L. 90-448)). 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency

Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67
Flood insurance, Flood plains.

PART 67—[AMENDED]

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received and have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD). Modified	
Arizona	Phoenix, city, Maricopa County (FEMA District No. 6485).	Cavo Creek	Upstream corporate limits	*1,518	
			7th Street (upstream side)	*1,484	
			Boardley Road (upstream side)	*1,432	
			Union Hills Drive (upstream side)	*1,400	
			West Bell Road (upstream side)	*1,385	
			16th Avenue (upstream side)	*1,323	
			Thunderbird Road (upstream side)	*1,293	
			Cactus Road (upstream side)	*1,273	
			Peoria Avenue (upstream side)	*1,252	
			Dunlap Avenue (upstream side)	*1,223	
			Northern Avenue (upstream side)	*1,193	
			Giordano Avenue (upstream side)	*1,176	
			Bethany Home Road (upstream side)	*1,153	
			Indian School Road (upstream side)	*1,114	
			Van Buren Street (upstream side)	*1,077	
			Durango Street (upstream side)	*1,049	
			East Fork Cavo Creek	Upstream corporate limits	*1,452
				7th Street (upstream side)	*1,378
			Moon Valley Wash	Confidence with Cavo Creek	*1,329
		Thunderbird Road		*1,321	
		Scatter Wash	Confidence with Cavo Creek	*1,283	
			7th Avenue (downstream side)	*1,471	
			18th Avenue (upstream side)	*1,435	
		East Branch Scatter Wash	Deer Valley Road (upstream side)	*1,375	
			Confidence with Skunk Creek	*1,323	
			27th Avenue (upstream side)	*1,330	
		Skunk Creek	Confidence with Scatter Wash	*1,324	
			Upstream corporate limits	*1,461	
			Happy Valley Road (upstream side)	*1,432	
			Deer Valley Road (upstream side)	*1,382	
		Tenth Street Wash	Downstream corporate limits	*1,300	
			Morcor Lane	*1,337	
Arizona Canal	*1,242				
Indian Bend Wash	Arizona Road (downstream side)	*1,418			
	Sweetwater Avenue (upstream side)	*1,398			
	46th Street (downstream side)	*1,385			
Myrtle Avenue Wash	16th Street	*1,250			
	Confidence with Dreamy Draw Wash East	*1,242			
Flynn Lane Wash	Lincoln Drive	*1,310			
	Arizona Canal	*1,242			
Dreamy Draw Wash East	Frier Drive (upstream side)	*1,265			
	Confidence with Myrtle Avenue Wash	*1,242			
Salt River	Upstream corporate limits	*1,143			
	7th Street (upstream side)	*1,076			
	51st Avenue (upstream side)	*1,016			
	Downstream corporate limits	*851			
Aqua Fria River	Downstream corporate limits	*1,031			
	Upstream corporate limits	*1,033			
New River	Downstream corporate limits	*1,031			
	Upstream corporate limits	*1,043			
Echo Canyon Wash	Arizona Canal	*1,251			
	44th Street (upstream side)	*1,284			

Maps available for inspection at the City Hall, 251 West Washington Street, Phoenix, Arizona.

California	Fillmore (city of), Ventura County (FEMA-6563)	Santa Clara River	100 feet north of the intersection of Ventura Street and Santa Drive	*453
		Sespe Creek	Intersection of Ventura Street and C Street	(?)

Maps are available for review at City Hall, 524 Sespe Avenue, Fillmore, California.

Colorado	La Plata County (Unincorporated Areas), FEMA-6563	Lightner Creek	700 feet upstream of confluence of U.S. Highway 160 (near Bridge No. 5)	*6,503
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Maps are available for inspection at the Planning Department, 12th and Main, Durango, Colorado.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground Elevation in feet (NGVD) Modified
Delaware	Sussex County (Docket No. FEMA-6558)	Little Assawoman Bay	Shoreline at Conch Point Shoreline of Little Assawoman Canal south of Muddy Neck Road bridge Shoreline at Drum Point Shoreline of Miller Creek at Brickbat Point	*5 *4 *4 *4
Maps available for inspection at the Office of Planning and Zoning, Sussex County Courthouse, Georgetown, Delaware.				
Georgia	(C) Clarkston, DeKalb County (Docket No. FEMA-6547)	South Fork Peachtree Creek Tributary "C" of Snapfinger Creek	About 2,100 feet upstream of Montreal Road Just upstream of Interstate Route 285 culvert Approximately 600 feet south of Norman Street	*658 *940 *923
Maps available for inspection at 3921 Church Street, Clarkston, Georgia.				
Georgia	(Uninc.) Clayton County (Docket No. FEMA-6547)	Little Cotton Creek Conley Creek	About 300 feet upstream of Dam (upstream of Rox Road) About 100 feet downstream of confluence of Upton Creek About 700 feet downstream of East Conley Road About 300 feet upstream of East Conley Road	*780 *780 *799 *808
Maps available for inspection at the Clayton County Courthouse, Administration Building, Jonesboro, Georgia.				
Georgia	(Uninc.) Douglas County (Docket No. FEMA-6558)	Chattahoochee River Sweatwater Creek	Just upstream of State Highway 92 At upstream county boundary At mouth About 1.3 miles upstream of Lower River Road	*747 *701 *757 *757
Maps available for inspection at 6754 Broad Street, Douglasville, Georgia.				
Georgia	(C) Marietta, Cobb County (Docket No. FEMA-6538)	Rottenwood Creek	Just upstream of Dalk Road Just downstream of Interstate 75	*926 *933
Maps available for inspection at P.O. Box 609, Marietta, Georgia.				
Georgia	(C) Roswell, Fulton County (Docket No. FEMA-6547)	Chattahoochee River Seven Branches Big Creek Riverside Creek Willeo Creek	At confluence of Willeo Creek At confluence of Big Creek At upstream corporate limits At confluence with Chattahoochee River Just downstream of Martin Landing Dam At confluence with Chattahoochee River At confluence with Chattahoochee River At confluence with Chattahoochee River	*682 *887 *871 *870 *870 *687 *863 *862
Maps available for inspection at 617 Atlantic Street, Roswell, Georgia.				
Illinois	(v) East Dundee, Kane County (Docket No. FEMA-6558)	Fox River	Northwest corporate limit near Wenzel Avenue and Water Street intersection Southwest corporate limit 2,500 feet south of Williams Road and Elgin Avenue intersection	*721 *717
Maps available for inspection at the Village Hall, 120 Barrington Avenue, East Dundee, Illinois.				
Illinois	(v) Northbrook, Cook County (Docket No. FEMA-6568)	Techry Drain	At downstream corporate limits Just downstream of School Foot Bridge About 140 feet upstream of School Foot Bridge	*643 *647 *650
Maps available for inspection at Engineering Department, 1225 Cedar Lane, Northbrook, Illinois.				
Illinois	(v) Palatine, Cook County (Docket No. FEMA-6568)	Salt Creek Arlington Heights Branch	About 1,200 feet downstream of LaLonde Avenue About 500 feet downstream of Michigan Avenue Just upstream of Chicago and Northwestern Railroad Just downstream of Palatine Road Just upstream of Clark Road Just upstream of Tahoe Drive About 4,600 feet upstream of Smith Street	*727 *728 *714 *717 *722 *735 *758
Maps available for inspection at the Village Hall, 200 East Wood Street, Palatine, Illinois.				
Illinois	(v) West Dundee, Kane County (Docket No. FEMA-6558)	Fox River	Southeast corporate limit 300 feet east of First Street and Fay Avenue intersection Northern corporate limit near Sixth Street and Hillcrest Court intersection	*717 *721
Maps available for inspection at 102 South Second Street, West Dundee, Illinois.				
Indiana	(T) Nashville, Brown County (Docket No. FEMA-6538)	North Fork Salt Creek	At confluence of Jackson Branch About 1,750 feet upstream of Stato Route 46 (near confluence of Graw Bone Creek)	*690 *617
Maps available for inspection at P.O. Box 401, 141 Old School Way, Nashville, Indiana.				
Massachusetts	Lakeville, town, Plymouth County (Docket No. FEMA-6547)	Nemasket River Assawompset Pond Long Pond Long Pond River	Downstream corporate limits At Assawompset Pond Dam Entire shoreline Entire shoreline Entire length	*55 *55 *55 *55 *55
Maps available for inspection at the Town Office Building, Bedford Street, Lakeville, Massachusetts.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). Modified
Michigan	(C) Zilwaukee, Saginaw County (Docket No. FEMA-6547).	Shallow Flooding (Overflow from Saginaw River and Unweired Drain).	West of Central and south of Tittabawassee Street	*583
Maps available for inspection at 319 Tittabawassee Drive, Saginaw, Michigan.				
Minnesota	(Uninc.) Isanti County (Docket No. FEMA-6547)	Isanti Creek	About 1.4 miles downstream of County Road 43	*935
			Just downstream of County Road 43	*945
			Just upstream of Florence Lake Dam	*947
		Florence Lake	Shoreline	*947
		Elms Lake	Shoreline	*947
		Lake Parula	Shoreline	*950
		Skegman Lake	Shoreline	*950
Maps available for inspection at the Isanti Courthouse, 237 S.W. 2nd Avenue, Cambridge, Minnesota.				
New Jersey	Cherry Hill (township of), Camden County (Docket No. FEMA-6563).	South Branch	49 feet upstream from the centerline of Springdale Road	*44
		Pennsauken Creek	29 feet upstream from the centerline of Old Marlen Pike	*73
Maps are available for review at the Office of Community Development, 820 Mercer Street, Cherry Hill, New Jersey.				
New Jersey	Mount Laurel (Township of) Burlington County FEMA-6563.	South Branch Pennsauken Creek	89 feet upstream from the centerline of Springdale Road	*44
Maps are available for review at Town Hall, 100 North Mount Laurel Road, Mount Laurel, New Jersey.				
New York	Wheatfield, town, Niagara County (Docket No. FEMA-6558).	Borgheltz Creek	Approximately 2,000 feet downstream of Williams Road	*574
			Upstream of Niagara Road	*582
			Upstream corporate limits (located downstream of Raymond Road).	*602
Maps are available for inspection at the Town Hall, 2800 Church Road, North Tonawanda, New York.				
Oregon	Heppner (city of), Morrow County FEMA-6563)	Willow Creek	10 feet upstream from centerline of Gale Street	*1,927
			29 feet upstream from centerline of Alafia Street	*1,973
		Sheba Creek	29 feet upstream from centerline of Chase Street	*1,971
		Hinton Creek	Centerline of Elder Street	*1,945
Maps are available for review at City Hall, 188 West Willow, Heppner, Oregon.				
Oregon	Lexington (town of), Morrow County (FEMA-6563)	Willow Creek	169 feet upstream of Centerline of Mountain Road	*1,412
			89 feet upstream of the centerline of B Street	*1,443
		Blackhorse Canyon	639 Feet upstream from the confluence with Willow Creek	*1,433
Maps are available for review at Town Hall, Lexington, Oregon.				
Oregon	Morrow County (Unincorporated Areas), (FEMA-6563)	Willow Creek (At Heppner)	20 feet downstream from the centerline of Fuller Canyon Road	*1,1837
		(At Lexington)	Centerline of Mountain Road	*1,411
		(At Iona)	City of Iona westernmost corporate limits	*1,071
Maps are available for review at the Planning Department, Lexington, Oregon.				
Pennsylvania	Derry, borough, Westmoreland County (Docket No. FEMA-6563).	McGeo Run	Downstream corporate limits	*1,133
			Upstream of 4th Street	*1,144
			Upstream of Canada Way	*1,154
			Upstream corporate limits	*1,227
		Gorano Mills Run	Confluence with McGeo Run	*1,152
			Upstream of Chestnut Street	*1,153
			Downstream of West 2nd Avenue	*1,183
			Upstream of West 3rd Avenue	*1,193
			Downstream West Utopia Street	*1,236
			Approximately 200 feet upstream of West 5th Avenue	*1,250
Maps available for inspection at the Borough Hall, Derry, Pennsylvania.				
Pennsylvania	Union, township, Washington County (Docket No. FEMA-6563).	Monongahela River	Downstream corporate limits	*751
Maps available for inspection at the Union Municipal Building, Gastonville, Pennsylvania.				
South Carolina	(C) Conway, Horry County (Docket No. FEMA-6538)	Waccamaw River	About 0.7 mile downstream of U.S. Highway 501	*10
			At the confluence of Kingston Lake Swamp	*14
		Kingston Lake Swamp	At mouth of Waccamaw River	*14
			About 1.8 miles upstream of the Seaboard Coast Line Railroad	*14
		Crab Tree Swamp	Just downstream of Long Avenue	*14
			About 2,400 feet upstream of Oak Street	*14
Maps available for inspection at P.O. Drawer 1075, Conway, South Carolina.				
Texas	Alamo Heights, city, Bexar County (Docket No. FEMA-6563).	Almos Creek	Downstream corporate limits	*631
			Upstream of Olmos Dam	*726
			Upstream corporate limits	*726
Maps available for inspection at the Alamo Heights City Hall, 6116 Broadway, San Antonio, Texas.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) Modified
Texas	Irving, city, Dallas County (Docket No. FEMA-6558)	West Fork of Trinity River Bear Creek	MacArthur Boulevard (upstream side) Approximately 1,250' upstream of Hunter-Farrel Road Approximately 6,000' upstream of Hunter-Farrel Road	*438 *437 *438
Maps available for inspection at the City Hall, 825 West Irving Boulevard, Irving, Texas.				
Virginia	Roanoke, city, Independent City (Docket No. FEMA-6558)	West Fork Carvin Creek Ore Branch Glade Creek	Downstream corporate limits Upstream corporate limits Upstream of Wonju Street Approximately 800' upstream of the Norfolk and Western Railway bridge	*1,032 *1,047 *959 *939
Maps are available for inspection at the City Hall, 215 Church Avenue, SW, Roanoke, Virginia.				
West Virginia	Martinsburg, city, Berkeley County (Docket No. FEMA-6547)	Dry Run	Downstream of CONRAIL crossing	*450
Maps are available for inspection at the City Hall, 224 West King Street, Martinsburg, West Virginia.				
West Virginia	Morgantown, city, Monongalia County (Docket No. FEMA-6547)	Deckers Creek Knocking Run Aaron Creek	Confluence with Monongahela River Upstream of Deckers Creek Road/Walnut Street Upstream of Rodgers Street Upstream of White Avenue Upstream of State Route 64 Upstream of Carnegie Street Most upstream corporate limit Confluence with Deckers Creek Confluence with Deckers Creek	*814 *818 *829 *844 *850 *864 *888 *853 *845
Maps are available for inspection at the City Hall, 389 Spruce Street, Morgantown, West Virginia.				

* Area protected by levee from base flood

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; (42 U.S.C. 4001-4128); E.O. 12127, 44 FR 19387; and delegation of authority to the Administrator) Issued: January 4, 1984.

Jeffrey S. Bragg,
Administrator, Federal Insurance Administration.

[FR Doc. 84-788 Filed 1-11-84; 8:45 am]

BILLING CODE 6718-03-M

44 CFR Part 67

National Flood Insurance Program;
Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are finalized for the communities listed below.

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

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Dr. Brian R. Mrazik, Chief, Risk Studies Division, Federal Insurance

Administration, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 287-0230.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for flood plain management in floodprone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Federal Insurance Administrator, to whom authority has been delegated by the Director, Federal

Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 1229, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Alabama	City of Clanton, Chilton County (FEMA-6470).	Gecco Pond Creek	Just upstream of Lay Dam Road.	*569
			Just upstream of Louisville and Nashville Railroad	*572
		Paley Bridge Creek	Just downstream of 6th Street.	*569
			Just upstream of Louisville and Nashville Railroad	*575
		Black Snake Creek	Just upstream of Old Avenue.	*571
		Focum Creek	Just upstream of Blacksnake Road	*568
			Just upstream of 16th Avenue North	*579
		Just downstream of Center Street	*568	
		Just upstream of Old Thursday Road	*580	
		Just upstream of 14th Avenue	*569	

Maps available for inspection at City Clerk's Office, City Hall, Second Avenue, Clanton, Alabama 36045.

California	Rocklin (City), Placer County (FEMA-6550).	Agular Road Tributary	25 feet upstream from center of Feethill Road	*297
		Antelope Creek	Center of intersection of Sunset Boulevard and Antelope Creek	*291
		Clover Valley Creek	100 feet upstream from center of Midas Avenue	*266
		Leona Tributary	200 feet upstream from confluence with Sucker Ravine.	*284
		Pleasant Grove Creek	500 feet upstream from center of Sunset Boulevard	*180
		Rocklin City Tributary	50 feet upstream from center of Fern Street	*228
		Sucker Ravine	100 feet upstream from center of Rocklin Road	*253
		Center of intersection of Dominguez Road and Sucker Ravine.	*292	

Maps available for inspection at Planning Department, 4060 Rocklin Road, Rocklin, California.

California	San Rafael (City), Marin County (FEMA-6550).	San Rafael Creek	Intersection of C Street and 1st Street	*9
		San Rafael Bay (San Rafael Canal)	Intersection of High Street and 3rd Street	*6
		San Pablo Bay (Gallinas Creek)	Intersection of Civic Center Drive and Southern Pacific Railroad	*6
		Miller Creek	400 feet along the corporate limits Northwest from the Southern Pacific Railroad.	*12

Maps available for inspection at the Department of Engineering, 1400 5th Avenue, San Rafael, California.

Colorado	Delta (City), Delta County (FEMA-6557)	Gunnison River	At U.S. Highway 59 Northbound	*4,824
		Uncompahgre River	70 feet upstream of the 5th Street Bridge (new)	*4,842

Maps available for inspection at Planning and Zoning Department, East 4th & Main Street, Delta, Colorado.

Connecticut	Groton (City) New London County (Docket No. FEMA-6553).	Long Island Sound	Shoreline at Eastern Point	*15
			Shoreline at Bayberry Lane extended	*13
			Entire shoreline of Baker Cove within community	*12
			Shoreline at Bayview Avenue No. 1 extended	*13
			Shoreline at northern corporate limits	*12

Maps available for inspection at the City Municipal Building, Groton, Connecticut.

Florida	Unincorporated Areas of Hernando County (FEMA 6535).	Withloosechoo River	Approximately 1,000 feet downstream of Interstate Highway 75.	*53
			Approximately 500 feet upstream of U.S. Highway 301	*71
		Little Withloosechoo River	Approximately 1,000 feet downstream of U.S. Highway 301.	*71
			Approximately 200 feet upstream of U.S. Highway 301.	*72
		Ponding Area 1	At Brockville Quarry	*70
		Ponding Area 2	Approximately 1,000 feet southwest of intersection of Wallen Drive West and Cook Drive.	*84
		Ponding Area 3	Along County Club Drive approximately 500 feet south of 5th Avenue.	*81
		Ponding Area 4	Approximately 1,500 feet southeast of intersection of Martin Drive and Weeks Drive.	*62
		Shallow Flooding	Entire shoreline of Horse Lake lying south of the intersection of State Highway 59 and County Road 405.	*72
		Shallow Flooding	Approximately 1,000 feet northwest of intersection of Green Road (County Road 478) and Patrick Road.	*83
		Shallow Flooding	Along Martin Drive approximately 200 feet east of Wallen Drive East.	#3
		Gulf of Mexico	Along County Road 535 approximately 500 feet north of Hammock Creek.	*18
		Gulf of Mexico/Indian Bay	Just south of the intersection of Hernando Beach Road and County Road 535.	*13
		Gulf of Mexico/Little Pine Bay	Intersection of Hernando Beach and Hernando Blvd.	*12
		Gulf of Mexico/Conteado Bay	Along County Road 535 approximately 500 feet southwest of Withloosechoo River.	*13
Gulf of Mexico/Rock Island Bay	Intersection of State Highway 59 and County Road 535.	*16		
Gulf of Mexico Chascohawzika Bay.	Along the northern county limits at the crossing of Ryle Creek.	*16		

Maps available for inspection at Board of County Commissioners' Office, John Law Ayco Building, 1 North Brockville Avenue, Brockville, Florida 33572.

Florida	Hillsborough County (unincorporated areas) FEMA-6557.	Gulf of Mexico	At the center of State Highway 45 crossing of Cook-reach Creek	*9
			At the center of the intersection of Memorial Highway and West Hillsborough Avenue.	*10
			At the center of the intersection of Estelle Avenue and Connecticut Street.	*11

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
			At the center of the junction of Kresker Avenue and State Highway 45.	*12
			At Sand Island.....	*15
Maps available for inspection at County Drainage Engineering Department, 800 Twiggs Street, Tampa, Florida.				
Georgia.....	Unincorporated Areas of Camden County (FEMA-6560).	Atlantic Ocean.....	At the confluence of Point Peter Creek with St. Marys River. Along the southeastern shoreline of Cumberland Island. At the confluence of Brickhill River with Cumberland River. At the confluence of Sandbar Creek with Crooked River. Along the northeastern shoreline of Cumberland Island. Just downstream of U.S. Route 95 along White Oak Creek. Just downstream of U.S. Route 95.....	*15 *10 *10 *17 *18 *20 *17 *20
Maps available for inspection at Camden County Commissioners Offices, County Branch Office, Woodbine, Georgia 31589.				
Georgia.....	Jekyll Island State Park Authority, Glynn County (FEMA-6560).	Atlantic Ocean.....	At the intersection of River View Drive and Captain Wylie Road. At the intersection of Major Horton Road and Beach View Drive.	*13 *14
Maps available for inspection at Convention Center, Beachview Drive, Jekyll Island, Georgia 31521.				
Georgia.....	City of Kingsland, Camden County (FEMA-6560).	Atlantic Ocean/Little Catfish Stream. Atlantic Ocean.....	100 feet SE of the intersection of Clark Bluff Road and Little Catfish Stream. Just downstream of Clark Bluff Road along Catfish Creek.	*12 *12
Maps available for inspection at City Hall, 115 South Railroad Avenue East, Kingsland, Georgia 31548.				
Georgia.....	City of Macon-Bibb County (FEMA-6560).	Ocmulgee River..... Ocmulgee River (after levee overtopping).	Just upstream of Seaboard Coast Line Railroad..... Just upstream of Southern Railway..... Just downstream of Spring Street..... Approximately 300 feet upstream of Arkwright Road Access. Just west of intersection of Walker Road and Macon Levee. At intersection of Lower Boundary Street and Southern Railway. At intersection of Poplar Street and Walker Road.....	*297 *303 *307 *325 *200 *202 *298
Maps available for inspection at Mayor George Israel's Office or Mr. Joe Withering, City Engineer, City Hall, Second & Poplar Streets. Maps are also available at the Bibb County Engineer's Office and The County Chairman's Office, County Courthouse, Macon, Georgia 31201.				
Georgia.....	Unincorporated Areas of McIntosh County (FEMA-6550).	Atlantic Ocean.....	At the confluence of McCloy Creek and Blackbeard Creek. At the confluence of Mud River and Now Teakettle Creek. At the confluence of Ridge River mouth and Front River. At the confluence of the Wahoo River and the South Newport River.	*16 *17 *18 *19
Maps available for inspection at the McIntosh County Commissioner's Office, County Courthouse, Darien, Georgia 31305.				
Georgia.....	City of Richmond Hill, Bryan County (FEMA-6546).	Sterling Creek 1..... Sterling Creek 2..... Ogeechee River.....	Just upstream of Interstate 95..... Just upstream of Timber Trail..... Just downstream of Seaboard Coast Line Railroad..... Just upstream of Seaboard Coast Line Railroad..... Just upstream of Dirt Road..... Just downstream of U.S. 17 & State Road 25..... Just upstream of U.S. 17 & State Road 25..... Just downstream of the Seaboard Coast Line Railroad..	*10 *11 *12 *17 *17 *17 *18 *14
Maps available for inspection at City Clerk's Office, City Hall, Ford Avenue, Richmond Hill, Georgia 31324.				
Georgia.....	City of St. Marys Camden County (FEMA-6560).	Atlantic Ocean.....	At the confluence of Sweetwater Branch with North River.	*14
Maps available for inspection at City Hall, 418 Osborne Street, St. Marys, Georgia 31558.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Georgia	Town of Tyrone, Fayette County (FEMA-6521).	Line Creek	Approximately 600 feet downstream of Cedarwood Road.	*856
			Approximately 650 feet upstream of Cedarwood Road.	*857
Maps available for inspection at Town Hall, Town Clerk's Office, Highway 74, Tyrone, Georgia 30220.				
Georgia	City of Woodbine, Camden County (FEMA-6560).	Atlantic Ocean/Satilla River	At the intersection of U.S. Route 17 and 8th Street	*14
Maps available for inspection at City Hall, 8th Street, Woodbine, Georgia 31569.				
Idaho	Grangeville (City), Idaho County FEMA-6557.	East Fork Three Mile Creek	40 feet upstream from the center of Main Street	*3,419
		Middle Fork Three Mile Creek	40 feet upstream from the center of W. North Street	*3,378
		Main Three Mile Creek	40 feet upstream from the center of E. North 7th Street	*3,324
		West Fork Three Mile Creek	40 feet upstream from the center of South 5th Street	*3,423
		Shallow Flooding	At the center of intersection of State Street and South Street	#2
		Long Haul Creek	40 feet upstream from the center of North 2nd Street	*3,352
		Shallow Flooding	10 feet east of the intersection of W. South 1st Street and E Street	#1
Maps available for inspection at City Hall, 225 West North Street, Grangeville, Idaho.				
Illinois	(C) Warsaw, Hancock County (Docket No. FEMA-6560).	Mississippi River	About 4.0 miles downstream of confluence of Des Moines River.	*433
			About 0.7 mile upstream of confluence of Des Moines River.	*501
Maps available for inspection at the Office of the City Clerk, City Hall, 309 Main Street, Warsaw, Illinois.				
Indiana	(C) Indianapolis Marion County (Docket No. FEMA-6541).	White River	At downstream County Boundary	*631
			Just downstream of Dam (near 16th Street)	*633
			Just upstream of Dam (near 16th Street)	*633
			About 0.4 mile upstream of Northwest Avenue	*710
			At upstream County Boundary (just downstream of 65th Street)	*740
		Belly Creek	At mouth	*726
			Just downstream of Olney Street	*733
		Beech Creek	At confluence with Link Creek	*760
			Just downstream of 6th Avenue	*771
			At confluence of Churchman Creek	*602
			Just upstream of County Line Road	*709
			Just downstream of Stop 11 Road	*733
			Just upstream of David Lane	*754
		Bean Creek	At confluence with Pleasant Run	*765
			Just upstream of Crut Street	*723
			Just upstream of Villa Avenue	*742
			Just downstream of Central	*763
			Just upstream of Central	*776
			About 0.3 mile upstream of Minnesota Street	*783
		Buck Creek	At downstream County Boundary	*764
			Just upstream of Central	*774
			Just upstream of Chicago System	*809
			Just downstream of County Line Road	*826
		Little Buck Creek	At mouth	*633
			Just upstream of State Route 37	*631
			Just upstream of Southport Road (just east of Sherman Drive)	*776
			Just downstream of Edgewood Avenue (About 1600 feet east of Five Points Road)	*842
		Central Creek	At mouth	*725
			Just downstream of 65th Street	*740
		Creeked Creek	At mouth	*703
			Just upstream of Kramden Road	*752
			Just downstream of Northwest Avenue (About 600 feet south of Sapphire Boulevard)	*811
			Just upstream of Northwest Avenue (About 900 feet south of Sapphire Boulevard)	*817
			Just upstream of Dam	*654
			Just upstream of Interstate 465	*863
		Churchman Creek	At confluence with Beech Creek	*802
			Just upstream of High School Road	*807
			Just downstream of confluence of Swan Ditch	*824
		Delaware Creek	At confluence with Creeked Creek	*833
			About 160 feet upstream of Interstate 465	*849
		Doven Creek	At mouth	*733
			Just downstream of Euton Road	*744
		Eagle Creek	At confluence with White River	*631
			Just downstream of 21st Street	*725
			Just upstream of Interstate 74 (below Eagle Creek Dam)	*754
		Little Eagle Creek	At confluence with Eagle Creek	*635
			Just upstream of Central (near Falcon Creek)	*724
	Just upstream of 53th Street	*789		
	Just downstream of New Augusta Road	*841		
Falcon Creek	At confluence with Little Eagle Creek	*733		
	Just downstream of 53rd Street	*753		
Fell Creek	At confluence with White River	*632		
	Just upstream of Dam (near Koytano Avenue)	*727		
	Just downstream of Good Reservoir Dam	*723		
Fisher Creek	At confluence with Link Creek	*833		

State	City/town/county	Source of flooding	Location	#Depth in foot above ground *Elevation in foot (NGVD)
		Guion Creek	Just upstream of Chessie System Just downstream of northbound Interstate 465 At confluence with Little Eagle Creek	*839 *843 *758
		Grassy Creek	Just upstream of 52nd Street About 0.54 mile upstream of 62nd Street	*773 *794
		Indian Creek	At confluence with Buck Creek About 260 feet upstream of 25th Street	*804 *834
		Lick Creek	Just upstream of Indian Lake Dam Just upstream of Conrail Just downstream of 42nd Street	*783 *818 *834
		Mud Creek	At mouth Just downstream of 86th Street	*658 *740 *793 *841 *864 *753 *701
		McFarland Creek	At confluence with Lick Creek Just upstream of Interstate 65 Just upstream of Emerson Avenue	*740 *707 *822
		Oil Creek	At confluence with Payne Branch Just downstream of 86th Street	*843 *865
		Strange Creek	At confluence with Bailey Creek Just downstream of 65th Street	*731 *740
		Williams Creek	At mouth Just upstream of Spring Mill Road Just downstream of 96th Street	*722 *754 *788
		Camp Branch	At confluence with Howland Ditch About 800 feet upstream of 75th Street	*749 *754
		Payne Branch	At confluence with Crooked Creek Just upstream of 86th Street	*824 *855
		Howland Ditch	At mouth Just upstream of Dean Road Just upstream of Allcornville Road	*728 *739 *760
		Dry Run	At confluence with Little Eagle Creek Just upstream of Georgetown Road Just upstream of 38th Street	*710 *733 *770
		Dry Run Diversion Ditch	Just downstream of 46th Street At mouth Just downstream of divergence from Dry Run	*600 *733 *741
		Sloan Ditch	At mouth Just downstream of Hunter Road	*824 *848
		Pleasant Run	At confluence with White River Just downstream of dam (near Conrail) Just upstream of Prospect Street Just upstream of 10th Street	*634 *739 *747 *808
		Pogues Run	About 0.2 mile upstream of Richard Street Just downstream of Vermont Street Just upstream of Sherman Drive Just downstream of 38th Street	*648 *721 *760 *837
Maps available for inspection at 2441 City County Building, Indianapolis, Indiana 46204.				
Iowa	(C) Marshalltown, Marshall County (Docket No. FEMA-6535).	Iowa River	About 0.5 mile downstream of Chicago and North-western Railroad. About 1,800 feet upstream of County Road E35 About 1 mile upstream of the confluence of Braddy Creek.	*681 *887 *891
		Linn Creek	At downstream corporate limit Just upstream of South 6th Street	*871 *883
		Anson Creek	At upstream corporate limit Mouth at Linn Creek	*801 *877
		Braddy Creek	Just upstream of South Center Street Mouth at Iowa River Just downstream of North 13th Street Just upstream of North 13th Street	*944 *879 *891 *898
Maps available for inspection at City Hall, P.O. Box #757, Marshalltown, Iowa.				
Kentucky	Unincorporated areas of Lawrence County (FEMA-6509).	Big Sandy River	At the confluence of Big Sandy River and Blaine Creek.	*588
		Blaine Creek	Approximately 130 feet downstream of State Highway 3. Just downstream of the Covered Bridge Approximately 100 feet downstream of State Highway 32.	*582 *591 *634
		Left Fork Blaine Creek	Approximately 530 feet upstream of State Highway 469.	*692
		Levisa Fork	Just upstream of Unnamed Bridge (approximately 1,800 feet northwest of Borders Chapel).	*592
		Right Fork Blaine Creek	Approximately 2,000 feet upstream of State Highway 469.	*691
		Tug Fork	Approximately 1,000 feet upstream of the confluence of Baker Branch (approximately 1,400 feet northwest of Concord Church). Approximately 550 feet downstream of the Lawrence County-Martin County boundary.	*598 *603
Maps available for inspection at County Judge's Office, Lawrence County Courthouse, 230 Main Cross Street, Louisa, Kentucky 41230.				
Kentucky	City of Russellville, Logan County (FEMA-6521).	Town Branch	Approximately 120 feet upstream of confluence of Town Branch Tributary D. Approximately 125 feet downstream of West Third Street.	*575 *584
		Town Branch Tributary A	Approximately 150 feet upstream of Bluegrass Avenue Approximately 300 feet upstream of Louisville and Nashville Railroad.	*598 *620

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD)
		Town Branch Tributary B	Approximately 330 feet upstream of Emerson Bypass (Industrial Road)	*630
			Approximately 60 feet downstream of West Sixth Street	*632
		Town Branch Tributary C	Approximately 100 feet upstream of U.S. Highway 79	*605
			Just upstream of U.S. Highway 431	*635
		Town Branch Tributary D	Approximately 100 feet upstream of East Second Street	*632
			Approximately 250 feet upstream of East Fourth Street (State Highway 63 and State Highway 67)	*591
			Approximately 150 feet downstream of State Highway 100	*601
		Town Branch Tributary E	Approximately 100 feet upstream of State Highway 100	*610
		Town Branch Tributary F	Just upstream of East Ninth Street	*630
	Just upstream of Gravel Street	*615		
	Town Branch Tributary G	Approximately 400 feet upstream of confluence with Town Branch	*655	
	Preston Branch Tributary A	Just upstream of the Eastern Corporate Limits	*630	
	Preston Branch Tributary B	Just upstream of Madamard Drive	*605	

Maps available for inspection at City Hall, Russellville, Kentucky 42276.

Maine	Bridgford, City, York County (Docket No. FEMA-6503).	Atlantic Ocean	Shoreline at Maresheo Cove	*14
			Shoreline at East Point	*20
			Shoreline approximately 500 northeast of Main Street (extended)	*25
		Saco River	Upstream Colcord Dam	*43
			Upstream Springs Dam	*57
			Upstream Interstate Route 65	*61
			Approximately 2 miles downstream State Route 5	*65
		Little River	Upstream corporate limits	*70
			Approximately 0.8 mile downstream of Pool Street	*9
			Upstream Pool Street	*16
		Moors Brook	Upstream Oak Ridge Road	*27
			Downstream Moxinghaus Road	*9
		Thatcher Brook	Approximately 1.54 miles upstream Moxinghaus Road	*44
			At confluence with Saco River	*69
				At South Street

Maps available for inspection at City Clerk's Office, City Hall, 205 Main Street, Bridgford, Maine.

Massachusetts	Hubbards, town, Worcester County (Docket No. FEMA-6546).	Concord Brook	Downstream corporate limits	*750
			Approximately 6,930 feet upstream of downstream corporate limits	*682
		East Branch Ware River	Waltonville Road (upstream side)	*643
			Downstream corporate limits	*636
			Lombard Road (upstream side)	*632
		Upstream corporate limits	*1,006	

Maps available for inspection at the Office of the Planning Board, Town Hall, Hubbards, Massachusetts.

Michigan	(C) Portland, Ionia County (Docket No. FEMA-6503).	Grand River	About 1.2 miles downstream of Chocoma System	*706
			About 0.8 mile upstream of Bridge Street	*716

Maps available for inspection at City Hall, 259 Kent Street, Portland, Michigan.

Minnesota	(C) Maplewood, Mower County (Docket No. FEMA-6553).	Cedar River	Within the corporate limits	*1,203
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Maps available for inspection at the Office of the City Clerk, City Hall, 204 Broadway, Maplewood, Minnesota.

Nebraska	(C) Lexington, Dawson County (Docket No. FEMA-6553).	Flatto River	About 0.60 mile downstream of U.S. Highway 223	*2,379
			About 2.25 miles upstream of U.S. Highway 223	*2,323
		Shallow flooding (overflow from Spring Creek).	About 2.0 miles north of Lexington Municipal Airport	#2
			About 0.25 mile west of State Highway 21 bridge over Spring Creek	#2
			About 0.8 mile northeast of State Highway 21 bridge over Spring Creek	#2
			About 0.25 mile east of State Highway 21 bridge over Spring Creek	#1
			About 1.9 mile east of intersection of Telt Street and U.S. Highway 223	#1
			About 2.0 miles east of intersection of Walnut Street and U.S. Highway 223	#2
Shallow flooding (overflow from Buffalo Creek).	At State Highway 21 intersection with Extraterritorial Limits Boundary in Section 20.	#1		

Maps available for inspection at City Hall, P.O. Box 70, Lexington, Nebraska.

New Jersey	Barnegat Light, borough, Ocean County (Docket No. FEMA-6550).	Atlantic Ocean	Entire shoreline within community	*15
		Barnegat Bay	Shoreline at 15th Street extended west	*7

Maps available for inspection at the Municipal Building, Ten West 10th Street, Barnegat Light, New Jersey.

New Jersey	Beach Haven, borough, Ocean County (Docket No. FEMA-6550).	Atlantic Ocean	Entire shoreline within community	*15
		Little Egg Harbor	Entire shoreline of Little Island	*12
			Entire shoreline within community	*10

Maps available for inspection at the Municipal Building, 300 Englewood Avenue, Beach Haven, New Jersey.

New Jersey	Edgewater, borough, Bergen County (Docket No. FEMA-6560).	Hudson River	Entire shoreline affecting community	*10
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Maps available for inspection at the Office of the Borough Clerk, Borough Hall, 916 River Road, Edgewater, New Jersey.

New Jersey	Harvey Cedars, borough, Ocean County (Docket No. FEMA-6550).	Atlantic Ocean	Entire shoreline within community	*15
		Manahawkin Bay	Entire shoreline within community	*7

Maps available for inspection at the Municipal Building, 16th Street and Long Beach Boulevard, Harvey Cedars, New Jersey.

State	City/town/county	Source of flooding	Location	#Depth in foot above ground. Elevation in foot (NGVD)	
New Jersey	Jamesburg, borough, Middlesex County (Docket No. FEMA-6553).	Manalapan Brook	Downstream corporate limits	*45	
			Downstream of dam	*47	
		Wigwam Brook	Manalapan Lake at William Street (extended)	*53	
			At confluence with Manalapan Brook	*47	
		Barclay's Brook	Upstream of Forsgate Drive culvert	*64	
			At corporate limits	*60	
			Confluence with Manalapan Brook	*45	
			Upstream of Lake Street	*51	
				At corporate limits	*59
		Maps available for inspection at the Municipal Building, 31 East Railroad Avenue, Jamesburg, New Jersey.			
New Jersey	Long Beach, township, Ocean County (Docket No. FEMA-6550).	Atlantic Ocean	Entire shoreline within community	*15	
			Shoreline at Cedars Avenue extended	*7	
		Manahawkin Bay	Shoreline at Roxie Avenue extended	*9	
			Shoreline at Hobart Avenue extended	*10	
		Little Egg Harbor	Shoreline 2,000 feet southwest of Roccovick Avenue extended.	*11	
Maps available for inspection at the Long Beach Township Municipal Building, 6805 Long Beach Boulevard, Beach Haven, New Jersey.					
New Jersey	Paramus, borough, Bergen County (Docket No. FEMA-6560).	Saddle River	Downstream corporate limits	*40	
			Upstream Century Road	*52	
		Sprout Brook	Upstream Grove Street	*01	
			Downstream Linwood Avenue	*78	
		Mannings Brook	Downstream corporate limits	*42	
			Upstream Century Road	*40	
		Van Saun Mill Brook	State Route 17	*47	
			Confluence of Mannings Brook	*53	
		Coles Brook	Confluence with Sprout Brook	*53	
			Downstream footbridge	*64	
		Bahnke Brook	Downstream corporate limits	*18	
			Upstream Howland Avenue	*01	
		Herring Brook	Continental Avenue	*45	
			Downstream corporate limits	*18	
			Upstream corporate limits	*25	
			Confluence with Herring Brook	*32	
			Upstream Forest Avenue	*43	
	Downstream Midland Avenue	*01			
	Confluence with Van Saun Mill Brook	*32			
	Downstream Meadow Lane	*39			
	Upstream State Route 4	*53			
Maps available for inspection at the Municipal Building, One Jockish Square, Paramus, New Jersey.					
New Jersey	Perth Amboy, city, Middlesex County (Docket No. FEMA-6550).	Raritan River	Shoreline west of State Route 35 bridge	*13	
			Shoreline east of State Route 35 bridge	*10	
		Arthur Kill	Shoreline at CONRAIL bridge	*13	
			Shoreline at Smith Street	*13	
		Spa Spring Creek	Shoreline at Buckingham Avenue	*12	
			Shoreline at State Route 440	*12	
			Entire shoreline of Woodbridge River	*10	
			Upstream of CONRAIL bridge	*13	
	Upstream of Amboy Avenue	*14			
Maps available for inspection at the Municipal Building, 260 High Street, Perth Amboy, New Jersey.					
New Jersey	Ship Bottom, borough, Ocean County (Docket No. FEMA-6550).	Atlantic Ocean	Entire shoreline within community	*15	
			Shoreline at 27th Avenue extended	*10	
		Manahawkin Bay	Shoreline at 11th Avenue extended	*0	
			Shoreline at 21st Avenue extended	*0	
Maps available for inspection at the Municipal Building, 17th and Boulevard, Ship Bottom, New Jersey.					
New Jersey	Surf City, borough, Ocean County (Docket No. FEMA-6550).	Atlantic Ocean	Entire shoreline within community	*15	
		Manahawkin Bay	Entire shoreline within community	*0	
Maps available for inspection at the Municipal Building, 813 Boulevard, Surf City, New Jersey.					
New Jersey	Upper, township, Cape May County (Docket No. FEMA-6560).	Atlantic Ocean	Entire shoreline within community	*15	
			Great Egg Harbor	From Garden State Parkway to Golders Point along shoreline.	*14
Maps available for inspection at the Upper Township Municipal Building, Tuckahoe, New Jersey.					
New Jersey	Weehawkin, township, Hudson County (Docket No. FEMA-6550).	Hudson River	Entire shoreline affecting community	*10	
Maps available for inspection at the Town Hall, 400 Park Avenue, Weehawkin, New Jersey.					
New Jersey	West New York, town, Hudson County (Docket No. FEMA-6550).	Hudson River	Entire shoreline within community	*10	
Maps available for inspection at 428 60th Street, West New York, New Jersey.					
New Jersey	West Windsor, township, Mercer County (Docket No. FEMA-6541).	Millstone River	Downstream corporate limits	*59	
			Upstream of CONRAIL bridge	*65	
			Upstream of Cranbury Road	*63	
		Big Bear Brook	Upstream corporate limits	*72	
			Confluence with Millstone River	*62	
			Upstream side of Grovers Mill Pond Dam	*67	
			Upstream of Hightstown Road	*73	
		Bear Creek	Upstream of Southfield Road	*79	
			Upstream corporate limits	*83	
			Confluence with Big Bear Brook	*82	
		Canoe	Upstream corporate limits	*69	
			Confluence with Big Bear Brook	*67	
			Upstream of North Mill Road	*70	
		Upstream of Hendrickson Drive	*65		

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. Elevation in feet (NGVD)
		Little Bear Brook	At upstream end of Penn-Lyn Road	*153
			At confluence with the Mistano River	*62
			Downstream of Meadow Road	*62
		Duck Pond Run	Downstream corporate limits	*65
			Upstream of CONRAIL bridge	*79
			Upstream of North Post Road	*85
		Stony Brook	Upstream of Penn-Lyn Road	*82
			Confluence with Mistano River	*58
			Upstream of Alexander Road	*61
		Assumpink Creek	Upstream corporate limits (extended)	*67
			Downstream corporate limits	*59
			Upstream side of Sta 29 Dam	*63
			Confluence of Bridgegreen Run	*70
			Upstream of Old Trenton Road	*70
		Bridgegreen Run	Upstream corporate limits	*74
Confluence with Assumpink Creek	*70			
Upstream of Edinburg Road	*77			
Upstream side of Old Trenton Road	*60			

Maps available for inspection at the Municipal Building, Clarksville Road, West Windsor, New Jersey.

New Jersey	White, township, Warren County (Docket No. FEMA-6509).	Delaware River	Most downstream corporate limits	*229	
			Shoreline at Ford R.R. Road (extended)	*232	
			Confluence Poplarbush Brook	*232	
			Approximately 0.65 mile upstream of upstream Edinboro corporate limits (area not included).	*260	
			Approximate center of Macks Island	*283	
			Most upstream corporate limits	*273	
			Downstream corporate limits	*285	
			Upstream Farm Road bridge	*265	
			160 feet upstream Broken Dam	*300	
			Upstream first CONRAIL crossing	*363	
		Poquest River	Upstream Buttrick Road	*375	
			Upstream third CONRAIL crossing	*465	
			Upstream corporate limits	*429	
			Confluence with Poquest River	*300	
			Upstream CONRAIL crossing	*327	
			Upstream corporate limits	*352	
			Beaver Brook	Upstream corporate limits	*327
				Confluence with Poquest River	*300
				Upstream CONRAIL crossing	*327
				Upstream corporate limits	*352

Maps available for inspection at Route 46 and Bridgeville Road, New Jersey 07823.

New York	Ballston, town, Saratoga County (Docket No. FEMA-6557).	Alphus Kill	At downstream corporate limits	*265
			At upstream corporate limits	*294
		Ballston Creek	At confluence with Ballston Lake	*253
			At downstream corporate limits	*256
		Ballston Lake	Entire shoreline within community	*253
			At East High Street	*226
		Manning Kill	Upstream of CONRAIL crossing	*271
			Upstream of Manning Kill Road	*322
			Upstream of bridge at Good Street	*333
			Upstream of Davis Lane	*437
	Upstream corporate limits	*432		

Maps available for inspection at the Town Hall, Ballston, New York.

New York	Ballston Spa, village, Saratoga County (Docket No. FEMA-6557).	Garden Creek	At confluence with Kayaderecreek Creek	*241
			Upstream of Bath Street	*245
			Upstream of Fair Ground Avenue	*225
		Kayaderecreek Creek	Approximately 1,200 feet upstream of Fair Ground Avenue	*234
			At downstream corporate limits	*230
			Upstream of Bath Street	*237
	Approximately 100 feet upstream of Milan Avenue	*243		

Maps available for inspection at the Village Hall, 66 Front Street, Ballston Spa, New York.

New York	Barker, village, Niagara County (Docket No. FEMA-6559).	Galloon Hill Creek	Approximately 600 feet upstream of State Route 143	*339
			Approximately 1,600 feet downstream of State Route 143	*366

Maps available for inspection at the Village Hall, 8703 Main Street, Barker, New York.

New York	Canastota, town, Ontario County (Docket No. FEMA-6470).	Canastota Outlet	Downstream corporate limits	*1,039
			Upstream of Hollow Road	*1,033
			Upstream of Private Hill Road	*1,100
		Alfetter Gully	Confluence with Kanoye Lake	*806
			Confluence with Tributary T5-B	*822
			Approximately 520 feet upstream of Tributary T5-B confluence	*834
		Tributary T-2	Confluence with Kanoye Lake	*808
			Upstream of Access Road	*814
			Approximately 825 feet upstream of Access Road	*842
		Tributary T5-B	Confluence with Alfetter Gully	*822
			Approximately 430 feet upstream of Alfetter Gully confluence	*841
		Tributary T-7	Confluence with Kanoye Lake	*806
			Upstream of Access Road	*812
		Tributary T-10	Approximately 750 feet upstream of Access Road	*837
			Confluence with Kanoye Lake	*806
		Tributary T-15	Upstream of Private Road	*825
			Approximately 270 feet upstream of Private Road	*842
		Tributary T-16	Confluence with Kanoye Lake	*806
			Upstream of Access Road	*820
		Tributary T-10	Approximately 200 feet upstream of Access Road	*823
			Confluence with Kanoye Lake	*806
		Tributary T-17	Upstream of Private Road	816
			Approximately 270 feet upstream of Private Road	*832
			Confluence with Kanoye Lake	*806
			Downstream of Private Road	*820

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (IGVD)
		Honeoya Lake.....	Upstream of Private Road.....	*825
		Hemlock Lake.....	Entire shoreline in the community.....	*806
			Entire shoreline in the community.....	*908
Maps available for inspection at the Town Hall, County Route 37, Springwater, New York.				
New York	Fishkill, town, Dutchess County (Docket No. FEMA-6550).	Hudson River.....	Downstream corporate limits.....	*8
			Upstream corporate limits.....	*8
		Fishkill Creek.....	Confluence with Hudson River.....	*8
			Second upstream corporate limits.....	*103
			Upstream of Interstate Route 84 westbound.....	*212
			Upstream of U.S. Route 9.....	*214
			Fourth downstream corporate limits.....	*210
			Upstream of State Route 52.....	*222
			Upstream corporate limits.....	*225
		Clove Creek.....	Confluence with Fishkill Creek.....	*212
			Upstream of downstream Private Road.....	*217
			Approximately 4,100 feet downstream of upstream Private Road.....	*230
			Upstream of upstream Private Road.....	*224
			Upstream corporate limits.....	*250
		Sprout Creek.....	Confluence with Fishkill Creek.....	*225
			Upstream corporate limits.....	*227
		Tributary to Fishkill Creek.....	Confluence with Fishkill Creek.....	*211
			Upstream of Wheaton Avenue.....	*215
			Upstream of U.S. Route 9.....	*224
			Approximately 2,700 feet downstream of Cedar Hill Road.....	*225
Maps available for inspection at the Office of the Town Clerk, 103 Main Street, Fishkill, New York.				
New York	Genesee Falls, town, Wyoming County (Docket No. FEMA-6550).	Genesee River.....	Upstream limit of Letchworth State Park.....	*1,114
			Upstream side County Route 436 bridge.....	*1,117
			At Whiskey bridge.....	*1,120
Maps available for inspection at the Town Hall, Church Street, Portageville, New York.				
New York	Glenville, town, Schenectady County (Docket No. FEMA-6557).	Mohawk River.....	Downstream corporate limits.....	*222
			At confluence of Kromme Kill.....	*226
			Upstream of CONRAIL and Delaware & Hudson Railroad.....	*231
			Upstream of Lock No. 8.....	*235
			Upstream of Boston and Maine Railroad.....	*243
			Upstream of State Route 103/Lock No. 9.....	*251
			Upstream corporate limits.....	*258
		Alplaus Kill.....	At confluence with Mohawk River.....	*224
			Upstream of Boston and Maine Railroad.....	*227
			Corporate limits (1st crossing).....	*236
			Corporate limits (2nd crossing).....	*294
			Upstream of dam.....	*330
			Upstream of Van Vorst Road.....	*335
			Upstream corporate limits.....	*340
		Kromme Kill.....	At confluence with Mohawk River.....	*220
			Downstream of Freeman's Road.....	*229
			Approximately 850 feet upstream of Delaware & Hudson Railroad.....	*241
Maps available for inspection at the Town Hall, 127 Mohawk Avenue, Scotia, New York.				
New York	Lake Luzerna, town, Warren County (Docket No. FEMA-6470).	Hudson River.....	Downstream of Palmers Falls Dam.....	*447
			Downstream of Curtis Mill Dam.....	*635
			Downstream of State Route 9N.....	*660
			Confluence of Sacandaga River.....	*681
Maps available for inspection at the Town Hall, 2143 Main Street, Lake Luzerna, New York.				
New York	Marcy, town, Oneida County (Docket No. FEMA-6535).	Mohawk River.....	Most downstream corporate limits.....	*414
			Upstream New York State Thruway.....	*415
			Upstream Hayco Road.....	*417
			At corporate limits located downstream of River Street.....	*419
			Most upstream corporate limits.....	*420
		Ninemile Creek.....	Approximately 1,700 feet (.32 mile) upstream of Powell Road.....	*493
			Approximately 4,600 feet downstream of Main Street.....	*511
			Approximately 2,900 feet (.55 mile) downstream of Main Street.....	*514
			Upstream Main Street.....	*527
			Upstream corporate limits.....	*544
Maps available for inspection at the Town Hall, 9455 Toby Road, Marcy, New York.				
New York	Port Chester, village, Westchester County (Docket No. FEMA-6550).	Long Island Sound.....	Shoreline of Port Chester Harbor.....	*17
			Byram River at Interstate Route 95.....	*12
Maps available for inspection at the Village Hall, 110 Willett Avenue, Port Chester, New York.				
New York	Schuylerville, village, Saratoga County (Docket No. FEMA-6557).	Hudson River.....	Downstream corporate limits.....	*100
			Upstream corporate limits.....	*101
		Fish Creek.....	At confluence with Hudson River.....	*109
			Upstream of Broad Street.....	*102
			At corporate limits.....	*149
Maps available for inspection at the Village Hall, Schuylerville, New York.				
New York	Scotia, village, Schenectady County (Docket No. FEMA-6557).	Mohawk River.....	Downstream of CONRAIL.....	*230
			Upstream of Western Gateway bridge.....	*232
			Upstream corporate limits (extended).....	*233
		Kromme Kill.....	Downstream corporate limits.....	*236
			Upstream of State Route 50.....	*247
			Approximately .48 mile upstream of U.S. Route 50.....	*249
Maps available for inspection at the Village Hall, Scotia, New York.				

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
New York	Schwartz, town of Saratoga County (Docket No. FEMA-6557).	Hudson River	Downstream corporate limits	*65
			Upstream of Lock No. 3	*82
			Upstream corporate limits with Village of Schwartz	*94
		Anthony Kill	Most upstream corporate limits	*97
			Downstream corporate limits at Round Lake Avenue	*158
			Confluence with Flinn Brook	*118
		Schuyler Creek	Upstream of footbridge	*132
			Upstream corporate limits	*159
			Downstream corporate limits	*84
		Flinn Brook	Approximately 3,100 feet upstream of corporate limits	*139
			Confluence with Anthony Kill	*118
			Upstream of George Thompson Road	*133
			Upstream of downstream dam	*152
			Approximately 4,450 feet upstream of dam	*215
Saratoga Lake	Approximately 2,000 feet downstream of dam	*275		
	Upstream of dam	*253		
	Approximately 2,700 feet upstream of dam, downstream of Robinson Road	*226		
	Entire shoreline within community	*210		
Maps available for inspection at the Town Hall, Schwartz, New York.				
New York	Sylvan Beach, village, Oneida County (Docket No. FEMA-6535).	Oneida Lake	Entire shoreline within the community	*373
			Erie Canal	*373
		Wood Creek	Entire shoreline within the community	*373
		Fish Creek	Confluence with Erie Canal	*373
		Upstream corporate limits	*377	
Maps available for inspection at the Municipal Building, Route 13, Sylvan Beach, New York.				
New York	Victory, village, Saratoga County (Docket No. FEMA-6557).	Fish Creek	Approximately 3,000 feet downstream of Hill Street (corporate limits)	*143
			Approximately 60 feet upstream of Hill Street	*179
			Approximately 500 feet upstream of Mennen Road	*193
Maps available for inspection at the Village Hall, Victory, New York.				
North Carolina	City of Burnsville, Yancey County (FEMA-6493).	Little Crabtree Creek	Just upstream of Hunter Street	*2,623
			Just upstream of Potomac Road (State Route 107)	*2,658
Maps available for inspection at Town Hall, Main Street, Burnsville, North Carolina 28714.				
North Carolina	Town of Maggie Valley, Haywood County (FEMA-6493).	Jonathan Creek	Just upstream of Secondary Road 1507	*2,874
			Approximately 75 feet upstream of Evans Cove Road	*2,856
		Campbell Creek	Just upstream of Fir Branch Road	*3,023
			Just downstream of U.S. Highway 19	*3,011
			Approximately 150 feet upstream of U.S. Highway 19	*3,015
Maps available for inspection at Town Hall, Highway 18, Maggie Valley, North Carolina 28751.				
North Carolina	Unincorporated areas of Yancey County (FEMA-6493).	Ayco Creek	Just upstream of Yancey Railroad (approximately 2,270 feet upstream from confluence with Little Crabtree Creek)	*2,403
			Just upstream of Secondary Road 1153	*2,628
		Little Crabtree Creek	Approximately 100 feet upstream of Secondary Road 1147	*2,471
			Just upstream of Secondary Road 1142	*2,582
		Bowlers Creek	Just upstream of Bowlers Creek Road (approximately 400 feet upstream of confluence with Cano River)	*2,615
			Just upstream of Bowlers Creek Road (approximately 2.65 miles upstream of confluence with Cano River)	*2,504
		Bald Creek	Approximately 100 feet upstream of U.S. Highway 10 (approximately 4,220 feet upstream of confluence with Cano River)	*2,512
		Bald Mountain Creek	Just upstream of Private Drive (approximately 1,800 feet upstream of confluence with Cano River)	*2,317
		Jacks Creek	Just downstream of Secondary Road 1416	*2,323
		South Toe River	Just upstream of Secondary Road 1000	*2,463
			Just downstream of confluence of Whitesock Creek	*2,678
		Cano River	Just upstream of Secondary Road 1354	*2,143
			Just upstream of U.S. Highway 10W	*2,400
		Elk Fork	Just upstream of U.S. Highway 10E	*2,535
			Just upstream of State Highway 107	*2,604
		Brewn Creek	Just upstream of State Highway 107	*3,118
		Cat Tail Creek	Just upstream of State Highway 09	*2,724
Whitesock Creek	Just upstream of State Highway 197	*2,597		
Big Creek	Approximately 20 feet upstream of Private Drive (approximately 4,800 feet above confluence with South Toe River)	*2,734		
	Just upstream of Secondary Road 1414	*2,103		
Honey Creek	Just upstream of Private Drive (approximately 700 feet upstream of confluence with Cano River)	*2,658		
Maps available for inspection at County Manager's Office, Yancey County Courthouse, Main Street, Burnsville, North Carolina 28714.				
North Dakota	Harwood (township), Cass County (FEMA-6546).	Red River of the North	The intersection of County Roads 32 and 31	*600
			Area approximately 400 feet north of the intersection of County Roads 4 and 31.	*604
Maps available for inspection at Township Hall, Route 1, Harwood, North Dakota.				
North Dakota	Road (township Cass County (FEMA-6546).	Red River of the North	The area approximately 600 feet southeast of the intersection of County Road 22 and Interstate 23.	*600
Maps available for inspection at Township Hall, Rural Route 2, Fargo, North Dakota.				

State	City/Town/county	Source of flooding	Location	#Depth in feet above ground, Elevation, in feet (NGVD), Modified
Ohio	(V) Delta, Fulton County (Docket No. FEMA-6553).	Fewloss Creek	About 2,200 feet downstream of Conrail Just upstream of Conrail About 0.6 mile upstream of Fernwood Avenue	*710 *719 *720

Maps available for inspection at the Administrator's Office, Memorial Hall, 401 Main Street, Delta, Ohio.

Ohio	(C) Grovo City, Franklin County (Docket No. FEMA-6449).	Plum Run	Just upstream of Londen-Groveport Road About 0.8 mile upstream of Londen-Groveport Road About 1.05 miles downstream of Borror Road	*720 *734 *720
		Grant Run	Just upstream of Borror Road *726	
		Grant Run Tributary	Just downstream of Interstate 71 Just upstream of Interstate 71 About 0.41 mile upstream of Interstate 71 About 0.25 mile downstream of Holton Road About 400 feet downstream of Holton Road Just upstream of Hoover Road About 1,000 feet upstream of Ordora Road	*816 *821 *820 *744 *748 *800 *826
		Brown Run	Just upstream of Hoover Road Just upstream of Santa Maria Drive Just upstream of Sheldon Place Just downstream of Chocoma System	*803 *816 *835 *845
		Mulberry Run	Just upstream of Interstate 71 Just upstream of Hoover Road Just upstream of Haughn Road	*700 *812 *838
		Marsh Run	Just upstream of Marlane Drive Just downstream of U.S. Route 62 Just upstream of U.S. Route 62 Just downstream of Chocoma System Just downstream of Big Run South Road Just upstream of Demoroot Road	*767 *810 *823 *824 *858 *872
		Republican Run	About 400 feet upstream of Interstate 71 Just downstream of Stringtown Road Just upstream of Stringtown Road About 600 feet downstream of Hoover Road Just upstream of Columbus Street (450 feet upstream of Hoover Road) Just downstream of Demoroot Road	*781 *780 *804 *818 *882

Maps available for inspection at the Administrative Assistant's Office, City Hall, 3360 Park Street, Grovo City, Ohio.

Ohio	(C) Jackson, Jackson County (Docket No. FEMA-6560).	Little Salt Creek	Approximately 0.5 mile downstream of the confluence of Jicoo Lake Creek	*648
		Horse Creek	Approximately 0.8 mile upstream of State Route 124 Approximately 0.25 mile downstream of Ch.licothe Street	*658 *650
		Price Creek	Approximately 0.3 mile upstream of M.J. Street Confluence with Little Salt Creek	*651 *649
		Jicoo Lake Creek	Approximately 400 feet upstream of Coffman Street Confluence with Little Salt Creek	*659 *649
		South Branch	At confluence with Parkview Lateral At the confluence with Little Salt Creek	*650 *654
		Sugar Run	Approximately 0.3 mile upstream of Vaughn Street Just downstream from Detroit, Toledo, and Cinton Railroad	*669 *652
		Parkview Lateral	Approximately 0.5 mile upstream from Chocoma System At confluence with Jicoo Lake Creek	*652 *650
		Lateral L	Approximately 0.1 mile upstream of State Street At confluence with Little Salt Creek Approximately 200 feet upstream of State Route 93	*650 *654 *657

Maps available for inspection at the Safety Service Director's Office, City Hall, Memorial Building, Broadway Street, Jackson, Ohio.

Oregon	Adama (city), Umatilla County (FEMA-6550).	Wildhorse Creek	Intersection of Wedo Street and Main Street	*1517
		Sand Hollow Creek	Intersection of William Street and East Street	

Maps available for inspection at City Recorder's Home, Box 112, Adama, Oregon.

Oregon	Baker (city), Baker County (FEMA-6548).	Powder River	At the intersection of 13th Street and Auburn Avenue	*3,435
		Old Scitlers Slough	At the intersection of Wabach Avenue and 2nd Street	*3,459

Maps available for inspection at City Hall, Baker, Oregon.

Oregon	Echo (city), (Umatilla County) (FEMA-6489).	Umatilla River	35 feet downstream from center of Main Street	*639
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Maps available for inspection at City Hall, Bonanza, Echo, Oregon.

Oregon	Helix (city), Umatilla County (FEMA-6557).	Greasewood Creek	Intersection of Harrison Street and Aurora Street	*1,755
		Southwest Drainage	Intersection of Columbia Street and Morton Street	*1,762

Maps available for inspection at City Hall, Helix, Oregon.

Oregon	Ontario (city), Malheur County (FEMA-6548).	Snake River	At Union Pacific Railroad Crossing	*2,142
		Malheur River	Center of Intersection of 8th Avenue NW and 5th Avenue NW	*2,145

Maps available for inspection at City Hall, 444 SW 4th Street, Ontario, Oregon.

Pennsylvania	Bechtelsville, borough, Berks County (Docket No. FEMA-6498).	Swamp Creek	Downstream corporate limits Approximately 80 feet upstream of M.J. Street Approximately 40 feet upstream of CONRAIL Upstream Main Street Upstream corporate limits	*325 *301 *305 *400 *425
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Maps available for inspection at the Borough Hall, 158 South Main Street, Bechtelsville, Pennsylvania.

Pennsylvania	Chester, township, Delaware County (Docket No. FEMA-6528).	Chester Creek	At downstream corporate limits At upstream corporate limits	*20 *41
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Maps available for inspection at the Chester Township Building, 1150 Mildred Avenue, Chester, Pennsylvania.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Pennsylvania	Colebrookdale, township, Berks County (Docket No. FEMA-6541).	Ironstone Creek	At downstream corporate limits	*318
			Approximately 169 feet downstream of Reading Avenue (Route 592)	*333
		Swamp Creek	At downstream corporate limits	*305
			Upstream M.J. Great Road	*318
			Approximately 233 feet downstream of Spring Garden Drive (Route 592)	*331

Maps available for inspection at the Municipal Building, Boyertown, Pennsylvania.

Pennsylvania	Douglass, township, Montgomery County (Docket No. FEMA-6550).	Munster Creek	Downstream corporate limits	*271
			Upstream Gilbertville Road	*235
			Upstream Munster Creek Dam No. 1	*310
		Oley Creek	At upstream corporate limits	*337
			At confluence with Munster Creek	*275
			Upstream of Gilbertville Road	*283
		Swamp Creek	Upstream of Swainhart Road	*353
			Approximately .24 mile upstream of Swainhart Road	*374
			Most downstream corporate limits	*271
		Middle Creek	Upstream of Congo Road	*291
			Approximately .76 mile downstream of County Line Road	*286
			At County Line Road and County boundary	*311
		Sektogel Run	Downstream corporate limits	*268
			Upstream of dam	*276
		West Branch Parkersman Creek	Approximately .53 mile upstream of Dam	*282
Downstream corporate limits	*276			
Upstream of Hallmanville Road	*306			
		Downstream of Hallman Road	*346	
		Upstream of West Branch Road	*345	
		Approximately .63 mile upstream of Dam No. 1	*336	
		Upstream of Miller Road	*335	
		Upstream County boundary	*411	

Maps available for inspection at the Municipal Building, Gilbertville, Pennsylvania.

Pennsylvania	Doylestown, borough, Bucks County (Docket No. FEMA-6541).	Neochamby Creek Tributary	Downstream corporate limits	*259
			Downstream Green Street	*283
			Upstream East State Street	*331
			Upstream Forest Drive	*337
		Cooks Run	Upstream Creek Drive	*355
			Upstream corporate limits	*373
			Upstream U.S. Route 292 bypass	*313
			Upstream corporate limits	*323

Maps available for inspection at the Borough Building, Doylestown, Pennsylvania.

Pennsylvania	LeZoeuf, township, Erie County (Docket No. FEMA-6012).	French Creek	U.S. Route 6 (upstream side)	*1,165
			Flata Road (upstream side)	*1,174
			Approximately 1,000 feet above Dowey Road	*1,197

Maps available for inspection at the Township Building, Waterford, Pennsylvania.

Pennsylvania	Montgomery, township, Montgomery County (Docket No. FEMA-6539).	West Branch Neochamby Creek Tributary	Corporate limits	*237
			Approximately 839 feet downstream of U.S. Route 292/Doylestown Road	*369
		Little Neochamby Creek	Downstream of U.S. Route 292/Doylestown Road	*372
			At Hones Road	*301
		Little Neochamby Creek Tributary No. 1	At confluence of Little Neochamby Creek Tributary No. 1	*327
			Downstream of Henschel Road/Pennsylvania Route 453	*345
		Little Neochamby Creek Tributary No. 2	At confluence of Little Neochamby Creek	*327
			Downstream of Stamp Road	*333
Cedar Tributary	At confluence with Little Neochamby Creek	*311		
	Downstream of Stamp Road	*340		
		1,229 feet upstream of CONRAIL	*291	
		2,009 feet upstream of CONRAIL	*232	

Maps available for inspection at the Township Municipal Building, Montgomery, Pennsylvania.

Pennsylvania	Washington, township, Berks County (Docket No. FEMA-6541).	Tributary E to Swamp Creek	Upstream Old Route 169	*442
			Downstream Farm Dam	*569
		Swamp Creek	At downstream corporate limits	*289
			Approximately 770 feet upstream of M.J. Street	*363

Maps available for inspection at the Township Building, Monday and Wednesday from 8:00 a.m. to 3:30 p.m., Washington, Pennsylvania.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in meters above ground, *Elevation in Meters (MSL)
Commonwealth of Puerto Rico.	Lajas Valley (FEMA-6554)	Rio Loco	Center of Puerto Rico Highway 332, 110 meters south of its intersection with Puerto Rico Highway 116.	*0.0
		Caribbean Sea	At the intersection of Puerto Rico Highways 116 and 389. South end of Puerto Rico Highway 332, approximately 1.45 kilometers south of its intersection with Puerto Rico Highway 116.	*23.0 *2.1
Maps available for inspection at Puerto Rico Planning Board, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio Guanajibo Basin (FEMA-6470)	Rio Guanajibo	10 meters upstream from the center of Puerto Rico Highway 102 (Avenida Comercio).	*3.0
			At the intersection of Puerto Rico Highway 114 and river.	*20.3
			10 meters downstream from the center of Puerto Rico Highway 119.	*45.6
			30 meters downstream from the center of Puerto Rico Highway 368.	*04.0
	Quebrada Mendoza	At the intersection of Puerto Rico Highway 312 and Calle Baldoriot.	*22.1	
	Atlantic Ocean	At the mouth of Rio Guanajibo	*1.0	
Maps available for inspection at Planning Board, Minillas Government Center, D-Diego Avenue, P.O. Box 41119, San Juan, Puerto Rico.				
Commonwealth of Puerto Rico.	Rio Yaguez Basin (FEMA-6554)	Rio Yaguez	40 meters upstream from the center of Calle Post	*9.5
		Atlantic Ocean	At the intersection of Avenida Comercio and Calle McKinley. West end of Calle McKinley, 90 meters west of its intersection with Avenida Comercio.	*0.9 *1.0
Maps available for inspection at Puerto Rico Planning Department, Minillas Government Center, North Building, 14th Floor, Santurce, Puerto Rico.				

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the 90-day period and the proposed base flood elevations have not been changed.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground, *Elevation in feet (NGVD)	
Rhode Island	Middletown, town, Newport County (Docket No. FEMA-6550).	Narragansett Bay	Entire shoreline within community	*17	
			Rhode Island Sound	Ellery Avenue (extended)	*28
			Hoover Road (extended)	*19	
			Easton Point	*28	
			Ashurt Avenue (extended)	*20	
			Purgatory Road (extended)	*34	
			Rocks Road (extended)	*19	
			Sachuest Point	*23	
			Mathews Lane (extended)	*34	
			Buena Vista Avenue (extended)	*20	
			Peckham Avenue (extended)	*10	
			Green End Avenue (upstream side)	*13	
			Clambake Road (upstream side)	*22	
			East Main Road (upstream side)	*45	
			Woolsey Road (upstream side)	*72	
			Approximately 1,400 feet upstream of St. Lucy School Drive.	*115	
			Paradise Brook	Confluence with Nelson Pond	*13
				Access Road (upstream side)	*04
				Green End Avenue (upstream side)	*120
			Maidford River	Upstream of Mitchell's Lane	*168
		Approximately 420 feet downstream of Easton Farm Drive.	*13		
		Reservoir Road (upstream side)	*47		
		Prospect Avenue (upstream side)	*72		
		Green End Avenue (upstream side)	*105		
		Berkeley Avenue (upstream side)	*117		
		Approximately 600 feet upstream of Wyatt Road	*164		
Maps available for inspection at the Town Hall, Middletown, Rhode Island.					
Texas	City of Little River-Academy, Bell County (FEMA 6526).	Boggy Creek	Just upstream of FM 436	*454	
			Just upstream of Texas Highway 95	*403	
		Boggy Creek Tributary 1	Just upstream of Wilson Valley Road	*447	
Maps available for inspection at City Hall, Main and Evan Streets, Little River Academy, Texas 76554.					
Texas	Shoreacres, city, Harris County (Docket No. FEMA-6431).	Galveston Bay	Entire shoreline within community	*17	
		Taylor's Bayou	Entire length within the community	*11	
Maps available for inspection at the Shoreacres City Hall.					

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
Virginia	Accomack County (Docket No. FEMA-6401)	Chincoteague Bay	Eastern shoreline	*9	
			Western shoreline	*10	
		Atlantic Ocean	Shoreline from northern county boundary to Washapague Inlet	*12	
			Shoreline from Washapague Inlet to southern county boundary	*13	
		Chesapeake Bay	Smith Island south to Tanger Island	*6	
			Great Fox Island south to Watts Island	*9	
			Shoreline from northern county boundary to Bee Creek	*9	
			Shoreline from Bee Creek to Nantux Creek	*10	
				Shoreline from Nantux Creek to southern county boundary	*11

Maps available for inspection at the Zoning Office, Accomack County Office Building, Accomack, Virginia.

Virginia	Patrick County (Docket No. FEMA-6553)	South Mayo River	Approximately 7 mile downstream of State Route 631	*1,152
			Confluence of Campbell Branch	*1,182
			Confluence of North Fork South Mayo River	*1,216
			Upstream State Route 63 (most downstream crossing)	*1,231
			Upstream State Route 815 (upstream crossing)	*1,624
			Upstream State Route 631 (most upstream crossing)	*1,447
		Campbell Branch	Approximately 03 foot upstream of State Route 644	*1,435
			Confluence with South Mayo River	*1,182
			Upstream U.S. Route 59	*1,249
		North Fork South Mayo River	Approximately 600 feet upstream Johnson Street	*1,351
			Confluence with South Mayo River	*1,216
			Confluence of Pearhouse Creek	*1,244
			Approximately 23 mile upstream U.S. Route 59 (downstream crossing)	*1,271
		Pearhouse Creek	Approximately 1.15 miles downstream State Route 8	*1,328
			Upstream U.S. Route 59 (upstream crossing)	*1,331
			Confluence with North Fork South Mayo River	*1,244
			Upstream of most upstream private drive	*1,279
				Approximately 23 foot upstream State Route 642

Maps available for inspection at the Office of Patrick County Administrator, Hooper Building, Stuart, Virginia.

Virginia	Stuart, town, Patrick County (Docket No. FEMA-6553)	South Mayo River	Downstream corporate limits	*1,182	
			Upstream Mountain Access Road	*1,189	
			Upstream corporate limits	*1,195	
		North Fork South Mayo River	Downstream corporate limits	*1,223	
			Upstream State Route 1620	*1,233	
			Upstream corporate limits	*1,243	
		Campbell Branch	Confluence with South Mayo River	*1,182	
			Upstream U.S. Route 59	*1,243	
			Upstream Johnson Street	*1,325	
				Upstream corporate limits	*1,351

Maps available for inspection at the Town Office, Stuart, Virginia.

West Virginia	Marshall County (Docket No. FEMA-6550)	Ohio River	At downstream county boundary	*640	
			At Captain Island	*643	
			At corporate limits of City of Mollohan	*655	
		Whooing Creek	At downstream county boundary	*659	
			County Route 5 (most downstream crossing) upstream side	*727	
		Little Grave Creek	At Birch Road	*771	
			At corporate limits of City of Moundsville	*652	
			Lindy Lane (upstream side)	*674	
				Approximately 59 mile upstream of Lindy Lane	*686

Maps available for inspection at the Marshall County Courthouse, Moundsville, West Virginia.

West Virginia	Monongalia County (Docket No. FEMA-6550)	Dozers Creek	Downstream corporate limits of City of Martintown	*845	
			Downstream of State Route 7	*839	
			Downstream side access road bridge	*843	
			Approximately 634 feet upstream of State Route 7 bridge	*1,017	
		Dunkard Creek	Downstream county boundary	*914	
			Upstream side, most downstream County Route 33 bridge	*920	
			Upstream side, most upstream County Route 33 bridge	*926	
			Downstream side, most downstream State Route 7 bridge	*940	
			Downstream side, most upstream State Route 7 bridge	*946	
			Most upstream county boundary	*856	
		Monongahela River	Downstream county boundary	*807	
			Downstream side, Star City Highway bridge	*811	
			Most downstream City of Martintown corporate limits	*812	
			Upstream side, Martintown Lock and Dam	*819	
			Most upstream Martintown corporate limits	*820	
			Upstream side, Interstate 78 bridge	*823	
			Upstream side, Hillbrende Lock and Dam	*835	
			Upstream side, Opokaka Lock and Dam	*857	
				Upstream county boundary	*861

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Aaron Creek.....	Downstream City of Morgantown corporate limits..... Upstream side, downstream County Route 64 bridge..... Upstream side, upstream County Route 64 bridge.....	*845 *849 *853
Maps available for inspection at the Monongalia County Courthouse, 245 High Street, Morgantown, West Virginia.				
West Virginia.....	Pratt, town, Kanawha County (Docket No. FEMA-6550).	Kanawha River..... Paint Creek.....	Confluence of Paint Creek..... Upstream corporate limits..... Confluence with Danawha River..... Upstream corporate limits.....	*614 *615 *614 *615
Maps available for inspection at the Town Hall, Pratt, West Virginia.				
Wisconsin.....	(V) Williams Bay, Walworth County (Docket No. FEMA-6541).	Lake Geneva..... Southwick Creek..... Southwick Creek Overland Flow.....	Shoreline..... At mouth..... About 1,800 feet upstream of Geneva Street..... About 4,000 feet upstream of Geneva Street..... Just upstream of confluence with Southwick Creek..... At divergence with Southwick Creek.....	*685 *685 *877 *903 *877 *885
Maps available for inspection at the Village President's Office, Village Hall, 65 West Geneva Street, Williams Bay, Wisconsin.				
Wyoming.....	Campbell County (unincorporated areas) (FEMA-6553).	Donkey Creek..... Donkey Creek..... Stonepile Creek..... Antelope Butte Creek..... Sleepy Hollow Creek..... Little Rawhide Creek.....	50 feet upstream from the center of Donkey Creek Drive. At the center of Jay Hawker Street crossing..... At the confluence with Donkey Creek..... 100 feet upstream of State Highway 59..... 100 feet upstream from the center of Sleepy Hollow Blvd. 50 feet downstream from the center of State Highway 14 and 16.	*4,560 *4,570 *4,401 *4,553 *4,570 *4,268
Maps available for inspection at Engineer's Office, 500 South Gillette, Gillette, Wyoming.				

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Appeals of the proposed base flood elevations were received and have been resolved by the Agency.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
Connecticut.....	Clinton, town, Middlesex County (Docket No. FEMA-6527).	Long Island Sound.....	Shoreline at Indian Street extended..... Shoreline at Uncas Road extended..... Shoreline at Central Road extended.....	*10 *14 *10
Maps available for inspection at the Town Hall, Clinton, Connecticut.				
Florida.....	Charlotte County (unincorporated areas) (FEMA-6485).	Gulf of Mexico..... Charlotte Harbor.....	At the center of intersection of Annapolis Lane and Oakland Hills Road. At the center of intersection of Griggs Road and Short Street. At the center of intersection of Woodside Street and Ester Avenue. At the center of intersection of 4th Street and Larsen Street. At the center of intersection of Bayshore Road and Larsen Street.	*10 *13 *0 *10 *12
Maps available for inspection at the Zoning Office, 18500 Murdock Circle, Port Charlotte, Florida.				
Florida.....	Sarasota County (unincorporated areas) (FEMA-6521).	Gulf of Mexico.....	Center of intersection of West River Road and Venoco Farm Road. Center of intersection of Mangrove Point Road and Midnight Pass Road. Center of intersection of Cedar Park Circle and Higel Avenue. Center of intersection of State Highway 789 and City Island Road. Center of intersection to Givens Street and Ocean Boulevard. Center of confluence of Forked Creek and Lemon Bay. Center of intersection of Beach Road and Columbus Boulevard. Western most tip of Sarasota Point..... 200 feet west from the center of intersection of Casey Key Road and Sandspur Lane. 500 feet southwest from center of intersection of Uplands Boulevard and Parkview Drive.	*0 *10 *11 *12 *13 *14 *15 *16 *17 *18
Maps available for inspection at the Building Department, 1301 Cattleman Road, Sarasota, Florida.				
Indiana.....	(T) Dyer, Lake County (Docket No. FEMA-6074).	Dyer Ditch.....	At mouth..... Just downstream of 213th Street..... Just upstream of 213th Street..... About 0.4 mile downstream of U.S. Highway 30..... Just downstream of U.S. Highway 30.....	*622 *622 *626 *629 *635

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet (NGVD)
			About 200 feet downstream of the Louisville and Nashville Railroad	*636
			Just upstream of the Louisville and Nashville Railroad	*642
		Hart Ditch	Just downstream of Navak Road	*642
			Just upstream of Main Street	*621
			Just downstream of the Elgin Joliet and Eastern Railway	*630
			Just upstream of the Louisville and Nashville Railroad	*632
		Shallow Flooding	About 0.27 mile upstream of Hart Street	*637
			Portions of the area south of Main Street, east of Sheffield Avenue, north of 210th Street, and west of Hart Ditch	*620
			Portions of the area bordered by Dyer Ditch, Hart Ditch, and 210th Street	*622
			Portions of the area south of 210th Street, west of Dyer Ditch, north of the Elgin Joliet and Eastern Railway, and east of Cabinet Avenue	*625
			Portions of the area south of 210th Street and northeast of Dyer Ditch	*624
			Portions of the area south of the Elgin Joliet and Eastern Railway, west of Dyer Ditch, north of Lincoln Highway, and east of the Louisville and Nashville Railroad	*623
			Area east of Dyer Ditch and north of Lincoln Highway	*623
			Portions of the area south of Main Street, east of Hart Ditch, and northeast of Dyer Ditch from its mouth to about stream mile 0.57	*620
			Portions of the area northwest of Dyer Ditch at about stream mile 0.6	*621

Maps available for inspection at the Town Hall, 226 East Schulte Street, Dyer, Indiana.

Nevada	Mineral County (unincorporated areas) (FEMA-6356)	Cottonwood Creek Alluvial Fan Flooding	Intersection of Kenneth Drive and Cottonwood Drive	#3
		Shallow Flooding	60 feet west from center of intersection of Randal Street and U.S. Highway 95	*4,035
		Carcy, Powell, and Little Squaw Creeks	Intersection of 1st Street and State Highway 31	#1
		Luning area Alluvial Fan Flooding	1.3 miles south of intersection of State Highway 23 and U.S. Highway 95	#1

Maps available for inspection at County Clerk and County Treasurer's Office, 1st and A Streets, Hawthorne, Nevada.

Pennsylvania	Kennett, township, Chester County (Docklet No. FEMA-6254)	Red Clay Creek	At the downstream corporate limits	*191
			At the confluence of East Branch Red Clay Creek	*204
		West Branch Red Clay Creek	At the confluence with East Branch Red Clay Creek	*204
			Approximately 1,600 feet upstream of Winding Lane	*217
			At Kaslin Road	*226
			At Private Road located approximately 3,800 feet upstream of Chandler Mill Road	*244
			At Hillendale Road bridge	*256
			At Quarry Road	*265
			At West Cypress Street	*277
			At the upstream corporate limits	*268
		East Branch Red Clay Creek	At the confluence with Red Clay Creek	*204
			At downstream side of Old Kennett Road	*224
			At upstream side of McFarland Road bridge	*241
			Approximately 550 feet upstream of Hillendale Road bridge	*260
			At the downstream Kennett Square corporate limits	*283
			At the upstream Kennett Square corporate limits	*306
			At the upstream corporate limits	*324
		Tributary 1	At the downstream corporate limits	*209
			At Burnt Mill Road bridge	*222
			Approximately 2,600 feet upstream of Burnt Mill Road bridge	*246
		Tributary 2	At the downstream corporate limits	*316
			At upstream side of Hadley Mill Road bridge	*323
			Approximately 1,300 feet upstream of Hadley Mill Road bridge	*341
			At the upstream corporate limits	*350

Maps available for inspection at the Township Building, Kennett Square, Pennsylvania.

Texas	City of Port Arthur, Jefferson County (FEMA-6333)	Rhodar Gulch	Just upstream of Port Arthur Road	*10
			Just downstream of U.S. Highway 69	*15
		Alligator Gulch	At the intersection of Memorial Freeway and Main "B" Canal	*3
		Port Arco	At the intersection of State Highway 365 and Wilson Avenue	*3
		Lakecaddo	Along Bayou Drive and Cashmere Drive	*1
		Creno Bayou	At the intersection of Main Avenue and 15th Street	*3
		Sabino Pass	At the entrance to Sabino Pass	*16
			Just south of Texas Point at mouth of Texas Bayou	*16
			At the Coast Guard Station at shore side	*13
			At Sabino Pass side	*14
			At Sabino Pass community at intersection of State Highway 87 and Broadway Street	*12
			At Sabino Pass just upstream of U.S. Highway 82	*12
			At the crossing of State Highway 87 over the Intra-coastal Waterway	*12

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)
		Neches River	At Gulf Gate Bridge at Sabino/Neches Canal..... At Main Avenue extended outside of the Lovco..... Southwest of the community of Sabino Pass, at the intersection of State Highway 87 and a dirt road located 1.75 miles southwest of Squib 14th Avenue. At State Highway 87 (under the control of Wave Height Action). At mouth of Molasses Bayou (affected by Wave Height Surge).	*10 *8 *15 *9 *0

Maps available for inspection at City Hall, 444 Fourth Street, Port Arthur, Texas 77640.

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17604, November 28, 1968), as amended; 42 U.S.C. 4001-4128; and E.O. 12127, 44 FR 19367)

Issued: January 5, 1984.

Jeffrey S. Bragg,
 Administrator, Federal Insurance Administration.

[FR Doc. 84-785 Filed 1-11-84; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[Gen. Docket No. 83-325; RM-4062; RM-4075; FCC 83-597]

Amendment of Part 15 to Add New Interim Provisions for Cordless Telephones

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order adopts interim rule provisions for cordless telephones. This action is needed because the present FCC Rules are inadequate to meet the growing consumer demand for these devices. This action is intended to provide relief from overcrowding of cordless telephone channels while the Commission contemplates permanent rule provisions for these devices.

DATES: This Order becomes effective February 15, 1984.

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

FOR FURTHER INFORMATION CONTACT: Mr. Julius P. Knapp, Federal Communications Commission, Office of Science and Technology, 2025 "M" Street NW., Washington, D.C. 20554. Phone (202) 653-8247.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 15

Cordless telephones.

Report and Order

In the matter of Amendment of Part 15 to add new interim provisions for cordless telephones; Gen. Docket No. 83-325, RM-4062, RM-4075.

Adopted: December 22, 1983.

Released: January 10, 1984.

By the Commission.

I. Introduction

1. A *Notice of Proposed Rulemaking* (NPRM) in this proceeding was adopted on March 31, 1983 (48 FR 16298, April 15, 1983). The instant *Report and Order* establishes interim rule provisions for cordless telephones until permanent frequencies can be found for operation of these devices.

2. Cordless telephones utilize a short range two-way radio communications link in place of the wire normally connected to a telephone handset. This allows the user the freedom to talk on the telephone anywhere throughout his home or yard without the restriction of the telephone cord. Cordless telephones presently operate without individual license under the provisions for low power communication devices in Part 15 of the FCC Rules. Most of the present generation of cordless telephones are designed so that the portable handset transmits on one of five frequencies in the 49 MHz band subject to the requirements of §§ 15.117 and 15.118; the base unit, which connects to the telephone line, transmits in the band 1.625 to 1.8 MHz using carrier current techniques, subject to the requirements of § 15.7 of the Rules.¹

¹ In an *Order Granting Conditional Waiver*, adopted September 29, 1982, released October 4, 1982, 48 FR 4788, the Commission granted a waiver of § 15.7 to American Telecommunications Corporation for a cordless telephone. The waiver was subject to technical and other conditions and required production to terminate by October 1, 1984. Authority was delegated to the Chief Scientist to grant waivers to other manufacturers subject to the same conditions. An *Errata* to the waiver was issued on February 1, 1983, 48 FR 5928. See also the *Memorandum Opinion and Order*, FCC 33-358,

3. This proceeding was initiated in response to petitions for rulemaking from the Electronic Industries Association, Telecommunications Group, Personal Communications Section (EIA/PCS) and Mura Corp.,² who stated that the present rules are inadequate to meet the growing demand for cordless telephones. The *NPRM* cited the following reasons for the proposal: the presently available frequencies are fast becoming overcrowded resulting in mutual interference between cordless telephones; the anticipated expansion of the AM broadcast band upwards to 1705 kHz towards the end of this decade will result in interference to cordless telephones; and, there are technical difficulties with 1.625-1.8 MHz carrier current operation (i.e., 1.7 MHz cordless telephones are susceptible to interference from home appliances and other devices connected to the household electrical wiring, and the 1.7 MHz band is a poor match for the 49 MHz link due to substantially different radio wave propagation characteristics). The petitioners requested that 25 to 30 channels be established for cordless telephones. Both Mura and EIA/PCS suggested use of frequencies in the bands 46.6-47.0 MHz and 49.6-50.0 MHz, which are allocated for use by the U.S. Government, and additionally, EIA/PCS recommended use of the bands 74.6 to 74.8 MHz and 75.2 to 75.4 MHz, which straddle the allocation at 75 MHz for aeronautical marker beacons.

adopted July 28, 1983, released August 5, 1983, reaffirming the waiver.

² Petition filed by the Mura Corporation on February 26, 1982, designated RM-4062. Petition filed by the Electronics Industry Association (EIA) on March 10, 1982, designated RM-4075.

4. The Commission's decision to propose frequencies in the 46 MHz and 49 MHz bands was coordinated with and concurred in by the U.S. Department of Commerce, National Telecommunications and Information Agency (NTIA) which has responsibility for managing U.S. Government use of the radio spectrum. Specifically, NTIA, in a report which was approved by the Interdepartment Radio Advisory Committee (IRAC) and referred to the Commission by NTIA, agreed to allow interim use of the 46 and 49 MHz frequencies provided that manufacturing or importing of equipment using these frequencies is terminated after five years and provided further that marketing is terminated within six years from the date any rules become effective.³

5. The *Notice of Proposed Rulemaking* in this docket proposed to permit production of cordless telephones for a period of 5 years in 20 frequencies (10 duplex channels) in the 46 and 49 MHz bands. Marketing was to terminate one year later. With respect to a long term solution for cordless telephones, the Commission had already solicited comments on one possible method of accommodating cordless telephones. In General Docket 83-26, which proposed a new personal radio service in the 900 MHz region of the spectrum, comments had been requested as to whether cordless telephones might be made part of this new service.⁴ Cordless telephone manufacturers had indicated informally that it would take 5 to 10 years to develop viable 900 MHz cordless telephones. In view of the industry's stated need for more immediate relief, the Commission elected to propose interim rules at 46/49 MHz.

6. Fourteen parties filed comments and eight parties filed reply comments in response to the *NPRM* as listed in the attached Appendix A. The majority of commenters are manufacturers of cordless telephones. Two of the commenters, AT&T and GTE Service Corp., are telephone system operators. Three are organizations representing TV broadcast interests who focus exclusively on interference to TV reception that could potentially be caused by cordless telephones. The issues which the commenters have raised are discussed below. With the exceptions of those modifications discussed in the succeeding paragraphs,

the rules we are adopting herein are essentially the same as those proposed.

II. Comments and Discussion

A. Permanent Provisions for Cordless Telephones

7. Cordless telephone manufacturers and telephone system operators first and foremost emphasize the need for the Commission to move forward as soon as possible with permanent provisions for cordless telephones, notwithstanding the fact that immediate relief is needed by way of adoption of the proposed interim rules. The cordless telephone industry indicates that while it is receptive to a permanent frequency assignment in the 900 MHz region of the spectrum, it does not believe that cordless telephones can share frequencies with the proposed new personal radio service. Several of the commenters report that they intend to file detailed comments to this effect in the pending General Docket 83-26. Further, Electronic Industries Association, Personal Communications Section (EIA/PCS), which represents approximately fifteen cordless telephone manufacturers, states that it plans to submit a petition for rulemaking in the near future containing a specific proposal for an exclusion allocation of frequencies for cordless telephones in the 900 MHz region.

8. General Electric Co. (GE), the petitioner for the new 900 MHz personal radio service, filed comments in the instant docket as a distributor of cordless telephones. GE suggests that the Commission delay a decision on a permanent allocation for cordless telephones until after the new personal radio service is established and some experience is gained with this service. This experience could then form the basis for determining whether the service is suitable for cordless telephones. This suggestion is strongly opposed by EIA/PCS, AT&T and Uniden who reply that the demand for cordless telephones is sufficiently great that it merits separate and immediate action.

9. The Commission fully recognizes the need to establish permanent provisions for cordless telephones. We will evaluate the comments filed in General Docket 83-26 and if it appears that cordless telephones can and should be accommodated within the scope of that proceeding we will act accordingly. Alternatively, if the industry believes that a separate proceeding is required, as seems to be indicated by the comments filed in this docket, we would welcome a detailed proposal.

B. Proposed Interim Frequencies

10. In addition to proposing the use of 46/49 MHz frequencies for cordless telephones, comments were solicited in the *NPRM* as to whether additional lightly loaded frequencies in the non Government land mobile bands between 30 and 50 MHz might be used for cordless telephones on either an interim or permanent basis. The frequencies, identified in footnote 11 of the *NPRM*, were not expressly proposed because it was anticipated that the wide dispersal of the frequencies would pose design problems for cordless telephones.⁵ Also, it was expected that land mobile users would increase the use of these frequencies once they became aware of the light loading. EIA/PCS suggests that the frequencies in the band 30 to 50 MHz be made available for cordless telephones on an interim basis. They estimate that the 20 frequencies which the Commission proposed at 46 and 49 MHz will provide relief for only 12 to 18 months. Some manufacturers who filed individual comments estimated that the relief might last as long as 2½ years. The additional lightly loaded frequencies in the 30 to 50 MHz band should, according to EIA/PCS, be made available to provide the 5 year relief contemplated in the *NPRM*. EIA/PCS indicates that if manufacturers encounter difficulties in designing cordless telephones for the entire 30 to 50 MHz band, they can merely choose to design for a part of this band, i.e. the 46/49 MHz segment.

11. The question of how long a period of relief from overcrowding will be provided by the interim frequencies at 46 and 49 MHz is a matter of speculation and we have no clear evidence that the proposed frequencies will not be sufficient until permanent provisions are in place. Moreover, there appears to be little assurance that cordless telephone manufacturers would, in fact, use the subject frequencies in the 30 to 50 MHz band if made available to them. These factors, in addition to some concerns we have about possible interference, lead us to conclude that it is inappropriate to take action on the subject frequencies in the 30 to 50 MHz region at this time. Accordingly, we have limited the interim frequencies for cordless telephones to those at 46 and 49 MHz, as proposed in the *NPRM*.

³A copy of the "Report of Ad Hoc 184" has been placed in the official file of this proceeding and is available through the FCC duplicating contractor.

⁴*Notice of Proposed Rulemaking*, General Docket 83-26, FCC-83-19 [Released March 4, 1983], at paragraph 76.

⁵Footnote 11 of the *NPRM* identified 30 frequencies spread throughout the 30 to 50 MHz range. The frequencies are so widely separated that it is questionable whether a single cordless telephone design could cover all the frequencies. Changes of electrical parts or returning of circuits might be required.

12. GTE notes that a number of the proposed interim frequencies are spaced only 15 kHz apart and contends that adjacent channel interference will occur with this spacing. No data are presented to support this contention. Existing cordless telephones operating at 49 MHz under the provisions of §§ 15.117 and 15.118 utilize 20 kHz channels spaced 15 kHz apart and none of the manufacturers commenting in this proceeding report difficulties with adjacent channel interference. The Commission has received reports of mutual interference between cordless telephones, and while we cannot say with certainty that adjacent channel interference has never been the cause, in our opinion this does not seem to be a significant problem. Lacking actual evidence of adjacent channel interference, we believe there is no reason to change the channel spacing at this time.

13. Mr. John S. Papay, an amateur radio operator, advises that 3 of the proposed interim frequencies, 46.79, 49.79 and 49.93 MHz, are utilized by the U.S. Army Military Affiliate Radio System (MARS) program in Ohio. Consequently, Mr. Papay claims that there will be mutual interference between cordless telephones and MARS equipment in Ohio. MARS is a voluntary program whereby amateur radio operators provide communications assistance to the military using U.S. Government frequencies. In response to Mr. Papay, EIA/PCS and Uniden point out that the proposed frequencies were recommended by NTIA/IRAC as the least utilized on a nationwide basis. The use of certain frequencies by MARS in Ohio should not, according to EIA/PCS and Uniden, preclude nationwide use by cordless telephones. They assert further that with the high power operation of MARS and low power operation of cordless telephones, if interference occurs it would be to cordless telephones. We agree, in part, with EIA/PCS and Uniden. Most importantly, we would expect that if interference occurs on these few frequencies in Ohio, then vendors in that state will soon learn to avoid marketing cordless telephones that use those frequencies. Mr. Papay's comment has been brought to the attention of NTIA for its consideration.

C. Designation of Frequency Bands for Base and Remote Units; Frequency Pairing

14. In order for a cordless telephone to operate in a duplex mode (talk and listen at the same time), two frequencies must be utilized, one for transmission from the base to the remote handset and one for the remote to the base. The

NPRM proposed no restrictions on how the 20 interim frequencies for cordless telephones might be paired or otherwise organized. This was to be left up to the discretion of each individual manufacturer. There is a clear consensus among the commenters, with the exception of Electra Corp., that certain restrictions should be prescribed for how the frequencies may be used.

15. Most of the industry request that the Commission designate the frequencies in the 46 MHz band for base units and frequencies in the 49 MHz band for remote units. This designation of frequencies is allegedly needed to preclude manufacturers from designing by chance cordless telephones that operate on complementary frequency pairs, such that two cordless telephone base units in adjacent homes or apartments might lock on to one another. According to GTE, in such a situation both telephones could go off hook and tie up telephone company central office equipment.⁶ Further, a valuable cordless telephone frequency pair would be blocked. Several commenters in addition express concern that cordless telephone handsets operating on complementary frequencies might be used as walkie-talkies.

16. The industry also requests that the Commission pair the interim frequencies. This would allegedly reduce the amount of interference between cordless telephones compared with unpaired frequencies because both frequencies in each channel pair would either be vacant or receiving interference. EIA/PCS, AT&T, GE, GTE, Phone-Mate and Dynascan all advocate a pairing scheme that takes advantage of a fixed spacing of 3.06 MHz between 6 pairs of the proposed 20 frequencies. The uniform spacing would provide for design of frequency agile cordless telephones that could scan for a vacant channel. An alternative pairing scheme put forward by Mura Corp. involves use of 3.00 MHz spacing between the paired frequencies, where 5 pairs of the proposed 20 frequencies have this spacing. Mura and GTE suggest an exchange of certain frequencies with the U.S. Government to increase the number of channels having fixed spacing.⁷

⁶ GTE acknowledges that this issue is related to the issue of cordless telephone security as discussed in paragraphs 20 through 27, below. However, GTE points out that it is insufficient to rely on security features alone to avoid lock-up of two cordless telephones operating on complementary frequency pairs.

⁷ The frequencies suggested for addition or substitution were 49.610; 49.630; 49.690; 49.710; 49.730; and 49.790 MHz.

17. Electra is the sole opposition to designation of base unit and remote unit frequencies and frequency pairing. Electra explains that it developed and is marketing under the existing FCC Rules a cordless telephone which uses a technique that permits operation on two closely spaced frequencies in the 49 MHz band.⁸ According to Electra, assignment of base/remote unit frequencies and frequency pairing will stifle innovations such as its duplex 49 MHz cordless telephone. AT&T contends that the technique utilized by Electra is not the result of marketplace forces so much as a way of dealing with FCC rules that were never intended to accommodate cordless telephones. AT&T states that there appears to be no free market justification for denying the public the benefit of channel pairing in order to preserve Electra's design. EIA/PCS, GTE, Phone-Mate and Uniden all oppose continued provision for duplex 49 MHz cordless telephones because this would allegedly create an imbalance whereby the 49 MHz frequencies are more heavily utilized than the 46 MHz frequencies. In its reply comments Electra asserts that the *NPRM* did not propose termination of duplex 49 MHz cordless telephones, and in any event, Electra feels that it should at least be allowed an adequate period to recover the development costs of its duplex 49 MHz cordless telephone.

18. We are persuaded that the risk that cordless telephones may be designed to operate on complimentary frequencies, resulting in base units interlocking and causing adverse effects on telephone company plant, warrants designation of the 46 MHz frequencies for base units and 49 MHz frequencies for remotes. Although little evidence has been submitted to support the industry's claim that frequency pairing will reduce interference, it appears that the hypothesis is correct.⁹ Since reduction

⁸ The Electra duplex 49 MHz cordless telephone operates under the present §§ 15.117 and 15.118 and utilizes the frequencies 49.830 and 49.890 MHz, which are the lowest and uppermost frequencies of the five that are currently available at 49 MHz. Thus the two frequencies are separated by only 60 kHz.

⁹ That pairing of frequencies will reduce mutual interference between cordless telephones can be seen intuitively. For example, suppose only four frequencies were available and one user is occupying two of the frequencies. If the frequencies are paired at random, a second user will receive interference if his unit operates on either or both of the first unit's frequencies. But if the frequencies are paired in a defined way, the second user will receive interference only when his unit operates on the same pair of frequencies; the possibility of receiving interference on only one frequency is eliminated. Thus the chance or probability of receiving interference is reduced when utilizing channel pairing.

of mutual interference among cordless telephones would be of benefit to consumers, to manufacturers and to the telephone companies, we are prescribing frequency pairing. We have elected to adopt the 3.06 MHz frequency pairing recommended by the majority of commenters because this provides the highest number of uniformly spaced frequencies among those proposed. We have consulted with the Executive Branch regarding the frequencies that Mura and GTE recommend to substitute to increase the number of paired channels with fixed spacing. Due to the nature of existing operations or the density of usage on the suggested frequencies, it is believed that significantly increased interference to the cordless telephones would result. Therefore, the frequencies we are adopting are those that were proposed.

19. With regard to Electra's argument that pairing frequencies will stifle innovations, it is difficult to foresee any tangible benefits that would result from allowing manufacturers to choose their own frequency pairs. Electra has not pointed out anything substantive. We believe that the overall benefits of reduced interference outweigh the minimal risk that frequency pairing might in some way impede meaningful innovations. Under the rules we are adopting, Electra will be permitted to continue to produce its dual 49 MHz cordless telephone until October 1, 1984, which as discussed in paragraph 31 below, is the same termination date that applies to all other current generation cordless telephones. Whether Electra's situation is sufficiently unique that it should be allowed a longer period is not an issue to be considered in this proceeding. We note, however, that the Electra unit has already been on the market for at least 2 years, and so it seems likely that Electra will amply recover its development costs.

D. Cordless Telephone Security

20. Proposed § 15.232(g) stipulated that "A cordless telephone system shall provide some minimum means of preventing the base unit from either being engaged by an outside party or unintentionally going off-hook and seizing local telephone network loops." This proposed requirement stemmed primarily from comments submitted by one telephone company that cordless telephones could cause billing and other problems for telephone companies unless these devices are properly designed. While the commenters agree that such a requirement may be necessary, they are divided about what should be considered a "minimal means" of protection. The cordless

telephone industry refers to the ability of a cordless telephone to reject outside users or spurious signals as cordless telephone security. We will use the same term herein to refer to the subject requirement.

21. GTE explains that it is seriously concerned about how inadequate cordless telephone security might adversely impact on telephone company operations. GTE describes a number of scenarios where the telephone company would be left to resolve problems caused by poor cordless telephone security. For instance, a user may discover he can obtain a dial tone from a neighbor's base unit and proceed to make toll or obscene calls. Or, a user may have the same security combination as a neighbor's base unit and unwittingly dial a call through his neighbor's base unit. Or, if a cordless handset engages two base units and a call is placed to something like an airline reservation desk, two reservation clerks would receive the call and, due to the crosstalk, the telephone company would likely receive an "others on line" report by the reservation desk. GTE reports that it has heard of two incidents where cordless telephones dialed 911 as a result of responses to spurious signals. AT&T does not elaborate on how it perceives that inadequate cordless telephone security may affect telephone company operations. However, AT&T contends that the proposed rule implies that manufacturers need only make some minimal effort to achieve security and suggests that the rule be amended to require that manufacturers do whatever is necessary.

22. Because of these potential problems, many cordless telephones currently marketed are designed to provide some security protection.¹⁰ Many units are designed to completely lock out the base unit radio receiver when the remote handset is in the base unit's cradle. Since it is obvious that often the handset will not be left in the cradle but will be kept at another location in the house, the lock out feature is therefore sometimes supplemented with one of two types of security techniques. Probably the more widely used technique involves transmission of one or more guard tones in addition to the main voice signal. The

¹⁰ While manufacturers are presently required to submit applications for equipment authorization of cordless telephones, information is not required concerning security features and how they function. Our information on current cordless telephone security features comes in part from a review of what material has occasionally been submitted with equipment authorization applications and in part from a number of articles appearing in technical magazines.

tones, inaudible to the user, must be present for the base unit to respond and dial out a call. For technical reasons this technique is limited to a few unique combinations per channel.¹¹ The second approach to cordless telephone security, which seems to be growing in popularity, is to transmit a digitally coded signal to "unlock" the base unit. This approach generally allows several hundred code combinations per channel and is similar to the technique utilized by garage door opener controls.¹²

23. The commenters express diverse opinions on what the Commission should consider an acceptable minimal means of security. GTE explains that at least 500 codes per channel are needed in order to ensure that there is a reasonable chance that two cordless units within range won't have the same combination. This is based on GTE's understanding of what the garage door industry found to be necessary for garage door controls and upon a limited analysis.¹³ Phone-Mate concurs with GTE. Mura suggests that cordless telephones be required to have at least a level of security provided by dual combination guard tones or a digital coding scheme that accommodates at least 64 different code combinations. Uniden asserts that single guard tone technology will provide adequate protection against the situations described by GTE and requests that the Commission expressly state that guard tones are acceptable.

24. EIA/PCS opposes any requirement calling for a minimum number of codes or combinations and states that some manufacturers are developing security

¹¹ Usually the guard tones employed by cordless telephones range somewhere between 4 and 7 kHz. The handset will ordinarily contain an oscillator to generate the tones and the base unit will contain a tuned circuit which responds to the tones. There are several constraints which limit the number of combinations a manufacturer might achieve using guard tones as higher frequency tones are used, wider transmitter and receiver bandwidths are required; tones spaced closely together require greater selectivity to distinguish them; and use of multiple tones requires more complex and likely more expensive circuitry.

¹² Garage door openers generally transmit a train of digital pulses to "unlock" the receiver and hence open the door. Usually the sequence of the pulses can be adjusted by the user to form 250 or more combinations of pulse sequences. This is accomplished by setting a series of switches in both the garage door opener transmitter and receiver to have the identical on/off sequence.

¹³ GTE claims that the chance of two cordless telephones having the same combination is similar to the so-called "Birthday Paradox"—a probability analysis which shows that even among a small number of people there is a surprisingly good chance that two will have the same birthday. GTE uses the analysis to compute that with 500 codes, the 19/20 probability of duplication occurs for 27 users. This analysis appears to be oversimplified for the reasons indicated in paragraph 23.

techniques where the number of combinations would be irrelevant. The Section strongly believes that competitive marketplace forces will ensure that sufficient security levels will be achieved. EIA/PCS states that the Commission staff should determine what is a minimally acceptable means of security on a dynamic basis, taking into account a number of factors including the number of channels used by the product, the state-of-the-art and the real danger of harm to the network.¹⁴

25. We are not convinced that the potential problem of inadequate cordless telephone security is as severe as GTE describes. While GTE has concluded that 500 codes per channel are needed to prevent disruption of telephone company operations, it neglects to take into account several factors which tend to lessen the chances of cordless telephone interactions. To begin with, although several cordless telephones might be operated near each other, in all likelihood only a few would utilize the same channel. Then, we can assume that, consistent with the present generation of cordless telephones, most of these units will have some form of security protection. In order to interact, two units would have to be in the receive mode (handset removed from its cradle), the security techniques of each would have to be similar and they would have to be set for the same 'combination'. A cordless telephone using guard tones for security may be immune to one using digital coding, and vice versa.¹⁵

26. Further, we note that there is little evidence in the record before us of external cost—*viz.*, costs to users other than the cordless phone customer without a security system. There is no evidence, for example, that without security systems tie-ups in the telephone company central office equipment would result like those which have led us to require, henceforth, the pairing of frequencies. In addition, we have been presented with no information on the extent to which misbillings actually occur, on how the telephone companies are handling the problem, or on the cost incurred by telephone companies because of misbilling. At the same time, we have no information as to the cost to

manufacturers of including security devices, a cost that would likely be passed on to the consumer.

27. In light of this lack of information, we find insufficient justification for imposing a regulation mandating security systems at this time. This conclusion is particularly warranted because marketplace forces have already served to bring about security features on most cordless telephones. We expect, as suggested by EIA/PCS, that marketplace forces will bring about still further improvements in cordless telephone security systems. In our view, it is preferable to allow the consumer to decide the degree of security protection he requires and cost he is willing to pay rather than prescribing specific minimal design requirements for security systems. For instance, someone who lives in a remote area may have little if any need for a security system for his cordless telephone. By contrast, someone who lives in a city would gain almost no protection from a minimal security system, such as a 3-code system, which would afford little or no safeguards against nearby users who do not coordinate with other cordless telephone owners operating on the same pair of frequencies. Indeed, we are concerned that if we mandate a specific minimal security system, some consumers might be misled into believing that, by purchasing an "FCC security-approved system," they were purchasing a system that would provide complete security, when that is not a fact. In lieu of a design requirement, we have determined to initiate a notice of rulemaking in this docket, contemplating a labelling requirement for cordless telephones, whereby the prospective purchaser would be informed of the security features that prevent others from dialing calls through that unit. By ensuring that the potential problem of inadequate cordless telephone security is brought to the consumer's attention, we expect that the marketplace would provide appropriate security features best suited to the individual consumer's needs. Thus, the security concerns expressed by parties in this proceeding could be accommodated without the Commission mandating a security requirement.

E. Technical Requirements

28. Electronic Industries Association/Consumer Electronics Group (EIA/CEG), representing manufacturers of television receivers, points out that the fourth harmonics of the proposed interim cordless telephone frequencies at 46 and 49 MHz fall within television channels 9 and 11, respectively. EIA/

CEG explains that the spurious emissions limits proposed in § 15.232(d) are insufficient to protect reception of a Grade B contour signal on television channels 9 or 11 if an indoor antenna is used and the cordless telephone is only 3 meters away. EIA/CEG recommends 60 dB suppression of 4th harmonics from cordless telephones. The National Association of Broadcasters (NAB) and the Association of Maximum Service Telecasters, Inc. (AMST), which both represent television broadcasters, echo EIA/CEG's concern. Uniden and EIA/PCS reply that the fourth harmonic of present 49 MHz cordless telephones falls on television channel 11, and is suppressed only 28 dB. They also point out that the FCC proposal represents an additional 10 dB suppression of the 4th harmonic and question the need for 60 dB of suppression. We believe EIA/CEG's assumptions are overly conservative.¹⁶ For instance, in an area where only a Grade B television signal is available it is more likely that an outdoor aerial would be used. Also, a user can correct any interference to his own TV reception by increasing the separation distance. While we have received at least one report of interference to TV reception (on TV channel 2) caused by a cordless telephone, there is little evidence at this time of significant interference caused by harmonic emissions from cordless telephones. In light of these factors we are adopting the proposed spurious emissions limits. The spurious emissions requirement has been renumbered from the proposal and is set forth in § 15.233(d).

29. EIA/PCS requests a slight modification of the proposed spurious emissions requirement with respect to the modulation products on either side of the fundamental frequency. Present cordless telephones operating under § 15.118 are subject to a spurious emissions limit of 500 microvolts per meter ($\mu\text{V}/\text{m}$) measured at 3 meters distance. As mentioned above, the Commission's proposal called for a tightening of this requirement to further control the interference potential to television broadcast and other radio services. While EIA/PCS is willing to accept the tighter limits, it requests a slight modification to allow 500 $\mu\text{V}/\text{m}$ in the 10 kHz bands just above and below the authorized band. This request is

¹⁴ A definition of harm to the telephone network can be found in § 68.3(g) of Part 68. While inadequate cordless telephone security may not physically damage telephone equipment, any resultant misbilling due to use of these devices could be construed as harm to the telephone network under the definition in Part 68.

¹⁵ GTE's recommendation to require 500 codes per channel would be tantamount to mandating use of digital coding. If all cordless telephones utilized digital coding then the advantage of possible noncompatibility of techniques is lost.

¹⁶ The proposed spurious emissions limits are identical to those in place for personal computers, adopted in FCC Docket No. 20780. For a discussion of these limits see paragraphs 44 thru 47 of the *Order Granting in Part Reconsideration* in Docket No. 20780, adopted March 27, 1980, released April 9, 1980, 45 FR 24154, April 9, 1980.

made to accommodate the modulation products attributable to the use of guard tones for security purposes. We believe that imposing a field strength limit in a 10 kHz band would be a somewhat unorthodox approach to limiting modulation products and would at least be inconvenient from a measurement standpoint.¹⁷ The more appropriate approach to this problem is modification of the provisions pertaining to the emission bandwidth. Accordingly, the rules we are adopting in § 15.233(b) provide the relaxation EIA/PCS requests but are based on limits on emission bandwidth. The procedure to determine compliance with this requirement is a practical one that is used for other transmitters.

30. Several of the commenters request clarification of proposed § 15.232(e) which calls for the cordless telephone to be completely self contained with the antenna permanently attached. They ask that this requirement be modified to explicitly permit designs that allow the user to conveniently replace a broken antenna with one of the same kind. Apparently antenna breakage occurs frequently with cordless telephones. The manufacturers point out that many current generation cordless telephones provide user serviceable antennas under the 'self contained' requirement of § 15.118(e). We are expanding the proposed requirement and renumbering it as § 15.233(e) to specifically allow antenna attachment designs that facilitate replacement of broken antennas. However, we will not permit use of standard electrical connectors that would allow replacement with an antenna of a different type of use of external radio frequency amplifiers. Manufacturers also request that the requirement that the device be self-contained should be interpreted to allow operation while connected to a battery charger. Experience has indicated that the transmitter output signal is affected only minimally by connection of a battery charger. Accordingly, § 15.233(e) has been rewritten to specifically permit operation while connected to a battery charger.

¹⁷ In order to determine the levels of modulation products it is necessary to apply a standard input signal to the device. It would be cumbersome to carry the instruments necessary to generate this input signal out to an open field test site where field strength measurements are normally performed. Tests to determine emission bandwidth and levels of modulation products are therefore normally performed at a laboratory bench. Aside from this, there are other measurement difficulties posed by a field strength limit for closely spaced emissions in a 10 kHz band.

F. Implementation/Termination Dates

31. Fanon/Courier requests that the new rules for cordless telephones not be finalized until April, 1984 to avoid any disruption of the 1983 Christmas marketing season. Evidently it is concerned that consumers may not purchase present generation cordless telephones if they are aware that new models will be available in the near future. In view of the fact that all other manufacturers request immediate action to adopt the proposed interim provisions, we must assume that the concern expressed by Fanon Courier is of minor importance to the cordless telephone industry. Moreover, the issue raised by Fanon Courier is practically moot at this point in time. Accordingly, we see no reason to delay these rules. A number of the commenters point out that the proposal did not include any termination dates for cordless telephones operating under the present rule provisions. They state that unless the Commission takes this measure, there would be overlap and potential contradiction between the general provisions for 49 MHz low power communications devices as set forth in §§ 15.117 and 15.118 and the new interim provisions for cordless telephones. Most suggest that production of current generation cordless telephones be required to cease by October 1, 1984. This is the production termination date the Commission established as a condition for waiver of § 15.7 for cordless telephone 1.7 MHz carrier current transmitters.¹⁸ We agree that a termination date for present generation cordless telephones should be stated in the rules and are amending § 15.117 to require production to terminate by October 1, 1984.

32. Several of the commenters request modification of the termination dates for the interim provisions. They state that the termination for manufacturing cordless telephones under the new provisions should be set at either 5 years after the interim rules are adopted or 2 years after permanent rules are adopted, whichever is later. As we indicated earlier, at this time we expect to have permanent rule provisions in place soon enough to make a smooth transition from the interim rules. We are therefore prescribing a fixed 5 year cut-off date on production under the interim provisions. Several manufacturers also oppose the proposed requirement that marketing cease one year after production. They state that this will create a situation whereby many

¹⁸ See footnote 1, *supra*.

retailers may be forced to sell off surplus at a loss. As an alternative, it is suggested that the marketing cut-off only be applied to marketing by manufacturers or importers; not to retailers. In our view, one year should be sufficient to complete sales of these cordless telephones once manufacture ceases, particularly since the cut-off date is known well in advance. We are therefore adopting the one year cut-off on marketing after production ceases.

G. Miscellaneous Issues

33. The proposed rules included a requirement that cordless telephones carry a label that alerts consumers that the device may not ensure privacy of conversations. Mr. Samuel H. Beverage, commenting as a purchaser of a cordless telephone, complains that this is not sufficient. Mr. Beverage explains that the consumer may not be aware when buying the device that it employs radio and conversations may not be private.¹⁹ He suggests that cordless telephones be required to either employ voice scrambling or have a beeper that warns the incoming caller that the conversation may not be private.

34. We do not believe that a design requirement to ensure privacy is the appropriate approach. Consumers must share some responsibility for evaluating the advantages and limitations of cordless telephones before deciding whether to purchase such a device. We believe that the statement about privacy on the label will be plainly visible to consumers who inspect the product before purchase and it gives adequate warning. The lack of privacy when using cordless telephones has been discussed in any number of consumer articles about these devices and obviously many people are willing to accept the risk. Mandating voice encryption would surely increase the price of cordless telephones quite substantially. It is best left up to the individual consumer to decide whether this feature is needed and the added cost is warranted. While we are unaware of any voice secure cordless telephones available at this time, we have heard informal reports that such designs are being developed.

35. Several parties objected to the proposed requirement that a warning label be carried on both the cordless telephone base and remote units advising the user that interference must be accepted and conversations might not be private. GTE, Dynascan, Phone-Mate and Matsushita request that the

¹⁹ The Commission has received a number of complaints similar to Mr. Beverage's, both in writing and by telephone.

information be required to be put in the user instruction manual instead of on labels. They argue that there is little space for such a label on the remote unit and that the label is aesthetically unpleasing. Dynascan suggests that alternatively the label be put only on the base. We believe that this information is of sufficient importance that it should be put on the equipment where it can be readily seen by anyone who might use the cordless telephone. However, in view of the concern about space for the warning label on the handset, we are requiring that it be carried only on the base unit.

36. GTE recommends that the Commission prescribe limits on RF energy that may be coupled to the telephone line by cordless telephones. GTE is apparently concerned that manufacturers may attempt to use the telephone wiring as an antenna similar to what is being done now with the 1.7 MHz carrier current link used by present generation cordless telephones. This, according to GTE, could result in harm to the telephone network. While the telephone wiring may perform well as an antenna at 1.7 MHz where the wavelength is long, we suspect that it would yield poor performance at 46 MHz where the wavelength is much shorter. Accordingly, we have little reason to believe that manufacturers will design the 46 MHz cordless telephones to use the telephone line as an antenna for the transmitter. A limit on RF energy coupled to the telephone line does not appear to be needed.

IV. Final Regulatory Analysis

37. Pursuant to 5 U.S.C. 601 et seq. an Initial Regulatory Flexibility Analysis was incorporated in paragraph 12 of the *Notice of Proposed Rulemaking*. In paragraph 14 of this *NPRM*, written comments on this Analysis were solicited with the same filing deadlines as comments on the rest of the Notice. No comments in response to this request were received.²⁰

A. Need for and Objective of Rule

38. The Commission is establishing interim frequencies for cordless telephones. The existing general rule provisions that these devices have been operating under are considered by manufacturers to be inadequate to meet the growing consumer demand for these devices.

²⁰ Fanon Courier refers to the Initial Regulatory Flexibility Analysis in the heading of its comments. However, Fanon Courier's comments are clearly aimed at specific issues in the *NPRM* and not at the Commission's Initial Regulatory Flexibility Analysis.

B. Summary of Issues Raised in Comments on Initial Analysis

39. No comments were received specifically concerned with the Initial Regulatory Flexibility Analysis in the Notice in this proceeding. Since these rules do not impose any new reporting or record keeping requirement, there is no deleterious economic effect on manufacturers of cordless telephones whether a small business or large. In fact, since these rules will facilitate continued growth of the cordless telephone industry, the effects will be beneficial.

C. Significant Alternatives

40. The regulations adopted herein respond to petitions from the cordless telephone industry seeking special rule provisions and additional frequencies for cordless telephones. This action is in line with the petitions, except that the provisions will be made available only for limited period to allow time to consider permanent frequencies and rule provisions. No other significant alternatives are apparent.

V. Ordering Clauses

41. Pursuant to the above and under the authority of §§ 4(i), 302 and 303(r) of the Communications Act of 1934, as amended, it is ordered that Part 15 is amended as set out in Appendix B of this Order.

42. It is further ordered that this amendment shall become effective February 15, 1984. Applications for certification of cordless telephones under these rule provisions will not be accepted before February 15, 1984.

43. For further information concerning this Order contact Mr. Julius Knapp, Office of Science and Technology, telephone (202) 653-8247.

Federal Communications Commission.
William J. Tricarico,
Secretary.

APPENDIX A

	Organization acronym
The following parties filed comments in response to the <i>NPRM</i> in General Docket 83-325:	
American Telephone and Telegraph Company.	AT&T.
Samuel H. Beverage.....	Beverage.
Dynascan Corporation.....	Dynascan.
Electronic Industries Association:	
Consumer Electronics Group.....	EIA/CEG.
Telecommunications Group, Personal Communications Section.	EIA/PCS.
Electra Company, Division of Masco Corp. of Indiana.	Electra.
Fanon/Courier Corporation.....	Fanon.
General Electric Company.....	GE.
GTE Service Corporation.....	GTE.
Matsushita Electric Corporation of America.....	Matsushita.
Mura Corporation.....	Mura.
John S. Papay.....	Papay.
Phone-Mate, Inc.....	Phone-Mate.

APPENDIX A—Continued

Uniden Corporation of America.....	Uniden.
The following parties filed reply comments:	
American Telephone and Telegraph Company.	AT&T.
Association of Maximum Service Telecasters, Inc.	AMST.
Electra Company, Division of Masco Corp. of Indiana.	Electra.
Electronic Industries Association, Telecommunications Group, Personal Communications Section.	EIA/PCS.
GTE Service Corporation.....	GTE.
National Association of Broadcasters.....	NAB.
Phone-Mate, Inc.....	Phone-Mate.
Uniden Corporation of America.....	Uniden.

Appendix B

PART 15—[AMENDED]

Part 15 of the FCC Rules (47 CFR Part 15) is amended as follows:

1. The table of contents of Part 15 is amended by adding a new subheading at the end of Subpart E and titles of new rule Sections to read as follows:

* * * * *

Cordless Telephones

- Sec.
- 15.231 Interim provisions for a cordless telephone.
- 15.232 Interim frequencies for cordless telephones.
- 15.233 Technical specifications.
- 15.234 Report of measurements.
- 15.235 Certification requirement.
- 15.236 Labelling and identification requirements for a cordless telephone.
- 15.237 Non-interference requirement.

2. Section 15.117 is amended by designating the present text as paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 15.117 Operation between 49.83-49.90 MHz.

* * * * *

(b) The manufacture of a cordless telephone using the frequencies in paragraph (a) of this section under the provisions of § 15.118 shall cease October 1, 1984. All cordless telephones manufactured after October 1, 1984 shall conform to the requirements in §§ 15.231-15.237, inclusive.

3. Subpart E of Part 15 is amended by adding a new undesignated heading immediately following § 15.228 and by adding new §§ 15.231-15.237 to read as follows:

Cordless Telephones

§ 15.231 Interim provisions for a cordless telephone.

A cordless telephone may be operated without an individual license, subject to the requirements of §§ 15.231-15.237,

inclusive. The manufacture and importation of such devices shall cease February 15, 1989 and the marketing shall cease February 15, 1990.

§ 15.232 Interim frequencies for cordless telephones.

A cordless telephone shall be operated on one or more of the following frequency pairs, provided it complies with the provisions in §§ 15.231-15.237, inclusive.

Channel	Base transmit (MHz)	Handset transmit (MHz)
1	46.610	49.670
2	46.630	49.845
3	46.670	49.860
4	46.710	49.770
5	46.730	49.875
6	46.770	49.830
7	46.830	49.890
8	46.870	49.930
9	46.930	49.930
10	46.970	49.970

§ 15.233 Technical specifications.

A cordless telephone shall comply with all the technical specifications in this section.

(a) Frequency tolerance of carrier: $2 \pm 0.01\%$. The tolerance shall be maintained for a temperature variation of -20°C to $+50^{\circ}\text{C}$ at normal supply voltage, and for variation in the primary voltage from 85% to 115% of the rated supply voltage at a temperature of 20°C .

(b) Emission shall be confined within a 20 kHz band centered on the authorized carrier frequency. Modulation products falling within 10 kHz or below this 20kHz band shall be attenuated at least 26 dB below the level above of the unmodulated carrier. Tests to determine compliance with this requirement shall be performed using an appropriate input signal as prescribed in § 2.989 of this chapter.

(c) The field strength of the carrier frequency shall not exceed $10,000 \mu\text{V}/\text{m}$ at 3 meters.

(d) Harmonics and other out-of-band emissions, on any frequency more than 20 kHz removed from the authorized center frequency shall comply with the field strength limitations in the following table:

Frequency (MHz)	Field strength ($\mu\text{V}/\text{m}$ at 3m)
25 to 89	100
89 to 216	150
216 to 1000	200

The spectrum shall be scanned from 25 to 1000 MHz and all signals exceeding $20 \mu\text{V}/\text{m}$ at 3 meters shall be reported.

(e) The cordless telephone shall be completely self-contained except for the

power line cord and wiring for connection to the telephone line. This provision does not prohibit operation while connected to a battery charger. The antenna shall be permanently attached to the enclosure containing the phone. The manufacturer may design the unit so that a broken antenna can be replaced by the user; however, use of an antenna jack or standard electrical connector is prohibited.

(f) A cordless telephone which receives electrical power from the public utility power lines shall limit the radio frequency voltage coupled back into the powerlines to less than $100 \mu\text{V}$ on any frequency below 30 MHz. A device which is designed to utilize a battery charger is subject to this requirement. Measurements shall be performed in accordance with the appropriate parts of IEEE Standard 213. (See § 15.75 of this Part.)

§ 15.234 Report of measurements.

The report of measurements for a cordless telephone operating under § 15.233 shall contain the information required by § 15.143.

§ 15.235 Certification requirement.

Both the base station and portable handset of a cordless telephone shall be certificated by the Commission pursuant to the procedures in Subpart J of Part 2. Certification is a prerequisite for legal marketing and use. The transmitter portion of the cordless telephone shall be certificated to show compliance with the requirements in §§ 15.231-15.237, inclusive. The receiver portion shall be certificated to show compliance with the requirements in Subpart C of this Part. A single application for certification (*FCC Form 731*) may be filed for a cordless telephone system provided it clearly identifies and provides data for all parts of the system to show compliance with the applicable technical requirements.

Note.—A cordless telephone, which is intended to be connected to a public telephone network shall also comply with regulations in Part 68 of this Chapter. A separate application for registration under Part 68 is required.

§ 15.236 Labelling and identification requirements for a cordless telephone.

Both the base station and portable handset of a cordless telephone system shall be identified and labelled pursuant to §§ 2.925, 2.926 and 2.1045 of Part 2 of this Chapter. In addition, the label attached to the cordless telephone base station shall contain the following statement:

This cordless telephone system operates under Part 15 of FCC Rules. Privacy of Communications may not be ensured when

using this phone. Operation is subject to two conditions: 1) it may not interfere with radio communications; and 2) it must accept any interference received, including that which may cause undesirable operation.

When a single application for certification of a cordless telephone system is submitted in accordance with § 15.236, both the base station and portable handset may carry the same FCC Identifier.

§ 15.237 Non-interference requirement.

Notwithstanding compliance with the technical specifications herein, a cordless telephone is subject to the general conditions of § 15.3 of this part. The operator of a cordless telephone may be required to stop operating his device upon a finding that the device is causing harmful interference and it is in the public interest to stop operation until the interference problem has been corrected.

[FR Doc. 84-021 Filed 1-11-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 87

[PR Docket No. 83-29]

Provision of a Transition Period for the Removal of the A3 Class of Emission (Voice) From Aeronautical Radiobeacon Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On November 18, 1983, on page (48 FR) 52464, the Commission published a Report and Order in this proceeding concerning the removal of the A3 class of emission (voice) from aeronautical radiobeacon stations.

The effective date mentioned in the Preamble of that document was incorrect. The correct date should read: December 19, 1983, as mentioned in the ordering clause of the text.

In addition, immediately following the caption of the text in the first column, "In the Matter of * * *", the word "corrected" inadvertently appeared and should be disregarded.

FOR FURTHER INFORMATION CONTACT: Robert E. Mickley, Private Radio Bureau, (202) 632-7175.

William J. Tricarico,
Federal Communications Commission.

[FR Doc. 84-016 Filed 1-11-84; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 90

Amendment of Part 90 of the Rules To Modify Procedures for Determining Elevation of Average Terrain

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends § 90.309(a)(4) of the Rules by allowing the use of digital terrain data tapes to determine the elevation of average terrain. This procedural change is deregulatory in nature and reduces the burden on the public.

EFFECTIVE DATE: January 30, 1984.

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

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

List of Subjects in 47 CFR Part 90

Radio.

Order

In the matter of amendment of Part 90 of the rules to modify procedures for determining elevation of average terrain.

Adopted: December 28, 1983.

Released: January 9, 1984.

By the Managing Director.

1. Section 90.309(a)(4) of the Commission's Rules specifies the method of determining the average terrain elevation when calculating the antenna height above average terrain (AAT). This calculation must be made by applicants for frequencies in the 470-512 MHz and 806-821/851-866 MHz bands. The procedures state that terrain elevation data shall be taken from U.S. Geological Survey Topographic Quadrangle Maps, U.S. Army Corps of Engineer Maps, or Tennessee Valley Authority Maps (Scale 1:24,000), whichever is the latest. If such maps are not published for the area in question, the next best topographic information should be used.

2. The National Cartographic Institute, U.S. Geological Survey, has recently made available computer tapes containing digital terrain data obtained from their 2° x 1° maps (1:250,000 scale). The Commission has received requests that the use of these tapes be allowed for computation of antenna height AAT since computer computation is simpler and more economical than the present manual computations.

3. Since the digital terrain data tapes are derived from maps different from those specified in the Rules, it is possible that antenna height AAT values calculated when using such tapes may differ from values obtained from

1:24,000 scale maps. Considering that we allow different scale maps to be used if the 1:24,000 scale maps are not available, coupled with the 50 foot variation allowed for antenna heights in the antenna height/power equivalency tables in the Rules, and also the vagaries of signal strengths due to propagation and terrain conditions, it appears that our presently specified average terrain calculation procedures can be relaxed.

4. In view of its continuing actions to relax the rules when it is deemed to be in the public interest, the Commission is amending § 90.309(a)(4) of its Rules and Regulations to permit the use of 1:250,000 scale topographic maps, as well as terrain data in other forms derived from these maps, to be utilized in the calculation of antenna height above average terrain. This amendment is deregulatory in nature, consists of a procedural change, and reduces the burden on the public. Therefore, the notice and comment requirements set forth in Section 553 of the Administrative Procedures Act are not required.

5. Accordingly, it is ordered, pursuant to § 0.231(d) of the Commission's Rules and Section 4(i) and 303 of the Communications Act, as amended, that effective January 30, 1984, Part 90 of the Commission's Rules is amended as set forth in the attached Appendix.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

Appendix

PART 90—[AMENDED]

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

Section 90.309 is amended by revising paragraph (a)(4) to read:

§ 90.309 Tables and figures.

(a) * * *

(4) In determining the average elevation of the terrain, the elevations between 2 (3 km) and 10 (16 km) miles from the antenna site are employed. Profile graphs shall be drawn for a minimum of eight radials beginning at the antenna site and extending 10 (16 km) miles. The radials should be drawn starting with true north. At least one radial should be constructed in the direction of the nearest cochannel and adjacent channel UHF television stations. The profile graph for each radial shall be plotted by contour intervals of from 40 (12 m) to 100 (30 m) feet and, where the data permits, at least 50 points of elevation (generally uniformly spaced) should be used for

each radial. For very rugged terrain 200 (61 m) to 400 (122 m) feet contour intervals may be used. Where the terrain is uniform or gently sloping, the smallest contour interval indicated on the topographic chart may be used. The average elevation of the 8-mile distance between 2 (3 km) and 10 (16 km) miles from the antenna site should be determined from the profile graph for each radial. This may be obtained by averaging a large number of equally spaced points, by using a planimeter, or by obtaining the median elevation (that exceeded by 50 percent of the distance) in sectors and averaging those values. In the preparation of the profile graphs, the elevation or contour intervals may be taken from U.S. Geological Survey Topographic Maps, U.S. Army Corps of Engineers Maps, or Tennessee Valley Authority Maps. Maps with a scale of 1:250,000 or larger (such as 1:24,000) shall be used. Digital Terrain Data Tapes, provided by the National Cartographic Institute, U.S. Geological Survey, may be utilized in lieu of maps, but the number of data points must be equal to or exceed that specified above. If such maps are not published for the area in question, the next best topographic information should be used.

* * * * *

[FR Doc. 84-819 Filed 1-12-84; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[Gen. Docket No. 82-625; RM-3504; RM-3534]

Provide High Frequency Spectrum for Use by Eligibles in the Special Industrial, Petroleum, Telephone Maintenance and Power Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This action corrects typographical errors and erroneous paragraph designations in this proceeding concerning high frequency spectrum for use by eligibles in certain radio services.

FOR FURTHER INFORMATION CONTACT: Keith Plourd, Private Radio Bureau, Land Mobile and Microwave Division, (202) 634-2443.

Erratum

In the matter of amendment of Parts 2 and 90 of the Commission's rules and regulations to provide high frequency spectrum for use by eligibles in the Special Industrial, Petroleum, Telephone Maintenance and Power Radio

Services. (Gen. Docket No. 82-625, RM-3504, RM-3534.)

Released: December 30, 1983.

On July 7, 1983, the Commission released a Report and Order in the above-captioned matter. It was published in the Federal Register on July 20, 1983, 48 FR 32991. These errata correct errors in the printing of the Report and Order and the Federal Register to read as follows:

1. Page 32992, paragraph 2: the page number for the reference to the Notice of Proposed Rule Making released September 14, 1982 is corrected to read, "(47 FR 46339)."

2. Page 32992, footnote 3: the date of the release of the Memorandum Opinion and Order on Reconsideration, Docket No. 18921, is corrected to read, "June 2, 1983."

3. Appendix A, page 32993, instruction number 1: in column number 7 of the table, "Band (kHz)," the entry which reads "5000-4550" is corrected to read "5005-5450."

4. Appendix A, page 32994: in column number 11, "Nature OF SERVICES of stations," the entry to the extreme right of "9775-9995" which appears in column number 7, "Band (kHz)," is corrected to read "AERONAUTICAL FIXED. INDUSTRIAL. INTERNATIONAL FIXED PUBLIC. LOCAL GOVERNMENT."

5. Appendix A, page: 32996.

A. Under instruction number 5.A, in the Telephone Maintenance Radio Service Frequency Table, limitation number "13" in the right-hand column is redesignated as "14."

B. Under instruction number 5.B, new paragraph § 90.81(d)(13) is redesignated as § 90.81(d)(14).

6. Appendix A, page 32996, instruction number 6: new paragraph § 90.129(n) is redesignated as § 90.129(o)

7. Appendix A, pages 11 and 13, instruction number 10: In the "Combined frequently listing," §90.555(b), the second entry in the first column labeled "Frequently" is corrected to read "90-1120" in lieu of "10."

Federal Communications Commission. William J. Tricarico, Secretary.

[FR Doc. 84-818 Filed 1-11-84; 8:45 am] BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION 49 CFR Part 1

[OST Docket No. 1; Amdt. 1-188]

Organization and Delegation of Powers and Duties; Use of Railroad Bridges by Other Railroad Companies

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: This amendment delegates to the Federal Railroad Administration (FRA) the authority to arbitrate disputes between railroads over the terms for use of bridges constructed under the Bridge Act of 1906, since the issues that could arise are within the subject matters of FRA.

DATE: The effective date of this amendment is January 12, 1984.

FOR FURTHER INFORMATION CONTACT: Robert I. Ross, Office of the General Counsel, C-50, Department of Transportation, Washington, DC (202) 426-4723.

SUPPLEMENTARY INFORMATION: Since this amendment relates to Departmental management, procedures, and practice, notice and comment on it are unnecessary and it may be made effective in fewer than thirty days after publication in the Federal Register.

Under Section 3 of the Bridge Act of 1906, as amended (33 U.S.C. 493), all railroad companies are entitled to use railroad bridges built in accordance with that Act, upon payment of reasonable compensation. Disagreement over the terms of use or the compensation to be paid is resolved by the Secretary of Transportation. Some of the authority vested in the Secretary by the Act has previously been delegated to the Coast Guard and the Federal Highway Administration (49 CFR 1.46(c)(6) and 1.48(i)(1)); however, the issues that could arise in a dispute under Section 3 are matters within the subject matter of FRA. Hence, this amendment delegates this authority to FRA.

List of Subjects in 49 CFR Part 1

Authority delegations (government agencies), Organization and functions (government agencies).

PART 1—[AMENDED]

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended as follows:

1. In § 1.46, paragraph (c)(6) is revised to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

The Commandant of the Coast Guard is delegated authority to—

* * * * *

(c) Carry out the following laws relating generally to water vessel anchorages, drawbridge operating regulations, obstructive bridges, pollution of the sea by oil, and the locations and clearances of bridges and

causeways over the navigable waters of the United States.

* * * * *

(6) The Act of March 23, 1906, as amended (34 Stat. 84, 33 U.S.C. 491 et seq.) except section 3 (33 U.S.C. 493) and that portion of section 4 (33 U.S.C. 494) that relates to tolls.

* * * * *

2. In § 1.49, a new paragraph (z) is added, to read as follows:

§ 1.49 Delegations to Federal Railroad Administrator.

The Federal Railroad Administrator is delegated authority to—

* * * * *

(z) Carry out the functions vested in the Secretary by Section 3 of the Bridge Act of 1906, as amended (33 U.S.C. 493), relating to disputes over the terms and compensation for use of railroad bridges built under the Act.

Authority: 49 U.S.C. 322.

Issued in Washington, D.C., on January 4, 1984.

Elizabeth Hanford Dole, Secretary of Transportation. [FR Doc. 84-127 Filed 1-11-84; 8:45 am] BILLING CODE 4010-62-M

Federal Railroad Administration

49 CFR Part 210

[Docket No. RNE-2; Notice No. 2]

Railroad Noise Emission Compliance Regulations

Correction

In FR Doc. 83-34010 beginning on page 56756 in the issue of Friday, December 23, 1983, make the following corrections.

On page 56761, in the table, the information in the last three columns for "201.11(c) and 201.12(c)" and "201.16" should be moved down so that it aligns with the last line of the information in the second column; and in Footnote 1, "L_{max}" should read "L_{max}".

BILLING CODE 1535-01-M

National Highway Traffic Safety

Administration

49 CFR Part 571

[Docket No. 81-11; Notice 7]

Lamps, Reflective Devices and Associated Equipment; Correction

Correction

In FR Doc. 83-34725, appearing on

page 57494 in the issue of Friday, December 30, 1983, the figure in the fourth line below the heading "*§ 571.108 [Amended]*" in column two should read, "1.122."

BILLING CODE 1505-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 351

[Docket No. 31129-227]

Whaling: International Whaling Commission

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

ACTION: Final rule.

SUMMARY: The Whaling Convention Act requires that the Secretary of Commerce publish the Schedule of the International Convention for the Regulation of Whaling, 1946, in the Federal Register, so that the Schedule will "become effective with respect to all persons and vessels subject to the jurisdiction of the United States in accordance with the terms of such regulations" * * *. This final rule publishes the most recent amendments to the Schedule of the International Convention for the Regulation of Whaling. The intended effect of this action is to comply with United States international obligations under the Convention as provided in the Whaling Convention Act even though commercial whaling is proscribed for all persons and vessels subject to the jurisdiction of the United States.

EFFECTIVE DATE: This final rule is effective January 12, 1984.

FOR FURTHER INFORMATION CONTACT: Dean Swanson, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, NOAA, Department of Commerce, Washington, D.C. 20235, telephone—(202) 634-1792.

SUPPLEMENTARY INFORMATION: At its 35th Annual Meeting held in Brighton, England, July 18-23, 1983, the International Whaling Commission (IWC) adopted amendments to the Schedule establishing catch limits for the 1983-84 pelagic and 1984 coastal whaling seasons with regard to both commercial and aboriginal subsistence whaling.

Notification of amendments to the Schedule was made by the Secretary of the IWC on August 5, 1983, and corrections to it was made on September 7, 1983. By terms of the Convention, the amendments become effective at the end of a 90-day objection period except for any to which one or more Contracting Governments file objection. If any amendment is the subject of an objection, it becomes effective with respect to all Contracting Governments that have not objected at the conclusion of a second 90-day object period or 30 days after the last objection is filed, whichever is later.

At the conclusion of the objection period on November 3, 1983, no objections had been made. This publication, therefore, incorporates all amendments to the Schedule that became binding on the United States as of November 3, 1983.

All regulations in this Part relate to commercial whaling which is currently proscribed for all persons and vessel subject to United States jurisdiction, except as provided in Section 351.36. Additional regulations relating to the 1984 aboriginal subsistence harvest of bowhead whales by Alaskan Natives will be published at a later date and will appear in 50 CFR Part 230.

16 U.S.C. 916k requires the Secretary to promulgate IWC Schedule amendments. These amendments result from a process in which NOAA provided opportunity for public comment in the development of the United States positions. As the issuance of these regulations is required by U.S. law to carry out an obligation under the Convention, such issuance is within the "foreign affairs function of the United States" exception from the informal rulemaking requirements of 5 U.S.C. 55.3(a)(1), and the regulations can go into effect immediately. Also, this promulgation is exempt from the NEPA environmental document requirements under Section 6(c)(3) of the revised NOAA Directive (NDM 02-10; 45 FR 49312-49321) implementing NEPA because it constitutes a programmatic function with no potential for significant environmental impact.

The NOAA Administrator has reviewed this final rule in accordance with the specification of Executive Order 12291, "Federal Regulation," and the Departmental guidelines implementing that Order, and has determined that Section 1(a)(1) of the Order excludes these regulations from its scope as being "regulations issued

with respect to a * * * foreign affairs function of the United States." Accordingly, no regulatory impact analysis is required.

The General Counsel, Department of Commerce, has certified to the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities because it would regulate activities that are otherwise prohibited with the exception of aboriginal subsistence whaling allowed under 50 CFR 351.36, which does not in any event involve a substantial number of small entities. This exception will be the subject of a separate rulemaking to be published in 50 CFR Part 230. Accordingly, no regulatory flexibility analysis is required. Finally, this action does not increase the Federal paperwork burden for agencies, individuals, small businesses, or other persons. Therefore, the Paperwork Reduction Act of 1980 does not apply.

List of Subjects in 50 CFR Part 351

Fisheries, Marine mammals, Reporting and record keeping requirements, Treaties.

Dated: January 4, 1984.

Carmen J. Blondin,
Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

PART 351—WHALING

For reasons set down in the preamble, Part 351 of Title 50, Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Part 351 reads as follows:

Authority: Article 5, 62 Stat. 1718, Sec. 2-14; 64 Stat. 421-425; 16 U.S.C. 916 *et seq.*

2. Revise § 351.35 to read as follows:

§ 351.35 Catch limits for baleen whales.

(a) The number of baleen whales taken in the Southern Hemisphere in the 1983/84 pelagic season and the 1984 coastal season shall not exceed the limits shown in Tables 1 and 2. However, in no circumstances shall the sum of the area catches exceed the total catch limit for each species.

(b) The number of baleen whales taken in the North Pacific Ocean and dependent waters in 1984 and in the North Atlantic Ocean in 1984 shall not exceed the limits shown in Tables 1 and 2.

3. In § 351.36, revise paragraph (b) and add a new footnote "2" to read as follows:

* At the end of the first year this figure will be reviewed and if necessary amended on the basis of the advice of the Scientific Committee.

§ 351.36 Aboriginal subsistence whaling.

(b) Catch limits for aboriginal subsistence whaling are as follows:

(1) The taking of 9 humpback whales not below 35 feet (10.7 metres) in length per year is permitted in Greenland waters provided that whale catchers of

less than 50 gross register tonnage are used for this purpose.

(2) The taking of bowhead whales from the Bering Sea stock by aborigines is permitted, but only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines and further provided that: (i) For the years 1984 and 1985 the total number of whales struck shall not exceed 43,² provided that in either year the number of whales struck shall not exceed 27. (ii) It is forbidden to strike, take, or kill calves or any bowhead whale accompanied by a calf.

(3) The taking of gray whales from the Eastern stock in the North Pacific is permitted, but only by aborigines or a Contracting Government on behalf of aborigines, and then only when the meat and products of such whales are to be used exclusively for local consumption by the aborigines. The number of gray whales taken in accordance with this subparagraph in 1984 shall not exceed the limit shown in Table 1.

4. Revise Tables 1 through 3 and place at the end of Subpart C to read as follows:

TABLE 1 TO SUBPART C.—BALEEN WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS (EXCLUDING BRYDE'S WHALES)

	Sei		Minke		Fin		Ego Classification	Humpback classification	Right bowhead, gray/Right classification	Gray	
	Classification	Catch Limit	Classification	Catch Limit	Classification	Catch Limit				Classification	Catch Limit
Southern Hemisphere—1933/84 pelagic season and 1934 coastal season											
Area and longitudes:											
I—120° W. to 60° W.	PS	0	-	624	PS	0	FS	FS	•	•	•
II—60° W. to 0° W.	PS	0	-	630	PS	0	FS	FS	FS	•	•
III—0° to 70° E.	PS	0	-	1,416	PS	0	FS	FS	FS	•	•
IV—70° E. to 130° E.	PS	0	-	2,035	FS	0	FS	FS	•	FS	•
V—130° E. to 170° W.	PS	0	-	1,445	PS	0	FS	FS	•	FS	•
VI—170° W. to 120° W.	PS	0	-	778	PS	0	FS	FS	•	FS	•
Total catch not to exceed.				6,655		0	0	0	0		
Northern Hemisphere—1934 season.											
Arctic	•	•	•	•	•	•	•	•	FS	•	•
North Pacific:											
Whole region	PS	0	•	•	PS	0	FS	FS	FS	•	•
Okhotsk Sea-West Pacific Stock	•	•	SMS	1,421	•	•	•	•	•	•	•
Sea of Japan-Yellow Sea-East China Sea Stock	•	•	-	•	•	•	•	•	•	•	•
Remainder	•	•	IMS	•	•	•	•	•	•	•	•
Eastern Stock	•	•	•	•	•	•	•	•	•	SMS	173
Western Stock	•	•	•	•	•	•	•	•	•	FS	0
North Atlantic:											
Whole region	•	•	•	•	•	FS	FS	FS	•	•	•
West Greenland Stock	•	•	-	•	•	16	•	•	•	•	•
Newfoundland-Labrador Stock	•	•	•	•	•	•	•	•	•	•	•
Canadian East Coast Stock	•	•	-	•	•	•	•	•	•	•	•
Nova Scotia Stock	PS	0	•	•	FS	0	•	•	•	•	•
Central Stock	•	•	-	231	•	•	•	•	•	•	•
East Greenland-Iceland Stock	•	•	•	•	SMS	167	•	•	•	•	•
Iceland-Denmark Strait Stock	SMS	100	•	•	•	•	•	•	•	•	•
Spain-Portugal-British Isles Stock	•	•	•	•	-	120	•	•	•	•	•
Northeastern Stock	•	•	-	635	•	•	•	•	•	•	•
West Norway-Faroe Islands Stock	•	•	•	•	FS	0	•	•	•	•	•
North Norway Stock	•	•	•	•	-	0	•	•	•	•	•
Eastern Stock	-	0	•	•	•	•	•	•	•	•	•
Northern Indian Ocean	•	•	IMS	•	•	•	FS	FS	FS	•	•

¹ The total catch of minke whales shall not exceed 1,678 in the five years 1930 to 1934 inclusive.
² Provided that the remainder from the previous block quota of 3,634 for the five years 1930 to 1934 inclusive may be taken in the years 1934 and 1935.
³ Pending a satisfactory estimate of stock size.
⁴ Available to be taken by aborigines or a Contracting Government on behalf of aborigines pursuant to § 351.32(b)(5).
⁵ The total catch of minke whales shall not exceed 539 in the two years 1984 and 1985 inclusive.
⁶ Of the total numbers shown, a proportion corresponding to needs may be taken by aborigines pursuant to § 351.32(b)(4).
⁷ Available to be taken by aborigines pursuant to § 351.35(b)(4).
⁸ The total catch of sei whales shall not exceed 504 in the six years 1930 to 1935 inclusive.
⁹ The total catch of fin whales shall not exceed 270 in the three years 1933 to 1935 inclusive.

TABLE 2 TO SUBPART C.—BRYDE'S WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS

	Classification	Catch limit
Southern Hemisphere—1983/84 pelagic season and 1984 coastal season		
South Atlantic Stock.....		0
Southern Indian Ocean Stock.....	IMS.....	10
South African Inshore Stock.....		0
Solomon Islands Stock.....	IMS.....	10
Western South Pacific Stock.....	IMS.....	10
Eastern South Pacific Stock.....	IMS.....	10
Peruvian Stock.....		2 ³ 165
North Pacific—1984 season		
Eastern Stock.....	IMS.....	10
Western Stock.....	IMS.....	538
East China Sea Stock.....		0
North Atlantic—1984 season.....	IMS.....	10
Northern Indian Ocean—1984 season.....		0

¹ Pending a satisfactory estimate of stock size.

² Available to be taken in a six month period starting in November 1983.

³ The catch limit for this stock for the 1985 season will be lower than 165 and thereafter shall be zero until the Commission decides otherwise.

TABLE 3 TO SUBPART C.—TOOTHED WHALE STOCK CLASSIFICATIONS AND CATCH LIMITS

	Sperm		Bottlenose classification
	Classification	Catch limit	
Southern Hemisphere—1983/84 pelagic season and 1984 coastal season			
Division and longitudes:			
1—60° W. to 30° W.....	-	0	.
2—30° W. to 20° E.....	-	0	.
3—20° E. to 60° E.....	-	0	.
4—60° E. to 90° E.....	-	0	.
5—90° E. to 130° E.....	-	0	.
6—130° E. to 160° E.....	-	0	.
7—160° E. to 170° W.....	-	0	.
8—170° W. to 100° W.....	-	0	.
9—100° W. to 60° W.....	-	0	.
Northern Hemisphere—1984 season			
North Pacific:			
Western Division.....	-	12	.
Eastern Division.....	-	0	.
North Atlantic.....	-	0	° PS
Northern Indian Ocean.....	-	0	.

¹ No whales may be taken from this stock until catch limits including any limitations on size and sex are established by the Commission.

² Notwithstanding footnote 1, catch limits for the 1982 and 1983 coastal seasons are 450 and 400 whales respectively, provided that included within each of these catch limits there may be a by-catch of females not to exceed 11.5% and all whaling operations for this species shall cease for the rest of each season when the by-catch is reached.

³ Provisionally listed as PS for 1984 pending the accumulation of sufficient information for classification.

[FR Doc. 84-825 Filed 1-11-84; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register

Vol. 49, No. 8

Thursday, January 12, 1984

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

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157, 271, 282 and 284

[Docket Nos. RM79-50-000, et al.; Order No. 354]

Northern Natural Gas Co., et al.; Termination of Rulemaking Dockets

Issued January 6, 1984.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Termination of rulemaking dockets.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is terminating sixteen rulemaking dockets. In its order, the Commission withdraws the Notices of Proposed Rulemaking issued in Docket Nos. RM80-52-000 and RM80-64-000, and denies petitions for rulemaking filed in Docket Nos. RM79-50-000, RM80-49-000, RM81-22-000, RM80-77-000, RM81-42-000, RM81-32-000, RM81-39-000, RM81-43-000, RM82-42-000, RM81-23-000, RM82-22-000, RM83-48-000, and RM79-17-000. The Commission is terminating these dockets because it has already taken action that obviates the need for further activity in the docket or because it is not persuaded to change existing policies.

DATES: This termination of rulemaking dockets is effective January 12, 1984.

FOR FURTHER INFORMATION CONTACT: Elizabeth Withnell, Division of Rulemaking and Legislative Analysis, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033.

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

The Federal Energy Regulatory Commission (Commission) is terminating fifteen pending rulemaking dockets. In particular, the Commission is

withdrawing two Notices of Proposed Rulemaking (NOPR) and denying thirteen petitions for rulemaking (PRM). These various notices are explained in detail by individual docket numbers which, to the extent possible, are grouped by subject matter.

I. Natural Gas Act Certificate Matters

A. Docket No. RM79-50-000: Northern Natural Gas Company

On June 1, 1979, the Northern Natural Gas Company (Northern) asked the Commission to establish a procedure for issuing budget-type certificates to pipelines¹ to facilitate the construction of sales taps¹ to facilitate the sale and delivery of natural gas to right-to-way grantors who agree to the easement in reliance on obtaining service from the pipeline. The Commission is today denying this petition as unnecessary in light of rules adopted in Docket No. RM81-19-000.²

In Docket No. RM81-19-000, the Commission provided for the issuance of blanket certificates to authorize a number of activities by pipelines, including the construction of sales taps to right-to-way grantors. The Commission chose blanket certificates as the tool for implementing a streamlined certification process because with these certificates, rather than with budget-type certificates, a greater range of activities can be authorized. The Commission also broadened the definition of right-of-way grantors to eliminate the restriction on taps only to customers who grant easements in reliance on obtaining gas service. Under the final rules, a right-of-way grantor is a person who grants a right-of-way easement to the certificate holder or any successor to an interest which is subject to the easement.³

Because the Commission has made the changes that Northern requested in another docket, further action on RM79-50-000 is unnecessary. This petition is therefore denied.

¹ A sales tap consists of the metering and appurtenant facilities necessary to enable the certificate holder to deliver gas to a distribution customer or an end user. 18 CFR 157.202(b)(10) (1983).

² Interstate Pipeline Certificates for Routine Transactions, Docket No. RM81-19-000, issued May 28, 1982 (Order No. 234), 47 FR 24,254 (June 4, 1982), 47 FR 30,724 (July 15, 1982), III FERC Stats. & Regs. ¶30,363.

³ 18 CFR 157.202(b)(9) (1983).

B. Docket No. RM80-49-000: National Gypsum Company and National Gypsum Energy Company

The Commission is denying as unnecessary a petition for rulemaking filed on March 24, 1980, by the National Gypsum Company and the National Gypsum Energy Company. The petitioners asked that a rulemaking proceeding be instituted to establish uniform standards governing transportation of natural gas discovered, produced, and ultimately consumed by high priority industrial end users.

In Docket No. RM81-29-000,⁴ the Commission amended its rules to authorize under the blanket certificate program transportation of gas reserves owned and developed by a high priority end user. The Commission's rule authorizes such transportation on an automatic basis for a term of ten years or for the life of the gas reserves, whichever is less.⁵ In promulgating this regulation, the Commission noted that "such authorization is justified by the inherent risk involved in exploration for gas and the need for sufficient time to economically recover such reserves."⁶ National Gypsum Company and the National Gypsum Energy Company make similar arguments in their petition.

Because the Commission has acceded to petitioners' request by promulgating the rule in Docket No. RM81-29-000, further action on this petition for rulemaking is unnecessary. The petition is therefore denied.

C. Docket No. RM81-22-000: Consolidated Edison Company of New York, Inc., et al.

On March 10, 1981, Consolidated Edison Company of New York, Inc. (Con Ed) and several co-petitioners⁷ filed a

⁴ Sales and transportation by Interstate Pipelines and Distributors; Expansion of categories of Activities Authorized Under Blanket Certificate, Docket No. RM81-29-000, issued July 20, 1983 (Order No. 319) 49 FR 34,875, (Aug. 1, 1983) III FERC Stats. & Regs. ¶ 30,477.

⁵ 49 FR 34,883-83 (to be codified at 18 CFR 157.202(a)(ii)). Longer term transactions involving gas reserves owned and developed by a high priority end user are subject to a prior notice procedure. 18 CFR § 157.205 (1983).

⁶ 49 FR 34,878, II FERC Stats. & Regs. ¶ 30,477 at 30,669.

⁷ Co-petitioners include National Gas and Oil Corporation, Ohio Producers Group, Public Service Electric and Gas Company, Salt River Project Agricultural Improvement and Power District, Long Island Lighting Company, Alabama-Tennessee Natural Gas Company, and Phelps Dodge Corporation.

request with the Commission⁸ to extend the Order No. 30 program⁹ "until such time as the Commission implements a more effective program to replace [it]" and to institute a rulemaking proceeding to permit the issuance of blanket certificates for the transportation of oil displacement gas. This petition for rulemaking is being denied as unnecessary in light of related Commission actions.

Order No. 30 established a short-term program authorizing the transportation of natural gas for displacement of fuel oil to relieve demand pressure on distillate and related stocks of petroleum products during the winter heating season of 1979. The program was last extended by order No. 30-F¹⁰ in which the Commission reiterated that it would "reassess current policies . . . and . . . develop a comprehensive long-term policy . . ."¹¹ as part of its pending rulemaking proceeding in Docket No. RM81-19-000¹² and RM81-29-000.¹³

That reassessment is now complete. In a final rule issued in Docket No. RM81-29-000¹⁴ the Commission decided to terminate the Order No. 30 program because a fuel oil shortage emergency no longer exists. In a companion final rule, the Commission also decided to implement a short-term (until June 30, 1985) experimental program authorizing the transportation of natural gas under the blanket certificate to all end-users, including those who were eligible for the Order No. 30 program.¹⁵ During the term of this experimental program, the Commission will review gas markets to determine what, if any, future

⁸ A notice regarding this petition was issued on April 21, 1981, 46 FR 23,952 (Apr. 29, 1981).

⁹ 18 CFR 284.200-284.208.

¹⁰ Transportation Certificates for Natural Gas for the Displacement of Fuel Oil, Docket No. RM79-34-000, issued May 21, 1981 (Order No. 30-F) 46 Fed. Reg. 30,491 (June 9, 1981), FERC Stats. & Regs. (Reg. Preambles 1977-1981) ¶ 30,263. See also Order No. 30-D issued Aug. 15, 1980, 45 Fed. Reg. 56,046 (Aug. 22, 1980), FERC Stats. & Regs. (Reg. Preambles 1977-1981) ¶ 30,184.

¹¹ 45 FR at 56,050, FERC Stats. & Regs. (Reg. Preambles 1977-1981).

¹² Interstate Pipeline Certificates for Routine Transactions, Docket No. RM81-19-000, issued May 28, 1982, 47 Fed. Reg. 24,254 (June 4, 1982) (Order No. 234), III FERC Stats. & Regs. ¶ 30,367.

¹³ Sales Transportation by Interstate Pipelines and Distributors: Expansion of Categories of Activities Authorized Under Blanket Certificates, Docket No. 81-29-000, issued July 20, 1983 (Order No. 319), 48 Fed. Reg. 34,875 (Aug. 1, 1983), II FERC Stats. & Reg. ¶ 30,477.

¹⁴ *Id.* at 34,878, III FERC Stats. & Regs. ¶ 30,476 at 30,608.

¹⁵ Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors, Docket Nos. RM81-19-000 and RM81-29-000, issued July 20, 1983 (Order No. 234-B), 48 FR 34,872 (Aug. 1, 1983); III FERC Stats. & Reg. ¶ 30,476.

designations for transportation under the blanket certificate rule are appropriate.

Because of these decisions, which in effect make the changes Con Ed requested, further action on RM81-22-000 is unnecessary. That petition, accordingly, is denied.

II. NGPA Title I Pricing Matters

A. Docket No. RM80-52-000; Advance Payments Under the NGPA

On April 23, 1980, the Commission issued a Notice of Proposed Rulemaking (NOPR)¹⁶ which would have applied to version of the advance payments¹⁷ rule of 18 CFR 271.403¹⁸ to producers of gas eligible for maximum lawful prices authorized in sections other than 104 and 106(a) of the Natural Gas Policy Act (NGPA).¹⁹ The primary purpose of this proposal was to prevent producers from using interest free advance payments authorized under the Federal Power Commission's (FPC) advance payments program to circumvent maximum lawful prices set by the NGPA. The proposed rule would have imputed an interest rate to advance payments equal to the average prime rate for each calendar quarter, compounded quarterly, and would have prevented producers from receiving more than 50 percent of the applicable maximum lawful price for gas until advance payments they received on or after the date of issuance of the NOPR, plus interest, were repaid.

Many of the two dozen comments received in this docket took issue with the Commission's position. A number of commenters pointed out that Congress limited the Commission's jurisdiction over gas prices in the NGPA and authorized the agency to increase, but not to decrease, the statutorily mandated maximum lawful prices. According to this view, the Commission has no jurisdiction to limit gas prices received by producers until advances,

¹⁶ Advance Payments Under the Natural Gas Policy Act of 1978, Docket No. RM80-52-000, 45 FR 28,345 (Apr. 23, 1980), FERC Stats. & Regs. (Proposed Regs. 1977-1981) ¶ 32,063.

¹⁷ An advance payment is any payment made by a first purchaser of gas in advance of receipt of gas deliveries. These payments do *not* include prepayments made under take-or-pay contract provisions. *Id.* at 28,347 and n. 17, FERC Stats. & Regs. (Proposed Regs. 1977-1981) ¶ 32,063 at 32,705 and n.17.

¹⁸ 18 CFR 271.403 requires a deduction, as a carrying charge adjustment, of 83 cents per MMBtu from the maximum lawful price for natural gas qualifying under sections 104 and 106(a) of the NGPA if the seller has accepted advance payments after November 5, 1976, the date of issuance of Opinion 770-A by the Federal Power Commission.

¹⁹ The proposed rule would have governed gas eligible for prices established in sections 102, 103, 105, 106(b), 107, 108 and 109 of the NGPA; *i.e.*, both interstate and intrastate gas.

plus interest, are repaid. Other commenters argued that as drafted, the proposal was overly broad or ambiguous, particularly in its definition of advance payments.

After reviewing the comments and the Commission's experience with the Advance Payments program, the Commission does not believe that further action in this docket is necessary. The primary thrust of the proposed rule was to govern advance payments given rate base treatment for the exploration, development, and production of gas qualifying under NGPA incentive prices. By order of the F.P.C.,²⁰ however, rate base treatment for advances made after December 31, 1980 is not permitted. The advance payments governed by the proposed rule, therefore, would only have been those made between April 23, 1980 and December 31, 1980. A review of rate cases filed with the Commission indicates that no advances were made during this period. Additionally, the Commission has no reason to believe that advance payments were made by intrastate pipelines during this period.

Because the Commission believes that no advances were made during the period the proposed rule would have governed, implementation of a final rule in Docket No. RM80-52-000 is unnecessary. Accordingly, the Commission is withdrawing the NOPR issued in this docket. This action, however, does not constitute Commission determination of the question whether prepayments or advance payments already included in a pipeline's rate base violate Title I of the NGPA. While the Commission is not aware of any problems concerning the advance payments this rule was intended to address, termination of this rulemaking does not preclude appropriate action in specific instances where the Commission believes prepayments or advance payments may violate Title I.

B. Docket No. RM80-77-000; Gulf Oil Corporation

Gulf Oil Corporation (Gulf) filed a petition for rulemaking on September 11, 1980,²¹ requesting a change in the definition of minimum rate gas,²² found

²⁰ Accounting and Rate Treatment of Advances Included in Account No. 166 Advances for Gas Exploration, Development and Production, Docket Nos. R-411 and RM74-4 (Termination Order) issued Dec. 31, 1975, 54 FPC 3048 (1975).

²¹ Conoco, Inc. filed comments in support of Gulf's petition.

²² The purpose of a minimum rate for gas is to assure that rates received by producers are not so low as to prevent or retard further exploration for

Continued

at 18 CFR 271.402(b)(9), to establish a minimum rate for gas from wells drilled on or after January 1, 1973. The Gulf petition was submitted in response to the Commission's invitation, in a footnote to an order denying rehearing on final regulations implementing sections 104 and 106 of the NGPA, to "file a petition asking the Commission to undertake a hearing under Section 5 of the NGA to determine whether the rate for gas from these wells is unjust, unreasonable, unduly discriminatory or preferential."²³

Rather than seeking a hearing under section 5 of NGA, however, Gulf has asked for a generic rulemaking to establish on an industry-wide basis a minimum rate for gas from wells drilled on or after January 1, 1973. On the basis of available information, the Commission is unconvinced that a generic rate is warranted at this time. Gulf has offered no evidence in their petition that leads to a contrary conclusion.

If the company is interested in pursuing individual relief, a section 5 proceeding remains available. In the absence of sufficient evidence that the problems Gulf faces warrant a generic proceeding applicable to the whole industry, however, the Commission declines to change the definition of minimum rate gas. Gulf's petition is therefore denied.

C. Docket No. RM81-42-000: Sun Gas Company

The Sun Gas Company (Sun Gas) filed a petition on September 9, 1981 requesting an incentive rate for new wells drilled in old reservoirs on old leases²⁴ on the Outer Continental Shelf (OCS). The Commission also received comments from 11 other companies supporting this petition.

The company points out that under both section 104(b)(2) and section 107(c)(5) of the NGPA, the Commission has the authority to establish such a price for this gas. Section 104(b)(2) gives the Commission authority to set a

gas and to increase the incentives needed to maximize production from existing wells. Just and Reasonable National Rates for Sales of Natural Gas, Docket No. R-478, issued Dec. 31, 1975 (Opinion No. 749, 54 F.P.C. 3090, 3113).

²³ Ceiling Prices; Natural Gas Committed or Dedicated to Interstate Commerce; Order Denying Application for Rehearing and Stay and Amending Regulations, Docket No. RM80-19-000, issued Feb. 27, 1980, 45 FR 16,171, 16,173 n.15 (Mar. 13, 1980) (Order No. 64-A), FERC Stats. & Regs. (Reg. Preambles 1977-1981) ¶30.132 at 30.928.

²⁴ These reservoirs are those discovered prior to July 27, 1976. Natural Gas Policy Act section 102(d)(2), 15 U.S.C. 3311(d)(2) (Supp. V 1981).

ceiling price for interstate gas higher than the section 104 rate if such a price is "just and reasonable within the meaning of the Natural Gas Act." Sun Gas argues that a higher price is justified because section 104 prices are "woefully deficient in view of today's high cost of offshore maintenance, drilling, and platform construction." Section 107(c)(5) gives the Commission discretion to set an incentive price necessary for production of high cost gas; *i.e.*, gas produced under conditions presenting extraordinary risks or costs. The company argues alternatively that obtaining gas from new wells drilled in old reservoirs on old leases on the Outer Continental Shelf is extraordinarily risky and costly and that such gas, therefore, should be classified as "high cost."

The Commission is unpersuaded by Sun Gas's petition or the supporting comments that additional incentives generally are needed at this time to produce gas from new wells drilled in old reservoirs on old leases on the Outer Continental Shelf. In the first instance, the company has presented no information demonstrating that the current section 104 price for this category of gas is not just and reasonable. The Commission notes, in fact, that rates for interstate natural gas under section 104 have been adjusted by a monthly inflation factor since April 1977. As a result, the current price for this gas is higher than it would have been had the national rates, in effect prior to passage of the NGPA, continued to apply.

Additionally, although Sun Gas argues that a section 107 price is warranted, the company has failed to provide any cost data that would allow the Commission to make the requisite findings that production of gas generally from new wells drilled in old reservoirs on old leases on the Outer Continental Shelf is extraordinarily risky or costly and that an incentive price is necessary for production.

Because the Commission is not convinced by the Sun Gas petition that further incentives on a generic basis are needed at this time to produce gas from new wells in old reservoirs on old leases on the Outer Continental Shelf, the Commission denies the petition to issue a rule. However, Sun is not precluded from filing a petition with adequate substantiation for individual relief under section 104(b) or for an incentive price under section 107(c)(5).

D. Docket No. RM81-32-000: Indicated Producers, *et al.*

Docket No. RM81-39-000: Associated Gas Distributors
Docket No. RM81-43-000: Texas Eastern Transmission Corporation
Docket No. RM82-42-000: Interstate Natural Gas Association of America Indicated Producers, *et al.*,²⁵ Associated Gas Distributors (AGD), Texas Eastern Transmission Corporation (Texas Eastern) and Interstate Natural (Gas) Association of America (INGAA) filed petitions requesting both a declaratory order and a rulemaking proceeding.²⁶ The petitioners advocate a declaratory order establishing a proper relationship between the maximum lawful prices authorized in Title I of the NGPA and the cost or value of the service performed by a pipeline/purchaser in transporting liquid and liquefiable hydrocarbons (liquids and liquefiabiles)²⁷ for a producer/seller. The rulemaking proceeding would establish generically the rates applicable to pipeline transportation of producer-owned liquids and liquefiabiles. Petitioners argue that this action would expedite Commission consideration of the issues involved in allocating the costs of liquids and liquefiabiles between producer/sellers and pipeline/purchasers.

The question of how to allocate costs of transporting liquids and liquefiabiles has had a rather lengthy history before

²⁵ The "Indicated Producers" are: Shell Oil Company, Arco Oil and Gas Company, Conoco, Inc., Gulf Oil Corporation, and Marathon Oil Company. The Commission also received other petitions in this docket from Aminoil USA, Inc., "Certain Producers" (Pennzoil Company, Union Texas Petroleum Corporation, Tenneco Oil Company, and General American Oil Company of Texas), "Producer Petitioners" (Mobil Oil Corporation, Mobil Producing Texas and New Mexico, Inc., Mobil Oil Exploration and Producing Southeast, Inc., Amoco Production Company, Chevron USA, Inc., Cities Service Company, Exxon Company, Getty Oil Company, Kerr-McGee Corporation, Fluorid Oil Company, Phillips Petroleum Company, and Texaco, Inc.) who filed a "supplementary and complementary" petition to that of Indicated Producers, and Union Oil Company of California, which joined and adopted "Indicated Producers" petition. Additionally, the Public Service Commission of the State of New York filed comments in this docket and in Docket No. RM81-39-000.

²⁶ Three of the petitions were filed in 1931: Indicated Producers' on June 1, 1931, AGD's on July 22, 1931, and Texas Eastern's on September 22, 1931. INGAA's petition was filed on September 20, 1932.

²⁷ Liquids and liquefiabiles are substances separated from raw natural gas and include ethane, propane, butane and pentane. See generally Regulations Implementing Section 110 of the Natural Gas Policy Act and Establishing Policy Under the Natural Gas Act, Docket No. RM80-47-002 issued Jan. 24, 1983, 48 FR 5152 (Feb. 3, 1983) (Order No. 94-a), III FERC Stats. & Regs. ¶39.419.

the Commission, culminating in a Declaratory Order, issued January 17, 1983, 22 FERC ¶ 61,013 (1983), and an Order Denying Rehearing of the Declaratory Order, issued July 7, 1983, 24 FERC ¶ 61,004 (1983). The Declaratory Order substantively responded to petitioners' requests for a declaration of Commission policy on the applicability of Title I to the liquids and liquefiables issue.²⁸ On rehearing, the Commission affirmed the Declaratory Order and also effectively disposed of petitioners' request for the promulgation of a rule. Noting that the issuance of the Declaratory Order had made further action unnecessary, the Commission elaborated on the reasons for not proceeding with a generic proceeding.

Orders Approving Settlements for eleven major pipeline rate cases have already resolved the issue that would have been the subject of the generic rule—the proper amount to allocate to a pipeline's cost of service for the transportation of liquid and liquefiable hydrocarbons. Since the issue is well on the way to being resolved in individual pipeline rate cases, a generic rulemaking would more likely *delay* rather than expedite resolution of the issues.

24 FERC ¶ 61,004 at 61,023 (footnotes omitted; emphasis in the original).

The Commission has therefore disposed of the declaratory order portions of the petitions filed by the Indicated Producers, *et al.*, AGD, Texas Eastern and INGAA, and, at the same time, has provided the rationale for its decision to use a case-by-case approach in preference to a generic rule on liquids and liquefiables,²⁹ disposing of the rulemaking part of the petitions as well. Neither order, however, expressly denied the rulemaking part of the petitions filed in Docket Nos. RM81-32-000, RM81-39-000, RM81-43-000, and RM82-42-000, although the Order Denying Rehearing effectively did so.³⁰ The Commission therefore denies those rulemaking petitions today.

²⁸ In the Declaratory Order, the Commission granted Indicated Producers' petition for declaratory order and denied the petitions for declaratory order filed by AGD, Texas Eastern, and INGAA. 22 FERC at 61,026.

²⁹ See also, Trunkline Gas Company, Docket No. RP80-106-010, 23 FERC ¶ 61,137 (April 21, 1983) (Order Approving Settlement); *reh. denied* 24 FERC ¶ 61,105 (July 8, 1983). The Commission also notes in this context its discretion to choose to proceed by rule or by adjudication. See *SEC v. Chenery*, 332 U.S. 194 (1947) and its progeny.

³⁰ "Having decided to utilize the individual pipeline rate cases and not the general rulemaking approach, Texas Eastern's request for a rulemaking has been effectively denied." 24 FERC ¶ 61,004 at p. 61,027, n.27. Although the Commission specifically responded only to Texas Eastern's petition, the other three petitions deal with the same subject matter.

III. NGPA Title II Pricing Matters

A. Docket No. RM80-64-000: Exemption From Incremental Pricing for Distillers Who Produce Fuel Grade Alcohol Blended To Form Gasohol

In June 9, 1980, the Commission issued an NOPR³¹ to grant a short-term³² exemption from incremental pricing for certain distilleries³³ that use natural gas to produce anhydrous alcohol which is subsequently blended with gasoline to form gasohol. The purpose of the proposal was to offer an immediate incentive to hasten the production of gasohol by providing distilleries with an assured energy source at an economical price. Because these distilleries currently are exempt from incremental pricing surcharges as a result of corollary Commission actions, there is no need for further action in this docket.

On October 6, 1980, the Commission issued an interim rule in Docket No. RM80-75-000³⁴ clarifying the scope of 18 CFR 282.202(a), the definition of agricultural uses of natural gas that are exempt from incremental pricing. In the interim rule, the Commission proposed that all essential agricultural uses certified by the Secretary of Agriculture on or before October 15, 1979 would be considered agricultural uses by this Commission for purposes of incremental pricing exemptions. In the interim rule, the Commission also proposed, that essential agricultural uses certified by the Secretary of Agriculture after October 15, 1979 would not qualify automatically as exempt from incremental pricing, but would be evaluated on a case-by-case basis in full rulemaking proceedings. The use of natural gas in the distillation of fuel-grade alcohol from food grains under certain circumstances³⁵ was certified as

³¹ Exemptions From Incremental Pricing for Distillers Who Produce Fuel Grade Alcohol Blended to Form Gasohol, Docket No. RM80-64-000, issued June 9, 1980, 45 Fed. Reg. 40,617 (June 16, 1970), FERC Stats. and Regs. (Proposed Regs. 1977-1981) ¶ 32,070.

³² The exemption was intended to expire no later than May 9, 1984. Its short-term nature was designed to avoid conflicts with long-range energy policy to encourage facilities to switch from fuel oil to coal or other renewable energy sources.

³³ In order to qualify for the exemption, the distillers had to be in existence on or before May 8, 1980 and could not have the installed capacity lawfully to burn coal.

³⁴ Agricultural Uses Exemption; Interim Rule Amending Commission's Regulations Under the Natural Gas Policy Act of 1978, issued Oct. 6, 1980, 45 FR 67,276 (Oct. 9, 1980), FERC Stats. and Regs. (Reg. Preambles) ¶ 30,195.

³⁵ The distillers had to be in existence on June 30, 1980, could not have the installed capacity lawfully to burn coal, and could only qualify for the exemption until June 29, 1985.

an essential agricultural use by the Secretary of Agriculture after October 15, 1979 and thus falls in the category of uses that must be considered individually by the Commission.

Because of significant concerns raised about the interim rule, on April 23, 1981, the Commission issued an order staying its effective date to provide additional time to study its impact.³⁶ As a result of that stay, essential agricultural uses certified by the Secretary of Agriculture after October 15, 1979, including the use of natural gas by distilleries that produce anhydrous alcohol which is used to make gasohol, are exempt from incremental pricing while the stay is in effect. Moreover, even if the stay were lifted, there is no reason to proceed with this rulemaking since the proposed rule was for only a limited time period until May 9, 1984.

Since the primary purpose of rule proposed in Docket No. RM80-64-000 is being met, further action is unnecessary. The Commission is therefore withdrawing the Notice of Proposed Rulemaking.

B. Docket No. RM81-23-000: Rochester Gas and Electric Corporation

On March 17, 1981, Rochester Gas and Electric Corporation (RG&E) petitioned the Commission to amend its regulations implementing Title II of the NGPA to exempt from incremental pricing surcharges all district heating facilities³⁷ in existence as of 1977. The Commission also received comments in support of the petition from two Members of Congress. The Commission has considered RG&E's request and the supporting comments, but is not persuaded that its current policy should be modified:

The Commission is given broad discretion in the NGPA to implement the incremental pricing provisions of Title II which apply to the industrial use of natural gas.³⁸ In exercising that discretion, the Commission determined that the status of district heating facilities as industrial facilities should be based on the use to which the steam

³⁶ Interim Rule Amending § 282.202(a) of the Commission's Regulations under the Natural Gas Policy Act of 1978, Docket No. RM80-75-000 (Order Amending Stay), issued Apr. 23, 1981, 48 FR 25,599 (May 8, 1981), 15 FERC ¶ 61,065 (1981). A partial stay of the interim rule, limited to those users of natural gas who has filed affidavits for exemptions as agricultural users prior to October 6, 1980, was issued by the Commission on October 23, 1980, 45 Fed. Reg. 76,681 (Nov. 20, 1980).

³⁷ A district heating facility is a facility which generates steam sold to the public. 18 CFR 282.103(d)(2) (1983).

³⁸ See, e.g. Natural Gas Policy Act section 501 16 U.S.C. 3411(d)(1) (Supp. V 1981)

generated by these facilities is put.³⁹ Because a customer-by-customer determination for each district heating facility would be administratively cumbersome and would thwart the intent of the statute, the Commission decided that those heating facilities that serve primarily non-industrial steam requirements are not industrial facilities and therefore are exempt from incremental pricing.⁴⁰ RG&E's No. 9 plant serves primarily industrial customers and thus is not a facility exempt from incremental pricing surcharges.

RG&E argues that the Commission's regulations are in conflict with national energy policy, incompatible with Congressional intent, and inconsistent with the policies underlying incremental pricing. The Commission disagrees. The intent of the incremental pricing program is to place the initial burden of higher gas prices on industrial users. The Commission's regulations on district heating facilities accomplish this goal by ensuring that the facilities which serve primarily industrial customers are charged for and can pass along the increased costs of natural gas to such customers.⁴¹

RG&E also argues that its proposed rule revision would foster the revitalization of its district heating facility. The Commission is not persuaded that this is a proper basis for a generic rulemaking. This is especially true since the Commission has created procedures specifically to address the kind of case-specific issues RG&E raises. When Order No. 49-A was issued, the Commission counseled district heating facilities which served (in 1977) primarily non-exempt loads to petition for an adjustment under the procedures of 502(c) of the NGPA, 15 U.S.C. 3412(c) (Supp. V 1981) and to show why exemption is necessary to prevent special hardship, inequity, or unfair distribution of burdens.⁴² Under this procedure, RG&E has filed for an

adjustment in Docket No. SA80-88, which is still pending.⁴³

Rochester Gas and Electric has not convinced the Commission that an amendment to its incremental pricing rules is warranted. Therefore, the company's petition is denied.

C. Docket No. RM82-22-000: Miles Laboratories, Inc.

On March 25, 1982, Miles Laboratories, Inc. (Miles) petitioned the Commission to exempt from incremental pricing the manufacture of food-grade citric acid. The company argued that the production of this substance is food processing and thus an exempt agricultural use under section 206(b)(3)(A) of the NGPA. Because the Commission disagrees with Miles' classification of citric acid, it is denying the company's petition.

As an initial matter, the Commission notes that in the preamble to the Notice of Proposed Rulemaking issued in Docket No. RM81-17-000,⁴⁴ it urged all interested parties to petition for agricultural use exemptions by the deadline for filing written comments in the docket, May 29, 1981, because it did not expect to "allocate Commission or staff time to consideration of similar additional rulemaking proceedings in the near future."⁴⁵ The Commission imposed this deadline because it believed that "most persons who would request [exemptions] either have already done so or can do so in the context of this proceeding."⁴⁶ Miles did not petition for an exemption before the Commission's regulatory deadline.

Even if the Commission were willing to open another rulemaking docket to consider Miles' request, it is not persuaded that citric acid would qualify as a food. Generally, the Commission has recognized that food seasonings such as spices fall within the definition of food.⁴⁷ Citric acid, however, is not a discrete food seasoning akin to spice. Rather, it is an organic chemical that is added to food for a variety of purposes. Because it is not a food but a chemical additive, its manufacture does not qualify as food processing. Accordingly,

³⁹ The Director of the Office of Pipeline and Producer Regulation denied the request in 1980, 13 FERC § 82,054 (1983).

⁴⁰ Definition of Agricultural Use in Commission's Incremental Pricing Regulations, Docket No. RM81-17-000, issued Apr. 20 1981, 48 FR 23,467 at 23,483 (Apr. 27, 1981), FERC Stats. & Regs. (Proposed Regs.) § 32,129 at 33,174.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Incremental Pricing, Docket No. RM81-17-000, issued Nov. 16, 1981, 48 FR 57,463 (Nov. 24 1981) (Order No. 169), FERC Stats. & Regs. (Reg. Preambles) § 30,313 at 31,771.

the petition filed in Docket No. RM82-22-000 is denied.

D. Docket No. RM83-48-000: Church and Dwight Company, Inc.

On December 27, 1982, Church and Dwight Company Inc. petitioned the Commission to exempt from incremental pricing surcharges the use of natural gas as a boiler fuel in the manufacture of sodium bicarbonate used in animal feed. The company argued that the addition of sodium bicarbonate to animal rations makes the substance an animal feed and that, therefore, the boiler fuel use of natural gas to make this product is exempt under § 282.210 of the Commission's regulations. Section 282.210 exempts from incremental pricing natural gas used as a boiler fuel in the production of fertilizer, agricultural chemicals, animal feed and food.

The Commission is not persuaded that sodium bicarbonate is an animal feed and thus should be exempt from incremental pricing. The materials submitted by the company indicate that sodium bicarbonate is a non-feed substance that is added to animal rations. Its purpose is not to provide animal nutrition, but to change the content of the rumen of cattle in order to increase feed efficiency. The exemption authorized in § 282.210 is for animal feed itself, not for additions to the feed. Since sodium bicarbonate is not an animal feed, but a feed additive, the boiler fuel use of natural gas in its manufacture does not qualify for the exemption from incremental pricing found in the Commission's rules. Therefore, the Commission denies the petition submitted by Church and Dwight Company.

IV. General Policies Under the Natural Gas and Federal Power Acts

A. Docket No. RM79-17-000: Indiana Municipal Electric Association, et al.

The Commission is denying as unnecessary a petition for rulemaking submitted on January 26, 1979, by the Indiana Municipal Electric Association, et al.⁴⁸ The Association requested that the Commission raise the interest rate applicable to refunds under the Federal Power Act, 16 U.S.C. 791a-828c (1976 & Supp. V 1981) and the Natural Gas Act, 15 U.S.C. 717-717v (1976 & Supp. V 1981) by either (1) establishing a refund rate at no less than 2 percentage points above the prime rate; or (2) establishing

³⁹ Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978, issued Dec. 27, 1979, 45 FR 767, 775 (Jan. 3, 1980) (Order No. 49-A), FERC Stats. & Regs. (Reg. Preambles 1977-1981) § 30,114 at p. 30,799.

⁴⁰ *Id.*

⁴¹ The Commission understands that RG&E is prevented from allocating surcharge costs only to customers of its No. 9 plant as a result of a decision made by the New York Public Service Commission. The Commission believes that it is a state regulation prohibits passthrough of these charges, RG&E should request a change in the State, rather than the federal, requirement.

⁴² The Commission notes that RG&E did not petition for rehearing of Order No. 49-A.

⁴⁸ Co-petitioners include towns and cities in Indiana, designated as "IMEA Cities" and the Crawfordsville Light and Power Company of Crawfordsville, Indiana.

a fixed rate of no less than 12 percent; or (3) setting the rate at the return on equity requested by companies in their rate filings. The Association also advocated that interest on refunds be compounded.

On March 26, 1979, shortly after receiving this request, the Commission issued a Notice of Proposed Rulemaking⁴⁹ proposing, among other things, to tie the interest rate on carrying charges and refunds to the prime interest rate charged by commercial banks for short-term business loans and to require monthly compounding of interest on funds subject to refund. After accepting comments in that docket, the Commission issued a final rule on September 17, 1979.⁵⁰

In drafting the final rules, the Commission specifically considered proposals such as those advocated in this petition for rulemaking.⁵¹ The Commission concluded, however, that the prime rate charged by banks for short-term business loans would best reflect a balance between the costs and benefits associated with excessive payments and provide an incentive for prompt resolution of rate proceedings. The Commission decided to change the compounding requirement in the final rules from a monthly basis to a quarterly basis because of the burden a monthly adjustment could impose.

Because the Commission has already examined the question of an appropriate interest rate refund as well as the method for compounding this rate, further action on RM79-17-000 is unnecessary. Accordingly, that petition is denied.

(Administrative Procedure Act, U.S.C. 551-557 (1976); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (Supp. V 1981); Exec. Order No. 12009, 3 CFR 142 (1978); Federal Power Act, as amended, 16 U.S.C. 291-828 (1976 & Supp. V 1981), Natural Gas Act, 15 U.S.C. 717-7172 (1976 & Supp. V 1981), Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432 (Supp. V 1981)

In consideration of the foregoing, the Commission denies the petitions for rulemaking filed in Docket Nos. RM79-50-000, RM80-49-000, RM81-22-000; withdraws the Notice of Proposed Rulemaking in Docket No. RM80-52-000;

⁴⁹ Regulations under the Federal Power and Natural Gas Acts and Natural Gas Policy Act of 1978; Refund Requirements for Oil Pipelines, Docket No. RM77-22-000, issued Mar. 9, 1979, 44 FR 18,048 (Mar. 28, 1979), FERC Stats. and Regs. (Proposed Regs.) ¶ 32,012.

⁵⁰ Natural Gas Policy and Procedures; Final Regulations and Request for Comments, Docket No. RM 77-22-000, issued Sept. 10, 1979 (Order No. 47), 44 FR 53,483 (Sept. 14, 1979), FERC Stats. and Regs. (Reg. Preambles) ¶ 30,083.

⁵¹ *Id.* at 53,494, FERC Stats. & Regs. (Reg. Preambles) as 30,548.

denies the petitions for rulemaking filed Docket Nos. RM80-77-000, RM81-42-000, RM81-32-000, RM81-39-000, RM81-43-000, RM82-42-000, withdraws the Notice of Proposed Rulemaking in Docket No. RM80-64-000; and denies the petitions for rulemaking in Dockets Nos. RM81-23-000, RM82-22-000, RM83-48-000, and RM79-17-000. These dockets are being terminated as of the date of issuance of this Order.

By the Commission,
Lois D. Cashell,
Acting Secretary.

[FR Doc. 84-749 Filed 1-11-83; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Proposed Change in Hours of Customs Service at Noyes, Minnesota

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed change in hours of service; solicitation of comments.

SUMMARY: This notice solicits public comments on a proposed reduction in the hours of service currently provided at the Customs port of Noyes, Minnesota, located on the U.S.-Canadian border, in the Pembina, North Dakota, Customs District.

Because traffic at Noyes does not justify the current 24-hour schedule, it is proposed to eliminate service between midnight and 8:00 a.m.

It is estimated that the proposed change, which would enable Customs to obtain more efficient use of its personnel, facilities, and resources, would result in substantial savings.

DATES: Comments must be received on or before March 12, 1984.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Denise Crawford, Office of Inspection and Control, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8157).

SUPPLEMENTARY INFORMATION:

Background

In general, § 101.6, Customs Regulations (19 CFR 101.6), provides that each Customs office shall be open for

the transaction of Customs business between the hours of 8:30 a.m. and 5:00 p.m. on all days of the year except Saturdays, Sundays, and national holidays. It also provides that services performed outside a Customs office generally shall be furnished between the hours of 8:00 a.m. and 5:00 p.m. However, because of local conditions, different but equivalent hours may be necessary to maintain adequate and efficient service.

The Customs ports of entry of Noyes, Minnesota, and Pembina, North Dakota, both located on the U.S.-Canadian Border in the Pembina, North Dakota, Customs District, currently operate on a 24-hour basis and are staffed by Customs and Immigration and Naturalization Service personnel. Because traffic at Noyes and Pembina does not justify the hours of service between midnight and 8:00 a.m., since these two ports are located only a mile and a quarter from each other, Customs does not believe it is cost efficient to staff both locations on a 24-hour basis. Because Pembina is located on an interstate highway and Noyes is not, and since a lesser volume of traffic is processed at Noyes between midnight and 8:00 a.m. than is processed at Pembina during the same hours, Customs is proposing to eliminate service between midnight and 8:00 a.m. at Noyes.

The proposal, if adopted, would enable Customs to realize a savings of more than \$40,000 a year. In addition, the proposal would not have any major adverse impact on industry transportation or local population because of the close proximity to Pembina which could easily absorb the additional workload.

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Drafting Information

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

List of Subjects in 19 CFR Part 101

Customs duties and inspection, Harbors, Organization and functions (Government agencies), Seals and insignia.

Dated: December 9, 1983.

Alfred R. De Angelus,
Acting Commissioner of Customs.

[FR Doc. 84-705 Filed 1-11-84; 8:45 am]

BILLING CODE 4820-02-M

19 CFR Part 151**Examination of Imported Merchandise**

AGENCY: Customs Service, Treasury.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Customs Regulations to require that, as a general rule, all imported merchandise shall be examined at the place of arrival at the expense of the importer, rather than at "public stores" at Customs expense. A "public store" is a premises owned or leased by the Government and used for the storage of merchandise until it is released from Customs custody. The regulations now provide that unless the importer requests examination at a place other than a public store, merchandise is to be transported from the place of arrival to a public store for examination.

The proposed amendments would decrease Customs costs and liability while allowing more expeditious handling, examination, and release of cargo.

DATE: Comments must be received on or before March 12, 1984.

ADDRESS: Comments (preferably in triplicate) should be addressed to the Commissioner of Customs, Attention: Regulations Control Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Room 2426, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas Davis, Office of Cargo Enforcement and Facilitation, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5354).

SUPPLEMENTARY INFORMATION:**Background**

Under present § 151.6, Customs Regulations (19 CFR 151.6), all imported merchandise is required to be examined at the public stores, except inflammable, explosive, or dangerous merchandise, or any other merchandise which cannot be examined conveniently at the public stores, unless another place is requested by an importer and approved by

Customs in accordance with § 151.7, Customs Regulations (19 CFR 151.7). The term "public store" is defined in section 561, Tariff Act of 1930 (19 U.S.C. 1561), as "(A)ny premises owned or leased by the Government and used for the storage of merchandise for the final release of which from Customs custody a permit has not been issued * * *."

Merchandise sent to the public stores for examination under section 151.6 has been opened, examined, and closed by Customs personnel at Customs expense. However, any costs incurred (other than Customs salaries) when merchandise is examined at a place other than the public stores, such as at the wharf or other place of arrival or at the importer's premises, at the request of an importer under § 151.7, are charged to the importer. This has resulted in recurring disputes between Customs and importers involving responsibility for opening/closing cargo packages for Federal examination requirements.

The working of the current regulations allows an importer with a bulky or heavily-crated shipment which requires examination to refuse legitimately to request examination at other than the public stores and let Customs decide how, when, and where to examine the shipment. If Customs decides to do so at the public stores, it may cost Customs a substantial sum to load and haul the merchandise to that place. If Customs decides to examine the shipment where it is, in the absence of a request from the importer, then Customs provides the time, manpower, and tools to perform the examination. In either case, Customs must assume the inherent liabilities and responsibilities.

The concept of "public stores" in the traditional sense has waned because Customs facilities, personnel, equipment, and logistic backing necessary to support that function are extremely limited in many locations.

It is clear that Customs may require examination of imported merchandise where it chooses (19 U.S.C. 1499). Further, Customs may require an importer to bear all examination expenses.

If implemented, the proposed amendments will benefit not only Customs, but also importers, brokers, and carriers by allowing for expeditious handling, examination, and release of cargo shipments. In addition, these amendments would:

1. Allow maximum utilization of inspectional personnel;
2. Reduce the amount of paperwork and other controls necessary to forward examination packages to public stores;
3. Reduce the possibility of injury to Customs personnel;

4. Reduce instances of liability to Customs for tort claims because of damaged or pilfered merchandise; and

5. Reduce recurring costs of providing and replacing tools needed to conduct cargo examinations.

Accordingly, after studying the problem, Customs has determined that it would be desirable to amend §§ 151.6 and 151.7 to require that, in general, all imported merchandise will be examined at the place of arrival rather than the public stores and at the expense of the importer. This does not preclude the importer from requesting examination at a place other than the place of arrival, such as the importer's premises. Existing public stores would not be abolished, but used much less frequently, and solely at Customs option.

It is noted that this proposal is not intended to require an importer to pay any costs associated with the salary of a Customs employee in regard to examination of merchandise where such costs are not now paid.

Authority

This proposal is made under the authority of R.S. 251, as amended, section 461, 46 Stat. 717, section 467, as added June 25, 1938, section 11, 52 Stat. 1083, as amended, section 499, 46 Stat. 728, as amended, section 624, 46 Stat. 759 (19 U.S.C. 68, 1461, 1467, 1499, 1624).

Comments

Before adopting this proposal, consideration will be given to any written comments timely submitted to the Commissioner of Customs. Comments submitted will be available for public inspection in accordance with section 103.11(b), Customs Regulations (19 CFR 103.11(b)), from 9:00 a.m. to 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, Headquarters, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

E.O. 12291 and Regulatory Flexibility Act

It has been determined that this proposal is not a "major rule" within the criteria provided in section 1(b) of E.O. 12291, and therefore no regulatory impact analysis is required.

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

analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Todd J. Schneider, Regulations Control Branch, U.S. Customs Services. However, personnel from other Customs offices participated in its development.

Lists of Subjects in 19 CFR Part 151

Customs duties and inspection, Imports.

Proposed Amendments

It is proposed to amend § 151.6 and 151.7, Customs Regulations (19 CFR 151.6, 151.7), as follows:

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. Section 151.6 would be revised to read as follows:

§ 151.6 Place of examination.

All merchandise will be examined at the place of arrival, unless examination at another place is required by the district director or authorized in accordance with § 151.7 of this part. Except where the merchandise is required by the district director to be examined at the public stores, the importer shall bear any expense involved in preparing the merchandise for Customs examination and closing packages.

2. The heading, introductory language, and paragraphs (b) and (c) of § 151.7 would be revised to read as follows:

§ 151.7 Examination elsewhere than at place of arrival or public stores.

The district director may authorize examination at a place other than at the place of arrival or the public stores, such as at the importer's premises. If examination at a place other than at the place of arrival or the public stores is authorized it will be subject to the following conditions:

* * * * *

(b) *Preparation for Customs examination and closing packages.* Except when merchandise is required by the district director to be examined at the public stores, the importer shall arrange and bear any expense for preparation of the merchandise for Customs examination and closing of packages.

(c) *Reimbursement of expenses outside port limits.* If the place of examination is not located within the limits of a port of entry or at a Customs station at which a Customs officer is permanently located, whether or not

that location is the place of arrival, the importer shall pay any additional expenses, including actual expenses of travel and subsistence but not the salary during regular hours of duty of the examining officer. However, no collection will be made if the total amount chargeable against one importer for one day amounts to less than 50 cents. If the total amount chargeable amounts to 50 cents or more but less than \$1, a minimum charge of \$1 will be made.

* * * * *

William von Raab,
Commissioner of Customs.

Approved: December 14, 1983.

John M. Walker, Jr.
Assistant Secretary of the Treasury.

[FR Doc. 84-828 Filed 1-11-84; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In FR Doc. 83-34066 beginning on page 56801 in the issue of Friday, December 23, 1983, third column, under **ADDRESS**, third line, "550 Friendship" should read "5550 Friendship".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

Permanent State Regulatory Program of Alabama

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

ACTION: Proposed rule.

SUMMARY: OSM is announcing procedures for the public comment period and for a public hearing on the substantive adequacy of a program amendment submitted by Alabama to satisfy certain conditions imposed by the Secretary of the Interior on the approval of the Alabama State program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment also addresses the remand of three provisions of

Alabama's program by a United States District Court decision.

The amendment consists of a set of modifications to Alabama's surface and underground coal mining regulations and a draft memorandum of understanding between the Alabama Department of Environmental Management and the Alabama Surface Mining Commission.

The conditions proposed to be addressed by Alabama's proposed modifications relate to specific program requirements in the areas of sediment control, and spoil placement and disposal. The remanded section of Alabama's program proposed to be addressed relates to Alabama's provisions for approving exemptions from the requirements for operators to return mined lands to their approximate original contour. The remanded provision is proposed to be addressed by the aforementioned memorandum of understanding between the Alabama Department of Environmental Management and the Alabama Surface Mining Commission.

The specific details of Alabama's proposed amendment are discussed below under "SUPPLEMENTARY INFORMATION."

This document sets forth the times and locations that the Alabama program and proposed amendments are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and information pertinent to the public hearing.

DATES: Written comments, data or other relevant information relating to this rulemaking not received on or before 4:00 p.m. February 13, 1984 will not necessarily be considered.

A public hearing on the proposed modifications has been scheduled for February 6, 1984 at the address listed below under "ADDRESSES."

Any person interested in making an oral or written presentation at the hearing should contact Mr. John T. Davis at the address or phone number listed below by the close of business four working days before the date of the hearing. If no one has contacted Mr. Davis to express an interest in participating in the hearing by that date, the hearing will not be held. If only one person has so contacted Mr. Davis by the above date, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

ADDRESSES: Written comments should be mailed or hand delivered to: John T. Davis, Director, Birmingham Field

Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209.

The public hearing will be held at the Office of Surface Mining, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd floor, Homewood, Alabama.

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

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

Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

FOR FURTHER INFORMATION CONTACT: John T. Davis, Director, Birmingham Field Office, Office of Surface Mining Reclamation and Enforcement, 228 West Valley Avenue, 3rd Floor, Homewood, Alabama 35209; Telephone: (205) 254-0890.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Availability of Copies

Copies of the Alabama program, the Secretary's notice conditionally approving the Alabama program (together with the Secretary's findings), a listing of any scheduled public hearings or meetings and all written comments received in response to this notice will be available for review at the OSM offices and the office of the State regulatory authority listed below, Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

Office of Surface Mining, Room 5315, 1100 L Street, NW., Washington, D.C. 20240

Office of Surface Mining, Birmingham Field Office, Office of Surface Mining, 228 West Valley Avenue, Room 302, Birmingham, Alabama 34209

Alabama Surface Mining Commission, Central Bank Building, 2nd Floor, 811 Second Avenue, Jasper, Alabama 35501.

Written Comments

Written comments should be specific, pertain only to the issues proposed in

this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than Birmingham, Alabama, will not necessarily be considered and included in the Administrative Record for the final rulemaking.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business four working days before the date of the hearing. If no one requests to comment at the public hearing, the hearing will not be held.

If only one person requests to comment, a public meeting, rather than a public hearing, may be held and the results of the meeting included in the Administrative Record.

Filing of a written statement at the time of the hearing is requested and will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment, have been heard.

Public Meeting

Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed in "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings are open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made part of the Administrative Record.

II. Background on Conditional Approval

Under 30 CFR 732.13(j), the Secretary may conditionally approve a State permanent regulatory program which contains minor deficiencies where the deficiencies are of such a size and nature as to render no part of the program incomplete, the State is actively proceeding with the steps to correct the deficiencies, and the State agrees to correct the deficiencies according to a schedule set in the notice of conditional approval.

III. Background on the Alabama Program

Information regarding the general background on the Alabama State program, including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Alabama program can be found at 47 FR 22020-22038 (May 20, 1982) and 48 FR 34026 (July 27, 1983).

At the time of the Secretary's conditional approval, Alabama agreed to meet 13 conditions, many of which contained more than one element. Briefly, these conditions are:

1. Condition (a) requires Alabama to provide for the award of attorney and expert witness fees in accordance with Section 520(f) of SMCRA.

2. Condition (b)(1) requires Alabama to limit the definition of "extraction of coal as an incidental part" to only those areas included in the Federal definition.

3. Condition (b)(2) requires Alabama to redefine "Historic Lands" to include properly designated sites of religious, cultural and historic significance.

4. Condition (c) requires Alabama to change the term "unnecessarily disturbed" to "significantly disturbed" in order to provide sufficient protection for wildlife habitats.

5. Condition (d)(1) requires Alabama to provide that at the present time, the best technology currently available for sediment control is sedimentation ponds.

6. Condition (d)(2) requires Alabama to provide for sufficient sedimentation pond design criteria in accordance with 30 CFR 816.46(e)-(u) and 817.46(e)-(u).

7. Condition (d)(3) requires Alabama to limit impoundment slopes to not greater than 1v:2h.

8. Condition (d)(4) requires Alabama to provide for the inspection of all appropriate dams in accordance with 30 CFR 77.216-3.

9. Condition (d)(5) requires Alabama to provide for minimum sediment storage volume for sedimentation ponds.

10. Condition (e)(1) requires Alabama to prohibit the disposal of coal processing waste in head-of-hollow and valley fills.

11. Condition (e)(2) requires Alabama to provide for the placement of spoil in four horizontal lifts unless otherwise authorized by the regulatory authority.

12. Condition (e)(3) requires Alabama to provide criteria for slopes greater than 36%.

13. Condition (e)(4) requires Alabama to provide criteria and requirements for head-of-hollow and valley fills in a

manner no less effective than 30 CFR 816.72 and 816.73.

14. Condition (f)(1) requires Alabama to limit blasting periods to an aggregate of four hours per day.

15. Condition (f)(2) required Alabama to limit maximum peak particle velocity to one inch per second at the locations of certain structures and to adjust the scaled distance factor and accompanying tables accordingly.

16. Condition (g)(1) requires Alabama to provide that permit applications contain the identification of the current use of buildings on maps and plans.

17. Condition (g)(2) requires Alabama to provide that permit applications contain sufficient slope measurements to adequately represent the existing land surface configuration.

18. Condition (g)(3) requires Alabama to provide that permit applications contain information concerning equitable owners of record found in a standard title search of the standard chain of title.

19. Condition (h)(1) requires Alabama to provide mandatory authority for the regulatory authority to provide to the public information on acid and acid-forming materials in the coal seam.

20. Condition (h)(2) requires Alabama to grant to the regulatory authority, rather than the operator, the discretionary power to determine the confidentiality of information relative to exploratory activities, and containing specific criteria for such determination.

21. Condition (i) requires Alabama to provide that the applicant must demonstrate that the use of existing structures will not result in significant harm to the environment or impair public health or safety.

22. Condition (j) requires Alabama to provide for the permitting of coal processing plants and other support facilities including those not at or near the mine site.

23. Condition (k) requires Alabama to provide for the meeting of all three conditions contained in 30 CFR 785.18(d)(9) prior to the granting of a variance.

24. Condition (l) requires Alabama to grant authorized representatives the power to and requiring that the authorized representatives shall impose affirmative obligations on the operator in situations of imminent danger or significant environmental harm or when an operator fails to abate the violation in the most expeditious manner physically possible.

25. Condition (m) requires Alabama to make certain editorial changes to its rules as follows:

(m)(1): In the definition of Federal Lands, insert "interest" after "mineral".

(m)(2): In the definition of "Groundwater" substitute "in" in lieu of "below".

(m)(3): Add a scope section to Alabama rule Part 823 (now redesignated as 880-X-10G-.01).

(m)(4): Remove the word "following" from section 823.15 (now redesignated as 880-X-10G).

(m)(5): Add appropriate references in Sections 816.46(u) and 817.46(u) (now redesignated as 880-X-10G and 880-X-10D).

(m)(6): Correct the reference at section 778.13(d) (now redesignated as 880-X-8D).

On August 29, 1983, Alabama submitted proposed amendments to meet each of the above conditions except for (d), (e) and (m)(5). OSM announced receipt of Alabama's August 29, 1983, amendments in the Federal Register on September 28, 1983 (48 FR 44233) and invited public comment. Also, at that time, Alabama requested an extension of time to meet conditions (d), (e) and (m)(5). A final rule indicating the Secretary's actions regarding Alabama's August 29, 1983, amendments and the conditions related thereto will be announced separately in the Federal Register. The extension request sought by Alabama may be mooted if the Secretary finds the November 26, 1983, proposed amendments meet conditions (d), (e) and (m)(5).

In addition, OSM announced in the November 15, 1983 Federal Register a proposed rule concerning the remand of three Alabama program provisions by the United States District Court for the Middle District of Alabama in *Citizens for Responsible Resource Development v. Watt*, Civil No. 82-530-N, October 7, 1983. Two of the three remanded provisions were proposed for reconsideration by OSM's November 15, 1983, notice in light of recent changes made to the Federal rules.

The first remanded provision concerns the Secretary's approval of Alabama's provision allowing partial bond release prior to topsoil replacement. Under the Federal rules which existed at the time the Alabama program was conditionally approved, 30 CFR 807.12 allowed the regulatory authority discretion to release sixty percent of the bond upon completion of Phase I reclamation. The Federal rules at 30 CFR 807.12(e)(1) required topsoil replacement as one of the elements which must be finished in order for reclamation Phase I to be deemed to have been completed. Alabama's provision at 880-X-9D omits this requirement. However, the Federal rules have since been changed. The new rule at 30 CFR 800.40(c)(1) provides that Phase I reclamation which would allow

partial bond release may include topsoil replacement, but the requirement of topsoil replacement is no longer mandatory (48 FR 32932, July 19, 1983).

The other remanded provision concerns the Secretary's approval of Alabama's rules governing bond replacement in the event of the insolvency of a surety or bank. Under the Federal rules that existed at the time the Alabama program was conditionally approved, 30 CFR 806.12 (e)(6)(iii) and (g)(7)(iii) provided that during the period an operator is without bond coverage and is seeking a replacement bond, the regulatory authority shall conduct weekly inspections of the affected site(s). The Alabama counterparts at 880-X-9C-.03 (5)(e)(3) and (6)(h)(iii) omit this requirement. Subsequent to the Secretary's conditional approval of Alabama's program, the Federal rules concerning bond replacement were changed to no longer require weekly inspections. See 30 CFR 800.16(e)(2), 48 FR 32932, July 19, 1983.

In order to respond to the District Court's remand of these two Alabama provisions, OSM sought public comment on whether the existing Alabama provisions are in accordance with SMCRA and are now no less effective than the current Federal rules. The public comment period ended on December 15, 1983. A final rule announcing the Secretary's findings and actions will appear in a separate Federal Register notice.

In addition to responding to the two remanded provisions discussed above, OSM's November 15, 1983 notice also proposed placing an additional condition on Alabama's program in response to the District Court's remand of a third program provision. However, such action is being superseded because Alabama has submitted a proposed amendment to address the third remanded section. That proposed amendment is discussed in detail below.

IV. Discussion of the Proposed Amendment

On November 28, 1983, the Alabama Surface Mining Commission submitted a proposed program amendment to satisfy conditions (d), (e), and (m)(5) and to address one of the provisions of the State's program remanded by the United States District Court for the Middle District of Alabama.

Specifically, Alabama has:

(1) Proposed changes to rules 880-X-10C-.13 and 10D-.13 to meet conditions (d)(1);

(2) Proposed changes to rules 880-X-10C.17 and 10D-.17 to meet conditions (d)(2) and (d)(5);

(3) Proposed changes to rules 880-X-10C.20 and 10D-.20 to meet conditions (d)(3) and (d)(4);

(4) Proposed changes to rules 880-X-10C-.36(13)(b) and 10D-.33(13)(b) to meet condition (e)(1);

(5) Proposed changes to rules 880-X-10C-.36(9) and 10D-.33(9) to meet conditions (e)(2) and (e)(3);

(6) Proposed changes to rules 880-X-10C-.36(15)-(17) and 10D-.33(15)-(17) to meet condition (e)(4);

(7) Requested that OSM review condition (m)(5) in light of final OSM rules at 30 CFR 816.49 and 817.49 published September 26, 1983 (48 FR 44032); and

(8) Submitted a draft memorandum of understanding between the Alabama Department of Environmental Management and the Alabama Surface Mining Commission which would, when finalized, provide for necessary consultation and approval authority on variances from approximate original contour for steep slope mining in accordance with 30 CFR 785.16(c)(4)(iii) and the decision of the U.S. District Court for the Middle District of Alabama in *Citizens for Responsible Resource Development v. Watt*, Civil No. 82-530-N, October 7, 1983.

Thus, the Secretary requests comments on the substantive adequacy of the proposed amendments to satisfy the above conditions and court remand. The issue is whether each amendment is no less effective than its counterpart in the Federal regulations.

V. Additional Determinations

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

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSM an exemption from Sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

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

established by SMCRA and the Federal rules would be met by the State.

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

List of Subjects in 30 CFR Part 901

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

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

Dated: January 6, 1984.

Director, Office of Surface Mining

James R. Harris,

[FR Doc. 84-812 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD3 83-080]

Drawbridge Operation Regulations; Nacote Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of Atlantic County, New Jersey, the Coast Guard is considering a change to the regulations governing the Route 575 Bridge at Port Republic, New Jersey by requiring notice of opening at all times and an opening as soon as possible for a public vessel of the United States. This proposal is being made because no requests have been made to open the draw since 1979. This action should relieve the bridge owner of the burden of having a person constantly available to open the draw and should still provide for the reasonable needs of navigation.

DATE: Comments must be received on or before February 27, 1984.

ADDRESSES: Comments should be submitted to and are available for examination from 9 a.m. to 3 p.m., Monday through Friday, except holidays, at the office of the Commander (oan-br), Third Coast Guard District, Bldg. 135A, Governors Island, NY 10004. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Bridge Administrator, Third Coast Guard District (212) 668-7994.

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 name and address, identify the bridge, and give reasons for concurrence with or for any recommended change in the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

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

Drafting Information

The drafters of this notice are Ernest J. Feemster, project manager and Mary Ann Arisman, project attorney.

Discussion of Proposed Regulation

The Route 575 County Bridge, near Port Republic, N.J., carries minimal roadway traffic over Nacote Creek. The Waterway area upstream of the bridge is confined and forms a large body of water suitable for pleasure boating. The bridge has a minimum eight-foot vertical clearance (at Mean High Water) in the closed position. The existing clearance apparently is adequate for the few vessels using the waterway. A marina is located downstream of the bridge and most vessels from the marina normally transit downstream rather than upstream. There are several old docks upstream of the bridge but very little, if any usage appears to be made of these docks. Based on the minimal usage of the waterway, and the bridge's not being required to open since 1979, the Coast Guard feels that it may be reasonable to require eight hours notice at all times. This notice would not apply to public vessels of the United States, which will be passed through the draw as soon as possible at all times. A draft economic evaluation has not been conducted for this action because the economic impact on marine and vehicular interests is expected to be minimal.

Economic Assessment and Certification

These proposed regulations have been reviewed under the provisions of Executive Order 12291 and have been determined not to be a major rule. In addition, these proposed regulations are considered to be nonsignificant in accordance with guidelines set out in the Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5 of 5-22-

80). As explained above, an economic evaluation has not been conducted since its impact is expected to be minimal. In accordance with § 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), it is certified that these rules, if promulgated, would not have a significant economic impact on a substantial number of small entities because no known water-dependent entities will be affected.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations.

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, by adding a new § 117.225(f)(9-a) to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

§ 117.225 Navigable waters in the State of New Jersey; bridges where constant attendance of draw tenders is not required.

(f) (9-a) Nacote Creek; the draw of the Ocean County Route 575 bridge, mile 3.5 at Port Republic shall open on signal if at least eight hours notice is given, and shall open as soon as possible at all times for passage for a public vessel of the United States.

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

Dated: December 27, 1983.

W. E. Caldwell,
Vice Admiral, U.S. Coast Guard Commander,
Third Coast Guard District.

[FR Doc. 04-833 Filed 1-11-84; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 712

[OPTS-82004P;TSH FRL 2502-3]

Preliminary Assessment Information; Manufacturer Reporting Amendment Adding Mesityl Oxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule adds a single chemical, mesityl oxide, to the list of chemicals for which manufacturers must submit Preliminary Assessment Information under section 8(a) of the Toxic Substances Control Act (TSCA). The Interagency Testing Committee

(ITC) designated this chemical in its Fourth Report as a candidate for testing under TSCA section 4. EPA did not include the chemical in the initial Preliminary Assessment Information Rule, but is adding it to the list of subject chemicals at this time. The Agency will use the reported data on mesityl oxide to obtain further support for its final test rule decision concerning that chemical.

DATE: Comments on this proposed rule must be submitted on or before February 13, 1984. Written comments should bear the document control number OPTS-82004P, and should be submitted to the following address: TSCA Public Information Office (TS-793), Office of Toxic Substances, Environmental Protection Agency, Rm. E-108, 401 M St., SW., Washington, D.C. 20460.

All written comments filed under this proposal will be available for public inspection in room E-107 at the address given above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT:

Jack P. McCarthy, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, D.C. 20460, Toll free: (800-424-9065), in Washington, D.C.: (544-1404). Outside the USA: (Operator-202-554-1404).

SUPPLEMENTARY INFORMATION: OMB Control Number: 2000-0420.

I. Legal Authority

The Preliminary Assessment Information Rule—Manufacturer Reporting, issued under the authority of section 8(a) of the Toxic Substances Control Act, was published in the Federal Register of June 22, 1982 (47 FR 26992). The rule established standardized reporting requirements for all manufacturers of chemicals listed in the rule. It required manufacturers of approximately 250 chemicals to report general production, use, and exposure information using the Preliminary Assessment Information Manufacturer's Report (EPA Form 7710-35). EPA may add chemical substances to the list of chemicals subject to the rule in order to gather data for the assessment of those chemicals.

II. Reporting Requirements

This rule proposes that mesityl oxide (CAS No. 141-79-7) be added to the list of chemicals subject to the Preliminary

Assessment Information Rule. Manufacturers (including importers) or mesityl oxide would be required to provide EPA with Preliminary Assessment Information Reports on that chemical. A manufacturing firm would be required to submit a separate Manufacturer's Report for each plant site at which mesityl oxide is produced. Manufacturers of mesityl oxide would be required to submit their completed Reports within 60 days of the effective date of the final rule. Any firm submitting data under this rule could, at its discretion, specify that EPA is to treat the data as Confidential Business Information (CBI).

Additional details of the reporting requirements, including the reporting exemptions, are fully described in the Preliminary Assessment Information Rule. That rule is codified in the Code of Federal Regulations at 40 CFR Part 712.

III. Agency Rationale and Objectives

The TSCA Interagency Testing Committee (ITC) included mesityl oxide in its Fourth Report of chemical substances designated for test rule consideration under TSCA section 4(u) [44 FR 31866, June 1, 1979]. In response to that designation, EPA has issued a rule proposing the establishment of testing requirements for mesityl oxide. That proposed rule was published in the Federal Register of July 5, 1983 (48 FR 30699).

EPA did not include mesityl oxide in the initial section 8(a) Preliminary Assessment Information Rule. However, the Agency is now proposing the addition of mesityl oxide to that rule in order to obtain production, use, and exposure data on the chemical. Although EPA has already made a tentative decision to require testing on mesityl oxide, the Agency is seeking exposure-related information on the chemical at this time. These data will be used by EPA in making its final test rule decision with regard to mesityl oxide.

IV. Release of Aggregate Data

The Agency will follow procedures for the release of aggregate statistics as prescribed in a Rule Related Notice published in the Federal Register of June 13, 1983 (48 FR 27041). Included in the Notice are procedures for requesting exemptions from the release of aggregate data. Exemption requests concerning the release of aggregate data on any chemical substance must be received by EPA no later than 60 days after the effective date of the final rule.

V. Economic Impact

EPA's cost estimates for manufacturer compliance with the requirements of this rule are based on estimates used in the Preliminary Assessment Information Rule. These cost estimates were updated to reflect inflationary trends through the latter part of 1982. Although EPA does not expect the reporting requirements of this rule to be in effect until early 1984, the Agency is utilizing the 1982 economic data in estimating the cost of manufacturer reporting on mesityl oxide. With the recent moderation in the inflation rate, EPA does not expect the compliance costs of this rule to be significantly different from the 1982 values for per-chemical reporting costs.

EPA's has identified the following categories of compliance costs for this rule:

1. A fixed cost of approximately \$590 for a manufacturing plant site to become familiar with the regulation and to determine whether it is required to report on its production of mesityl oxide.

2. A variable cost of approximately \$520 per report for the plant site to complete the Manufacturer's Report, meet all certification requirements, and determine whether reported information should be claimed confidential.

Based on non-confidential data at EPA's disposal, the Agency estimates that four plant sites operated by four companies will submit reports under this rule. Each of these sites will submit a single report on mesityl oxide. This estimate excludes manufacturers of mesityl oxide that need not report because they qualify for the small manufacturer exemption. The total reporting cost of the mesityl oxide amendment is estimated by EPA to be \$4,440.

For a more detailed discussion of reporting costs, see the Economic Impact and Small Business Definition Analysis For the Final TSCA Section 8(a) Preliminary Assessment Information Rule, prepared in 1981 by ICF, Inc. This document is contained in the public record for the Preliminary Assessment Information Rule (OPTS-82004).

VI. Regulatory Assessment Requirements—Paperwork Reduction Act, Regulatory Flexibility Act, Executive Order 12291

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal agencies. The final section 8(a) rule has been reviewed and approved by OMB. The OMB control number is 2000-0420.

EPA has also determined that, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, this proposed addition to the section 8(a) rule will not have a significant economic impact on a substantial number of small entities. EPA expects only four companies to report under this rule, well within Regulatory Flexibility Act guidelines. In addition, the rule will exempt "small" manufacturers (as defined in 40 CFR 712.25) from reporting on mesityl oxide.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and should be subject to a Regulatory Impact Analysis. EPA has determined that this regulation is not major because it is not expected to have a compliance cost of \$100 million or more. Rather, as noted above, this rule is expected to have a one-time cost of approximately \$4,440. The rule therefore will not have a significant effect on competition, costs, or prices.

The reporting provisions in this proposed regulation have been submitted to OMB as required by Executive Order 12291.

VII. Rulemaking Record

The public record for this proposed rulemaking is a continuation of the record for the Preliminary Assessment Information Rule (OPTS-82004). All documents, including the index to this public record, are available for inspection in the OTS Reading Room from 8:00 a.m. to 4:00 p.m. on working days (Rm. E-107, 401 M St., Washington, D.C. 29460). The record includes basic information considered by the Agency in developing this proposed rule. The Agency will supplement the record with the following types of additional information as it is received:

1. All comments on this proposed amendment.
2. All relevant support documents and studies.
3. Records of all communications between EPA personnel and persons outside the Agency pertaining to the development of this rule. (This does not include inter- or intra-agency memoranda unless specifically noted in the index of the rulemaking record.)
4. Minutes, summaries, or transcripts of any public meetings held to develop this rule.
5. Any factual information considered by the Agency in developing the rule.

EPA will identify the complete rulemaking record on or before the date of promulgation of the regulation, as prescribed by section 19(a)(3) of TSCA, and will accept additional material for inclusion in the record at any time between this notice and that date. The

final rule will also permit persons to point out any errors or omissions in the record.

(Sec. 8(a), Pub. L. 94-469, 90 Stat. 2003 (15 U.S.C. 2597(a)))

List of Subjects in 40 CFR Part 712

Chemicals, Environmental protection, Recordkeeping and reporting requirements.

Dated: December 21, 1983.

Don R. Clay,

Director, Office of Toxic Substances.

PART 712—[AMENDED]

Therefore, it is proposed that 40 CFR 712.30 be amended by adding paragraph (i) to read as follows:

§ 712.30 Chemical lists and reporting periods.

* * * * *

(i) Manufacturers of the chemical substance listed below must submit a Preliminary Assessment Information Manufacturer's Report on that chemical substance within 90 days of the date of publication of this rule in the Federal Register:

Mesityl Oxide, CAS No. 141-79-7

* * * * *

[FR Doc. 84-03 Filed 1-11-84; 8:45 am]

BILLING CODE 6590-60-M

FEDERAL MARITIME COMMISSION

46 CFR Part 508

[Docket No. 82-58]

Action To Adjust or Meet Conditions Unfavorable to Shipping in the United States/Venezuela Trade

AGENCY: Federal Maritime Commission.

ACTION: Discontinuance of proposed rule.

SUMMARY: The Federal Maritime Commission has determined to discontinue this proceeding (47 FR 55869) without issuing a final rule. The status of the carriers which had petitioned for issuance of the rule has changed to such an extent that continuation of this proceeding would serve no purpose.

FOR FURTHER INFORMATION CONTACT: Francis C. Hurney, Secretary, Federal Maritime Commission, Room 11101, 1100 L Street, NW., Washington, D.C. 20573 (202) 523-5725.

SUPPLEMENTARY INFORMATION: On September 13, 1983, Concorde/Nopal Line moved the Commission to suspend action on its Petition For Issuance of Rules To Adjust Or Meet Conditions

Unfavorable to Shipping In The United States/Venezuela Trade filed on July 8, 1983. In that motion, the Commission was advised that the United States and Venezuela had entered into a "Memorandum of Consultation" encompassing terms permitting Concorde/Nopal to apply for provisional status to participate in the U.S./Venezuela trade. Concorde/Nopal has now notified the Commission, by letter from its counsel, that its application for provisional status has been granted.

Concorde/Nopal will thus be able to carry cargoes otherwise reserved by the Government of Venezuela to Venezuelan-flag and associate carriers, continuing its longstanding service in the trade. Concorde/Nopal states that its status is "provisional pending the outcome of further negotiations (scheduled for the first quarter of 1984) between the U.S. and Venezuela concerning a bilateral maritime agreement" and is subject to certain unspecified conditions applicable only to the operations of Concorde-Nopal in this trade. Concorde/Nopal asks the Commission to "continue to suspend further proceedings" on this matter.

Concorde/Nopal's concerns regarding its continued participation in the trade appear to have been alleviated by the Venezuelan government's grant of provisional associate status. The Commission sees no reason to continue the present docket because of Concorde/Nopal's apparent fears that its provisional status will prove transitory or because of dissatisfaction with the unnamed conditions imposed on its service. The information provided the Commission by Concorde/Nopal indicates simply that it has been granted provisional associate status, a state of affairs no more transitory or less secure than the interim associate status previously granted the two U.S. flag carriers whose petitions for relief under section 19(b) of the Merchant Marine Act, 1920, 46 U.S.C. 876(b), resulted in initiation of this proceeding.¹ If Concorde/Nopal's status changes, or its service suffers from the imposition of significant discriminatory conditions, it may again petition the Commission for action pursuant to section 19. No purposes would be served by continuation of the present inactive proceeding.

Therefore, it is ordered, that this proceeding is discontinued.

By the Commission.

Francis C. Hurney,
Secretary.

[FR Doc. 84-277 Filed 1-11-84; 8:45 am]
BILLING CODE 6730-01-M

¹Delta Steamship Lines, Inc. and Coordinated Caribbean Transport.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[RM-4436; CC Docket No. 83-1376; FCC 83-606]

Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission is initiating a *Notice of Inquiry* into the appropriateness of the existing rate integration policies for Alaska, Hawaii, Puerto Rico, and the Virgin Islands in light of recent Commission actions authorizing competitive entry to these points for interstate telecommunications services. This action is taken in response to a Petition for Rulemaking (RM 4436), filed by the state of Alaska and the Alaska Public Utilities Commission.

DATES: Comments must be received on or before March 7, 1984. Reply Comments are due on or before April 6, 1984.

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

FOR FURTHER INFORMATION CONTACT: Douglas Slotten, Policy and Program Planning Division at (202) 632-9342.

Notice of Inquiry

In the matter of Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, RM 4436; and Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands, CC Docket No. 83-1376.

Adopted December 22, 1983.

Released January 4, 1984.

By the Commission.

I. Background

1. The Commission has before it a Petition for Rulemaking filed by the State of Alaska and the Alaska Public Utilities Commission (hereinafter jointly referred to as Alaska) on April 11, 1983. The Petition requests the initiation of a rulemaking proceeding to establish a permanent mechanism for the integration of rates and services between the contiguous states and Alaska, Hawaii, Puerto Rico and the Virgin Islands (the noncontiguous points). The State of Hawaii, Alascom,

Inc. (Alascom),¹ and General Communications Incorporated (GCI)² filed comments in response to the Petition. Alascom replied to the GCI comments. A letter from Senator Ted Stevens supporting the initiation of a rulemaking proceeding to develop long-term policies for rate integration and competition in the post-divestiture era³ was included in the record.⁴

2. In support of the Petition, Alaska submits that rate integration is dependent primarily upon agreements between AT&T and carriers serving the noncontiguous points and that the separate interim agreements between Hawaiian Telephone Company and Alascom and AT&T expire January 1, 1985, after which settlements will be based on the *Separations Manual* which is incorporated as Part 67 of the Commission's Rules, 47 CFR 67.1. Alaska further contends that the implementation of access charges, *MTS-WATS Market Structure Inquiry (Phase I)*, 48 FR 10319 (March 11, 1983), *recon.*, 48 FR 42984 (September 21, 1983), *appeal pending sub nom. NARUC v. FCC*, Civ. No. 83-1225 (filed March 1, 1983), and the exchange plant separations proceeding, *Amendment of Part 67*, mimeo No. 6726 (released September 26, 1983), *modified in part*, FCC 83-564 (adopted December 1, 1983), will alter significantly the foundation on which settlements are based, thereby undermining the rate integration process. Alaska states that AT&T settlements with the noncontiguous carriers generally amounted to more than the revenues generated by calls from those areas. Because noncontiguous points typically have high cost exchange and interexchange facilities, Alaska contends that rate integration cannot be maintained without some form of modified interstate rate averaging or other

¹ Alascom is the traditional carrier in Alaska, offering both interstate and intrastate telecommunication services. It and the American Telephone and Telegraph Company (AT&T) currently offer the interstate services at integrated rates pursuant to Commission direction.

² GCI is a new competitive entrant in the interstate telecommunications market, offering service to Anchorage, Alaska, via satellite facilities there and in Seattle, Washington. It leases transponders, and utilizes ENFIA facilities, WATS or private line services obtained from AT&T to reach the called destination in the contiguous states.

³ The divestiture by AT&T of the Bell Operating Companies pursuant to the Modification of Final Judgment entered in *United States v. Am. Tel. and Tel. Co.*, 552 F. Supp. 131 (D.D.C. 1982), *cert. denied sub nom. Maryland v. United States*, 103 S. Ct. 1240 (1983).

⁴ On December 7, 1983, GCI filed a Petition for Expedited Consideration and Related Interim Relief. Comment was requested by Public Notice released December 9, 1983.

substantial support for both types of facility costs. While the access charge decision will provide support for nontraffic sensitive (NTS) costs, high traffic sensitive exchange costs will be passed on to the interexchange carrier who will recover them from the interstate user. In its view, this will increase rates to noncontiguous points or discourage service to those points. Additionally, Alaska asserts that there is now no mechanism to support high cost interexchange facilities since AT&T's agreement to pay a transitional supplement ends on December 31, 1984, after which settlements will be based on interstate costs assigned by the *Separations Manual*. Alaska believes that absent substantial support from all ratepayers benefitting from the extension of interstate services to Alaska points, rate integration may collapse. The support necessary is, in Alaska's view, not a significant percentage when compared to total toll revenues. While not proposing a specific mechanism, Alaska suggests that the high costs could be supported by a fund similar to the universal service fund and funded through the carrier common line rate element. It submits that payment from such a fund could be made to all carriers that provide service to the noncontiguous points under integrated rate structures, with payments being proportionate to traffic volumes and cost factors.

3. Hawaii states in supporting the objectives of the Alaska Petition that there is a compelling need for a mechanism to assure that rate integration is implemented. It asserts that services to noncontiguous points have been more expensive than comparable services between other points, thereby adversely affecting the residents of the noncontiguous points and those wishing to communicate with them. Hawaii submits that the universal service fund does not redress the problems associated with high cost, traffic sensitive exchange facilities or high cost interexchange facilities. Hawaii suggests that elimination of the interstate settlements pool and introduction of competition may cause carriers to be reluctant to honor their commitments to rate integration despite the clear directives of the Commission. The goals of Section 1 of the Communications Act of 1934, as amended, 47 U.S.C. 151, will be furthered, in Hawaii's view, if revised integration procedures are developed.

4. GCI, in supporting the Alaska Petition, submits that the changes in the telecommunication industry will not destroy rate integration, but represent

an increasing incongruity between the competitive policies and the existing mechanism for rate integration. For the public to receive the benefits of both policies, it asserts that rate integration must be restructured. It believes that some support to Alaska is necessary if universal service is to be achieved. However, it argues that if only one carrier is to receive support, competitive service in the Alaskan market will be frustrated. Therefore, GCI contends that the mechanism providing rate support must allow for participation by all carriers serving routes requiring support.

5. Alascom supports the initiation of a proceeding to ensure that rate integration will not be jeopardized as reliance on marketplace forces increases. Alascom states that it knows of no reason why it is not entitled to continue to recover its full interstate MTS-WATS costs from AT&T by means of settlements based on applicable separations procedures and negotiated arrangements. Alascom suggests that it the Commission does not wish to have AT&T continue to be the sole contributor to the support of services to high-cost noncontiguous points, a supplemental Alaskan interstate separations allocation that would become part of a universal service fund could be established. Such a fund could also, in Alascom's view, include above average NTS and exchange carriers' traffic sensitive costs, thus spreading the cost of supporting these high cost areas among all interstate exchange carriers at a minimum cost to the nation as a whole. Alascom does not believe, as highlighted in its reply comments to GCI's comments, that competitive providers should be compensated from such a fund since that would encourage uneconomic duplication of facilities. It says that users who already support facilities to provide service to high cost areas would have to pay the cost of such facilities. A competitive policy assertedly does not require subsidy of carriers competing with the carrier of last resort since that would create perverse incentives, would undermine the discipline that competition provides and would do nothing to further universal service. Alascom argues that if GCI cannot compete at cost-base rates, it should terminate service.

II. Existing Policy

6. AT&T and the independent telephone companies have long used a uniform rate schedule based upon averaged costs and rates for most interstate services among points in the contiguous states and the District of Columbia. Revenues from those services were traditionally divided in accordance

with a formula that compensated each participating carrier for its interstate expenses and provided each carrier with the same return on its interstate investment. The interstate expense and investment was computed in accordance with the *Separations Manual* that is used for purposes of jurisdictional separations (*ie.*, through division of revenues and settlements contracts agreed to by the participating carriers). Different procedures were used for purposes of computing settlements and interstate rates between domestic points and noncontiguous states, territories, and possessions. Those procedures historically resulted in rates to and from noncontiguous points that were higher than interstate rates for comparable distances within the contiguous states.

7. In the early 1970's this Commission adopted a rate integration policy for interstate MTS-WATS service between Alaska, Hawaii and Puerto Rico and the contiguous states. *Establishment of Domestic Communications Satellite Facilities*, 35 FCC 2d 844, 856 (1972) (*Domsat II*), *aff'd on recon.*, 38 FCC 2d 665 (1972), *aff'd sub nom.* Network Project v. FCC, 511 F. 2d 788 (D.C. Cir. 1975). Rate integration was not adopted for private line offerings, as they were considered to be specialized in character. The Virgin Islands was subsequently included within the rate integration policy.

8. When rate integration is discussed, there are, in fact, two subelements involved. The first, and the most obvious to users of telecommunications services, is the averaged rates charged which may not necessarily relate to the underlying costs of providing the service. The averaging implicit in the procedure has been justified on the grounds that no person should be deprived of telecommunications service at reasonable rates simply because of the high costs associated with serving the user's location. Full rate integration was to be achieved through phased reductions in tariffed rates. *Integration of Rates and Services*, 61 FCC 2d 380 (1976), *recon. denied*, 65 FCC 2d 234 (1977). Rates were fully integrated between Puerto Rico and the Virgin Islands on July 1, 1980. *Integration of Rates and Services*, 72 FCC 2d 715 (1979). The final step in the rate integration process for Alaska and Hawaii was scheduled to be accomplished on January 1, 1985. *Integration of Rates and Services*, 87 FCC 2d 25 (1981). On October 3, 1983, AT&T filed revised interstate tariffs that would have integrated Alaskan and Hawaiian MTS-WATS rates on January 1, 1984. These rates were suspended for

investigation until April 3, 1984.

Investigation of Access and Divestiture Related Tariffs, FCC 83-470 (released October 19, 1983).

9. The second factor in rate integration is the settlement arrangements between carriers serving the noncontiguous points and AT&T. It is this process through which carriers settle the differences between the amounts each collects from the end users and the amount to which the carrier is entitled for providing its part of the service offering. These agreements in the past have been negotiated between carriers on an individuals basis. AT&T and carriers serving the noncontiguous points have entered into new settlement arrangements that follow the traditional pattern in the contiguous states. Carriers that serve the noncontiguous points will recover all expenses apportioned to the interstate jurisdiction and a return on interstate investment equal to the rate earned by the settlements pool as a whole. The settlement agreements with Alascom and Hawaiian Telephone provide certain supplemental payments to those carriers through 1984.⁵ This Commission has determined that the same *Separations Manual* provisions that are used to identify interstate investment and expenses in the contiguous states should be used for all noncontiguous points, *Integration of Rates and Services*, 87 FCC 2d 18 (1981), and *Integration of Rates and Services*, 72 FCC 2d 699 (1979).

10. We have taken several actions recently that have opened the noncontiguous points to competitive entry, thereby bringing them the benefits that competition provides for the marketplace. The noncontiguous points of Hawaii, Puerto Rico and the Virgin Islands were opened to competition in 1980. *MTS-WATS Market Structure Inquiry*, 81 FCC 2d 177 (1980). The Alaskan interstate MTS-WATS market, with a limited exception prohibiting duplicative facilities to bush communities, was opened to competitive entry in 1982. *MTS-WATS Market Structure Inquiry (Phase II)*, 92 FCC 2d 787 (1982), *recon. denied*, FCC 83-213 (released May 9, 1983). Finally, we have promoted marketplace competition with the noncontiguous points by extending the dominant/nondominant and forbearance policies applicable to the

contiguous states to the noncontiguous points. *Competitive Carrier Rulemaking (Fourth Report and Order)*, FCC 83-481 (released November 2, 1983).

11. Our recent decision to establish a system of interstate access charges will substantially alter the traditional system of settlements and division of revenues within the contiguous states that has been used as a model for settlements between AT&T and carriers that serve the noncontiguous points. The telephone companies that serve the noncontiguous states are primarily exchange carriers and will be receiving most of their compensation for participation in interstate services through access charges. Settlement arrangements will, however, still be required (at least in the near term) between AT&T and independent telephone companies owning facilities that are classified as interexchange for purposes of the access charge rules.

III. Discussion

12. Our effort to bring telecommunication services to the noncontiguous points at rates comparable to those in the contiguous states has a long history. The pleadings before us support that just as we are achieving the culmination of rate integration, the competitive policies advanced in more recent years may adversely affect the future utility of existing rate integration procedures. While the pleadings express a need for a proceeding to investigate the interrelationships between rate integration and competition for the future telecommunication policies for the noncontiguous points, there is a decided lack of specificity concerning the nature or breadth of the problems perceived or the solutions proffered to alleviate them. Moreover, there is disagreement concerning the integration policy that would be compatible with competition.

13. The record developed in connection with Alaska's Petition is inadequate for us to make a recommendation of any rule changes at this time. Accordingly, we will not initiate a Notice of Proposed Rulemaking. However, we conclude that the public interest will be served if we begin a rulemaking proceeding to evaluate the rate integration policy and associated settlement arrangements in the light of more recent developments. This will give interested persons an opportunity to provide detailed support for the generalized assertions contained in the pleadings associated with the Alaska Petition.

14. Questions of competitive equity did not arise before carriers with their own facilities entered these markets in competition with the existing carriers. Moreover, as long as the competitive entrants' share of the market in the contiguous states was very small, the settlement procedures accommodated rate integration without significantly distorting competition. The increased levels of competition in the contiguous states and entry of competitors owning facilities in the noncontiguous points raises questions of the viability of competition under the existing rate integration procedures. To provide some focus for parties interested in commenting in this Docket, we shall outline several issues on which we seek comment. In doing so, we do not imply that these are the only issues that could be delineated, or that alternative formulations could not be posited. The focus of our discussion is on the potential long-run implications of maintaining our policies favoring both competition and rate integration, and on adjustments which may be necessary to reconcile those policies.⁶

15. Participants in this proceeding are requested to comment on the degree to which competition and the existing rate integration policies are believed to be incompatible. Any participant believing them to be incompatible should describe factors that lead to this incompatibility. In setting forth the factors, participants should be as specific as possible as to the interrelationships that exist and should identify the policies that will be affected by competitive entry. The identification of the factors causing the alleged incompatibilities is extremely important because it will permit the development of modified policies that specifically address the problems defined by the comments. To the extent that these factors impose additional financial burdens on carriers or customers, delineation of the specific costs involved should be provided. The provision of dollar amounts will be

⁵The assertion by Alaska that the settlements agreements will expire on January 1, 1985, is correct. It is only the transitional supplements that Alascom and Hawaiian Telephone have been receiving that will terminate on the date. The settlements agreements will, however, have to be modified to reflect the adoption of access charges for the exchange portion of telephone services.

⁶GCI argues in its Petition (*See Note 4, supra*), essentially, that the outcome of this proceeding will be academic because its viability as a competitor is significantly affected by the tariffs which are presently scheduled to become effective next April 3. We expect to address GCI's Petition and the responses thereto next month. It may be necessary for AT&T and GCI (as well as other facilities-based providers of service to noncontiguous points) to enter into some type of interim arrangements. Any such relief would have to be structured so as to have the least possible impact on the competitive environment and should be consistent with the long-run options. Interested persons should prepare themselves to move quickly on this matter, and are encouraged to meet upon this matter soon to begin mapping out what accommodations may be feasible should we rule favorably on GCI's Petition.

particularly helpful if the record discloses that modifications in the existing policies are necessary.

16. Participants are requested to submit proposals for modifying existing policies to account for the factors identified in response to the preceding paragraph. Any proposal should specifically identify those Commission policies or settlement arrangements that may be required.⁷ The dollar impacts of any changes should be provided if it is possible to do so. Comment is also sought on whether the modifications proposed will have different effects depending on the noncontiguous point to which they are applied. If so, to what extent will different policies be necessary for different noncontiguous points? Would different policies create unreasonable discrimination between points in violation of Section 202(a) of the Communications Act, 47 U.S.C. 202(a)? Participants should also comment on the impact any proposed plan would have on the provision of competitive telecommunication services throughout the entire domestic market (including service both to contiguous and noncontiguous points). If existing policies or practices are to be modified, we intend to select those modifications which have the least impact on competition wherever possible, consistent with the achievement of other Commission policies.

17. A critical factor in developing policies and rules for a competitive environment for the noncontiguous points is an evaluation of the characteristics possessed by the various interstate, interexchange carriers serving those markets. The determination of the characteristics of the carriers entering these markets is easier than identifying those of the existing carriers in these markets. The new entrant may rely totally on the resale of other carriers' facilities, may have its own facilities in the noncontiguous point and resell another carrier's facilities in the contiguous states (e.g., as GCI does in its offerings in Alaska), or may have a substantial network in the contiguous states and enter the noncontiguous point either via its own facilities or through the resale of a carrier's facilities in the noncontiguous point.

18. There appear to be two approaches to characterizing the carriers that have traditionally served such markets. The first is to consider those carriers as partners with AT&T and view the offering as a joint competitive offering. This view is based on the requirement that AT&T join with such a carrier in offering service at integrated rates. *Domsat II, supra*. The second is to view a carrier such as Alascom as facility-based in its particular service area and as a reseller with respect to the contiguous states. This view is premised on the fact that such a carrier owns only those facilities in its service area and relies on the facilities of other carriers to complete its interstate offerings. The decision as to which characterization to apply to these carriers may significantly affect the ultimate market structure and applicable rules.

19. Under a joint venture theory, a competitive entrant would be competing with the average costs associated with the joint offering. A new entrant presumably would enter only if it could offer service at a cost lower than the average cost of the joint venture. This could create a barrier to entry since an entrant could also be expected to incur somewhat higher costs—absent a significant technological breakthrough. Therefore, we seek comment on whether the obligations on AT&T and carriers such as Alascom should be altered in any way to provide a more workable competitive environment. If so, what change are necessary? Can there in fact be an obligation imposed on two carriers to provide service at integrated rates without considering them to be a partnership for purposes of determining a competitive policy?

20. The facility-based/resale characterization would appear to require considerably greater modifications in existing practices than might the joint venture characterization. We seek comment on the implications of the facility-based/resale characterization for existing policies and practices: How would we determine equitable mechanisms to compensate for the fact that the original carrier has an obligation to serve all points, while the entering carrier is under no such obligation? Would the result be an administered price system? If so, will the benefits of competition actually be achieved?

21. In analyzing these options, participants should address the degree of competition possible under each approach. Particular attention should be paid to whether support payments can be minimized if one characterization is

adopted over another. What factors should we consider in making such a comparison and what weight should be assigned to each factor?

22. The premise underlying Alaska's Petition appears to be that since the high-cost noncontiguous points currently receive support from the contiguous states, a modified rate integration plan or some other mechanism must be in place to ensure that carriers will continue to serve these points in a competitive environment. GCI, in commenting on Alaska's Petition, argues that if support is provided to the incumbent carrier, the competitive entrant must receive support in order to afford the entrant an opportunity to compete. Does the answer to the question of whether a support payment should be made to a competitive entrant depend on which characterization of the existing carrier is selected? Is such a policy consistent with a competitive marketplace? If a policy allowing a competitive entrant to receive support payments through some mechanism were to be adopted, what impact would this have on the overall level of support payments required for a particular point? If demand were stimulated by entry, would it not be possible that the support amount would increase? Would competitors in all noncontiguous points require support payments? What protections could a plan contain that would ensure that the competition-based incentives to control costs are attained? If such controls cannot be developed, would it be better to adopt a policy that did not provide support to competitive entrants at all, thereby possibly limiting the support payments required from ratepayers in the contiguous states?

23. The existing policy imposes the requirement for supporting the high-cost noncontiguous points upon services provided by AT&T and its partners in the interstate settlements pool. While the implementation of access charges will spread some of this support over all carriers utilizing the exchange facilities, the majority of support is required because of high interexchange costs. Alascom suggests that in a competitive environment it may not be equitable, or even viable, to continue to impose any obligation for supporting service to such points on one group of competitive carriers. If this is the case, what mechanism should be used to spread the costs of supporting service to such points? Participants who favor alternative mechanisms should describe in detail how any mechanism they propose would work, and what existing procedures would have to be changed.

⁷ Participants may also suggest changes in separations rules if they believe such changes are necessary or desirable in order to develop a viable long-run policy. We will not, of course, adopt any separations changes in this Docket. Any change in separations rules would require an initial decision of a Federal-State Joint Board pursuant to Section 410(c) of the Act, 47 U.S.C. 410(c). If separations changes are suggested in this Docket that appear to warrant consideration, we will refer such questions to a Joint Board.

24. Several parties' comments have suggested that a universal service fund approach be taken to providing support to the high-cost noncontiguous points.⁸ Would this method be workable? At what point in the process would the costs be spread among services of the various carriers? Would the spreading be equitable, or would it result in uneven distribution of the costs among carriers? Is there a different mechanism that would be more efficient, or cause less competitive impact?

25. Several comments suggest that the changes to the exchange allocations in the *Separations Manual* and the adoption of access charges will adversely affect rate integration. Exchange carriers are part of the

⁸Such a universal service fund would be different than that adopted by the Joint Board in CC Docket No. 80-286. That fund was intended to spread certain high cost nontraffic sensitive costs among all users of telecommunication service. The suggested universal service fund would relate only to some unspecified high interexchange costs.

National Exchange Carrier Association which provides a mechanism for achieving partially averaged access tariff rates and compensation for exchange carrier costs that are assigned to the interstate jurisdiction by the *Separations Manual*. While we believe that the principal area in which possible concerns exist is the interexchange area, participants who believe that access charges or *Separation Manual* changes will have an adverse impact on integration policies should feel free to present their positions in their comments. Such participants should describe the adverse effects they anticipate and the size of any perceived impacts. We believe that our decisions in these areas have carefully taken into account the impacts on high cost areas, thereby obviating any significant impact.

26. Accordingly, it is ordered, pursuant to Sections 1, 4 (i) and (j), 201-205 and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154

(i) and (j), 201-205 and 403, and Section 553 of the Administrative Procedures Act, 5 U.S.C. 553, That this *Notice of Inquiry* is hereby initiated.

27. It is further ordered, That comments shall be filed on or before March 7, 1984. Reply comments shall be filed on or before April 6, 1984. Comments shall be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. All comments will be available for public inspection in the Commission's Docket Reference Room, 1919 M. Street, NW, Washington, D.C.

28. It is further ordered, That the Petition for Rulemaking filed by the State of Alaska and Alaska Public Utilities Commission is granted to the extent indicated herein.

Federal Communications Commission.

William J. Tricarico,
Secretary.

[FR Doc. 84-832 Filed 1-11-84 9:45 am]
BILLING CODE 6712-01-M

Notices

Federal Register

Vol. 49, No. 8

Thursday, January 12, 1984

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Soybean Research Advisory Institute; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Agricultural Research Service announces the following meeting:

Name: Soybean Research Advisory Institute.

Date: February 7-9, 1984 (9:00 a.m. Daily).

Place: Room 3109, South Building, U.S. Department of Agriculture, 12th and Independence Avenue, SW., Washington, DC 20250.

Type of Meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: This is the fifth meeting of the Soybean Research Advisory Institute. The purpose of this Advisory Institute is to provide a temporary advisory body to assess soybean production and utilization research in the United States and to submit a comprehensive report to Congressional committees on its findings. The fifth meeting includes a review of the executive summary and complete report and any required work sessions on completing the report.

Contact Person: Dr. Robert C. Leffel, Executive Secretary, Soybean Research Advisory Institute, Bldg. 011, HH-19, BARC-West, Beltsville, MD 20705. Telephone: (301) 344-1722.

Done at Beltsville, Maryland, this 19th day of December 1983.

Robert C. Leffel,

Executive Secretary, Soybean Research Advisory Institute.

[FR Doc. 84-877 Filed 1-11-84; 8:45 am]

BILLING CODE 3410-03-M

Commodity Credit Corporation

[1984-Crop Peanuts]

1984-Crop Peanut Program Proposed Determination Regarding National Average Support Levels for Quota and Additional Peanuts and the Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Loan Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of proposed determination.

SUMMARY: This notice requests comments with respect to the following determinations for the 1984 crop of peanuts: (1) The national average level of price support for quota peanuts, (2) the national average level of support for additional peanuts and (3) the Commodity Credit Corporation (CCC) export edible sales policy for 1984-crop additional peanuts which are pledged as collateral for a price support loan. These determinations are necessary to carry out the peanut price support program provided for in Section 108A of the Agricultural Act of 1949, as amended (hereinafter referred to as the "Act"). It is proposed that the quota support level for the 1984 crop shall be the same level as that applicable to the 1983 crop, \$550 per ton. With respect to the level of support for additional peanuts and the minimum export edible sales price for additional peanuts pledged as loan collateral, this notice sets forth the range of prices under consideration.

DATE: Comments must be received on or before February 9, 1984 to be assured of consideration.

ADDRESSES: Send comments to Director, Analysis Division, 3741 South Building, P.O. Box 2415, Washington, D.C. 20013.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday in Room 3741 South Building, 14th and Independence Avenue SW., Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Gypsy Banks, Agricultural Economist, Agricultural Stabilization and Conservation Service, USDA, Room 3732 South Building, P.O. Box 2415, Washington, D.C. 20013 (202) 447-5953. A Preliminary Regulatory Impact Analysis is available upon request.

SUPPLEMENTARY INFORMATION: This notice has been reviewed under USDA procedures required by Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified "not major." It has been determined that the actions proposed by the notice will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local governments, or geographical regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program to which this notice applies to are: Title—Commodity Loans and Purchases, Number—10.051, as found in the Catalog of Federal Domestic Assistance.

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

It has been determined that the public comment period with respect to this notice of proposed determination should be 30 days. The determination of the national average support level for the 1984-crop of additional peanuts is required by law to be made by the Secretary of Agriculture no later than February 15, 1984. Restricting the comment period to thirty days is necessary to assure adequate time for review and consideration of comments and permit a final determination with respect to the loan level for additional peanuts to be made by that date. The determinations with respect to the national average support level for quota peanuts and the minimum CCC export edible sales price for loan collateral additional peanuts are usually made at the same time as the additional support level in order to facilitate producer planning for the crop year.

These matters involve the considerations set forth below and comments are requested to aid in the determinations.

A. *National Average Support Level for Quota Peanuts.* Section 108A (1) of the Agricultural Act of 1949 ("the 1949 Act")

provides that the national average support level for each of the 1984 and 1985 crops of quota peanuts shall be the national average quota support rate for such peanuts for the preceding crop, adjusted to reflect any increase, during the period January 1 and ending December 31 of the calendar year immediately preceding the marketing year for the crop for which a level of support is being determined, in the national average cost of peanut production, excluding any increase in the cost of land. Section 108A provides further that in no event shall the national average quota support rate for any such crop exceed by more than 6 per centum the national average quota support rate for the preceding crop.

Since the 1983 calendar year immediately precedes the marketing year for the 1984 crop, the 1984 quota support level is required to be the 1983 quota support of \$550 per ton adjusted to reflect any such increase in the national average cost of peanut production in calendar year 1983. The basis on which the national average cost of peanut production is to be determined is not specified in section 108A(1) of the 1949 Act. With respect to other commodity programs authorized by the 1949 Act in connection with which determinations are to be made on the basis of average cost of production (for example, sections 105B(b)(1)(C) and 107B(b)(1)(C)), it is specified that the costs should be determined on a per acre basis. As shown in the following table, using cash expenses, capital replacement, land, and labor, the national average cost of producing 1983-crop peanuts on a planted acre basis is estimated by the Economic Research Service (ERS) to have decreased 0.7 percent from the 1982 cost estimate.

If a unit basis (cost of production per pound of peanuts) were used to determine whether there had been any increase in the cost of production in 1983 as compared to 1982, it would be necessary to make adjustments for variations in the quantities of peanuts produced caused by weather and other factors. This would require the use of trend yields. Using trend yields as calculated by ERS, the national average cost of producing 1983 crop peanuts on a per pound basis is estimated to have decreased \$0.005 per pound or 2.4 percent from the 1982 cost of production. Details of the cost of production estimates are shown in the following table.

TABLE 45—PEANUT PRODUCTION COSTS, U.S., 1982-1984¹

Item	Dollars per planted acre	
	1982 ²	1983 ³
Cash receipts:		
Primary crop	656.52	546.58
Secondary crop	11.00	10.78
Total	667.52	557.36
Cash expenses:		
Seed	63.43	63.49
Fertilizer	20.83	19.56
Lime and gypsum	14.57	13.68
Chemicals	82.92	85.90
Custom operations	7.49	7.68
Fuel and lubrication	35.88	34.54
Repairs	20.56	20.24
Drying	42.14	34.70
Total, variable expenses	287.81	280.79
General farm overhead	27.12	27.72
Taxes and insurance	7.45	8.73
Interest	98.66	94.40
Total, fixed expenses	133.22	130.85
Total, cash expenses	421.03	411.63
Receipts less cash expenses	246.49	145.73
Capital replacement	53.17	58.31
Receipts less cash expenses and replacement	193.32	87.42
Economic costs:		
Variable expenses	287.81	280.79
General farm overhead	27.12	27.72
Taxes and insurance	7.45	8.73
Capital replacement	53.17	58.31
Allocated returns to owned inputs:		
Operating capital	12.09	11.64
Other nonland capital	19.73	21.35
Land	38.32	37.82
Labor ⁴	33.23	34.23
Residual to management and risk	188.60	76.77
Net returns to owned inputs	291.97	181.81
(Price dollars/pounds)	0.248	0.244
Trend yield (pounds/planted acre)	2,618.29	2,665.00
Total cash expenses plus capital replacement, land, and labor:		
Dollars per planted acre	545.75	541.99
Dollars per pound with trend yield2084	.2034

¹ Based on 1982 survey data.

² Preliminary.

³ Projected.

⁴ This item includes hired labor (a cash expense) and unpaid labor; they could not be separately identified given available survey data.

In view of the foregoing, it is proposed that the national average support level for the 1984 crop of quota peanuts remain unchanged from the 1983 level of \$550 per ton.

B. National average level of support for additional peanuts. Section 108A (2) of the Act provides that the Secretary shall make price support available to producers through loans, purchases, or other operations on 1984-crop additional peanuts at such level as the Secretary determines to be appropriate, taking into consideration certain factors. Those factors are the demand for peanut oil and meal, expected prices of other vegetable oils and meals and the demand for peanuts in foreign markets. The Act further provides that the

Secretary shall set the support rate on additional peanuts at a level estimated by the Secretary to ensure there are no losses to CCC on the sale or disposal of such peanuts. Section 358(p) of the Agricultural Adjustment Act of 1938 defines additional peanuts for any marketing year as: (A) any peanuts marketed from a farm for which a farm poundage quota has been established that are in excess of the quota marketings from such farm for such year and (B) all peanuts marketed from a farm for which no farm poundage quota has been established. The 1949 Act provides that the level of support for 1984-crop additional peanuts shall be announced no later than February 15, 1984. The statutory factors for determining the additional support level are discussed below for the 1984 crop.

1. Demand for peanut oil and meal. The quantity of peanuts available for crushing in 1984/85, a residual of edible use, is expected to range from 194,000 tons to 274,000 tons compared with 170 thousand tons for 1982 and 1983. Peanut oil and meal prices are expected to average 37 cents per pound and \$190 per ton, respectively, for the 1984/85 marketing year assuming lower and mid-range minimum CCC export edible sales price options. With the higher minimum sales price option more peanuts are expected to be crushed, thus, depressing peanut oil prices to an estimated 35 cents per pound.

2. Expected prices of other vegetable oils and meals. In 1983/84, the world aggregate production of oilseeds is estimated to be 179 million short tons (162.8 million metric tons), 9 percent lower than 1982/83. Virtually all the reduction is expected to occur in the U.S. Soybeans account for 47 percent of the total world aggregate oilseed production while peanuts account for 12 percent. Because of soybean dominance of the total supply, soybeans lead the demand-supply price patterns for oilseeds. Tight supplies and higher prices dominate the 1983/84 U.S. soybean outlook. In 1983/84 soybean oil prices are estimated to range from 28 to 34 cents per pound compared to 20.5 cents per pound in 1982/83. Soybean meal prices are expected to range from \$230 to \$250 per ton, compared with \$187 per ton for 1982/83. Soybean acreage will likely increase in 1984 and the resulting larger production is expected to offset the drawdown in 1983/84 carryout stocks. Demand for oil and meal is expected to strengthen. Soy oil prices are projected to decrease 3 percent from 1983/84 price and soybean meal prices are projected to decrease 21 percent from 1983/84 levels.

3. *Demand for peanuts in foreign markets.* The demand for U.S. peanuts in foreign markets is expected to strengthen as U.S. exports return to their more historical levels prior to the drought-reduced 1980 crop. The U.S. is expected to supply as much as 422,000 short tons to the export market in the 1984/85 marketing year, 25 percent above the 338,000 ton estimate for 1983/84 marketing year. The 1983 drought was not as severe as the 1980 drought and is not expected to impact exports as much as 1980.

As indicated, in addition to the consideration of the above factors, the 1949 Act also provides that the support rate must be established at a level estimated to ensure no loss to CCC from the sale or disposal of additional peanuts placed under loan. Under the pool concept, gains from any pool are redistributed to the producers. Thus, a loss in any pool is a net loss to CCC. It is expected that all peanuts in some additional loan pools will be disposed of exclusively through sales for domestic crushing. Based on present data, it is proposed that the support level for the 1984 crop of additional peanuts be no higher than \$230 per ton and no lower than \$185 per ton. The higher figure is derived from an expected crushing price for the 1984 marketing year of \$315 per ton minus expected CCC handling and related costs of \$85 per ton. The lower figure of \$185 per ton is the 1983-crop additional support level. A support level of less than \$230 per ton would provide a cushion against lower than expected crushing prices, higher than expected costs, or other factors which would result in a loss to CCC from the sale or disposal of additional loan collateral peanuts.

C. *Minimum CCC export edible sales price for additional peanuts pledged as collateral for a price support loan.* The determination of a minimum CCC export edible sales price with regard to additional peanuts pledged as loan collateral is discretionary with the Secretary. It is presently intended that this determination will be made at the same time as the determination of the support levels for quota and additional peanuts in order to give handlers and growers adequate information on which to base export contracts for additional peanuts. If the minimum sales price is established too high, it discourages export contracting between handlers and growers and encourages the production of additional peanuts for the loan program on the assumption that the

minimum sales price is the price growers will receive for their loan peanuts. This assumption may be incorrect, however, since a misjudgement in the price of edible peanuts in the export market could result in CCC losing edible sales and having to crush the loan inventory. In such case, growers would only receive the additional loan rate. If the minimum sales price is too low, returns from export sales will not be maximized and grower income will be reduced, since export contracts between handlers and growers are generally based on the CCC minimum sales price. It is proposed that the minimum export edible sales price for the 1984 crop of peanuts will range from \$265 per ton to \$530 per ton. The lower figure is equal to the lowest proposed additional support level plus the estimated costs incurred by CCC for the storage, handling, inspection of export edible peanuts. The higher figure was derived by deducting \$20 per ton from the proposed \$550 per ton quota support price. The minimum CCC export edible sales price for the 1978 through 1981 crops was established at \$20 per ton below the quota support price. However, for the 1982 and 1983 crops, the minimum CCC export edible sales price was established at \$75 per ton and \$150 per ton below the quota support price, respectively. Some growers have suggested this minimum sales price should be established closer to the quota support price.

Proposed Determinations

Comments are requested on the following issues with respect to 1984-crop peanuts:

- (1) The national average price support level for quota peanuts.
- (2) The national average price support level for additional peanuts.
- (3) The minimum CCC export edible sales price for additional peanuts pledged as loan collateral.

All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m. Monday through Friday in room 3741-South Building, 14th and Independence Avenue, SW., Washington, D.C. 20013.

Signed at Washington, D.C. on January 10, 1984.

C. Hoke Leggett,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Dec. 64-964 Filed 1-10-84; 2:52 p.m.]
BILLING CODE 3410-05-M

Forest Service

National Forest Land and Resource Management Plans, National Forests in Alabama, et al.; Revised Notice of Intent to Prepare Environmental Impact Statements

The Department of Agriculture, Forest Service, is preparing Environmental Impact Statements for proposed Forest Land and Resource Management Plans for the National Forests in Alabama, Puerto Rico, Tennessee, Kentucky, Florida, Virginia, Arkansas, Oklahoma, and Texas. Notices of Intent were previously filed. However, in response to the decision by the Ninth Circuit Court of Appeals (*California vs. Block*, October 22, 1982) the Secretary of Agriculture directed the Forest Service to evaluate roadless areas in Environmental Impact Statements for Forest Land and Resource Management Plans. Consequently, completion and filing of the EISs will be delayed and a revised Notice of Intent is being filed. Regulations were revised (36 CFR 219.17) to allow for the roadless area re-evaluation. Public participation in the roadless area re-evaluation has been proceeding following press releases in order to collect data and analyze past activities.

To evaluate roadless areas in these states, the public, other government agencies, and Indian tribes are, or have been, invited to participate in identifying new or revised issues associated with inventoried roadless areas, clarifying current roadless area issues, and assisting in determining the necessary scope and detail of evaluation appropriate for each roadless area. Specific information is, or has been, requested on manageable boundaries, wilderness values, and resource development potential.

The Forest Service will, or has solicited, written responses from the public through newsletters, press releases and/or personal contacts with known interested organizations and individuals.

Written comments, suggestions and information about roadless areas should be, or have been, sent to the appropriate Forest Supervisor as follows:

National Forests in Alabama, 1765

Highland Avenue, Montgomery, AL 36107

Caribbean National Forest, Box AQ, Rio Piedras, PR 00928

Cherokee National Forest, 2800 N. Ocoee Street, NW., Box 2010, Cleveland, TN 37311

Daniel Boone National Forest, 100 Vaught Road, Winchester, KY 40391
 National Forests in Florida, Hobbs Federal Building, 227 No. Bronough Street, Suite 4061, Tallahassee, FL 32301
 George Washington National Forest, 210 Federal Building, Harrisonburg, VA 22801
 Jefferson National Forest, 210 Franklin Road, S.W., Caller Service 2900, Roanoke, VA 24001
 Ouachita National Forest, Box 1270, Federal Building, Hot Springs National Park, AR 71902
 Ozark-St. Francis National Forests, Box 1008, Russellville, AR 72801
 National Forests in Texas, Homer Garrison Building, 701 N. First Street, Lufkin, TX 75901

Forest land and resource management plans are being prepared to provide for multiple use and sustained yield of the goods and services from the National Forest System in a way that maximizes long term net public benefits in an environmentally sound manner. Plans will guide all natural resource management activities and establish management standards and guidelines. They will determine resource management practices, levels of resource production and management, and the availability and suitability of lands for resource management. Environmental Impact Statements will evaluate several alternatives for management. The public will be invited to comment on draft Environmental Impact Statements as they are completed.

The revised schedule for completion and filing of draft and final Environmental Impact Statements is:

National Forest	DEIS	FEIS
Alabama.....	3/85	9/85
Caribbean.....	9/84	9/85
Cherokee.....	12/84	9/85
Daniel Boone.....	5/84	6/85
Florida.....	12/84	9/85
George Washington.....	9/84	6/85
Jefferson.....	12/84	9/85
Ouachita.....	9/84	6/85
Ozark-St. Francis.....	12/84	9/85
Texas.....	3/85	9/85

John E. Alcock, Regional Forester, Southern Region, is the responsible official. Questions and requests for additional information should be directed to the appropriate Forest Supervisor.

Dated: January 4, 1984.

James E. Webb,
 Deputy Regional Forester.

[FR Doc. 84-788 Filed 1-11-84; 8:45 am]
 BILLING CODE 3410-11-M

Soil Conservation Service

Martin County Airport, RC&D Measure, North Carolina

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Martin County Airport, RC&D Measure, Martin County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, Room 544, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27611, Telephone (919) 755-4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact state statement are not needed for this project.

The measure concerns a plan for reducing serious erosion on the Martin County Airport grounds. The planned works of improvement include grading and shaping, liming, fertilizing, seeding and mulching with adapted vegetation.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: December 19, 1983.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program, Executive Order

12372, "Intergovernmental Review of Federal Programs" is applicable)

Coy A. Garrett,
 State Conservationist.

[FR Doc. 84-853 Filed 1-11-84; 8:45 am]
 BILLING CODE 3410-10-M

Scaly Mountain Critical Area Treatment; RC&D Measure, North Carolina

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Scaly Mountain Critical Area Treatment, RC&D Measure, Macon County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Coy A. Garrett, State Conservationist, Soil Conservation Service, Room 544, Federal Building, 310 New Bern Avenue, Raleigh, North Carolina 27611, Telephone (919) 755-4210.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Coy A. Garrett, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns a plan to treat critical eroding areas in the Scaly Mountain Area with vegetative and structural measures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Coy A. Garrett.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Dated: December 19, 1983.

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Executive Order 12372, "Intergovernmental Review of Federal Programs" is applicable)

Coy A. Garrett,

State Conservationist.

[FR Doc. 84-854 Filed 1-11-84; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-201-017]

Postponement of Countervailing Duty Investigation; Bricks From Mexico

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The preliminary determination of bricks from Mexico is being postponed until not later than February 16, 1984.

EFFECTIVE DATE: January 12, 1984.

FOR FURTHER INFORMATION CONTACT: Deborah Semb, 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) 377-3534.

SUPPLEMENTARY INFORMATION: On November 14, 1983, we initiated a countervailing duty investigation to determine whether certain benefits which constitute bounties or grants within the meaning of the countervailing duty law are being conferred upon the manufacture, production or exportation of bricks from Mexico (48 FR 52496).

The notice of initiation stated that if the investigation proceeded normally, we would make our preliminary determination by January 17, 1984.

In accordance with section 703(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), counsel for the petitioners requested that we extend the preliminary determination by thirty days. This request was made to permit additional time to investigate the existence of an additional bounty or grant conferred upon the exportation of brick from Mexico. Therefore, we will now make our preliminary determination by February 16, 1984.

This notice is published in accordance with section 703(c)(2) of the Act.

Dated: January 4, 1984.

Alan F. Holmer,
Deputy Assistant Secretary for Import Administration.

[FR Doc. 84-831 Filed 1-11-84; 8:45 am]

BILLING CODE 3510-DS-M

Scientific Articles; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; North Carolina Central University et al.

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1956 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, D.C.

Docket No.: 83-326. Applicant: North Carolina Central University, Durham, NC 27707. Instrument: Electron Microscope, Model H-300. Manufacturer: Hitachi, Japan. Intended use: See notice at 48 FR 51675. Instrument ordered: November 18, 1982.

Docket No.: 83-328. Applicant: University of Texas Medical Branch at Galveston, Galveston, TX 77550. Instrument: Electron Microscope, Model EM 410LS and Accessories. Manufacturer: Nederlandse Philips Bedrijven, B.V., The Netherlands. Intended use: See notice at 48 FR 51675. Instrument ordered: September 13, 1983.

Docket No.: 83-331. Applicant: Veterans Administration Medical Center, Little Rock, AR 72203. Instrument: Electron Microscope, JEM-100CX and Accessories. Manufacturer: JEOL, Inc., Japan. Intended use: See notice at 48 FR 51676. Application received by Commissioner of Customs: October 27, 1983.

Docket No.: 83-344. Applicant: Cornell University, Geneva, NY 14456. Instrument: Electron Microscope, Model JEM-100SX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use: See notice at 48 FR 51619. Instrument ordered: September 6, 1983.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered.

Reasons: Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or of any other instrument suited

to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 84-833 Filed 1-11-84; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

National Marine Fisheries Service; Availability

Pursuant to section 14(b)(2) of the North Pacific Fisheries Act of 1954 as amended (16 U.S.C. 1021 et seq.), the National Marine Fisheries Service has released to the general public its Proposed Action Plan for Dall's Porpoise for 1984. The plan describes research studies conducted on Dall's porpoise, proposed research plans for 1984, and management measures taken to reduce the incidental take of this species in the Japanese high seas salmon fishery.

Copies of this report are available from the Office of Protected Species and Habitat Conservation, National Marine Fisheries Service, Washington, D.C. 20235.

Dated: January 6, 1984.

Carmen J. Blondin,

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

[FR Doc. 84-810 Filed 1-11-84; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Data Network (Defensive Systems Subgroup); Advisory Committee Meeting

The Defensive Systems Subgroup of the Defense Science Board Task Force on Defense Data network will meet in closed session on February 1-2, 1984 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

At the meeting on February 1-2, 1984, the Task Force will discuss the application of technology to systems designed to improve future U.S. air defense capabilities.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. I, (1976)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

Dated: January 6, 1984.

M. S. Healy,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 84-882 Filed 1-11-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

January 4, 1984.

The USAF Scientific Advisory Board Armament Division Advisory Group will meet February 14-15, 1984 at Eglin AFB, FL, from 8:30 a.m. to 4:30 p.m. each day.

The purpose of the meeting will be to review Sensor-Fuzed Munition Enhancements.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 84-857 Filed 1-11-84; 8:45 am]

BILLING CODE 3910-01-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Naval Research Advisory Committee Panel on Reduced Observables will meet on January 31, 1984 and February 1 and 2, 1984, at Commander Training Command, U.S. Pacific Fleet, San Diego, California. Sessions of the meeting will commence at 8:30 a.m. and terminate at 4:00 p.m. on January 31, 1984; commence at 8:30 a.m. and terminate at 3:00 p.m. on February 1, 1984; and commence at 9:00 a.m. and

terminate at 12:00 noon on February 2, 1984. All sessions of the meeting will be the public.

The entire agenda for the meeting will consist of discussions relating to the Fleet training assessment, Battle Group tactical operations/training, operational deception, operational modeling and gaming, operational initiatives and requirements, and technology developments. These matters constitute classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning contact: Commander M. B. Kelley, U.S. Navy, Office of Naval Research (Code 100N), 800 North Quincy Street, Arlington, VA 22217, Telephone Number (202) 696-4870.

Dated: January 9, 1984.

William F. Roos, Jr.,

*Lieutenant, JAGC, U.S. Naval Reserve,
Alternate Federal Register Liaison Officer.*

[FR Doc. 84-824 Filed 1-11-84; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF EDUCATION

National Advisory Council on Indian Education; Meeting

AGENCY: National Advisory Council on Indian Education.

ACTION: Amendment to Notice.

SUMMARY: Notice is hereby given to amend a Federal Register notice concerning a closed Search Committee Meeting of the National Advisory Council on Indian Education. On January 19, 1984, the agenda has been changed to include the interviewing of candidates for the position of Director, Indian Education Programs. The time and location of the search Committee Meeting on January 19, 1984, remains the same. On January 20, 1984, the meeting has been rescheduled to start at 8:30 A.M. instead of 9:00 A.M. Everything else for January 20, 1984, remains the same. The interview process may be continued on January 21, 1984, if necessary. The original notice was published in the

Federal Register on January 6, 1984, page 929, Vol. 49, No. 4.

DATE: January 10, 1984.

Lincoln C. White,

*Executive Director, National Advisory
Council on Indian Education.*

[FR Doc. 84-1018 Filed 1-11-84; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Forms Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of submission of request for clearance to the Office of Management and Budget.

SUMMARY: Under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), Department of Energy (DOE) notices of proposed collections under review will be published in the Federal Register on the Thursday of the week following their submission to the Office of Management and Budget (OMB). Following this notice is a list of the DOE proposals sent to OMB for approval. The listing does not contain information collection requirements contained in regulations which are to be submitted under 3504(h) of the Paperwork Reduction Act.

Each entry contains the following information and is listed by the DOE sponsoring office: (1) The form number; (2) Form title; (3) Type of request, e.g., new, revision, or extension; (4) Frequency of collection; (5) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (6) Type of respondent; (7) An estimate of the number of respondents; (8) Annual respondent burden, i.e., an estimate of the total number of hours needed to fill out the form; and (9) A brief abstract describing the proposed collection.

DATES: Last Notice published Thursday, December 8, 1983, (48 FR 55022).

FOR FURTHER INFORMATION CONTACT:

John Gross, Director, Forms Clearance and Burden Control Division, Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585; (202) 252-2308;

Jefferson B. Hill, Department of Energy Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503; (202) 395-7340; and

Vartkes Broussalian, Federal Energy Regulatory Commission Desk Officer, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503; (202) 395-7340.

SUPPLEMENTARY INFORMATION: Copies of proposed collections and supporting documents may be obtained from Mr.

Gross. Comments and questions about the items on this list should be directed to the OMB reviewer for the appropriate agency as shown above.

If you anticipate commenting on a form, but find that time to prepare these comments will prevent you from submitting comments promptly, you

should advise the OMB reviewer of your intent as early as possible.

Issued in Washington, D.C., January 4, 1984.

Yvonne M. Bishop,
Director, Statistical Standards, Energy Information Administration.

DOE FORMS UNDER REVIEW BY OMB

Form No. (1)	Form title (2)	Type of request (3)	Response frequency (4)	Response obligation (5)	Respondent description (6)	Estimated number of respondents (7)	Annual respondent burden (8)	Abstract (9)
EIA-28	Financial Reporting System.	Revision	Annual	Mandatory	Major domestic oil and gas producers.	25	43,000	EIA-28 collects financial, production and reserves data. The data, required pursuant to Pub. L. 95-91, are used to evaluate the competitive environment for energy products supply/development, and to analyze energy resource development/supply/distribution arrangements. EIA publishes the aggregate data.

[FR Doc. 84-474 Filed 1-11-84; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. ER84-185-000]

American Electric Power Service Corp.; Filing

January 6, 1984.

The filing Company submits the following:

Take notice that on December 30, 1983, the American Electric Power Service Corporation (AEP) on behalf of its affiliate Indiana & Michigan Electric Company (I&ME) submitted to the Commission Modification No. 11 dated December 1, 1983 to the Agreement dated January 2, 1977 between the City of Richmond, Indiana and I&ME (1977 Agreement), I&ME's Rate Schedule FERC No. 70.

AEP states that this modification revises the 1977 Agreement by extending the Agreement for an additional period of two years with one year automatic extensions, unless terminated by either party with one year's notice. This Modification also revises Service Schedule A—Firm Power and Energy by extending this service schedule and by specifying the RP&L Firm Contract Demand, in kilowatts for 1984 and 1985.

AEP further states this Modification also revises several other Service Schedules which are part of this Agreement. The terms and conditions contained in the revisions to these Service Schedules are substantially the same as those contained in several other Service Schedules filed by AEP

and accepted for filing by FERC. This Agreement is proposed to become effective January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Richmond Power and Light Company, the Public Service Commission of Indiana, and the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-732 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-173-000]

Centel Corp.; Filing

January 6, 1984.

The filing Company submits the following:

Take notice that on December 23, 1983, Centel Corporation (Centel) tendered for filing a Wholesale Contract between Centel, Western Power and the

Municipal City of Luray, Kansas. Centel states that the energy purchased by the city under the terms of this contract is for the operation of the electric distribution system and other such uses as commonly required by the city.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-733 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-174-000]

The Detroit Edison Co.; Filing

January 6, 1984.

The filing Company submits the following:

Take notice that The Detroit Edison Company on December 23, 1983 tendered for filing the following proposed changes in its FPC Electric Service Tariff, 1st Revised Volume No.1:

Amendment to Electric Supply Agreement

Detroit Edison is requesting that the Commission approve an amendment to the Electric Supply Agreement with the Thumb Electric Cooperative to enable Detroit Edison to add a new service delivery point with the customer. No other term of the Electric Supply Agreement has been changed as a result of this Agreement.

Detroit Edison requests that the Commission grant such waivers and authorizations as are required to enable the implementation of this Agreement from August 29, 1983.

Copies of the filing were served upon The Detroit Edison Company's jurisdictional customers and upon the Michigan Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 24, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-754 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-187-000]**El Paso Electric Co.; Filing**

January 6, 1984

The filing company submits the following:

Take notice that on December 30, 1983, El Paso Electric Company (El Paso) tendered for filing an "Interchange Agreement between El Paso Electric Company and Tucson Electric Power Company," dated December 16, 1983 (Agreement). El Paso states the Agreement establishes a general contractual framework for the provision of interchange services including economy energy interchange, nonfirm transmission service and additional power exchange.

El Paso requests an effective date of January 1, 1984, for Service Schedules A and B (economy energy interchange and nonfirm transmission service,

respectively) and therefore requests waiver of the Commission's notice requirements. Service Schedule C, Additional Power Exchange, is proposed to become effective with initial synchronization of Unit No. 1 at the Palo Verde Nuclear Generating Station.

According to El Paso copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission, and Tucson Electric Power Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-755 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-172-000]**El Paso Electric Co.; Filing**

January 6, 1984.

The filing Company submits the following:

Take notice that on December 22, 1983, El Paso Electric Company (EPE) submitted for filing, as an initial rate filing, an "Interchange Agreement between El Paso Electric Company and City of Riverside," dated November 29, 1981, (Agreement). EPE states that this Agreement provides a basis for the exchange of energy between parties on a returnable basis and on an economy basis. The Agreement also provides for emergency assistance. EPE has requested that this Agreement be accepted for filing and made effective on December 1, 1983, and that waiver of the notice provisions and other requirements of the Commission's Regulations be granted as appropriate.

EPE further states that copies of this filing have been served upon the Public Utility Commission of Texas, the New Mexico Public Service Commission, and the City of Riverside.

Any person desiring to be heard or to protest said filing should file a petition

to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 23, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-756 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-184-000]**Illinois Power Co.; Filing**

January 6, 1984.

The filing Company submits the following:

Take notice that on December 30, 1983, Illinois Power Company (Illinois) tendered for filing proposed changes in the following rate schedules:

Rate Schedule FERC No. 79, applicable to the City of Princeton
Rate Schedule FERC No. 80, applicable to the City of Waterloo
Rate Schedule FERC No. 81, applicable to the City of Peru
Rate Schedule FERC No. 82, applicable to the City of Mascoutah
Rate Schedule FERC No. 83, applicable to the City of Freebary
Rate Schedule FERC No. 84, applicable to the City of Breese
Rate Schedule FERC No. 85, applicable to the City of Highland
Rate Schedule FERC No. —, applicable to the City of Farmer City
Rate Schedule FERC No. —, applicable to the City of Caryle

Illinois states that the proposed changes would increase revenues from jurisdictional sales and service by approximately \$1,800,000 based on the twelve month period ended December 31, 1982.

Illinois further states that with the present rates it would earn a rate of return of only 13.65 percent on electric sales to these customers during the twelve months ended December 31, 1982. Continuing increases in cost of capital, labor, materials and supplies are expected to further reduce the company's earnings. The Company indicates that the electric rate changes

made by this filing are necessary to more fully provide compensation for these increasing costs.

Illinois requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the Company's electric partial requirements wholesale service customers and the Illinois Commerce Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-757 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EC84-8-000]

Interstate Power Co.; Application

January 6, 1984.

Take notice that on December 28, 1983, Interstate Power Company (Applicant) of Dubuque, Iowa, filed an Application pursuant to Section 203 of the Federal Power Act seeking authority to sell to Corn Belt Power Cooperative certain electric transmission line facilities and real estate located in the counties of Cerro Gordo and Franklin, State of Iowa.

The facilities proposed to be sold by Applicant for a base purchase price of \$240,844.16, consist of approximately 37.15 miles of 161 KV transmission line.

Applicant represents that after the sale there will be no change in the use of the facilities.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests

should be filed on or before January 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-753 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-188-000]

Kansas Power and Light Co.; Filing

January 6, 1984.

The filing Company submits the following:

Take notice that on January 3, 1984, Kansas Power and Light Company (KPL) tendered for filing an Interim Power Supply and Transmission Service Schedule with Kansas Electric Power Cooperative, Inc. (KEPCo), for wholesale service to that Cooperative. KPL states that this Schedule permits KEPCo to receive service under rate schedules RCW-8/83 and SWPA/KEPCo-1/84. The proposed effective date is January 1, 1984 and KPL requests that the Commission waive the notice requirements. KPL states that the proposed change provides essentially for an interim six month period in which KPL will provide power and energy to the Cooperative and transmission service of hydroelectric power and energy from Southwestern Power Administration. In addition, KPL states that copies of the Schedule have been mailed to KEPCo and the State Corporation Commission of Kansas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 84-753 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-175-000]

Pacific Gas and Electric Co.; Filing of Contract Amendments

January 6, 1984.

The filing Company submits the following:

Take notice that Pacific Gas and Electric Company ("PG&E") on December 27, 1983, tendered for filing amendments to Appendices A and B of a contract dated May 12, 1982, between PG and E and Sierra Pacific Power Company ("Sierra"), hereinafter jointly referred to as "Parties". This contract, entitled "Interconnection Agreement Between Pacific Gas and Electric Company and Sierra Pacific Power Company ("Contract") provides the terms and conditions for power sales and purchases between the Parties and was made effective by the Commission as of September 1, 1982.

On a scheduled basis, either Party, at the other Party's request, may offer to provide capacity as reserve, spinning reserve or capacity and associated energy to satisfy the other Party's requirements. Emergency assistance, limited short-term service of energy without capacity are other services also provided for by the Contract. The proposed amendments establish, among other things, an energy exchange account and include a list of Sierra's scheduled capacity purchases from PG and E for the years 1984 through 1987.

PG and E respectfully requests, pursuant to Section 35.11 of the Commission's regulations waiver of the Commission's usual notice requirement so as to permit an effective date for the Contract amendments of January 1, 1984. No customers under any other rate schedules will be affected if such waiver is granted.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will

not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-760 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-186-000]

Pacific Gas and Electric Co.; Filing

January 6, 1984.

The filing Company submits the following:

Take notice that on December 30, 1983, Pacific Gas and Electric Company (PGandE) tendered for filing proposed rate settlement agreements reached between PGandE and the City and County of San Francisco, Sierra Pacific Power Company, CP National Corporation and the Shasta Dam Area Public Utility District, respectively.

PGandE requests an effective date of January 1, 1984, and therefore requests waiver of the Commission's notice requirements.

Copies of this filing were served upon the public utility's jurisdictional customers and the California Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 25, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-761 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. EL84-5-000]

Sierra Pacific Power Co.; Filing

January 6, 1984.

Take notice that on December 21, 1983, Sierra Pacific Power Company (Sierra Pacific) tendered for filing an application for an order of the

Commission disclaiming jurisdiction under Section 203 of the Federal Power Act over a corporate reorganization under which Sierra Pacific will become a wholly-owned subsidiary of Sierra Pacific Resources, a newly created holding company.

Sierra Pacific is engaged in the generation, distribution and sale of electric energy in Nevada and California and in Nevada is also engaged in the distribution of Natural gas and water for domestic, commercial and irrigation uses. Sierra Pacific's rates and charges are subject to regulation by the Public Service Commission of Nevada, the Public Utilities Commission of California and by this Commission. Sierra Pacific is a "public utility" as that term is defined in Section 201(e) of the Federal Power Act.

Sierra Pacific states that the corporate reorganization does not involve any of the elements required for Commission jurisdiction under Section 203 of the Federal Power Act since there is no disposition by Sierra Pacific of its jurisdictional facilities, no merger or consolidation of Sierra Pacific's jurisdictional facilities with those of any other person, and no acquisition of Sierra Pacific's securities by another "public utility." Sierra Pacific states that the type of corporate reorganization involved in this case is the same type that was involved in Iowa Power & Light Co., Docket No. EL79-13, where the Commission granted the utility's request for disclaimer of jurisdiction under Section 203.

Sierra Pacific states that the corporate reorganization will not impair effective regulatory control in the public interest.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before January 27, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-762 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER79-150-009]

Southern California Edison Co.; Compliance Filing

January 6, 1984.

Take notice that on December 23, 1983, Southern California Edison Company (Edison) submitted for filing revised tariff sheets covering resale service as part of a revised compliance filing pursuant to the Commission's order issued on November 30, 1983.

Edison states that the revised compliance filing modifies the compliance filing submitted under date of March 18, 1983, with respect to the treatment of the collection of deferred taxes relating to the 1976-1978 removal cost deductions in the deferred tax account. Edison further states that this filing also modifies the rate design to reduce the range of individual customer rate of return compared with the original compliance filing.

Any person desiring to be heard or to protest this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 19, 1984. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-703 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ER84-75-000]

Southern California Edison Co.; Compliance

Issued January 5, 1984.

On November 8, 1983, Southern California Edison Company (SCE) tendered for filing a two-step increase in its rates to eight wholesale customers.¹ The proposed Phase A rates would increase revenues by approximately \$32.6 million (13.1%) and the proposed Phase B rates would increase revenues by an additional \$10.0 million, representing a total increase of approximately \$42.6 million (17.1%) for the calendar year 1984 test period. About \$10.5 million of the increase is supported by the inclusion in rate base of construction work in progress (CWIP) other than for pollution control or fuel conversion facilities. SCE requests that the proposed Phase A rates become

¹ See Attachment A for customers and rate schedule designations.

effective on January 7, 1984, and that the Phase B rates become effective on January 8, 1984.

Notice of the filing was published in the Federal Register with comments due on or before November 30, 1983. The City of Vernon, California (Vernon) filed a timely motion to intervene and protest, and requested that the Phase A and B rates be suspended for five months. The Cities of Anaheim, Riverside, Banning, Colton, and Azusa, California (Cities) also filed a motion to intervene, protest, motion for maximum suspension, and request for a hearing.² Vernon and the Cities raise various cost of service and rate base issues³ and allege that the proposed rates may create a price squeeze.

On December 15, 1982, SCE answered Vernon's motion to intervene. SCE does not oppose Vernon's intervention, but argues that the rates should be suspended for only one day, if at all. On December 20, 1983, SCE filed a motion for leave to file an answer out of time, together with its answer to Cities' pleading.⁴ SCE does not oppose Cities' intervention, but makes numerous arguments concerning Cities' motion for maximum suspension.

Discussion

Under Rule 214(c)(1) of the Commission's Rules of Practice and Procedure (18 CFR 385.214), the unopposed motions to intervene serve to make Vernon and the Cities parties to this proceeding.

We note initially that SCE has failed to properly synchronize test year interest expense used in the income tax calculation with the interest portion of the claimed rate of return.⁵ Consistent

with established Commission precedent,⁶ we shall order summary disposition with respect to this issue.

In addition, examination of SCE's filing indicates that the company has included approximately 51% of its CWIP balances (other than amounts related to pollution control and fuel conversion facilities) in rate base in violation of section 35.26 of the Commission's regulations. Since the regulations provide for a 50% ceiling, summary disposition as to this matter is also appropriate. Given the magnitude of the summary disposition items, SCE will be directed to file revised Phase B rates and revised cost of service statements reflecting a proper calculation of interest expense and an appropriate reduction in CWIP balances.

Our preliminary review of SCE's filing and the pleadings indicates that the proposed rates, as modified by summary disposition, have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing, as modified, and we shall suspend them as ordered below.

In *West Texas Utilities Company*, Docket No. ER82-23-000, 18 FERC ¶ 61,189 (1982), we noted that rate filings would ordinarily be suspended for five months where preliminary review indicates that the proposed increase may be unjust and unreasonable and may produce substantially excessive revenues, as defined in *West Texas*. Since it appears that both the Phase A and the Phase B rates, as modified by summary disposition, may yield substantially excessive revenues, a five month suspension is warranted as to both phases. However, we note that SCE's proposed effective date for the Phase A rates falls one day short of the required sixty day notice period. Thus, a five month suspension of both phases would result in the two rates becoming effective concurrently on June 8, 1984. Consistent with the Commission's treatment of a similar situation in *West Texas Utilities Company*, Docket No. ER83-694-000, 25 FERC ¶ 61,114, n.8 (1983), the lower Phase A rates will be deemed withdrawn, and the proposed Phase B rates will be suspended for five months, to become effective, subject to refund, on June 8, 1984.

In accordance with the Commission's policy and practice established in

Arkansas Power and Light Company, Docket No. ER79-339, 8 FERC ¶ 61,131 (1979), we shall phase the price squeeze issue raised by the intervenors.

The Commission orders:

(A) SCE's method of computing test year interest expenses is summarily rejected, as is SCE's inclusion of more than 50% of its CWIP balances (other than pollution control and fuel conversion) in rate base. SCE is directed to file, within thirty (30) days of the date of this order, revised Phase B rates and revised cost of service statements reflecting these adjustments.

(B) SCE's proposed Phase B rates are hereby accepted for filing, as modified by summary disposition, and are suspended for five months, to become effective on June 8, 1984, subject to refund; the proposed Phase A rates are deemed withdrawn.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Ch. I), a public hearing shall be held concerning the justness and reasonableness of SCE's rates.

(D) The Commission staff shall serve top sheets in this proceeding within ten (10) days of the date of this order.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days after service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) The Commission hereby orders initiation of price squeeze procedures and further orders that this proceeding be phased so that the price squeeze procedures begin after issuance of a Commission opinion establishing the rate which, but for consideration of price squeeze, would be just and reasonable. The presiding judge may modify this schedule for good cause shown. The price squeeze portion of this case shall be governed by the procedures set forth in § 2.17 of the

² On November 29, 1983, the Cities filed a motion to extend the period in which to file interventions and protests. That request was effectively granted by a notice of the Commission's Secretary accepting for filing the Cities' December 2, 1983 intervention.

³ Vernon alleges, *inter alia*, that SCE has included excessive depreciation expenses, decommissioning expenses, and operation and maintenance (O&M) expenses; that the company has overstated demand projections; and that SCE has claimed an excessive rate of return. Vernon also challenges the allocation of costs among customer classes. The Cities allege improper assignment to wholesale service of antitrust-related litigation costs; development of interest expense, for tax purposes, on a nonsynchronized basis; improper allocation of franchise fees; excessive O&M expenses; overstated demand projections; excessive depreciation and decommissioning expenses; excessive fuel stock; inclusion of excess CWIP in rate base; excessive rate of return; inclusion of prepayments in rate base; and premature inclusion of the SONGS No. 3 nuclear unit in rate base.

⁴ We hereby grant SCE's motion for leave to file its answer out of time.

⁵ Although SCE attempted to synchronize interest expense, it utilized an incorrectly weighted long-term debt component to develop total company interest expense, and also improperly allocated

total company expense to wholesale services on the basis of rate base less working capital.

⁶ *E.g.*, *Gulf States Utilities Company*, Docket No. ER82-375-000, 20 FERC ¶ 61,039 (1982).

Commission's regulations as they may be modified prior to the initiation of the price squeeze phase of this proceeding.

(G) The Secretary shall promptly publish this order in the Federal Register.

By the Commission.
Lois D. Cashell,
Acting Secretary.

Attachment A

SOUTHERN CALIFORNIA EDISON COMPANY DOCKET NO. ER84-75-000 RATE SCHEDULE DESIGNATIONS

Designation	Description	Other Party
(1) Supplement No. 18 to Rate Schedule FPC No. 6 (supersedes supplement No. 17)	TOU-R	Arizona Public Service Company (Cibola)
(2) Supplement No. 19 to Rate Schedule FPC No. 13 (supersedes supplement No. 18)	TOU-R	Vernon
(3) Supplement No. 23 to Rate Schedule FPC No. 15 (supersedes supplement No. 22)	TOU-R	Anaheim
(4) Supplement No. 18 to Rate Schedule FPC No. 16 (supersedes supplement No. 22)	TOU-R	Azusa
(5) Supplement No. 24 to Rate Schedule FPC No. 17 (supersedes supplement No. 23)	TOU-R	Riverside
(6) Supplement No. 17 to Rate Schedule FPC No. 21 (supersedes supplement No. 16)	TOU-R	Banning
(7) Supplement No. 17 to Rate Schedule FPC No. 29 (supersedes supplement No. 16)	TOU-R	Arizona Public Service Company (Blythe)
(8) Supplement No. 19 to Rate Schedule FPC No. 31 (supersedes supplement No. 18)	TOU-R	Colton
(9) Supplement No. 23 to Rate Schedule FPC No. 33 (supersedes supplement No. 22)	TOU-R	Southern California Water Company (Hartish)
(10) Supplement No. 24 to Rate Schedule FPC No. 33 (supersedes supplement No. 21)	TOU-R	Southern California Water Company (Gold Hill)

[FR Doc. 84-764 Filed 1-11-84; 8:45 am]

BILLING CODE 67A-01-M

[Docket No. TA84-1-31-003 (PGA84-1, IPR84-1)]

Arkansas Louisiana Gas Co.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

January 6, 1984.

Take notice that on December 30, 1983, Arkansas Louisiana Gas Company (Arkla) tendered for filing Thirty-fifth Revised Sheet No. 4 to its FERC Gas Tariff, First Revised Volume No. 1, Rate Schedule No. G-2, to become effective February 1, 1984, to reduce its rate by the amount of 10.95¢ per Mcf for the remainder of its present PGA period which will end March 31, 1984.

The filing of Thirty-fifth Revised Sheet No. 4 is to revise the current total end-rate which became effective on October 1, 1983, pursuant to Arkla's PGA filing, downward to a new proposed rate of 338.18¢ per Mcf. This downward adjustment is necessary to reflect the most current trend of Arkla's purchased gas costs available from producers and pipeline suppliers.

Arkla states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211,

385.214). All such petitions or protests should be filed on or before January 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Doc. 84-887 Filed 1-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-31-004 (PGA84-1, IPR84-1)]

Arkansas Louisiana Gas Co.; Filing of Revised Tariff Sheets Reflecting Tariff Adjustment

January 6, 1984.

Take notice that on December 30, 1983, Arkansas Louisiana Gas Company (Arkla) tendered for filing Thirty-Fourth Revised Sheet No. 185 to its FERC Gas Tariff, Original Volume No. 3, Rate Schedule No. X-26, to become effective February 1, 1984, to reduce its rate by the amount of 10.95¢ per Mcf for the remainder of its present PGA period which will end March 31, 1984.

The filing of Thirty-Fourth Revised Sheet No. 185 is to revise the current total end rate which became effective on October 1, 1983, pursuant to Arkla's PGA filing, downward to a new proposed rate of 338.18¢ per Mcf. This downward adjustment is necessary to

reflect the most current trend of Arkla's purchased gas costs available from producers and pipeline suppliers.

Arkla states that copies of the revised tariff sheet and supporting data are being mailed to Arkla's jurisdictional customers and other interested parties affected by this tariff change.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-888 Filed 1-11-84; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA84-1-16-000]

National Fuel Gas Supply Corp; Proposed Tariff Change

January 6, 1984.

Take notice that on December 30, 1983, National Fuel Gas Supply

Corporation (National) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-fifth Revised Sheet No. 4 proposed to be effective February 1, 1984.

National states that the purpose of this revised tariff sheet is to adjust National's rates pursuant to Article 17 (PGA) of the General Terms and Conditions. National further states that Forty-fifth Revised Sheet No. 4 reflects a decrease in National's rates of 21.46¢ per Mcf. In addition, National purposes to collect NGPA prices for the period December 1, 1978 to June 1, 1982, for its production through an annual surcharge.

National states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-869 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-11

[Docket Nos. TA 84-1-17-001 and RP 79-28-002]

Texas Eastern Transmission Corp. Proposed Changes in FERC Gas Tariff

January 6, 1984.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on Dec. 30, 1983 tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1 and Original Volume No. 2, the following sheets:

(A) Fourth Revised Volume No. 1

Sixty-eighth Revised Sheet No. 14
Sixty-seventh Revised Sheet No. 14A
Sixty-seventh Revised Sheet No. 14B
Sixty-seventh Revised Sheet No. 14C
Sixty-seventh Revised Sheet No. 14D
Ninth Revised Sheet No. 14E

(B) Original Volume No. 2

Fifteenth Revised Sheet No. 235

Sixteenth Revised Sheet No. 322
Fifth Revised Sheet No. 449
Fourth Revised Sheet No. 524
Fifth Revised Sheet No. 564
Fourth Revised Sheet No. 565
Fourth Revised Sheet No. 582
Fourth Revised Sheet No. 583
Second Revised Sheet No. 651
Third Revised Sheet No. 661
Third Revised Sheet No. 671
Third Revised Sheet No. 681
Fourth Revised Sheet No. 706
Third Revised Sheet No. 726
Third Revised Sheet No. 759
Third Revised Sheet No. 760

In the alternative, Texas Eastern submits for filing the following Alternate revised tariff sheets:

(C) Fourth Revised Volume No. 1

Alternate Sixty-eighth Revised Sheet No. 14
Alternate Sixty-seventh Revised Sheet No. 14A
Alternate Sixty-seventh Revised Sheet No. 14B
Alternate Sixty-seventh Revised Sheet No. 14C
Alternate Sixty-seventh Revised Sheet No. 14D
Ninth Revised Sheet No. 14E

(D) Original Volume No. 2

Fifteenth Revised Sheet No. 235
Sixteenth Revised Sheet No. 322

The primary revised tariff sheets are being issued pursuant to provisions of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff contained in section 12.4, Demand Charge Adjustment Commodity Surcharge; section 23, Purchased Gas Cost Adjustment; and section 27, Electric Power Cost (EPC) Adjustment. Such primary revised tariff sheets are also being issued pursuant to the Stipulation and Agreement filed in Docket No. RP79-38-000 approved by Commission order issued October 4, 1983. The Alternate revised tariff sheets do not reflect the Stipulation and Agreement approved in Docket No. RP79-28-000. The enclosed revised tariff sheets are being filed in the alternative due to the fact that the court has not yet accepted and approved the settlement approved by the Commission in Docket No. RP79-28-000.

In particular, the changes proposed therein consist of:

- (1) Changes in the DCA Commodity Surcharges pursuant to section 12.4.
- (2) A PGA increase of \$0.037/dth in the demand component of Texas Eastern's rates and an increase of \$0.3028/dth in the commodity component based on a net increase in the projected cost of gas purchased from

producers and pipeline suppliers and a negative balance in Account 191 as of November 30, 1983, pursuant to section 23.

(3) Projected Incremental Pricing Surcharges for the period February 1, 1984 through July 31, 1984, pursuant to section 23.

(4) Changes in rates for sales and transportation services pursuant to section 27 to reflect the projected annual electric power cost incurred in the operation of transmission compressor stations with electric motor prime movers for the 12 months beginning February 1, 1984, and to reflect the EPC surcharge which is designed to clear the balance in the Deferred Account as of November 30, 1983.

The primary set of revised tariff sheets also reflect the payments which Texas Eastern received from the construction firms of Brown & Root, Inc. and J. Ray McDermott & Company totaling \$4,512,143.01 as settlement of issues raised in Docket No. RP79-28-000. Pursuant to the Stipulation and Agreement filed in Docket No. RP79-28-000, approved by Commission order issued October 4, 1983, Texas Eastern has credited FERC Account 103 by such amount and reduced its base tariff rates as reflected on the primary revised tariff sheets by the cost of service effect of this reduction in rate base. The Alternate revised tariff sheets do not reflect such reduction.

The proposed effective date of the above tariff sheets is February 1, 1984.

On December 5, 1983, Texas Eastern filed with the Commission a motion for an extension of time in complying with the new format for PGA filings as set forth in Docket No. RM83-73-000. In response to Texas Eastern's filing of December 5, 1983 the Commission staff informally notified Texas Eastern that the requirements of Order 349 in Docket No. RM83-73-000 are applicable to PGA filings made subsequent to February 1, 1984. However in the event a waiver is required, Texas Eastern renews its request for an extension of time to comply with the requirements as set forth in the rulemaking under Docket No. RM83-73-000.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

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, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or

before January 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-870 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP84-38-000]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

January 6, 1984.

Take notice that on December 30, 1983, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing the following sheets to its FERC Gas Tariff, Second Revised Volume No. 1:

Original Sheet Nos. 17, 18, 170, 171, 172, 173, 361, 362 and 363

Transco states that such tariff sheets constitute Rate Schedule T-P which is entitled "Transportation Service For End Users In The Production Area". It is stated that Transco is filing this rate schedule to enable it to render end-user transportation service pursuant to the regulations promulgated by the Commission in Order Nos. 234-B, 319 and 319-A. § 157.209(d)(1)(i) of the Regulations, which was promulgated in Order No. 319-A, requires that an interstate pipeline transporting end-user gas state its rates and charges in a "generally applicable transportation tariff".

Transco further states that it already has a generally applicable tariff for transportation when gas is redelivered by Transco in one of its Rate Zones (which represent Transco's market area). However, it is stated that Transco does not have a generally applicable tariff for transportation when gas is redelivered by Transco in Transco's production area. Transco states that its production area is the area upstream of Transco's Compressor Station No. 65 located near the Louisiana-Mississippi State Boundary. It is stated that, for this reason, Transco is filing Rate Schedule T-P so Transco will be able to render end-user transportation service in its production area.

Transco further states that its currently effective rates for transportation service in the production area are reflected on Original Sheet Nos. 17 and 18 of subject filing. It is stated

that, in conjunction with such rates, Footnote 1 on Original Sheet No. 18 should be read. Footnote 1 states as follows:

The above charges per dt have been increased by 5% pursuant to Article II of the Interim Settlement Agreement As To Rates Of Transco filed on October 31, 1983 in Transco Docket No. RP83-30-000. If such Settlement Agreement is not approved by the FERC, Transco will charge each Buyer [of the transportation service] the applicable filed rate in Docket No. RP83-30-000 for transportation rendered through March 31, 1984. Transco will make any refunds to, and will be entitled to recover any surcharges from, a Buyer necessitated thereby. All refunds and surcharges will be without interest. If the FERC approves such Settlement Agreement, the above charges will increase or decrease effective April 1, 1984 to reflect the rolled-in rate methodology provided for in such Settlement Agreement.

It is proposed that subject tariff sheets be made effective February 1, 1984 so Transco may commence end-user transportation service in its production area as soon as possible. It is reiterated that Transco is filing this tariff pursuant to Regulations under which the Commission is encouraging end-user transportation by interstate pipelines. Transco states that a copy of the instant filing has been served on its customers and interested state commissions.

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 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions or protests should be filed on or before January 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-871 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA84-1-61-001]

West Lake Arthur Corp.; Filing

January 6, 1984.

Take notice that on December 29, 1983, West Lake Arthur Corporation (WLAC) tendered for filing Sixth Revised Sheet No. 4A of its FERC Gas

Tariff, Original Volume No. 1. The tariff sheet was filed pursuant to the Purchased Gas Cost Adjustment provision contained in Section 15 of WLAC's tariff.

WLAC states that copies of the filing were served upon WLAC's jurisdictional customer and interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such petitions or protests should be filed on or before January 16, 1984. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 84-872 Filed 1-11-84; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-66106 PH-FRI 2506-S]

Proposed Intent To Cancel Registrations of Pesticide Products Containing Dibromochloropropane (DBCP); Availability

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice of Availability of
Proposed Intent to Cancel.

SUMMARY: This notice is making available for comment a proposed intent to cancel pesticide products containing dibromochloropropane (DBCP). The proposed intent to cancel is based on recent evidence that use of DBCP on pineapple fields has led to contamination of drinking water. Under the proposed notice, registration for this use of DBCP would be cancelled and existing stocks would be permitted to be used only under circumstances where drinking water contamination would not result. Copies of the proposed notice of intent to cancel have been sent to the EPA's Scientific Advisory Panel and the U.S. Department of Agriculture for comment. Comments from all other interested persons are invited.

DATE: Comments on the proposed notice must be received on or before March 12, 1984.

ADDRESSES: Requests for copies of the proposed intent to cancel should be submitted to:

Richard J. Johnson, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

Office location and telephone number: Rm. 711H, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-7400)

By mail, submit written comments to: Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460

In person, deliver comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202

Written comments must be identified by the document control number [OPP-66106A]. All written comments filed in response to this notice will be available for public inspection in the Program Management and Support Division office at the address above from 8:00 a.m. to 4:00 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard J. Johnson (703-557-7400).

SUPPLEMENTARY INFORMATION: Sections 6(b) and 25(d) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, require that the Administrator of the Environmental Protection Agency submit any proposed notice of intent to cancel pesticide registrations to the Secretary of Agriculture and to the Scientific Advisory Panel (SAP) at least 60 days prior to providing formal notice of intent to cancel to the registrant. Accordingly, copies of the notice have been sent to the Secretary and the SAP for comment.

The proposal would cancel DBCP products registered for use in pineapple fields in Hawaii. This is the only remaining use for which DBCP is registered; notice that registrations for all other uses were cancelled was published in the Federal Register of March 31, 1981 (46 FR 19596). Existing stocks of DBCP would be permitted to be used to treat pineapple fields until December 31, 1986, only on the island of Maui, and only on fields where it could be determined that contamination of drinking water would not occur.

Copies of the proposed notice of intent to cancel are available upon request. Although not required to do so by FIFRA, the Agency invites comments from the public on the proposal. Such

comments must be submitted by March 12, 1984. This time allows for request and receipt of the proposed notice of intent to cancel and for submission of comments. Because of the Agency's concern for the potential hazards to public health resulting from this use, the Agency intends to proceed as expeditiously as possible. Accordingly, requests for extensions in the comment period will not be granted.

Dated: December 30, 1983.

John A. Moore,
Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 84-933 Filed 1-11-84; 8:45 am]

BILLING CODE 6550-50-M

FEDERAL COMMUNICATIONS COMMISSION

[MM Docket No. 83-1356; File No. BP-810701AS, etc.]

Voyageur Broadcasting Co., et al; Hearing Designation Order

In regard Applications of Voyageur Broadcasting Co., WMIN, Maplewood, Minnesota, Has: 1010 kHz, 250W, D, Req: 1030 kHz, 0.5 kW, 50 kW-LS, DA-2, U, MM Docket No. 83-1356, File No. BP-810701AS; Progressive Communications, Inc., WOKL, Altoona, Wisconsin, Has: 1050 kHz, 1kW, D, Req: 1030 kHz, 250W, 10 kW-LS, DA-N, U, MM Docket No. 83-1357, File No. BP-811026AG; Hercules Broadcasting Co., Sartell, Minnesota, Req: 1030 kHz 1 kW, 10 kW-LS, DA-2, U, MM Docket No. 83-1359, File No. BP-811204AD; For Construction permit.

Adopted: December 15, 1983.

Released: January 9, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration: (a) the above-captioned mutually exclusive applications for new AM broadcast stations; (b) petitions to intervene and to deny the Voyageur Broadcasting Co. and Progressive Communications, Inc. applications filed by Westinghouse Broadcasting and Cable, Inc.;¹ (c) a petition to deny the

¹ Westinghouse also filed a petition to intervene and to deny the Hercules Broadcasting Company application. Subsequently, the applicant filed a petition for leave to amend and an amendment which cured the alleged electrical interference. Westinghouse has withdrawn its petition contingent on Commission acceptance of the amendment. The amendment removes a potentially disqualifying defect; we will therefore grant the petition for leave to amend, accept the amendment and deny the petition.

Voyageur application filed by Palmer Communications Incorporated; and (d) related pleadings.

2. *Voyageur Broadcasting Company.* Westinghouse alleges prohibited overlap with the 0.5 mV/m 50% skywave contour of its station WBZ, Boston, Massachusetts, and seeks, in addition, a critical array designation for the Voyageur proposal. Turning first to several procedural and technical questions raised by its pleading, Voyageur responded to Westinghouse's initial petition with a minor amendment to its proposal purporting to eliminate the interference cited by petitioner. Subsequently, Westinghouse filed a supplemental pleading, and Voyageur a motion to strike this submission as an untimely reply. In our view, though, the Westinghouse pleading is properly responsive to new matters raised by the Voyageur amendment and was timely filed in this context. Hence we will accept the pleading and deny the motion to strike.

3. With respect to the proper basis for calculating the relevant WBZ contours, the Voyageur proposal was filed on July 1, 1981, and the contractor's modified standard pattern conversion for WBZ was released on July 14, 1981. Therefore, the applicant properly utilized the WBZ 1979 proof-of-performance conductivities and measured radiation pattern to determine the relevant WBZ contours. Voyageur's subsequent minor amendment did not introduce a requirement that it adopt different data. See *Radiation Patterns for AM Broadcast Stations*, 84 FCC 2d 769, 827-829 (1981).

4. As for the merits of Westinghouse's petition, we have reviewed all of the information and data filed by the applicant and the petitioner. Utilizing the measured radiation pattern and within the range of resolution of our skywave curves at these large distances, we find that the proposal is in compliance with §§ 73.187 and 73.182 of our Rules. We will therefore deny the Westinghouse petition.

5. Palmer Communications Incorporated for its part alleges that the 0.5 mV/m contours of its station WHO, Des Moines, Iowa, and the Voyageur proposal will overlap in violation of § 73.37(a) of the Commission's Rules. Our review of all of the information and data submitted by the parties, including the additional data contained in petitioner's reply pleading, reveals no prohibited overlap however. We will therefore deny the petition to deny.

6. Section 73.24(j) of the Commission's Rules requires, *inter alia*, that the proposed 25 mV/m contour encompass

the business district of the community to which the station is assigned. We cannot determine from the information before us whether Voyageur's 25 mV/m contour will encompass the business district of its designated community, and, if not, whether waiver is warranted. An appropriate issue will be specified.

7. *Progressive Communications, Inc.* In its petition, Westinghouse alleges prohibited interference to the 0.5 mV/m 50% skywave contour of station WBZ. Our own study reveals no such interference, however, and the petition will be denied.

8. *Hercules Broadcasting Company.* This applicant's local notice of the filing of its application failed to list the antenna height as required by § 73.3580(f)(5) of the Commission's Rules. A corrected notice must be republished and that fact certified to the presiding Administrative Law Judge within thirty (30) days of the release of this Order.

9. The Material filed by this applicant does not establish its financial qualifications. The application is filed on the 1977 version of the FCC Form 301 and section III, the financial qualifications section, has not been completed. Thus, while the applicant specifies land and equipment costs, it does not provide estimates as to its construction, operating and other expenses. We cannot under these circumstances determine whether sufficient funds are available. On October 25, 1982, the applicant filed an amendment to its application and certified its financial qualifications as required by the FCC Form 301 which became effective December 2, 1981. This certification does not, however, answer questions raised by the initially deficient financial showing. See *South Florida Broadcasting Company Inc.*, FCC 83-265, Mimeo 95065, released June 2, 1983. A financial issue will therefore be specified.

10. Except as indicated by the issues below, all three applicants are qualified to construct and operate as proposed.² However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the applications are for different communities, they would serve substantial areas in

² Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

common. Therefore, in addition to an issue to determine pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will be specified.

11. 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 to be specified in a subsequent Order, upon the following issues:

(1) To determine, whether the 25 mV/m contour of the Voyageur Broadcasting Company proposal will encompass the business district of Maplewood, Minnesota, and if it does not, whether circumstances exist which warrant waiver of § 73.24(f) of the Commission's Rules.

(2) To determine, with respect to the Hercules Broadcasting Company application:

(a) The costs of constructing the station and operating for three months as proposed,

(b) Whether the applicant has available sufficient funds to meet the proposed construction and operating costs, and

(c) Whether, in light of the above, the applicant is financially qualified to construct and operate as proposed.

(3) To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural services to such areas and populations.

(4) To determine in light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service.

(5) To determine, in the event it is concluded that a choice among the applicants should not be based solely on considerations relating to section 307(b), which of the proposals would, on a comparative basis, best serve the public interest.

(6) To determine in light of the evidence adduced pursuant to the foregoing issues, which of the applications, if any, should be granted.

12. It is further ordered, That the motion to strike filed by Voyageur Broadcasting Company is denied, and the supplement to petition to intervene and to deny filed by Westinghouse Broadcasting and Cable, Inc. is accepted.

13. It is further ordered, That the petitions to intervene and to deny the applications of Voyageur Broadcasting Company and Progressive Communications, Inc., filed by Westinghouse Broadcasting and Cable, Inc., are denied, and its petition to intervene and to deny the application of Hercules Broadcasting Company is dismissed as moot.

14. It is further ordered, That the petition to deny filed by Palmer Communications, Incorporated is denied.

15. It is further ordered, That Hercules Broadcasting Company republish a corrected public notice of the filing of its application as set out in paragraph eight (8) above, and certify as to its compliance with the Administrative Law Judge within thirty (30) days of the release of this Order.

16. It is further ordered, That the petition for leave to amend filed by Hercules Broadcasting Company on November 17, 1982, is granted, and the amendment contained therein is accepted for filing.

17. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall, within 20 days of the mailing of this Order, in person or by attorney, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

18. It is further ordered, That pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and section 311(a)(2) of the Commission's Rules, the applicants shall give notice of the hearing as prescribed by the rule, and shall advise the Commission of the publication of the notices as required by § 73.359(g) of the rules.

Federal Communications Commission.

W. Jan Gay,

*Assistant Chief, Audio Services Division,
Mass Media Bureau.*

[FR Doc. 84-843 Filed 1-11-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-1378; File No. BP-820304AD, etc.]

Chapman Broadcasting Co., et al; Hearing Designation Order

In regard to Applications of Dale Chapman D/B/A Chapman Broadcasting Co., San Juan, Texas, Req: 1210 kHz, 1 kW, 10 kW-LS, DA-2, U, MM Docket No. 83-1378, File No. BP-820304AD; Gisela Rodriguez, San Benito, Texas, Req: 1210 kHz, 1 kW, 50 kW-LS, DA-2, U, MM Docket No. 83-1379, File No. BP-821223AE; Rio Broadcasting Company, Inc., Kirt, Pharr, Texas, Has: 1580 kHz, 1 kW, DA-N, U, Req: 1210 kHz, 1 kW, 10 kW-LS, DA-2, U, MM Docket No. 83-1380, File No. BP-821223AF; Maida Mascorro D/B/A Texas Gulf Coast Broadcasting Co., Donna, Texas, Req: 1210 kHz, 2.5 kW, 50 kW-LS, DA-2, U, MM Docket No. 83-1381, File No. BP-821223AH; For Construction Permit.

Adopted: December 20, 1983.

Released: January 10, 1984.

By the Chief, Mass Media Bureau.

1. The Commission by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has under consideration the mutually exclusive applications of Dale Chapman d/b/a Chapman Broadcasting Company (Chapman), Gisela Rodriguez (Rodriguez), Rio Broadcasting Company, Inc. (Rio), and Maida Mascorro d/b/a Texas Gulf Coast Broadcasting Company (Gulf Coast).¹ In addition we have before us a petition to deny the Rodriguez proposal filed by Gulf Coast and related pleadings.

2. *The Rodriguez proposal.* Rodriguez submitted certification of its financial qualifications under Section III of Form 301. The certification, however, is incomplete. Rodriguez has failed to certify under Item 2 that it has a reasonable assurance of a present firm intention for each agreement to furnish capital, and that it can and will meet all contractual requirements as to collateral, guarantees and capital investment. The applicant must submit an amended Section III financial certification to remedy this omission, as indicated below.

3. Gulf Coast alleges, and Rodriguez concedes, that the Rodriguez proposal fails to provide 25 mV/m nighttime coverage to the business district of San Benito. Waiver of § 73.24(j) is warranted, however. Rodriguez complies fully with all other coverage requirements, including the daytime business district coverage provisions, and its nighttime signal strength of 15.95 mV/m seems to us adequate for a community and business district of San Benito's size.²

4. The Rodriguez application indicates that photographs of the proposed transmitter site will be furnished. We have no evidence that this amendment has been filed, however. To remedy this deficiency, Rodriguez will be required to file an appropriate amendment with the presiding Administrative Law Judge.

5. *The Rio proposal.* By amendment to its application, Rio has reported the institution of a lawsuit alleging violations on its part of antitrust and related provisions. We cannot at this early stage of that litigation assess its impact on Rio's qualifications to be a Commission licensee. Hence, we will

specify no issues at this time, leaving it to the presiding Administrative Law Judge to evaluate subsequent developments as they occur.³

6. *The Gulf Coast proposal.* Gulf Coast proposes 2.5 kilowatts nighttime power. Recognizing that § 73.21(a)(2)(ii)(c), of our Rules limits new Class II-B stations on the clear channels to a 1 kW nighttime power, Gulf Coast requests waiver of the rule. The Commission has adopted a strict standard for waiver requests of this nature, however. Thus waivers will be granted only upon a showing that the higher power proposed is necessary to provide principal city service and will not impede our allocation objectives. While Gulf Coast has established compliance with the first part of this test, it has not sufficiently supported its claim that the higher power will not preclude other possible co-channel, unlimited time Class II assignments. Since it cannot be determined from the record if waiver of Section 73.21 is warranted, an issue will be specified.

7. Except as indicated by the issues specified below, all applicants are qualified to construct and operate as proposed.⁴ However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding. Although the proposals are for different communities, they would serve substantial areas in common. Therefore, in addition to determining pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would best provide a fair, efficient, and equitable distribution of radio service, a contingent comparative issue will be specified.

8. 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 to be specified in a subsequent Order, upon the following issues:

2. To determine with respect to the proposal of Maida Mascorro d/b/a Texas Gulf Coast Broadcasting Co., whether

³ We will adopt the same approach toward the pending renewal application of station KAEQ (whose principals are identical to Rio's) against which a petition to deny has been filed.

⁴ Operation with the facilities specified herein is subject to modification, suspension or termination without right to hearing, if found by the Commission to be necessary in order to conform to the Final Acts of the ITU Administrative Conference on Medium Frequency Broadcasting in Region 2, Rio de Janeiro 1981, and to bilateral and other multilateral agreements between the United States and other countries.

circumstances exist which warrant waiver of § 73.21(a)(2)(ii)(c) of the Commission's Rules.

3. To determine the areas and populations which would receive primary service from each proposal, and the availability of other primary aural service to such areas and populations.

4. To determine, in the light of section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient, and equitable distribution of radio service.

5. To determine, in the event it be concluded that a choice among the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would on a comparative basis better serve the public interest.

6. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, That the petition to deny filed by Maida Mascorro d.b.a. Texas Gulf Coast Broadcasting Company is denied.

10. It is further ordered, That Gisela Rodriguez shall file the amended financial certification of Section III, Form 301, discussed in paragraph 2 above, or advise the Administrative Law Judge within 30 days of the release of this Order that certification cannot be made.

11. It is further ordered, That Gisela Rodriguez shall file the amendment described in paragraph 4 above within 30 days of the release of this Order.

12. It is further ordered, That in the event the application of Gisela Rodriguez is granted, § 73.24(j) of the Rules will be waived on its behalf.

13. It is further ordered, That, the petitions for leave to amend filed by Gisela Rodriguez and Rio Broadcasting Company, Inc., are granted and the accompanying amendments are accepted.

14. It is further ordered, That to avail themselves of the opportunity to be heard and pursuant to § 1.221(c) of the Commission's Rules, the applicants shall within 20 days of the mailing of this order, in person or by attorney, file with the Commission in triplicate written appearances stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this order.

15. It is further ordered, That pursuant to section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, the applicants shall give notice of the hearing as prescribed in the rule, and shall advise the Commission of the publication of the notice as required by § 73.3594(g) of the Rules.

¹ Rodriguez and Rio have filed amendments that fail to meet the requirements of § 73.3522 of the Commission's Rules. Under § 1.65, however, good cause has been shown for the acceptance of these amendments.

² As the Gulf Coast pleading addresses matters governing the acceptability for filing of Rodriguez's application, we have considered it at this stage of the proceeding.

Federal Communications Commission.

W. Jan Gay,

*Assistant Chief, Audio Services Division,
Mass Media Bureau.*

Appendix

16. The Commission has not yet received Federal Aviation Administration clearance for the antenna tower proposed by the below listed applicant. Accordingly, it is ordered, that the following issue is specified:

1. To determine whether there is reasonable possibility that a hazard to air navigation would occur as a result of the tower heights and location proposed by Maida I. Mascorro, d.b.a. Texas Gulf Coast Broadcasting Co.

17. It is further ordered, That the Federal Aviation Administration is made a party to the proceeding.

[FR Doc. 84-838 Filed 1-11-84; 8:45 am]
BILLING CODE 6712-01-M

[CC Docket No. 79-184]

North Atlantic Region; Meeting of Parties Interested in Facilities Planning

January 6, 1984.

Members of the Common Carrier Bureau Staff will convene a public meeting of all interested persons to discuss the updated North Atlantic facilities planning information and draft United States submissions to the January 31-February 2, 1984 North Atlantic Consultative Working Group meeting submitted to date. The public meeting will be held in Room 856, 1919 M Street NW., Washington, D.C. on Wednesday, January 11, 1984 at 10:00 a.m.

For additional information, contact Robert Gosse (202) 632-4047.

William J. Tricarico,
*Secretary, Federal Communications
Commission.*

[FR Doc. 84-835 Filed 1-11-84; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket Nos. 83-1382 and 83-1383; File Nos. BPCT-830822KF and BPCT-831018KP]

Haynes Communications Co. and Central Plains Communications Co.; Hearing Designation Order

In the matter of applications of Haynes Communications Co., Salina, Kansas (MM Docket No. 83-1382, File No. BPCT-830822KF) and Central Plains Communications Co., Salina, Kansas (MM Docket No. 83-1383, File No. BPCT-831018K)P for construction permit.

Adopted: December 23, 1983.

Released: January 6, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for new commercial television station to operate on Channel 34, Salina, Kansas.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, for the purpose of comparison, the areas and populations which would be within the predicted 64 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. No determination has been reached that the tower height and location proposed by either applicant would not constitute a hazard to air navigation.¹ Accordingly, an issue regarding this matter will be specified.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. Since these 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.

5. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, before and Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Haynes Communications Co. and Central Plains Communications Co. whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

¹ The Commission has not received a copy of the Federal Aviation Administration's determination for Haynes Communication Co.

6. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

7. It is further ordered, that, to avail themselves to the opportunity to be heard, the applicants and the party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 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. 84-837 Filed 1-11-84 8:45 am]
BILLING CODE 6712-01-M

[MM Docket Nos. 83-1384 and 83-1385; File Nos. BPCT-830815 KF and BPCT-831018 KK]

Haynes Communications Co. and Duluth Media; Hearing Designation Order

In the matter of applications of Haynes Communications Co. Duluth, Minnesota (MM Docket No. 83-1384, File No. BPCT-830815KF) and Alfonso Arreola d/b/a DULUTH MEDIA, Duluth, Minnesota (MM Docket No. 83-1385, File No. BPCT-831018KK) for construction permit.

Adopted: December 23, 1983. Released: January 9, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for a new commercial television station to operate on Channel 27, Duluth, Minnesota.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by the applicants indicate that there would be a significant difference in the size of the area and population that each proposes to serve. Consequently, for the purpose of comparison, the areas and populations which would be within the predicted 64 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. No determination has been reached that the tower height and location proposed by each applicant would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Duluth Media proposes to operate from a site located within 250 miles of the Canadian border with maximum visual effective radiated power (ERP) of more than 1000 kilowatts. The proposal poses no interference threat to United States television stations; however, it contravenes an agreement between the United States and Canada which limits the maximum visual ERP of United States television stations located within 250 miles of Canada to 1000 kilowatts. *Agreement Effectuated by Exchange of Notes, T.I.A.S. 2594 (1952)*. Accordingly, in the event of a grant of Duluth Media's application, the construction permit shall be appropriately conditioned.

5. 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.

6. 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 to be specified in a subsequent Order, upon the following issues:

1. To determine whether there is a reasonable possibility that the tower height and location proposed by each applicant would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that the Federal Aviation Administration is made a party respondent to this proceeding with respect to issue 1.

8. It is further ordered, that, in the event of a grant of Duluth Media's

application, the construction permit shall be conditioned as follows:

Subject to the condition that operation with effective radiated power in excess of 1000 kW is subject to the consent of Canada.

9. It is further ordered, that to avail themselves of the opportunity to be heard, the applicants and the party respondent 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.

10. 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. 84-320 Filed 1-11-84; 9:45 am]

BILLING CODE 6712-01-11

[MM Docket No. 83-1359 et al.; File No. BPCT-830524KE]

K-J Broadcasting, Inc.; Hearing Designation Order

In the matter of applications of K-J Broadcasting, Inc., New Iberia, Louisiana (MM Docket No. 83-1359, File No. BPCT-830524KE), Way of the Cross of Baton Rouge, New Iberia, Louisiana (MM Docket No. 83-1360, File No. BPCT-830714KG), Commerce Broadcasting, Inc., New Iberia, Louisiana (MM Docket No. 83-1361, File No. BPCT-830729KJ), Blue Rose Television, New Iberia, Louisiana (MM Docket No. 83-1362, File No. BPCT-830801KE), Guadalupe Enterprises, Inc., New Iberia, Louisiana (MM Docket No. 83-1363, File No. BPCT-830801KI), Tres Video, Inc., New Iberia, Louisiana (MM Docket No. 83-1364, File No. BPCT-830801KM) and Rosemary Azar d/b/a CHANNEL 36 BROADCASTING, New Iberia, Louisiana (MM Docket No. 83-1365, File No. BPCT-830801KN) for construction permit.

Adopted: December 19, 1983.

Released: January 10, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, 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 36, New Iberia, Louisiana.

2. The effective radiated visual power, antenna height above average terrain and other technical data submitted by each applicant indicates that there would be a significant difference in the size of the areas and populations that each proposes to serve. Consequently, for the purposes of comparison, the areas and populations which would be within the predicted 64 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 any of the applicants. Way of the Cross of Baton Rouge has not submitted the population figures required by Item 10, Section V-C, FCC, Form 301. Way of the Cross of Baton Rouge will be required to submit the population figures in amendment form to the presiding Administrative Law Judge within 20 days after the date of the release of this Order.

3. No determination has been reached that the tower heights and locations proposed by Way of the Cross of Baton Rouge, Commerce Broadcasting, Blue Rose Television, Ltd. and Guadalupe Enterprises, Inc.¹ would not constitute a hazard to air navigation. Accordingly, an issue regarding this matter will be specified.

4. Section 73.685(f) of the Commission's Rules requires an applicant proposing to use a directional antenna to include a tabulation of relative field pattern, oriented so that 0° corresponds to True North and tabulated at least every 10° plus any minima or maxima. Commerce Broadcasting, Inc., Blue Rose Television, Ltd., Guadalupe Enterprises, Inc., Tres Video Inc. and Channel 36 Broadcasting have not supplied this data. Accordingly, the applicants will each be required to submit an amendment with the appropriate information, to the presiding Administrative Law Judge and a copy to the TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

5. Tres Video, Inc.'s indicates that it will side mount its antenna on a tower to be constructed by FM stations KDEA, New Iberia, Louisiana and KTDY, Lafayette, Louisiana. The applications are currently pending before the

¹ The Commission is not in receipt of FAA's determinations for the towers proposed by Way of the Cross of Baton Rouge, Commerce Broadcasting, Inc. and Blue Rose Television, Ltd. Further, a previous FAA determination of "No Hazard" for Guadalupe expired on July 10, 1983. Guadalupe will therefore be required to revalidate its FAA determination.

Commission. Any question relating to major environmental actions or FAA determinations will be considered during the processing of the FM applications.

6. 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.

7. 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 to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Way of the Cross of Baton Rouge, Commerce Broadcasting, Inc., Blue Rose Television, Ltd. and Guadalupe Enterprises Inc., whether there is a reasonable possibility that the tower height and location proposed by each would constitute a hazard to air navigation.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that Way of the Cross of Baton Rouge shall submit an amendment stating the population within its predicted Grade B contour, to the presiding Administrative Law Judge, within 20 days after the date of the release of this Order.

9: It is further ordered, that Commerce Broadcasting, Inc., Blue Rose Television, Ltd., Guadalupe Enterprises, Inc., Tres Video, Inc. and Channel 36 Broadcasting shall each submit an amendment providing the information required by § 73.685(f) of the Commission's Rules, to the presiding Administrative Law Judge and a copy to TV Branch, Mass Media Bureau, within 20 days after the date of the release of this Order.

10. It is further ordered, that the Federal Aviation Administration IS MADE A PARTY RESPONDENT to this proceeding with respect to issue 1.

11. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants and party respondent herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of

the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. 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. 84-842 Filed 1-11-84; 8:45 am]
BILLING CODE 6712-01-M

Sheila Callahan and Friends and KGVO Broadcasters, Inc.; Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Sheila Callahan and Friends; Missoula, MT.	BPH-820504AT.....	83-1373
B. KGVO Broadcasters, Inc.; Missoula, MT.	BPH-820908AN.....	83-1374

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety in a sample standardized Hearing Designation Order (HDO) which can be found at 48 FR 22428, May 18, 1983. The issue headings shown below correspond to issue headings contained in the referenced sample HDO. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

- 1. Comparative, A, B
- 2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding may be obtained, by written or telephone request, from the Mass Media Bureau's

Contact Representative, Room 242, 1919 M Street, NW., Washington, D.C. 20554, Telephone (202) 632-6334.

W. Jan Gay,
Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 84-839 Filed 1-11-84; 8:45 am]
BILLING CODE 6712-01-M

[MM Docket Nos. 83-1368 and 83-1369; File Nos. BPCT-830118KI and BPCT-830314KL]

Stanley G. Emert, Jr. and Metro Program Network, Inc.; Hearing Designation Order

In the matter of applications of Stanley G. Emert, Jr., Cedar Rapids, Iowa; (MM Docket No. 83-1368, File No. BPCT-830118KI) and Metro Program Network, Inc., Cedar Rapids, Iowa; (MM Docket No. 83-1369, File No. BPCT-830314KL) for construction permit.

Adopted: December 19, 1983.
Released: January 9, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of Stanley G. Emert, Jr. and Metro Program Network, Inc. for authority to construct a new commercial television broadcast station on Channel 28, Cedar Rapids, Iowa.

2. In Section III, Items 1 and 2, FCC Form 301, Metro answered "no" to the question as to whether or not it is financially qualified to construct and operate the proposed facility. Accordingly, the applicant will be given 20 days from the release date of this Order to review its financial proposal in light of Commission requirements, to make any changes that may be necessary, and, if appropriate, to submit a certification to the presiding Administrative Law Judge in the manner called for in Section III Form 301, as to its financial qualifications. If the applicant cannot make the required certification, it shall so advise the Administrative Law Judge who shall then specify an appropriate issue.

3. Section 73.610 of the Commission's Rules requires a minimum separation of 20 miles between a station operating on Channel 28 and a station or city to which Channel 20 is allocated. Metro's application states it would be 18 miles from vacant channel 20, Iowa City, Iowa.¹ Metro would, therefore, be 2

¹ The Commission has on file an application for Channel 20, Iowa City, Iowa, BPCT-821203KF, which meets the spacing requirements to Metro's application.

miles short-spaced. Accordingly, an issue will be specified.

4. Metro intends to mount its antenna on the existing tower of station KCCK-FM. The Commission's records show the authorized height of the KCCK-FM tower to be 360 feet above ground level (1200 feet AMSL), but the applicant specifies the tower height AGL as 400 feet (1240 feet AMSL). The Commission cannot determine whether the discrepancy is an error by the applicant or whether the applicant proposes to increase the tower height by 40 feet. If it is an error, the applicant may amend by appropriate timely-filed amendment; if the applicant proposes to increase the tower height, the presiding officer will specify an appropriate air hazard issue.

5. 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 application must be designated for hearing in a consolidated proceeding on the issues specified below.

6. 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 to be specified in a subsequent Order, upon the following issues:

1. To determine, with respect to Metro Program Network, Inc., whether the application is consistent with § 73.610 of the Commission's Rules and, if not, whether circumstances exist which would warrant a waiver of the rule.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that Metro shall submit to the presiding Administrative Law Judge within 20 days of the release of this Order the clarification or amendment required by paragraph four as to its proposed tower height.

8. It is further ordered, that Metro Program Network, Inc., shall submit a financial certification in the form required by Section III, FCC Form 301, within 20 days after this Order is released or advise the Administrative Law Judge that certification cannot be made, as may be appropriate.

9. 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.

10. 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 Service Divisions, Mass Media Bureau.

[FR Doc. 84-040 Filed 1-11-84; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket Nos. 83-1366 and 83-1367; File Nos. BMPCT-830307KE and BPCT-830603KF]

Sterling Associates, Ltd. and Anthony Jay Fant and Kyla Beth Fant, Hearing Designation Order

In the matter of applications of AG Thiessen and Ellen Ann Thiessen, d.b.a. Sterling Associates, Ltd. (WTJP-TV), Gadsden, Alabama (MM Docket No. 83-1366, File No. BMPCT-830307KE) Anthony Jay Fant and Kyla Beth Fant, Gadsden, Alabama, (MM Docket No. 83-1367, File No. BPCT-830603KF) for construction permit.

Adopted: December 19, 1983.

Released: January 6, 1984.

By the Chief, Mass Media Bureau.

1. The Commission, by the Chief, Mass Media Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications of A.G. Thiessen and Ellen Ann Thiessen, d.b.a. Sterling Associates, Ltd., for modification of construction permit for unbuild Station WTJP-TV to change channel from 60 to 44, Gadsden, Alabama; and Anthony Jay Fant and Kyla Beth Fant¹ for authority to

¹ On August 4, 1983, the B cut-off date, the Fants filed an informal amendment to their application. On August 5, 1983, the Fants submitted a supplement to this amendment. The information in the August 5 amendment, in most instances, duplicated the less formal August 4 amendment. The Fants state that the August 5 amendment was late due to the failure of Eastern Airlines to properly transfer the package in Atlanta. For good cause shown, the amendment is accepted. See *Areatel, Inc.*, 53 RR 2d 647 (1983).

construct a new commercial television station on Channel 44, Gadsden, Alabama.

2. 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.

3. 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, before an Administrative Law Judge at a time and place to 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.

4. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

5. 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. 84-041 Filed 1-11-84; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; Banco Zaragozana, S.A., et al.

The Companies listed in this notice have applied for the Board's approval under section 3(a)(3) of the Bank

Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, D.C. 20551:

1. *Banco Zaragozano, S.A.*, Madrid, Spain; Banzano International, N.V., Curacao, Netherlands Antilles; Banzano, B.V., Amsterdam, Netherlands; and, Miami National Bancorp, Coral Gables, Florida; to acquire 89.7 percent of the voting shares or assets of International Bank of Miami, Miami, Florida. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Atlanta. Comments on this application must be received not later than February 6, 1984.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-767 Filed 1-11-84; 8:45 am]

BILLING CODE 6210-01-M

identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW, Atlanta, Georgia 30303:

1. *Broward Bancorp*, Lauderdale Lakes, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Broward Bank, Lauderdale Lakes, Florida. Comments on this application must be received not later than February 6, 1984.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *First Breckinridge Bancshares, Inc.*, Irvington, Kentucky; to become a bank holding company by acquiring at least 80.0 percent of the voting shares of First State Bank, Irvington, Kentucky. Comments on this application must be received not later than February 6, 1984.

C. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Spring Woods Bancshares, Inc.*, Houston, Texas; to become a bank holding company by acquiring at least 80 percent of the voting shares of Spring Woods Bank, Houston, Texas. Comments on this application must be received not later than February 6, 1984.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-768 Filed 1-11-84; 8:45 am]

BILLING CODE 6210-01-M

Governors. With respect to the application, interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding this application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 3, 1984.

A. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *First City Financial Corporation*, Albuquerque, New Mexico; to acquire First City Mortgage Company, Albuquerque, New Mexico. Applicant proposes to engage in mortgage banking activities including the origination of real estate mortgages banking activities including the origination of real estate mortgage loans for its own account and the account of others. These activities would be conducted from offices in Phoenix and Tucson, Arizona, serving the State of Arizona, and San Diego, California, serving the State of California.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-771 Filed 1-11-84; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Broward Bancorp, et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing.

Acquisitions of Companies Engaged in Permissible Nonbanking Activities; First City Financial Co.

The bank holding company listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (49 Federal Register 794) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Greencastle Bancorp, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated for that inspection. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. With respect to each application, interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 3, 1984.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Greencastle Bancorp, Inc.*, Greencastle, Indiana; to acquire 100 percent of the voting shares of Greencastle Investment Company, Greencastle, Indiana, and thereby indirectly acquire 80 percent of the voting shares of First-Citizens Bank and Trust Company, Greencastle, Indiana.

2. *Mahaska Investment Company*, Oskaloosa, Iowa; to acquire 100 percent of the voting shares or assets of Mahaska State Bank, Oskaloosa, Iowa.

B. Federal Reserve Bank of St. Louis (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Downstate Bancshares, Inc.*, Murphysboro, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank in Altamont, Illinois.

2. *E. & D. Bancshares, Inc.*, Mendon, Illinois; to become a bank holding company by acquiring 87.5 percent of the voting shares of Mendon State Bank, Mendon, Illinois.

3. *Farmers Bancorp of Sturgis, Inc.*, Sturgis, Kentucky; to become a bank holding company by acquiring 80 percent or more of the voting shares of Farmers State Bank, Sturgis, Kentucky.

4. *Paducah Bank Shares, Inc.*, Paducah, Kentucky; to become a bank holding company by acquiring 80 percent or more of the voting shares of Paducah Bank and Trust Company, Paducah, Kentucky.

C. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Lewisville Bancorp, Inc.*, Lewisville, Minnesota; to become a bank holding company by acquiring 86.8 percent of the voting shares of Merchants State Bank of Lewisville, Lewisville, Minnesota.

2. *Silver Run Bancorporation, Inc.*, Red Lodge, Montana; to become a bank holding company by acquiring 81.07 percent of the voting shares of The United States National Bank of Red Lodge, Red Lodge, Montana.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-703 Filed 1-11-84; 8:45 am.]

BILLING CODE 6210-01-M

Proposed De Novo Nonbank Activities by Bank Holding Companies; United Financial Banking Companies, Inc., et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *United Financial Banking Companies, Inc.*, Vienna, Virginia (commercial lending; District of Columbia, Maryland, Virginia): To engage in the business of making or acquiring loans and extensions of credit such as would be made by a commercial finance company including activities such as servicing loans and participating in loans, in accordance with the Board's Regulation Y. These activities would be performed primarily in the States of Virginia and Maryland, and in the District of Columbia. Comments on this application must be received not later than January 30, 1984.

B. Federal Reserve Bank of Dallas (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Helotes Bancshares, Inc.*, Helotes, Texas (financing and insurance activities; Texas): To engage, through its subsidiary, Southern Sun Life Insurance Company, in the underwriting of credit life insurance and credit accident and health insurance directly related to extensions of credit by Helotes State Bank, a Texas banking association and wholly owned subsidiary of Helotes Bancshares, Inc. These activities would be performed from an office in Helotes, Texas, serving the State of Texas. Comments on this application must be received not later than February 6, 1984.

Board of Governors of the Federal Reserve System, January 6, 1984.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 84-770 Filed 1-11-84; 8:45 am.]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Cooperative Agreements; Preventive Health Services-Tuberculosis Control; Availability of Funds for Fiscal Year 1984

The Centers for Disease Control (CDC) announces the availability of funds for Fiscal Year 1984 for Cooperative Agreements for Tuberculosis Control Programs, Catalog of Federal Domestic Assistance Number 13.116. This program is authorized by section 317(a) of the Public Health Service (PHS) Act (42 U.S.C. 247b(a)), as amended. Regulations governing programs for preventive health services

are codified at 42 CFR Part 51b. Subpart A contains general provisions relating to these programs.

Eligible applicants for this program are the official public health agencies of State and local governments, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa. Although new applications will be considered, priority for funding will be given to continuation of currently funded cooperative agreements because of the limited funds available in Fiscal Year 1984. New awards, if any, will be limited to support of programs in States which reported 100 or more new cases of tuberculosis for each of the years 1981 and 1982 or had an incidence rate greater than the national tuberculosis incidence rate reported in 1982 (11.0 per 100,000 population) for both 1981 and 1982, and to selected urban areas as described below.

New cooperative agreements may also be awarded directly to a local health agency serving a high-priority urban area with a city of at least 250,000 population which reported 200 or more new cases of tuberculosis in each of the years 1981 and 1982 or had an incidence rate greater than the rate for United States cities over 250,000 population in 1982 (22.3 per 100,000 population) for both 1981 and 1982. Although certain local health agencies may be eligible for direct funding, eligible local health agencies within a State are strongly encouraged to include their request for assistance in the State application to ensure effective coordination of State/local/Federal resources.

State and local applicants must show that tuberculosis cooperative agreement funds will be directed primarily to support outreach activities in high incidence population groups and selected geographical areas with (1) a significant level of tuberculosis; and (2) an incidence rate greater than the State as a whole.

Applications meeting these requirements will be evaluated and priority for funding of new projects established, based upon the following factors, using data for both 1981 and 1982: (1) The total number of cases reported; (2) the number of bacteriologically confirmed cases reported; (3) the bacteriologically substantiated incidence rate of disease; (4) the number of tuberculosis cases among children 0-14 years of age; (5) significant levels of tuberculosis among individuals who were born in countries with high rates of tuberculosis; and (6) a

significant increase in tuberculosis morbidity.

In addition, the overall potential effectiveness of the applicant's plan of operation in meeting the objectives of the proposed project will be considered in evaluating and assigning priority to applications. These factors were chosen to establish the extent of an applicant's tuberculosis problem and incorporate the intent of Congress for expenditure of these funds.

Purpose and Cooperative Activities

A. Purpose

The national goal in tuberculosis control is to continue an annual reduction of reported tuberculosis cases of at least 5 percent. The minimum short-term objectives needed to meet this goal include:

1. At least 75 percent of all initially infectious patients will become noninfectious (convert their sputum from positive to negative) within 3 months of starting treatment, and at least 95 percent will become noninfectious within 6 months.

2. At least 90 percent of all reported cases of tuberculosis will complete an American Thoracic Society/Centers for Disease Control (ATS/CDC) recommended regimen of antituberculosis drug therapy.

3. At least 95 percent of all close contacts to infectious cases will receive examinations, with at least 95 percent of all those under 15 years of age and 75 percent of all infected persons 15 years of age and over placed on preventive treatment.

4. For close contacts and other high-risk individuals placed on preventive therapy, at least 90 percent of those persons under 15 years of age and 75 percent of all others will complete a recommended course of preventive therapy.

B. Cooperative Activities

The collaborative and programmatic involvement of recipients of funds and CDC is as follows:

1. *Recipient Public Health Agency Activities.* a. Reporting of all tuberculosis cases, suspects, and significant laboratory results by health care providers and laboratories in both the public and private sectors; analysis of reporting trends; and implementation of updated public health record systems needed to monitor the current care status of patients, suspects, contacts, and high-risk infected persons in the community.

- b. Deployment of outreach personnel for followup of patients and their contacts; application or intensification

of directly administered daily or intermittent drug treatment.

- c. Providing tuberculosis diagnostic, treatment, and prevention services adapted to the characteristics of tuberculosis population subgroups; and implementation of special approaches to meet the needs of immigrants with inherent language and cultural barriers.

- d. Development or continuation of cost effective, medically sound tuberculosis medical care and public health policies. A major policy component should be the use of recommended ATS/CDC treatment regimens.

- e. Epidemiological analysis and rapid followup for laboratory reports of drug resistant organisms.

- f. Program evaluation and special epidemiological investigation/analysis of unique tuberculosis problems such as tuberculosis in foreign born, drug resistance, etc. Activities should include detailed investigation of all cases in children to identify causes of community control failure and to design more effective prevention and control actions.

2. *Centers for Disease Control Activities.* a. Collaboration in the development and operation of tuberculosis case reporting and program management record systems. Assistance in analysis and evaluation of morbidity, mortality, and program management information.

- b. Assistance in improving program performance through onsite assistance and the provision of training materials for use by project staff.

- c. Provision of onsite technical assistance in the planning, operation, and evaluation of program activities.

- d. Provision of medical and programmatic consultation through telephone and written consultation.

- e. Development and dissemination of public health and medical policies and recommendations for the diagnosis, treatment, and prevention of tuberculosis (including the development of joint ATS/CDC statements). Development of patient education and motivation materials.

Quarterly and/or semiannual narrative and performance statistical reports may be required subject to approval by the Office of Management and Budget. Financial status reports are required no later than 90 days after the end of each budget period. Final financial status and progress reports are required 90 days after the end of a project period.

Approximately \$5 million will be available during Fiscal Year 1984 to continue between 40 and 48 cooperative agreements initiated in 1982 and 1983.

Although new applications will be considered, priority for funding will be given to continuation of existing programs; up to 3 new cooperative agreements may be funded. The average award is expected to be \$100,000, with individual awards ranging from \$30,000 to \$500,000. Cooperative agreements are usually funded for 12 months in a 1- to 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates outlined above may vary and are subject to change.

Cooperative agreement funds may be used to support both local personnel and the employment of individuals in direct assistance (i.e., "in lieu of cash") positions under section 317 of the PHS Act, and to purchase supplies and services directly related to the public health tuberculosis outpatient activities, particularly morbidity surveillance, outreach, and assessment. Project funds may not be used to supplant State or local funds available for tuberculosis control or to support construction costs or inpatient care.

New applications for a cooperative agreement must include a narrative which summarizes: (1) The background and need for support including information that relates to factors by which the applications will be evaluated; (2) both long- and short-term objectives of the proposed project which are consistent with the national goal outlined above, and which are specific, measurable, realistic, and time-framed; (3) the activities and methods which will be employed to accomplish the objectives (of special importance will be the employment of outreach workers in high incidence areas for use in patient followup and directly administered therapy programs); (4) the methods which will be employed to evaluate program activities; (5) fiscal information of the applicant pursuant to provisions of section 317(b)(2) of the PHS Act, although there are no matching or cost participation requirements; and (6) any other information which will support the request for assistance.

Continuation applications should provide new short-term objectives for the new budget period; a progress report on activities performed during the prior budget period; a description of any changes in the method of operation, long-term objectives, need for grant support, and evaluation procedures compared to information provided in previous applications; and fiscal and other supporting information as

indicated in (5) and (6) in the preceding paragraph.

The original and one copy of the application must be submitted to the address in *l.a.* below on or before 4:30 p.m. (e.s.t.) on Friday, March 30, 1984. Applications may meet the deadline by either delivering or mailing the application on or before that date, provided the following conditions are met:

1. *Mailed applications.* Applications mailed through the U.S. Postal Service shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date by Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 107A, Atlanta, Georgia 30305, or

b. Sent by first class mail, postmarked on or before the deadline date, and received by the granting agency in time for submission to the independent review group. (Applicants are cautioned to request a legible U.S. Postal Service postmark or use U.S. Postal Service express mail, or certified or registered mail, and obtain a legible dated mailing receipt from the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

2. *Applications submitted by other means.* Applications submitted by any means except mailing first class through the U.S. Postal Service shall be considered as meeting the deadline only if they are physically received at the place specified in paragraph *l.a.* above before close of business on or before the deadline date (4:30 p.m. e.s.t. Friday, March 30, 1984).

3. *Late applications.* Applications which do not meet the criteria in either paragraph 1. or 2. above are considered late applications and will not be considered in the current competition.

4. *Copies of Applications.* A copy of the application should be simultaneously submitted to the appropriate Department of Health and Human Services Regional Office listed below. For applicants who are other than State agencies, the appropriate State health agency should be notified of the submission of the application.

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs, and regulations (42 CFR Part 122, as amended, and Part 123) implementing the National Health Planning and Resource Development Act of 1974.

Information on application procedures, copies of application forms,

and other material may be obtained from Leo A. Sanders, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, N.E., Room 107A, Atlanta, Georgia 30305, telephone (404) 262-6575, or FTS 236-6575. Technical assistance may be obtained from John J. Seggerson, Division of Tuberculosis Control, Center for Prevention Services, Centers for Disease Control, Atlanta, Georgia 30333, telephone (404) 329-2508, or FTS 236-2508. Technical assistance is also available from the appropriate Department of Health and Human Services Regional Office.

Dated: December 30, 1983.

James O. Mason,
Director, Centers for Disease Control.

Department of Health and Human Services (HHS) Regional Offices

Regional Health Administrator, PHS, HHS Region I, John Fitzgerald Kennedy Building, Boston, Massachusetts 02203, (617) 223-6827

Regional Health Administrator, PHS, HHS Region II, Federal Building, 26 Federal Plaza, Room 3337, New York, New York 10278, (212) 264-2561

Regional Health Administrator, PHS, HHS Region III, Gateway Building No. 1, 3521-35 Market Street, Mailing Address: P.O. Box 13716, Philadelphia, Pennsylvania 19101, (215) 596-6637

Regional Health Administrator, PHS, HHS Region IV, 101 Marietta Towers, Suite 1007, Atlanta, Georgia 30323, (404) 221-2316

Regional Health Administrator, PHS, HHS Region V, 300 South Wacker Drive, 33rd Floor, Chicago, Illinois 60666, (312) 353-1385

Regional Health Administrator, PHS, HHS Region VI, 1200 Main Tower Building, Room 1835, Dallas, Texas 75202, (214) 767-3879

Regional Health Administrator, PHS, HHS Region VII, 601 East 12th Street, Kansas City, Missouri 64106, (816) 374-3291

Regional Health Administrator, PHS, HHS Region VIII, 1185 Federal Building, 1961 Stout Street, Denver, Colorado 80294, (303) 837-6163

Regional Health Administrator, PHS, HHS Region IX, 50 United Nations Plaza, San Francisco, California 94102, (415) 556-5810

Regional Health Administrator, PHS, HHS Region X, 2901 Third Avenue, MS. 402, Seattle, Washington 98121, (206) 442-0430

[FR D. : 04-043 Filed 11-11-84 8:43 am]

BILLING CODE 4100-10-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.

Date: February 2-3, 1984.

Place: Auditorium A, Centers for Disease Control, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Time and Type of Meeting: Closed: 8:30 a.m. to 8:45 a.m.—February 2; Open: 8:45 a.m. to 4:45 p.m.—February 2; Open: 8:30 a.m. to 12:00 noon—February 3.

Contact Person: Roy M. Fleming, Sc.D., Executive Secretary, Mine Health, Research Advisory Committee, NIOSH, CDC, Building 1, Room 3053, 1600 Clifton Road NE., Atlanta, Georgia 30333, Phone: (404) 329-3343.

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 previous meeting and future meeting dates; report on End-of-Service-Life-Indicators from the Respirator Subcommittee; discussion of the identification of research cohorts with NIOSH data; status of diesel research; NIOSH's program planning process and NIOSH's mining research program priorities with input from the Mine Safety and Health Administration, the Bureau of Mines, industry representatives, and labor representatives. Beginning at 8:30 a.m. through 8:45 a.m., February 2, 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 US Code, 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. Viewpoints and suggestions from any interested parties are invited. 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 during the meeting by a scheduled speaker should submit the question in writing, along with his or

her name and affiliation, through the Executive 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: January 6, 1984.

James O. Mason,
Director, Centers for Disease Control.

[FR Doc. 84-849 Filed 1-11-84; 8:45 am]
BILLING CODE 4160-19-M

National Institutes of Health

Board of Scientific Counselors, NIEHS; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, NIEHS, January 31-February 1, 1984, in Building 101, Conference Room, South Campus, NIEHS, Research Triangle Park, North Carolina.

This meeting will be open to the public 9 a.m. to 12 noon on January 31, for the purpose of presenting an overview of the organization and conduct of research in the Laboratory of Pharmacology. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Section 552b(c)(6) of Title 5 U.S. Code and Section 10(d) of Public Law 92-463, the meeting will be closed to the public on January 31 from approximately 1 p.m. to adjournment on February 1, for the evaluation of the programs of the Laboratory of Pharmacology, including the consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Executive Secretary, Dr. Charles E. Carter, Scientific Director, NIEHS, Research Triangle Park, N.C. 27709, telephone (919) 541-3205, FTS 629-3205, will furnish summaries of the meeting, rosters of committee members and substantive program information.

Dated: January 4, 1984.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 84-902 Filed 1-11-84; 8:45 am]
BILLING CODE 4140-01-M

National Advisory Environmental Health Sciences Council; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 24-25, 1984, at the National Institute of Environmental Health Sciences, Building 101 Conference Room, Research Triangle Park, North Carolina.

This meeting will be open to the public on January 24 from 9 a.m. to approximately 12 noon for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 24, from approximately 1:00 p.m. to adjournment on January 25, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, Rm. 2B55, NIH, Bethesda, Md. 20205, (301) 496-3511, will provide summaries of the meeting and rosters of council members.

Dr. Wilford L. Nusser, Associate Director for Extramural Program, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.112, Characterization of Environmental Health Hazards; 13.113, Biological Response to Environmental Health Hazards; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: January 4, 1984.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 84-859 Filed 1-11-84; 8:45 am]
BILLING CODE 4140-01-M

National Cancer Advisory Board and Board Subcommittees; Meeting

Pursuant to Public Law 92-463, notice is hereby given of the meetings of the National Cancer Advisory Board and its Subcommittees, January 29-February 1, 1984, National Cancer Institute, Building 31, C Wing, Conference Room 6, National Institutes of Health, Bethesda, Maryland 20205. Portions of the Board meeting and its Subcommittees will be open to the public to discuss committee business as indicated in the notice. Attendance by the public will be limited to space available.

Portions of these meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Mrs. Winifred Lumsden, the Committee Management Officer, NCI, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of the meetings, substantive program information and rosters of members, upon request.

Name of committee: *National Cancer Advisory Board.*

Dates of meeting: January 30-February 1, 1984.

Place of meeting: Building 31, C Wing, Conference Room 6, National Institutes of Health.

Open: January 30, 8:30 a.m.—recess, February 1, 8:30 a.m.—adjournment.

Agenda: Reports on activities of the President's Cancer Panel and the Director's Report on the National Cancer Institute; Update on Ovarian Cancer; Surgical Oncology; Consensus Conference; National Hospice Study; and reports on the NCAB Subcommittees.

Closed session: January 31, 8:30 a.m.—recess.

Closure reason: To review grant applications.

Name of committee: *Subcommittee on Organ Systems Program.*

Date of meeting: January 29, 1984.

Place of meeting: Building 31, C Wing, Conference Room 7, National Institutes of Health.

Open: January 29, 6:00 p.m.—adjournment.

Agenda: A discussion of the Organ Systems Program.

Name of committee: *Subcommittee on Cancer Control and the Community.*

Date of meeting: January 29, 1984.

Place of meeting: Building 31, C Wing, Conference Room 7, National Institutes of Health.

Open: January 29, 7:30 p.m.—adjournment.

Agenda: A discussion of NCAB interests in the Cancer Prevention and Control Program.

Name of committee: *ad hoc Subcommittee on Construction.*

Date of meeting: January 30, 1984.

Place of meeting: Building 31, C Wing, Conference Room 6, National Institutes of Health.

Closed: January 30, 7:30 p.m.—adjournment.

Closure reason: Review of grant applications.

Name of committee: *Subcommittee on Special Actions for Grants.*

Date of meeting: January 31, 1984.

Place of meeting: Building 31, C Wing, Conference Room 6, National Institutes of Health.

Closed: January 31, 8:30 a.m.—adjournment.

Closure reason: Review of grant applications.

Name of committee: *ad hoc Subcommittee on Innovations in Surgical Oncology.*

Date of meeting: January 31, 1984.

Place of meeting: Building 31, C Wing, Conference Room 7, National Institutes of Health.

Open: January 31, 7:30 p.m.—adjournment.

Agenda: To organize the subcommittee, scrutinize the grant process, and discuss the Surgical Oncology Program.

Dated: January 4, 1984.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

(Catalog of Federal Domestic Assistance Program Numbers: 13.392, project grants in cancer construction. 13.393, project grants in cancer cause and prevention. 13.394, project grants in cancer detection and diagnosis. 13.395, project grants in cancer treatment. 13.396, project grants in cancer biology. 13.397, project grants in cancer centers support. 13.398, project grants in cancer research manpower. 13.399, project grants and contracts in cancer control.)

[FR Doc. 84-933 Filed 1-11-84 8:45 am]

BILLING CODE 4160-01-M

Review of Contract Proposals; Meetings

Pursuant to Public Law 92-463, notice is hereby given for meetings of several committees of the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance

with the provisions set forth in Sections 552b(c)(4) and 552(c)(6), Title 5, U.S. Code and Section 10(d) of Public Law 92-463, for the review, discussion and evaluation of individual contract proposals. These proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20205 (301/496-5708) will furnish summaries of meetings and rosters of committee members upon request. Other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: Biometry and Epidemiology Contract Review Committee.

Dates: January 27, 1984.

Place: National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20205.

Times: Open: January 27, 9:00 a.m.—9:30 a.m.

Agenda: A review of administrative details.

Place: National Institutes of Health, Building 31C, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20205.

Times: Open: January 27, 9:00 a.m.—9:30 a.m.

Agenda: A review of administrative details.

Closed: January 27, 9:30 a.m.—adjournment.

Closure reason: To review contract proposals.

Executive Secretary: Dr. Wilna A. Woods, Westwood Building, Room 897, National Institutes of Health, Bethesda, MD 20205. Phone: 301/496-7153.

Name of Committee: Cancer Resources and Repositories Contracts Review Committee.

Dates: January 30-31, 1984.

Place: January 30, National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20205.

January 31, National Institutes of Health, Building 31, Conference Room 2, 9000 Rockville Pike, Bethesda, MD 20205.

Times: Open: January 30, 8:30 a.m.—9:00 a.m.

Agenda: A review of administrative details.

Closed: January 30, 9:00 a.m.—recess, January 31, 8:30 a.m.—adjournment.

Closure Reason: To review contract proposals.

Executive Secretary: Dr. Margaret W. Holmes, Westwood Building, Room 895, National Institutes of Health, Bethesda, MD 20205. Phone: 301/496-7421.

Dated: January 4, 1984.

Betty J. Beveridge,
Committee Management Officer, National
Institute of Health.

[FR Doc. 84-801 Filed 1-11-84; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-84-1330]

Privacy Act of 1974; Proposed Amendments to Systems of Records

AGENCY: Department of Housing and
Urban Development.

ACTION: Amendments to existing
Privacy Act systems of records.

SUMMARY: Pursuant to the provisions of
the Privacy Act of 1974, as amended by
the Debt Collection Act of 1982, the
Department is giving notice that it
intends to amend five Privacy Act
systems of records.

EFFECTIVE DATE: Amendments
pertaining to disclosure of information
to consumer reporting agencies are
effective upon publication of this notice
(January 12, 1984). Amendments
concerning administrative and salary
offset shall become effective without
notice 30 days from the publication date
of this notice (February 11, 1984), unless
comments are received on or before that
date which would result in a contrary
determination.

ADDRESS: Rules Docket Clerk, Room
10278, Department of Housing and
Urban Development, 451 Seventh Street
SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:
Arthur L. Stokes, Departmental Privacy
Act Officer, (202) 755-5320. (This is not a
toll-free number.)

SUPPLEMENTARY INFORMATION: Five
systems of records are being amended
to provide for compatible disclosures to
other Federal agencies for the purpose
of collecting debts owed the Federal
government through Administrative or
salary offset. These system notices are
also being amended to provide for
disclosures to consumer reporting
agencies to facilitate the collection of
debts pursuant to the provisions of 5
U.S.C. 552a(b)(12) and the Debt
Collection Act of 1982 (31 U.S.C. 3711(f)).
The systems are: (1) HUD/DEPT-2,
Accounting Records, published at 46 FR
54879 and previously amended at 46 FR
59315; (2) HUD/DEPT-34, Pay and Leave
Records of Employees, published at 46
FR 54889 and previously amended at 47
FR 15914; (3) HUD/DEPT-37, Personnel

Travel System, published at 46 FR 54889
and previously amended at 47 FR 39251;
(4) HUD/DEPT-62, Claim Collection
Records, published at 46 FR 54897; and
(5) HUD/DEPT-69, Intergovernmental
Personnel Act Assignment Records,
published at 46 FR 54902. The words "to
other Federal agencies for the purpose
of collecting debts owed the Federal
government by administrative or salary
offset" are added to the routine use
section of each system description.
Further, a new section entitled
"Disclosures to Consumer Reporting
Agencies" is added to each system
description. The notices are published
below in their entirety, as amended. The
prefatory statement containing General
Routine Uses applicable to most of the
Department's systems of records was
published at 46 FR 34322 (August 6,
1982). Appendix A, which lists the
addresses of HUD's Field Offices, was
published at 46 FR 34331 (August 6,
1982).

(5 U.S.C. 552a, 88 Stat. 1896; sec. 7(d)
Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., December 29,
1983.

Donald J. Keuch, Jr.,
Deputy Assistant Secretary for
Administration.

HUD/DEPT-2

SYSTEM NAME:

Accounting Records.

SYSTEM LOCATION:

Headquarters and field offices. For a
complete listing of these offices, with
addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors; mortgagees; grant/project
and loan applicants and recipients; HUD
personnel; vendors; brokers; bidders;
managers; tenants; individuals within
Disaster Assistance Programs; builders,
developers, contractors, and appraisers;
individuals writing to the Department;
employees on HUD/FHA projects;
investors; subjects of audit; closing
agents; former mortgagors and
purchasers of HUD-owned properties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lease and loan collection register;
schedules of payments receivable and
received; premiums due; claim files and
fee billing statements; escrow and
Certificates of Deposit files; cash flow
and budget control files; earnest money
register; purchase order log; imprest
fund; area managers' accounting
records; restitution, maintenance, and
market expenses; distributive shares
records; salary; savings bonds; bills of
lading; vouchers; invoices; receipts;

cancelled checks; mortgages, builders
and contractors financial statements,
records and audit reports; requests for
termination of home mortgage
insurance; deposit and receipt records;
detailed accounting reports concerning
diversified payments, disbursements,
and cancelled checks; repurchases of
mortgages; adjustments from recoveries,
manual adjustments, and defaults;
acquired home property records; sales
closing papers; statements of accounts;
tax records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

See 113 of the Budget and Accounting
Act of 1950 31 U.S.C. 86a. (Pub. L. 81-
784).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Users paragraphs in
prefatory statement. Other routine uses:
U.S. Treasury—for disbursements and
adjustments thereof; Internal Revenue
Service—for reporting of sales
commissions and to obtain current
mailing address; General Accounting
Office, General Services Administration,
Department of Labor, Labor housing
authorities, and taxing authorities—for
audit, accounting and financial
reference purposes; mortgagee lenders—for
accounting and financial reference
purposes; HUD contractor—for
mortgage note servicing; to other
Federal agencies for the purpose of
collecting debts owed to the Federal
Government by administrative or salary
offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

*Disclosures pursuant to 5 U.S.C.
552a(b)(12).* Pursuant to 5 U.S.C.
552a(b)(12), disclosures may be made to
a consumer reporting agency as defined
in the Fair Credit Reporting Act (15
U.S.C. 1681a(f) or the Federal Claims
Collection Act of 1966 31 U.S.C.
3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Desks; safes; locked filing cabinets;
central files; book cases; ledger trays
and binders; tables; magnetic tape/disc/
drum.

RETRIEVABILITY:

By Social Security number; name;
case file number; schedule number;
audit number; control number; receipt
number; voucher number; contract
number; address.

SAFEGUARDS:

Security checks, limited authorization and access, security guards; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints - employed with regard to accessing the records.

RETENTION AND DISPOSAL:

GSA schedules of retention and disposal; destruction after six months; transfer to either a Federal Records Center or Archives.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURE:

The Department's rule for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Department Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451, Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; other individuals; current or previous employers; credit bureaus; financial institutions; private corporations or firms doing business with HUD; Federal and non-federal governmental agencies; HUD personnel.

HUD-DEPT-34**SYSTEM NAME:**

Pay and Leave Records of Employees.

SYSTEM LOCATION:

All Department offices. For a complete listing of offices, with addresses, see Appendix A

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and separated HUD employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number and employee number, grade, step, and salary; organization, retirement of FICA data as applicable; Federal, State and local tax deductions; regular and optional Government life insurance deduction(s), health insurance deduction and plan or code; cash award data; jury duty data; military leave data; pay differentials; union dues deductions; allotments by type and amount; financial institution code and employee account number; leave status and data of all types (including annual, compensatory, jury duty, maternity, military, retirement, disability; sick, transferred, and without pay); time and attendance records, including sign in/ sign out sheets and related documentation, leave applications and reports, individual daily time reports, adjustments to time and attendance, overtime reports, supporting data, such as medical certificates, number of regular, overtime, holiday, Sunday and other hours worked; pay period number and ending dates; cost of living allowances; mailing address; co-owner and/or beneficiary of bonds, marital status and number of dependents; "Notification of Personal Actions," Congressional requests or inquiries on the pay/leave problems of employees; court orders; personnel/payroll data requests; information about the problem received from the employee, an Administrative Office, or from a Personnel employee, including supporting documentation; written correspondence pertaining to pay/leave problems; and related information or documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: Transmittal of data to U.S. Treasury to effect issuance of paycheck to employees and distribution of pay according to employee directions for saving bonds, allotments, financial

institutions and other authorized purposes. Annual reporting of W-2 statements to Internal Revenue Service, Social Security Administration, the individual, and taxing authorities of States, the District of Columbia, territories, possessions, and local government, except Social Security Numbers will be reported only to such authorities that have satisfied the requirements set forth in Section 7(a)(2)(B) of the Privacy Act of 1974. To the Office of Personnel Management concerning pay, benefits, retirement deductions, and other information necessary for the Office to carry on its Government-wide personnel functions; to GAO—for audit and to resolve employee appeals on pay/leave decisions; to other Federal government agencies—to facilitate employee transfers; to State agencies—to verify workmen's compensation injury claims; time and attendance data—to contractor for scanning, keying, producing error lists, and producing input media; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**STORAGE:**

Manual, machine-readable and magnetic media.

RETRIEVABILITY:

Name of employee; Social Security Number.

SAFEGUARD:

Physical, technical, and administrative security is maintained with all storage equipment and/or rooms locked when not in use. Admittance, when open, is restricted to authorized personnel only. All personnel who handle or maintain records as a part of their official duties are instructed and cautioned on the confidentiality of the records. Manual files kept in lockable desks, file cabinets and safes.

RETENTION AND DISPOSAL:

Retained on site until after GAO audit, then disposed of, or transferred to

Federal Records Storage Centers in accordance with fiscal records program approval by GAO, as appropriate, or General Records Schedules of GSA. Generally, records on employee pay-leave problems are retained in the Personnel Systems and Payroll Division in Headquarters for three years after a decision has been made on the problem. In payroll, the retention schedule for these records is the same as that for employee pay and leave records. In Personnel Offices, problem pay/leave records are retained for six months after a decision has been made on the problem, and then disposed of.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Systems and Payroll Division, Office of Personnel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with procedures in 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate locations. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURE:

The Department's rules for contesting the contents of records and appealing initial denials, by the individuals concerned appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A, (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Officer of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410

RECORD SOURCE CATEGORIES:

Subject individuals, supervisors, timekeepers, official personnel records, previous employers, or other Federal government agencies, Headquarters or Regional Office personnel responsible for solving pay/leave problems. Area and Service Office personnel who have information about pay/leave problems, banks, other financial institutions, and courts.

HUD/DEPT-37

SYSTEM NAME:

Personnel Travel System.

SYSTEM LOCATION:

All Department offices maintain employee travel records. For a complete listing of offices, with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

All travel records, including vouchers, requests, advances, receipts for requests, orders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 7(d) of the Department of Housing and Urban Development Act of 1965, Pub. L. 89-174; Budget and Accounting Act of 1950, 31 U.S.C. 66a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USERS:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to Treasury—for payment of vouchers; vouchers and receipts are available to GAO and GSA for audit purposes and vouchers are verified by private transporters; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

In file folders and on magnetic tape/disc/drum.

RETRIEVABILITY:

Almost always retrievable by name, occasionally by Social Security number.

SAFEGUARDS:

Lockable desks or file cabinets; computer records are maintained in secure areas with access limited to authorized personnel and technical restraints employed with regard to accessing the records.

RETENTION AND DISPOSAL:

Records are active and kept up-to-date. Files purged in accordance with HUD Handbook.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

For Transportation Requests: Director, Office of Administrative Services, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appeared in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of record, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individual and supervisors.

HUD/DEPT-62

SYSTEM NAME:

Claims Collection Records.

SYSTEM LOCATION:

Headquarters and field offices. For a complete listing of these offices with addresses, see Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Mortgagors; mortgagees; grant/project and loan applicants and recipients; HUD personnel; vendors; brokers; bidders; managers; tenants; builders; developers.

contractors, and appraisers; employees on HUD/FHA projects; investors; subjects of audit; closing agents; former mortgagors and purchasers of HUD-owned properties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Lease and loan collection register; schedules of payments receivable and received; premiums due; claim files; fee billing statements; escrow and Certificates of Deposit files; cash flow and budget control files; earnest money register; purchase order log; imprest fund; area managers' accounting records; restitution, maintenance, and market expenses; bills of lading; vouchers; invoices; receipts; mortgagors, builder's and contractor's financial statements, records and audit reports; deposit and receipt records; disbursements and cancelled checks; repurchases of mortgages; adjustments from recoveries, defaults, acquired home property records; sales closing papers; statements of accounts; tax records; certifications and applications for assistance; and notice of court action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Section 1, Pub. L. 89-508).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: Justice Department—for prosecution of fraud revealed in the course of claims collection efforts, and for the institution of foreclosure or other proceedings to effect collection of claims; FBI—for investigation of possible fraud revealed in the course of claims collection efforts; General Accounting Office—for the institution of proceedings to effect collection of claims; other Federal Agencies—to facilitate collection of claims against Federal employees; Office of Personnel Management—for offsetting retirement payments; to commercial credit bureaus—to facilitate claims collection consistent with Federal Claims Collection Standards, 4 CFR 102.4; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims

Collection Act of 1966, 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Desks; safes; locked file cabinets.

RETRIEVABILITY:

Name, Social Security Number, Project Name and Number, and Contract Number.

SAFEGUARDS:

Locked files; limited access by authorized individuals.

RETENTION AND DISPOSAL:

GSA schedules of retention and disposal; destruction one year after statute of limitation expiration.

SYSTEM MANAGER AND ADDRESS:

Department Claims Officer, Office of Finance and Accounting, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A. (ii) In relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Subject individuals; other individuals; current or previous employers; credit bureaus; financial institutions; private corporations or firms doing business

with HUD; Federal and non-Federal government agencies; HUD personnel

HUD/DEPT-69

SYSTEM NAME:

Intergovernmental Personnel Act Assignment Records.

SYSTEM LOCATION:

Headquarters and field offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current or former employees of State or local governments, educational institutions, Indian tribal governments, or other eligible organizations who are presently on or have completed a detail with the Department of Housing and Urban Development (HUD) under the provisions of the Intergovernmental Personnel Act (IPAP).

CATEGORIES OF RECORDS IN THE SYSTEM:

These records are comprised of a copy of the assignee's IPA agreement between HUD and a State or local government, educational institution, Indian tribal government, or other eligible organization; resume, personal qualifications statement, and background information about the assignee(s); records of interviews with assignee(s) and any required assignment evaluations and reports; and any documents which affect the status of the assignment such as extensions, amendments and terminations of contracts. The following data will be included in the records: Name of employee, social security number, date of birth, home address, agency employed by, job title, name and title of immediate supervisor, office telephone number, annual salary, date employed by agency, position to which assignment will be made, type of assignment, and period of assignment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Intergovernmental Personnel Act of 1970 (84 Stat. 1909), 5 U.S.C. 3371-3376, and E.O. 11589.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Merit System Protection Board, Federal Labor Relations Authority, and the Equal Employment Opportunity Commission when requested in performance of authorized duties. To Office of Personnel Management for personnel inspections of the Department; to other Federal agencies for the purpose of collecting debts owed to the Federal Government by administrative or salary offset.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Pursuant to 5 U.S.C. 552a(b)(12), disclosures may be made to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.**STORAGE:**

Paper records in file folders.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

Files are kept in a secured area, with access limited to authorized personnel.

RETENTION AND DISPOSAL:

Records are retained in accordance with officially approved mandatory standards contained in HUD Handbooks 2225.6 and 2228.2.

SYSTEM MANAGERS(S), AND ADDRESS:

Director, Employment Planning and Standards Division, Office of Personnel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

NOTIFICATION PROCEDURE:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the appropriate location, in accordance with 24 CFR Part 16. A list of all locations is given in Appendix A.

RECORD ACCESS PROCEDURES:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A.

CONTESTING RECORD PROCEDURES:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) in relation to contesting contents of records, the Privacy Act Officer at the appropriate location. A list of all locations is given in Appendix A, (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and

Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

RECORD SOURCE CATEGORIES:

Participating individual; individual's permanent employing organization; Department personnel files and records.

[FR Doc. 84-823 Filed 1-11-84; 8:45 am]

BILLING CODE 4210-32-M

[Docket No. N-84-1329]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.
ACTION: Notices.

SUMMARY: The proposed information collection requirement described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Neal, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Acting Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, telephone (202) 755-5310. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S.

Cristy, Acting Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:
Proposal: Request for Final Endorsement of Credit Instrument

Office: Housing

Form Number: FHA-2023

Frequency of submission: On Occasion

Affected Public: Businesses or Other For-Profit

Estimated Burden Hours: 698

Status: Extension

Contact: Linda D. Cheatham, HUD (202) 426-7113 or Robert Neal, OMB (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 29, 1983.

Proposal: Schedule of Subscribers Addendum for Construction Loan Certification

Office: Government National Mortgage Association

Form Number: HUD-1735, HUD-1738, HUD-11739, and HUD-11745

Frequency of submission: On Occasion

Affected Public: Businesses or Other For-Profit

Estimated Burden Hours: 262

Status: New

Contact: Patricia Gifford, HUD (202) 755-5550 or Robert Neal, OMB (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 29, 1983.

Proposal: Technical Assistance Recipient Questionnaire

Office: Community Planning and Development

Form Number: HUD-40011

Frequency of submission: On Occasion

Affected Public: State or Local

Governments, Businesses or Other For-Profit, and Non-Profit Institutions

Estimated Burden Hours: 0,000

Status: Extension

Contact: Harold Goldblatt, HUD, (202) 755-6186 or Robert Neal, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 29, 1983.

Proposal: Technical Suitability of Products

Office: Housing
Form Number: None
Frequency of submission: On Occasion
Affected Public: Businesses or Other For-Profit and Federal Agencies or Employees
Estimated Burden Hours: 8,000
Status: New
Contact: Donald K. Baxter, HUD, (202) 755-5718 or Robert Neal, OMB, (202) 395-7316
Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: December 29, 1983.

Proposal: Section 3—Affirmative Action Plan

Office: Fair Housing and Equal Opportunity
Form Number: None
Frequency of submission: On Occasion
Affected Public: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 7,500
Status: New
Contact: Turner Russell, HUD, (202) 755-5673 or Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).
Dated: December 29, 1983.

Proposal: Section 3—Participation in Other Federal Programs Report

Office: Fair Housing and Equal Opportunity
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 2,500
Status: New

Contact: Turner Russell, HUD, (202) 755-5673 or Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 29, 1983.

Proposal: Section 3—Monitoring and Compliance Report

Office: Fair Housing and Equal Opportunity
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Government, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 7,500

Status: New
Contact: Turner Russell, HUD, (202) 755-5673 or Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 29, 1983.

Proposal: Voluntary Compliance Agreement Report

Office: Fair Housing and Equal Opportunity
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments and Non-Profit Institutions
Estimated Burden Hours: 18,000
Status: New
Contact: Laurence D. Pearl, HUD, (202) 755-5904 or Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 29, 1983.

Proposal: Section 3—Statement of Work Force Needs

Office: Fair Housing and Equal Opportunity
Form Number: None
Frequency of Submission: On Occasion
Affected Public: State or Local Governments, Businesses or Other For-Profit, Non-Profit Institutions, and Small Businesses or Organizations
Estimated Burden Hours: 2,500
Status: New

Contact: Turner Russell, HUD, (202) 755-5673 or Robert Neal, OMB, (202) 395-7316.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 29, 1983.

Lea Hamilton,
Director, Office of Information Policies and Systems.

[FR Doc. 84-822 Filed 1-11-84; 8:45 am]
BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

December 29, 1983.

This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the North Fork Mono Band of Indians, c/o Mr. Ron Goode, P.O. Box 49, North Fork, California 93643, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs on September 7, 1983. The petition was forwarded and signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be by mail to the petitioner and other interested parties at the appropriate time.

Under § 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the Bureau of Indian Affairs files.

The petition may be examined by appointment in the Division of Tribal Government Services, Bureau of Indian Affairs, Department of the Interior, 18th and C Streets, N.W., Washington, D.C. 20245.

John W. Fritz,
Acting Assistant Secretary—Indian Affairs.

[FR Doc. 84-700 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management

[A-17000-H]

Arizona; Termination of Segregative Effect

January 6, 1984.

1. On May 13, 1971, August 10, 1971, January 17, 1972, February 23, 1972, October 31, 1980, March 23, 1981, and May 4, 1981, the State of Arizona filed applications to select certain public lands in lieu of school lands that were encumbered by other rights or reservations before the State's title could attach (43 U.S.C. 851-852). Effective August 27, 1981, said lands were segregated from appropriation under the public land laws, including the mining, but not the mineral leasing laws (46 FR, No. 144; pp 38508-38509).

The State has withdrawn its applications as to the following described lands:

Gila and Salt River Meridian, Arizona
T. 4 N., R. 1 E.

Sec. 3: Lots 1-3, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$.

T. 5 N., R. 1 E.
Sec. 28: SW $\frac{1}{4}$ NE $\frac{1}{4}$;

- Sec. 30: S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
 Sec. 33: N $\frac{1}{2}$ NE $\frac{1}{4}$;
 Sec. 34: All.
 T. 7 N., R. 2 E.,
 Sec. 15: Unpatented land west of I-17
 highway in E $\frac{1}{2}$;
 Sec. 26: N $\frac{1}{2}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 11 N., R. 2 E.,
 Sec. 23: Lots 11-13, inclusive, 20, 32.
 T. 5 N., R. 3 E.,
 Sec. 1: SE $\frac{1}{4}$ NE $\frac{1}{4}$.
 T. 8 N., R. 3 E.,
 Sec. 35: E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$.
 T. 7 N., R. 3 E.,
 Sec. 30: Lots 1, 2.
 T. 5 N., R. 4 E.,
 Sec. 6: Lots 6, 7, SW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 7: Lot 1.
 T. 6 N., R. 4 E.,
 Sec. 8: NE $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 9: Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$.
 T. 1 N., R. 8 E.,
 Sec. 36: S $\frac{1}{2}$ SE $\frac{1}{4}$.
 T. 1 N., R. 15 $\frac{1}{2}$ E.,
 Sec. 23: NE $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 24: SW $\frac{1}{4}$ NW $\frac{1}{4}$;
 Sec. 26: W $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$,
 W $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 27: SE $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$.
 T. 14 N., R. 2 W.,
 Sec. 3: W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 4: S $\frac{1}{2}$;
 Sec. 9: N $\frac{1}{2}$ N $\frac{1}{2}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$;
 Sec. 10: NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The areas described aggregate 2,840.09 in Gila, Maricopa, Pinal, and Yavapai Counties.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on August 27, 1983.

Appropriation of lands under the general mining laws between August 27, 1981 and August 26, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, vested no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the

Interior, 2400 Valley Bank Center,
 Phoenix, Arizona 85073 (602-261-4774).
 Mario L. Lopez,
 Chief, Branch of Lands and Minerals
 Operations.

[FR Doc. 84-779 Filed 1-11-84; 8:45 am]
 BILLING CODE 4310-32-M

[A-17000-X]

Arizona; Termination of Segregative Effect

January 6, 1984.

1. On July 2, 1981, the State of Arizona filed application to select certain public lands in lieu of school lands that were encumbered by other rights or reservations before the State's title could attach (43 U.S.C. 851-853). Effective August 27, 1981, said lands were segregated from appropriation under the public land laws, including the mining, but not the mineral leasing laws (46 FR, No. 144; pp 38508-38509).

The State has withdrawn its application as to the following described lands:

Gila and Salt River Meridian, Arizona,

- T. 10 N., T. 2 E.,
 Sec. 2: That part of Lots 2 and 3 lying between I-17 R/W and Bloody Basin Road.
 T. 11 N., T. 2 E.,
 Sec. 2: Lot 5, N $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$, SW $\frac{1}{4}$ E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 8: E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$;
 Sec. 17: W $\frac{1}{2}$ W $\frac{1}{2}$ E $\frac{1}{2}$;
 Sec. 26: That part of W $\frac{1}{2}$ W $\frac{1}{2}$ east of I-17 R/W;
 Sec. 35: Part of S $\frac{1}{2}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$ lying between I-17 R/W and Bloody Basin Road.
 T. 12 N., R. 2 E.,
 Sec. 28: S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{2}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$;
 Sec. 33: E $\frac{1}{2}$ E $\frac{1}{2}$ NW $\frac{1}{4}$.

The areas described aggregate 439.63 acres in Yavapai County.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on August 27, 1983.

Appropriation of lands under the general mining laws between August 27, 1981 and August 26, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C.

Section 38, vested no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquires concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602-261-4774).
 Mario L. Lopez,
 Chief, Branch of Lands and Minerals
 Operation.

[FR Doc. 84-778 Filed 1-11-84; 8:45 am]
 BILLING CODE 4310-32-M

[A-6727]

Arizona; Termination of Segregative Effect

January 6, 1984.

1. On January 17, 1972, the State of Arizona filed application to select certain public lands in lieu of school lands that were encumbered by other rights or reservations before the State's title could attach (43 U.S.C. 851-852). Effective August 27, 1981, said lands were segregated from appropriation under the public land laws, including the mining, but not the mineral leasing laws (46 FR, No. 144; pp 38508-38509).

The State has withdrawn its application as to the following described lands:

Gila and Salt River Meridian, Arizona,

- T. 1 N., R. 8 E.,
 Sec. 8: S $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
 Sec. 9: S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$.

The areas described aggregate 580 acres in Pinal County.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on August 27, 1983.

Appropriation of lands under the general mining laws between August 27, 1981 and August 26, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, vested no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law

where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602-261-4774).

Mario L. Lopez,
Chief, Branch of Lands and Minerals
Operations.

[FR Doc. 84-777 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-32-M

[A-1700-F]

Arizona; Termination of Segregative Effect

January 6, 1984.

1. On May 15, 1972, May 24, 1972, October 31, 1980, March 23, 1981, and May 4, 1981, the State of Arizona filed applications to select certain public lands in lieu of school lands that were encumbered by other rights or reservations before the State's title could attach (43 U.S.C. 851-852). Effective August 27, 1981, said lands were segregated from appropriation under the public land laws, including the mining, but not the mineral leasing laws (46 FR No. 144; pp 38508-38509).

The State has withdrawn its applications as to the following described lands:

Gila and Salt River Meridian, Arizona

- T. 5 S., R. 5 E.,
Sec. 13: Lots 6, 7, S $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ S E $\frac{1}{4}$;
Sec. 24: Lot 1, E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$.
T. 5 S., R. 6 E.,
Sec. 17: W $\frac{1}{2}$;
Sec. 18: Lots 4, 5, E $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$.
T. 5 S., R. 10 E.,
Sec. 20: E $\frac{1}{2}$;
Sec. 21: NE $\frac{1}{4}$, S $\frac{1}{2}$.
T. 16 S., R. 10 E.,
Sec. 4: Lot 15.
T. 12 S., R. 11 E.,
Sec. 28: NE $\frac{1}{4}$ NE $\frac{1}{4}$.
T. 13 S., R. 11 E.,
Sec. 17: SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 29: NE $\frac{1}{4}$.
T. 14 S., R. 12 E.,
Sec. 29: Lots 1-52 inclusive, NE $\frac{1}{4}$;
Sec. 30: Lots 9-72 inclusive;

- Sec. 35: N $\frac{1}{2}$ SW $\frac{1}{4}$.
T. 15 S., R. 12 E.,
Sec. 1: Lots 24-31 inclusive;
Sec. 3: Lots 1, 2;
Sec. 4: Lot 1, SE $\frac{1}{4}$ NE $\frac{1}{4}$;
Sec. 20: S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$, S $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 22: NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 23: NE $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 24: SW $\frac{1}{4}$ NW $\frac{1}{4}$.
T. 12 S., R. 13 E.,
Sec. 19: Lots 3, 4, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ W $\frac{1}{2}$, SE $\frac{1}{4}$.
T. 14 S., R. 13 E.,
Sec. 19: SE $\frac{1}{4}$.
T. 22 S., R. 21 E.,
Sec. 20: E $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 34: S $\frac{1}{2}$ NE $\frac{1}{4}$.
T. 22 S., R. 22 E.,
Sec. 4: Lots 11, 23-33 inclusive, 36, 39, 40, 45, 46, 50, 57, 59, 62, 63, 66-70 inclusive, 72, 73, 76, 77, 82-85 inclusive, 87-90 inclusive, 93-103 inclusive.

The areas described aggregate 5,069.75 acres in Cochise, Pima, and Pinal Counties.

2. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the lands described in paragraph 1 were opened to the operation of the public land laws including the mining laws (Ch. 2, Title 30 U.S.C.) on August 27, 1983.

Appropriation of lands under the general mining laws between August 27, 1981 and August 26, 1983 was unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. Section 38, vested no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

3. The lands have been and will continue to be open to applications and offers under the mineral leasing laws.

4. Inquiries concerning the lands should be addressed to the Bureau of Land Management, Department of the Interior, 2400 Valley Bank Center, Phoenix, Arizona 85073 (602-261-4774).

Mario L. Lopez,
Chief, Branch of Lands and Minerals
Operations.

[FR Doc. 84-770 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-32-M

[S 1683 WR, CA 7053 WR, CA 7054 WR, and CA 7055 WR]

California; Proposed Continuation of Withdrawals of Land; Opportunity for Public Hearing

January 6, 1984.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action provides notice and opportunity for public hearing of the proposed continuation of four withdrawals affecting a total of 354.82 acres of public and reconveyed land withdrawn in connection with the Orland Reclamation Project. The lands remain closed to surface entry and mining but have been and will remain open to mineral leasing.

FOR FURTHER INFORMATION CONTACT: Dianna Storey, California State Office, (916) 484-4431.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 204(z) of the Federal Land Policy and Management Act of 1976, 90 Stat. 2754; 43 U.S.C. 1714, the Bureau of Reclamation, Mid-Pacific Region, proposes to continue four existing withdrawals of land for a period of 50 years. The withdrawals, located in Glenn County, are described as follows:

Mount Diablo Meridian

S 1683 WR

Public Land Order No. 4652 of April 18, 1969:

- T. 20 N., R. 6 W.,
Sec. 16, E $\frac{1}{2}$ NE $\frac{1}{4}$.

The area described contains 80 acres.

CA 7053 WR

Secretarial Order of November 16, 1917:

- T. 20 N., R. 6 W.,
Sec. 21, E $\frac{1}{2}$ NE $\frac{1}{4}$.

The area described contains 89 acres.

CA 7054 WR

Secretarial Order of June 16, 1909:

- T. 22 N., R. 2 W.,
Sec. 18, lot 3.
T. 22 N., R. 3 W.,
Sec. 14, NE $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described aggregate 74.82 acres.

CA 7055 WR

Secretarial Order of December 28, 1903:

- T. 18 N., R. 6 W.,
Sec. 35, SW $\frac{1}{4}$ NE $\frac{1}{4}$ and W $\frac{1}{2}$ SE $\frac{1}{4}$.

The areas described contains 120 acres.

1. The purpose of the withdrawals is to protect lands for the Orland Reclamation Project. The withdrawals segregate the lands from operation of the public land laws generally, including the mining laws, but not from

applications and offers under the mineral leasing laws. No change in the segregative effect of the withdrawals or use of the land is proposed.

2. Notice is hereby given that an opportunity for a public hearing is afforded in connection with the proposed withdrawal continuations. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal continuations must submit a written request to the Chief, Branch of Lands and Minerals Operations within 90 days from the date of publication of this notice. If the State Director, Bureau of Land Management, in his discretion, determines that a public hearing is justified, a notice of the time and place will be published in the Federal Register at least 30 days prior to the scheduled date of the meeting.

3. In addition, for a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Lands and Minerals Operations, California State Office.

4. 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 lands and their resources, and will review the withdrawal rejustification to ensure that, (1) continuation would be consistent with the statutory objectives of the programs for which the lands are dedicated; (2) the areas involved are the minimum essential to meet the desired needs; (3) the maximum concurrent utilization of the lands is provided for; and (4) an agreement is reached on the concurrent management of the lands and their resources.

5. The authorized officer will also prepare a report for consideration by the Secretary of the Interior, the President, and the Congress who will determine whether or not the withdrawals will be continued, and if so, for how long. The determination on the continuation of the withdrawals will be published in the Federal Register. The existing withdrawals will continue until such final determination is made.

All communications in connection with the proposed withdrawal continuations and opportunity for public hearing should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, California State Office,

Room E-2841, 2800 Cottage Way,
Sacramento, California 95825.

Eleanor Wilkinson,
Chief, Lands and Locatable Minerals Section
Branch of Lands and Minerals Operations.

[FR Doc. 84-774 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-84-M

Coos Bay District Advisory Council; Meeting

AGENCY: Bureau of Land Management,
Interior.

ACTION: Meeting of Coos Bay District
Advisory Council.

SUMMARY: Notice is hereby given in accordance with Pub. L. -579 and 43 CFR Part 1780 that a meeting of the Coos Bay District Advisory Council will be held on Friday, February 17, 1984. The meeting will be held in the conference room of the Coos Bay District Office, 333 South Fourth Street, Coos Bay, OR, beginning at 10:00 a.m.

Agenda

The agenda for the meeting will include:

1. A discussion of old business.
2. A presentation by District staff on some of the problems associated with the extension BLM road system in the District.
3. A discussion of possible ways to improve the situation, including a District proposal for road closures.
4. Lunch.
5. A discussion among the council members to develop a recommendation to the District Manager concerning the proposed road closures.
6. Arrangements for the next meeting.

The meeting is open to the public and news media. Interested persons may make oral statements to the council during a 30-minute period immediately following lunch, or file written statements for the council's consideration. Anyone wishing to make an oral statement must notify the District Manager by close of business on Friday, February 3, 1984 (Telephone 503-269-5880).

ADDRESS: Bureau of Land Management,
Coos Bay District Office, 333 South
Fourth Street, Coos Bay, OR 97420.

Summary minutes of the meeting will be maintained at the District Office and made available during regular business hours (7:45 a.m. to 4:30 p.m.) for public inspection or reproduction at the cost of duplication.

Dated: January 3, 1984.

Robert T. Dale,
District Manager.

[FR Doc. 84-789 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-33-M

[M-57793]

Montana; Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management,
Interior.

ACTION: Opening of Public Lands.

SUMMARY: In an exchange of lands in Phillips and Carbon Counties, Montana, the United States acquired the following tract of land in the Custer National Forest:

Principal Meridian, Montana

T. 8 S., R. 26 E.,
Secs. 5, 8, and 9—parts within HES.-169.
Containing 159.96 acres.

SUPPLEMENTARY INFORMATION: Upon acceptance of title to the above-described lands, they became part of the Custer National Forest and are subject to all the laws, rules and regulations applicable thereto. At 10 a.m. on February 15, 1984, the lands shall be open to such forms of disposition as may by law be made of national forest lands.

Inquiries concerning the lands should be addressed to the Forest Supervisor, Custer National Forest, P.O. Box 2556, Billings, Montana 59103.

James Binando,
Chief, Branch of Land Resources.

January 6, 1984.
[FR Doc. 84-775 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-DN-M

Rock Springs District Advisory Council; Meeting

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of Meeting of Rock
Springs District Advisory Council.

DATE: February 2, 1984.

ADDRESS: Rock Springs District Office,
Bureau of Land Management, U.S. 191
North, Rock Springs, Wyoming.

FOR FURTHER INFORMATION CONTACT:
Donald H. Sweep, District Manager,
Rock Springs District, Bureau of Land
Management, P.O. Box 1869, Rock
Springs, Wyoming 82902-1869, (307-382-
5350).

SUPPLEMENTARY INFORMATION: This
meeting of the Rock Springs District
Advisory Council will convene at 10:00
a.m. in the District Office Conference
Room at the above address.

The agenda items are:

Grazing Management-Cooperative
Management Agreements
Known Geologic Structures Designation
Status

Sodium Concessionary Leasing Plans
Green River-Hamms Fork Coal Leasing
Status
Kemmerer Resource Management Plan Status
FY 1984 Wild Horse Program Status
Public comment period and plans for next
meeting.

Donald H. Sweep,
District Manager.

[FR Doc. 84-790 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-22-M

[C-0102703]

**Colorado; Proposed Continuation
Amendment to Notice of Proposed
Withdrawal Fryingpan-Arkansas
Project; Correction**

January 3, 1984.

In Federal Register of Wednesday,
September 28, 1983, paragraph 2, on
page 44273, column 1, after the
description for T. 11 S., R. 80 W., 6th
P.M., amend description to include:

- T. 11 S., R. 81 W.,
Sec. 24, that portion of lot 9 south of State
Highway 82.
T. 8 S., R. 84 W.,
Sec. 7, lots 3, 4, and E $\frac{1}{2}$ SW $\frac{1}{4}$;
Sec. 11, approximately 2.4 acres in the
southeast corner of lot 6;
Sec. 16, N $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$, N $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$
NE $\frac{1}{4}$, NW $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ N $\frac{1}{2}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$,
S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$, and NW $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 17, S $\frac{1}{2}$ NE $\frac{1}{4}$, and N $\frac{1}{2}$ NW $\frac{1}{4}$;
Sec. 18, NW $\frac{1}{4}$, and N $\frac{1}{2}$ NE $\frac{1}{4}$.

Robert D. Dinsmora,
Chief, Branch of Lands and Minerals
Operations.

[FR Doc. 84-791 Filed 1-11-84; 8:45 am]
BILLING CODE 7310-J8-M

[AA-48110-V]

**Alaska; Proposed Reinstatement of a
Terminated Oil and Gas Lease**

January 5, 1984.

In accordance with Title IV of the
Federal Oil and Gas Royalty
Management Act (Pub. L. 97-451), a
petition for reinstatement of oil and gas
lease AA-48110-V has been timely filed
for the following lands:

Kateel River Meridian
T. 21 S., R. 22E.,
Sec. 5, NW $\frac{1}{4}$ SE $\frac{1}{4}$.
(40 acres).

The proposed reinstatement of the
lease will be under the same terms and
conditions of the original lease, except
the rental will be increased to \$5 per
acre per year, and royalty increased to
16 $\frac{2}{3}$ percent. The \$500 administrative
fee and the cost of publishing this Notice
have been paid. The required rentals

and royalties accruing from September
1, 1983, the date of termination, have
been paid.

Having met all the requirements for
reinstatement of lease AA-48110-V as
set out in Section 31 (d) and (e) of the
Mineral Leasing Act of 1920 (30 U.S.C.
188), the Bureau of Land Management is
proposing to reinstate the lease,
effective March 1, 1984, subject to the
terms and conditions cited above.

Dated: January 5, 1984.

Robert E. Sorenson,
Chief, Branch of Mineral Adjudication.

[FR Doc. 84-704 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-04-M

[AA-48110-W]

**Alaska; Notice of Proposed
Reinstatement of a Terminated Oil and
Gas Lease**

January 5, 1984.

In accordance with Title IV of the
Federal Oil and Gas Royalty
Management Act (Pub. L. 97-451), a
petition for reinstatement of oil and gas
lease AA-48110-W has been timely filed
for the following lands:

Kateel River Meridian

T. 21 S., R. 22 E.,
Sec. 5, NE $\frac{1}{4}$ SW $\frac{1}{4}$.
(40 acres).

The proposed reinstatement of the
lease will be under the same terms and
conditions of the original lease, except
the rental will be increased to \$5 per
acre per year, and royalty increased to
16 $\frac{2}{3}$ percent. The \$500 administrative
fee and the cost of publishing this Notice
have been paid. The required rentals
and royalties accruing from September
1, 1983, the date of termination, have
been paid.

Having met all the requirements for
reinstatement of lease AA-48110-W as
set out in Section 31 (d) and (e) of the
Mineral Leasing Act of 1920 (30 U.S.C.
188), the Bureau of Land Management is
proposing to reinstate the lease,
effective March 1, 1984, subject to the
terms and conditions cited above.

Dated: January 5, 1984.

Robert E. Sorenson,
Chief, Branch of Mineral Adjudication.

[FR Doc. 84-705 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-04-M

[A-18905-E]

Arizona; Notice of Conveyance

December 29, 1983.

Notice is hereby given that the
following described land has been sold

pursuant to sections 203 and 209 of the
Federal Land Policy and Management
Act of 1976 for \$61,500 at public auction
held at Tonopah, Arizona, on September
22, 1983.

Gila and Salt River Meridian, Arizona

T. 1 S., R. 9 W.,

Sec. 7, lots 1, 2, 3, 4, E $\frac{1}{2}$ W $\frac{1}{2}$ comprising
302.96 acres in Maricopa County.

The purpose of this notice is to inform
the public and interested State and local
government officials of the transfer of
the land out of Federal ownership.

Mario L. Lopez,

Chief, Branch of Lands and Minerals
Operations.

[FR Doc. 84-702 Filed 1-11-84; 8:45 am]
BILLING CODE 4210-32-M

**North Dakota; Call for Expressions of
Leasing Interest in Coal for the Fort
Union Coal Region**

AGENCY: Bureau of Land Management
(BLM), Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land
Management is asking the public,
industry, small business, public bodies,
and state and local governments to
identify areas in North Dakota where
there is interest in leasing federal coal.
In accordance with 43 CFR 3420.3-2, this
and other information gathered by the
BLM will be used to delineate
preliminary tracts which can be
considered for possible leasing in the
next federal coal lease sale in the
region, currently scheduled for June
1986.

The lands open to expressions of
leasing interest at this time have been
found acceptable for further leasing
consideration in the following
management framework plans (MFPs):
West-Central North Dakota, McKenzie-
Williams, and Southwest North Dakota.
Maps showing the areas acceptable for
further consideration are available from
the BLM Dickinson District Office.

On the basis of the MFPs,
approximately 489,920 acres are
available for expressions of leasing
interest. (See Table I for a breakdown
by MFP area.)

Not all of this acreage has undergone
complete application of the MFP coal
"screens". In the Southwest and
McKenzie-Williams MFP areas, further
application of wildlife and cultural
resource screens may result in excluding
some lands from further consideration
for leasing. For more information on
this, those interested are urged to

contact the BLM Dickinson District Office.

Responses to this Notice will be accepted until February 24, 1984.

All information submitted in the expressions of interest shall be available for public inspection and copying upon request.

ADDRESS: Two copies of the expression of interest must be sent to the BLM State Director for Montana and the Dakotas: Michael Penfold, State Director (921), Bureau of Land Management, P.O. Box 36800, Billings, MT 59107.

FOR FURTHER INFORMATION CONTACT: Chuck Pettee, Bureau of Land Management, Gate City Building, 204 Sims Sts., P.O. Box 1229, Dickinson, ND 58602, Telephone: (701) 225-9148.

SUPPLEMENTARY INFORMATION: Maps and supplementary information on the lands available for expressions of leasing interest may be obtained from the BLM Dickinson District Office. Respondents to this Notice should use these materials in preparing their expressions of interest.

Expressions of interest from small businesses and public bodies are particularly invited in accordance with the provisions of 43 CFR 3420.1-3, which states that a reasonable number of lease tracts will be reserved and offered through competitive lease sales to those qualifying under the definitions of public bodies and small coal mining businesses.

Those who submit expressions of interest should state that the submissions are for possible small business or public body set-asides and should also supply proof of small business or public body status. An individual, business or governmental entity, or public body may participate and submit expressions of leasing interest.

An expression of interest is not an application for coal leasing. Information obtained as a result of this invitation will be used along with other information gathered by the BLM to delineate potential lease tracts that could be ranked, selected, and scheduled for inclusion into a lease sale, as described in 43 CFR 3420.5-1.

Expressing interest in a certain area does not guarantee that the area will be included in a potential lease tract. Among other things, thoroughness and completeness of an expression are determining factors in deciding whether or not to delineate a tract. Expressions of leasing interest should include the following data, where applicable:

1. Location:

a. Locate proposed mining project boundaries on a Fort Union coal interest

map (available from the BLM Dickinson District).

b. If no location is indicated but other specific information is provided, the expression could still be considered.

2. Type of mine:

a. Surface or underground.
b. Technique of mining (i.e., longwall, shovel and truck, room and pillar, dragline).

3. Quantity and quality of coal needs including total tonnage, life of mine, average annual production rates, and the year mine production would begin.

4. Proposed use of coal:

a. Identify the likely market and location, or potential alternative locations for coal use including type and size of power plant and synthetic fuel plant, or other use both within and outside the Fort Union coal region.

5. Transportation and proposed routes to existing and proposed facilities (i.e., railroads, pipelines, and highways).

6. Information relating to mineral ownership:

a. Information on surface owner consents over federal coal previously granted (i.e., name of qualified surface owner, date of surface lease agreement, description of leased lands, whether agreement is transferable and termination date of consent, etc.).

b. Commitments from fee coal owners or commitments for associated nonfederal coal.

7. Contacts. List the name, address, and phone number of the person who may be contacted for clarification or additional information on the area of interest and end use information.

Information considered proprietary should not be submitted as part of this expression of leasing interest. If proprietary information is submitted, please include a signed release stating that the information can be made available for public inspection and copying upon request.

Dated: January 5, 1984.

Reed L. Smith,
Dickinson District Manager.

TABLE I—Continued

Coal deposit	Estimated in-place Federal coal	
	Acres	Million tons
Dickinson.....	24,195	635.5
Totals.....	186,285	3,259.3
West-Central MFP Area:		
Dickinson.....	63,112	1,762.9
Dunn Center.....	41,550	1,095.6
Center-Stanton.....	12,975	363.3
Hazen.....	3,200	60.1
Renner's Cove.....	10,025	269.6
North Beulah.....	2,838	59.6
Zap.....	2,084	32.8
South Beulah.....	7,849	178.6
Washburn.....	1,035	14.5
Underwood.....	1,430	27.5
Garrison.....	3,600	39.4
North Garrison.....	3,868	64.3
Totals.....	153,568	3,979.1
Grand totals.....	489,920	9,618.2

[FR Doc. 84-781 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-DN-M

[Utah 51482]

Realty Action for Lands in Tooele County, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This is a Notice of a direct sale of 140 acres of public land in Tooele County, in accordance with existing law.

DATE: The date of the sale is April 4, 1984.

ADDRESS: Comments concerning the sale will be accepted for a period of 45 days from the date of this notice by the: District Manager, Bureau of Land Management, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Nancy Bloyer, Pony Express Realty Specialist, (801) 524-5348.

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	Acres
T. 6 S., R. 18 W., SLB&M:	
Sec. 4, W½E½SW¼.....	40
Sec. 8, NE¼NE¼.....	40
Sec. 9, W½NE¼NW¼, NW¼NW¼.....	60
Total.....	140

The land is being offered by direct sale to Mr. Eldon Stubbs at the appraised fair market value of \$17,500.

The lands are being offered for sale to serve the public objectives of economic

TABLE I

Coal deposit	Estimated in-place Federal coal	
	Acres	Million tons
McKenzie-Williams MFP Area:		
Williston.....	44,462	764.1
Hanks.....	42,620	645.2
Sand Creek.....	49,970	846.1
Tobacco Garden.....	10,980	92.4
Bennie Peer.....	2,037	32.0
Totals.....	150,069	2,379.8
Southwest MFP Area:		
Elgin-New Leipzig.....	14,360	156.6
Mott.....	41,060	477.6
New England.....	87,910	1,384.3
Bowman-Gascoyne.....	18,760	605.3

development and the growing of cultivated crops. Authorizing the farming of these lands will enhance Mr. Stubbs' adjoining farm operation. This objective could not be achieved on other public land such as a parcel that was noncontiguous. The parcel does not possess more important public values than economic development since livestock grazing is the present and projected use of the land. The tract is no larger than necessary to support a family-sized farm.

A direct sale to Mr. Stubbs will recognize a preference to him as a user with existing improvements and as an adjoining landowner, as set forth in FLPMA.

The sale is consistent with the Bureau of Land Management's planning system and with Tooele County planning and zoning.

The public lands will be sold on the fourth day of April, 1984.

Terms and conditions applicable to the sale are:

1. The sale of these lands will be subject to all valid existing rights.
2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States Act of August 30, 1980 (26 Stat. 391; 43 U.S.C. 945).
3. All minerals will be reserved to the United States.
4. Federal law requires that the buyer be a U.S. citizen. proof of this requirement shall be presented by Mr. Stubbs on the date of the sale.

The designated purchaser, Mr. Stubbs, will be required to pay for the cost to publish this notice in the Federal Register. He will also be required to submit a nonrefundable deposit of one-fifth of the full price of \$17,500 on the sale date, April 4, 1984, by certified check. The remainder of the full price shall be paid within 30 days of the sale date. Failure to pay the full price within 30 days shall disqualify Mr. Stubbs as the designated purchaser and the deposit shall be forfeited and disposed of as other receipts of sale. The lands may then be offered on a competitive bidding basis, with details of such a sale to be set forth in a subsequent notice.

Detailed information concerning the sale, including the planning documents and environmental 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 determination. In the absence of any action by the District Manager, this realty action will become

the final determination of the Department of the Interior.

Frank W. Snell,

Salt Lake District Manager.

[FR Dec. 84-763 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-DQ-M

[A-18411]

Public Lands Exchange; Mohave County, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action—exchange, public lands in Mohave County, Arizona.

SUMMARY: 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:

Gila and Salt River Meridian, Arizona

T. 25 N., R. 19 W.,
Sec. 16; W $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ NW $\frac{1}{4}$.

Containing 5 acres, more or less.

In exchange for these lands, the United States will acquire the following described land from Martin L. Harbarger, Jr., and Stanley E. Jones.

Gila and Salt River Meridian, Arizona

T. 18 N., R. 16 W.,
Sec. 11; N $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$.

Containing 20 acres, more or less.

The purpose of the exchange is to acquire the non-Federal land that contains highly diversified wildlife habitat on the southwest slope of Wabayuma Peak, south of Kingman, Arizona. The exchange is consistent with the Bureau's land use plans and the public interest will be well served.

The above lands will be subject to an appraisal to determine the value of the lands to be exchanged. The listed lands may change to reflect equal value following the completion of the appraisal.

Lands to be transferred from the United States will be subject to the following reservations:

1. A right-of-way for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).
2. All minerals in the subject are reserved to the State of Arizona pursuant to the Act of June 20, 1910.
3. Subject to an easement to Mohave County for Pierce Ferry Road as approved by the County Board of Supervisors by Resolution No. 476, Recorded in Book 132 of Dockets, Pages 425-428 on October 24, 1988.

4. Subject to such rights for powerline right-of-way A-18556 as provided under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

5. Subject to such rights for telephone right-of-way A-11587 as provided under the authority of the Act of October 21, 1976 (90 Stat. 2776; 43 U.S.C. 1761).

Private lands to be acquired by the United States will be subject to the following reservations, terms and conditions:

1. All minerals in the subject are reserved to the Santa Fe Pacific Railroad Company as set forth in Book 78 of Deeds, page 348, Mohave County, Arizona.

Publication of this Notice will segregate the subject lands from all appropriations under the public land laws. This segregation will terminate upon the issuance of a patent or two years from the date of this Notice, or upon publication of a Notice of Termination.

Detailed information concerning this exchange can be obtained from the Kingman Resource Area Office, 2475 Beverly Avenue, Kingman, Arizona 86401. For a period of Forty-five (45) days from the date of this Notice, interested parties may submit comments to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix Arizona 85027. Any adverse comments will be evaluated by the District Manager who may vacate or modify this Realty Action, and issue a final determination. In the absence of any action by the District Manager, this Realty Action will become the final determination of the Department of the Interior.

Dated: December 30, 1983.

Marlyn V. Jones,

District Manager.

[FR Dec. 84-847 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-33-M

[N-38119, N-38119-A]

Nevada; Notice of Conveyance

Notice is hereby given that, pursuant to the Act of December 23, 1980, 94 Stat. 3381; 43 U.S.C. 1701 and section 209(b) of the Act of October 21, 1976 (90 Stat. 2757; 43 U.S.C. 1719), Carol and Lester Hall, Las Vegas, Nevada have purchased, by competitive sale, public lands in Clark County described as:

Mount Diablo Meridian, Nevada

T. 22 S., R. 61 E.,

Sec. 6, lot 50.

Containing 5 acres.

The purpose of this notice is to inform the public and interested State and local governmental officials of the issuance of a conveyance document to Carol and Lester Hall.

William K. Stowers,

Acting Deputy State Director, Operations.

[FR Doc. 84-850 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-HC-M

Fish and Wildlife Service

Information Collection Submitted for Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service clearance officer and the OMB Interior Desk Officer, Washington, D.C. 20503, telephone 202-395-7313.

Title: Mourning Dove Call Count Survey.

Abstract: Such survey is conducted annually by Service and State biologists to assess the population status of the mourning dove. The survey data are analyzed, and the resulting assessment guides the Service in its promulgation of regulations for hunting the species.

Bureau Form Number: 3-159.

Frequency: Annually.

Description of Respondents: Service and State biologists.

Annual Responses: 850.

Annual Burden Hours: 145.

Service Clearance Officer: Arthur J. Ferguson, 202-653-7499.

Dated: January 6, 1984.

Ronald E. Lambertson,

Associate Director, Wildlife Resources.

[FR Doc. 84-787 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-07-M

Minerals Management Service

Samedan Oil Corp.; Receipt of a Proposed Plan of Development/Production

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a Proposed Plan of Development/Production (POD/P).

SUMMARY: Notice is hereby given that Samedan Oil Corporation has submitted a POD/P describing the activities it proposes to conduct on Lease OCS-G 4846, Block 241, Galveston Area, offshore Texas. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Freeport, Texas.

DATE: The subject POD/P was deemed submitted on October 11, 1983.

ADDRESSES: A copy of the subject POD/P is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Hossein Hekmatdoost, Minerals Management Service, Gulf of Mexico Region; Rules and Production; Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Phone (504) 838-0873.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Sec. 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the POD/P and that it is available for public review.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in POD/Ps available to affected states, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: January 5, 1984.

John L. Rankin,

Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-786 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-MR-M

Proposal To Change the Water Depth Criterion for Granting Longer Primary Lease Terms

AGENCY: Minerals Management Service, Interior.

ACTION: Extension of comment period.

SUMMARY: On December 20, 1983 (48 FR 56279), the Minerals Management Service (MMS) published in the Federal Register a Request for Comments. In that Request the MMS stated that it was examining its policy on the proper length of the primary lease term for deepwater offshore oil and gas leases.

To encourage exploration and development in deepwater areas, MMS is considering establishing 10-year lease terms in water depths exceeding 400m. That solicitation was intended to obtain comments and recommendations on whether there is a need to change current policy, and, if so, what water depth is more appropriate. The comment period was scheduled to expire on January 19, 1984. Several commenters have asked for an extension to file a response. Upon further consideration, the comment period is extended to February 9, 1984.

DATE: Comments should be postmarked or hand-delivered no later than the close of business February 9, 1984.

ADDRESS: Request for Comments on Longer Lease Terms—Director, Minerals Management Service, U.S. Department of the Interior, 12203 Sunrise Valley Drive, Reston, Virginia 22091, Attn: MS643.

FOR FURTHER INFORMATION CONTACT: Mr. Marshall Rose or Ms. Carol Hartgen, Minerals Management Service, MS643, Reston, Virginia 22091, telephone (703) 860-7571 or 860-7558.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 84-797 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-MR-M

Exxon Co.; Oil and Gas and Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Exxon Company, U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 1177, Block 6, South Marsh Island Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9

a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations.

Dated: January 3, 1984.

John L. Rankin,
Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-856 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-MR-M

Outer Continental Shelf Advisory Board's Gulf of Mexico Regional Technical Working Group; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. 92-463. A meeting of the Outer Continental Shelf Advisory Board's Gulf of Mexico Regional Technical Working Group will be held on February 14-16, 1984, in Metairie, Louisiana. The agenda of the meeting is as follows:

- February 14—Gulf of Mexico Winter Ternary Studies Meeting 9:30 a.m. to 5:00 p.m.
- February 15—Regional Technical Working Group Business Meeting 8:30 a.m. to 5:00 p.m.:
 - A. Update on Offshore Lease Offerings.
 - B. Anchoring on East and West Flower Garden Banks.
 - C. Briefings by Regional Supervisors.
 - D. Draft Regional Studies Plan for FY 1986.
- February 16—Completion of Draft Regional Studies Plan for FY 1986 8:30 a.m. to 11:30 a.m.

The meeting will be held in the Fourth Floor Conference Room of the Minerals Management Service, Gulf of Mexico Regional Office, 3301 North Causeway Boulevard, Metairie, Louisiana 70010. The meeting is open to the public, and interested persons may make oral or written presentations upon request. Such requests should be made not later than February 10, 1984, to Mr. Sydney H. Verinder, at the above address, or telephone (504) 838-0627.

A taped cassette transcript and summary minutes of the meeting will be available for public inspection in the

Office of the Regional Manager, Gulf of Mexico Regional Office, not later than 60 days after the meeting.

Dated: January 3, 1984.

John L. Rankin,
*Regional Manager, Gulf of Mexico Region,
Minerals Management Service.*

[FR Doc. 84-851 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-MR-M

Mobil Oil Exploration and Producing Southeast Inc.; Oil and Gas Sulphur Operations in the Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Mobil Oil Exploration and Producing Southeast Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS-G 4003, Block 90, Grand Isle Area, Offshore Louisiana. Proposed plans for the above areas provide for the development and production of hydrocarbons with support activities to be conducted from an onshore base located at Morgan City, Louisiana.

PURPOSE: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the Code of Federal Regulations, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the Plan for consistency with the Louisiana Coastal Resources Program.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code of Federal Regulations. Accordingly, a copy of the Plan is available for public review at the Office of the Regional Manager, Gulf of Mexico Region, Minerals Management Service, 3301

North Causeway Blvd., Room 147, Metairie, Louisiana (Office Hours: 9 a.m. to 3:30 p.m., Monday through Friday).

A copy of the Consistency Certification and the Plan are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44396, Baton Rouge, Louisiana 70804. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management Section receives a copy of the Plan from the Minerals Management Service.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, 3301 North Causeway Blvd., Metairie, Louisiana 70002. Phone (504) 838-0519.

Dated: January 3, 1984.

John L. Rankin,
Regional Manager, Gulf of Mexico Region.

[FR Doc. 84-855 Filed 1-11-84; 8:45 am]
BILLING CODE 4310-MR-M

MOTOR CARRIER RATEMAKING STUDY COMMISSION

Postponement of Public Meeting

The meeting of the Motor Carrier Ratemaking Study Commission scheduled for 9:00 a.m., Wednesday, January 18, 1984 has been postponed. It will be rescheduled in the near future.

This meeting had been called to provide the opportunity for the Study Commission to discuss and consider the draft report, findings, and recommendations; to direct issuance of the final document with its findings and recommendations to the Congress and President; and to consider other business as appropriate.

For Further Information contact: Gary D. Dunbar, Executive Director, Motor Carrier Ratemaking Study Commission, 100 Indiana Avenue, NW., Washington, D.C. 20001. Phone (202) 724-9600.

Submitted this, the 9th day of January 1984.
Gary D. Dunbar,
Executive Director.

[Doc. 84-853 Filed 1-11-84; 8:45 am]
BILLING CODE 6320-BD-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co. (Brunswick Steam Electric Plant, Units 1 and 2); Exemption

I

The Carolina Power & Light Company (the licensee) is the holder of Facility Operating License Nos. DPR-71 and DPR-62 (the licenses) which authorize operation of the Brunswick Steam Electric Plant, Units 1 and 2 located in Brunswick County, North Carolina at steady state reactor core power levels each not in excess of 2436 megawatts thermal. This license provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On October 2, 1980, the Commission proposed rulemaking on "Interim Requirements Related to Hydrogen Control and Certain Degraded Core Considerations." The proposed amendments to 10 CFR Part 50 would improve hydrogen management in light-water reactor facilities and provide specific design and other requirements to mitigate the consequences of accidents.

On January 4, 1982, the proposed rule became effective and as part of the amendments, it required hydrogen recombiner capability to reduce the likelihood of venting radioactive gases following an accident. The hydrogen recombiner capability applies to light-water nuclear power reactors that rely upon purge/repressurization systems as the primary means of hydrogen control.

Section 50.44(c)(3)(ii) of 10 CFR Part 50 requires that by the end of the first scheduled outage after July 5, 1982 and of sufficient duration to permit required modifications, each light-water power reactor, that relies upon a purge/repressurization system as the primary means for controlling combustible gases following a Loss-of-Coolant Accident, shall be provided with either an internal recombiner or the capability to install an external recombiner following the start of an accident.

III

In a March 16, 1983 submittal, the licensee requested an exemption from the requirement of § 50.44(c)(3)(ii) for provision of either an internal recombiner or the capability to install an external recombiner following the start of an accident. The request was based on BWR Owners Group studies of

combustible gas control submitted for NRC review by letter dated June 21, 1982. In the event that the Commission is unable to issue promptly its decision on request for exemption from the equipment requirements of § 50.44(c)(3)(ii), the licensee requested an extension of the schedule requirements of 10 CFR 50.44(c)(3)(ii). By letter dated June 21, 1983 the Commission granted an extension of the schedular requirements through December 31, 1983. By letter dated October 27, 1983 the licensee requested a further extension to June 30, 1984 in the event that the NRC had not completed its review.

We are nearing completion of our review of the BWR Owners Group studies on which the licensee's exemption request was based. We will be able to consider the licensee's request for permanent exemption following completion of that review.

During the interim period, with respect to combustible gas control in the event of a loss-of-coolant accident, the Brunswick units can use the existing containment atmosphere control systems, in conjunction with the standby gas control systems, to avoid unacceptable combustible gas concentrations. The containment atmosphere control system maintains an inert atmosphere during normal operation and the Containment Atmosphere Dilution (CAD) system is used to control combustible gas concentrations after an accident. By means of the CAD system, hydrogen and oxygen concentrations are monitored as nitrogen is added to the containment atmosphere to dilute combustible gases. In the unlikely prospect of high containment vessel pressure, the pressure may be relieved by venting through the standby gas control system. A detailed procedure has been developed by the licensee, with operating personnel trained to use these systems in the control of combustible gases. We find these means of combustible gas control acceptable for interim operation of the Brunswick Steam Electric Plant, Units 1 and 2 through June 30, 1984.

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest. Therefore, the Commission hereby approves the following exemption request.

Exemption is granted from the schedular requirement of § 50.44(c)(3)(ii) to extend the required date from "the end of the first scheduled outage

beginning after July 5, 1982 and of sufficient duration to permit modifications" to no later than June 30, 1984, or, if the plant is shutdown on that date, before the resumption of operation thereafter.

The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

For the Nuclear Regulatory Commission,

Dated at Bethesda, Maryland, this 29th day of December 1983.

Darrel G. Eisenhut,
Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-660 Filed 1-11-84; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-295 and 50-304]

Commonwealth Edison Co.; Consideration of Issuance of Amendments to Facilities Operating Licenses and Opportunity for Prior Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facilities Operating License Nos. DPR-39 and DPR-48, issued to Commonwealth Edison Company (the licensee), for operation of the Zion Nuclear Power Station, Unit Nos. 1 and 2 located in Zion, Illinois.

The amendments would revise the provisions in the Technical Specifications regarding the acceptance criteria for containment leakage tests. The change would replace the existing design basis accident leakage rate of 0.1 percent of the containment volume per 24 hours at 47 psig with a value of 0.225 percent of the containment volume per 24 hours at 47 psig. The change reflects the results of calculations to establish the maximum allowable primary containment leakage per the dose guideline limits of 10 CFR Part 100 for off-site dose and GDC-19 of Appendix A of 10 CFR Part 50 for control room personnel dose.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 13, 1984, the licensee may file a request for a hearing with respect to issuance of the amendments to the

subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rule of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfied these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Chief, Operating Reactors Branch No. 1, Division of Licensing: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to P. Steptoe, Esquire, Isham, Lincoln and Beale, Attorneys at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated August 8, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Dated at Bethesda, Maryland, this 23rd day of December 1983.

For the Nuclear Regulatory Commission,
Steven A. Varga,
Chief, Operating Reactors Branch No. 1,
Division of Licensing.

[FR Doc. 84-001 Filed 1-11-84; 8:45 am]
BILLING CODE 7550-01-M

[Docket Nos. 50-295 and 50-304]

**Commonwealth Edison Co.;
Consideration of Issuance of
Amendment to Facility Operating
License and Opportunity for Prior
Hearing**

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-39 and DPR-48 issued to Commonwealth Edison Company (the licensee), for operation of the Zion Nuclear Power Station, Units 1 and 2 located in Zion, Illinois.

In accordance with the licensee's application for amendment dated October 14, 1983 the amendment would permit temporary one-time changes to Zion Technical Specifications regarding the Auxiliary Electric Power that would allow performing extensive preventive maintenance on the diesel generator shared between the two units. Because that diesel generator is shared, extended maintenance periods have not been available under present technical specifications, even during scheduled refueling outages of either of the two units. The proposed one-time changes would extend the present seven-day period to forty-five days during which, with one unit in cold shutdown, only two diesel generators would be required to satisfy the standby AC on-site power requirements.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 13, 1984 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a

request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspects(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United

States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period; it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Steven A. Varga, Chief, Operating Reactors Branch No. 1, Division of Licensing: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to P. Steptoe, Esquire, Isham, Lincoln and Beale, Attorneys at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer of the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 14, 1983, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Zion-Benton Public Library District, 2600 Emmaus Avenue, Zion, Illinois 60099.

Dated at Bethesda, Maryland this January 5, 1984.

For the Nuclear Regulatory Commission.

Steven A. Varga,
Chief, Operating Reactors Branch No. 1,
Division of Licensing.

[FR Doc. 84-802 Filed 1-11-84; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-269 etc.]

Duke Power Co. (Oconee Nuclear Station, Units 1, 2 and 3 McGuire Nuclear Station, Units 1 and 2); Exemption

I

In the matter of Docket Nos. 50-269, 50-270, 50-287, 50-369, and 50-370.

Duke Power Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR-38, DPR-47 and DPR-55 which authorize operation of the Oconee Nuclear Station, Units 1, 2 and 3 (Oconee or the facilities). The licensee is also the holder of Facility Operating Licenses Nos. NPF-9 and NPF-17 which authorize operation of the McGuire Nuclear Station, Units 1 and 2 (McGuire or the facilities). These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The Oconee facilities are pressurized water reactors located at the licensee's site in Oconee County, South Carolina. The McGuire facilities are pressurized water reactors located at the licensee's site near Charlotte, North Carolina.

II

Section IV.F. of Appendix E to 10 CFR Part 50 requires each licensee of a nuclear power facility to conduct an annual emergency preparedness exercise. Section IV.F. of Appendix E also requires that provisions be made for training and exercising of licensee employees, including licensee headquarters support personnel, in radiation emergency matters.

III

The licensee's letter of March 9, 1983, to Harold R. Denton, Director, Office of Nuclear Reactor Regulation, requested an exemption to be granted to the requirements of 10 CFR Part 50, Appendix E, IV.F. as applied to active participation by all licensee headquarters support personnel for each station's annual exercise. The licensee bases this request for exemption on the fact that with the addition of the Catawba Nuclear Station to the system the licensee will be conducting three exercises per year. Consequently, headquarters support personnel would be exercised three times per year. Based on experience gained during emergency preparedness exercises at the McGuire and Oconee Nuclear Stations during 1980, 1981, and 1982, the licensee proposes an alternative whereby licensee headquarters support personnel participate in emergency preparedness

exercises once per year and not once per year per station.

In the same letter of March 9, 1983, the licensee provided commitments to provide adequate support by its headquarters support personnel to ensure effective exercises are conducted at each nuclear station. The Commission's staff has reviewed the results of past emergency preparedness exercises, results of emergency preparedness implementation appraisals, and results of routine emergency preparedness inspections at the McGuire and Oconee facilities. Licensee performance during past exercises has been determined to be adequate by the Commission's regional staff. The licensee has also been responsive to issues identified during the emergency preparedness appraisal and inspection program. The licensee has shown a willingness to take prompt action on problems identified during exercises, appraisals, and inspections. In addition, the regional staff has found through review of training programs, evaluation of personnel qualification and program administration, and by physical inspection of facilities and equipment, that licensee management is committed to effective emergency preparedness.

Granting of the proposed exemption would not relieve the licensee of the responsibility for providing full corporate support to each exercise in which a State government is participating on a full scale basis. The licensee, however, has in fact committed to fulfilling this responsibility in a letter dated October 10, 1983.

Based on (1) the licensee's demonstration of adequate performance during emergency preparedness exercises while staffing corporate positions on an annual basis, (2) the licensee's continuing commitment to emergency preparedness programs, and (3) the adequacy of the licensee's current emergency management system program, it is the staff's position that exercising the same corporate staff personnel more than once annually is not necessary to maintain adequate preparedness. Exercising of necessary corporate support personnel on an annual basis is sufficient to maintain proficiency and familiarity with the emergency work function. Therefore, the Commission's staff considers that the objectives of Section IV.F. of Appendix E to 10 CFR Part 50 are met and the licensee's request to be exempted from the requirement to exercise the same corporate staff support personnel annually for each station should be granted

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security, is otherwise in the public interest, and the licensee is hereby exempted from that portion of the requirements of 10 CFR Part 50, Appendix E, Section IV.F. requiring the licensee's headquarters support personnel to be exercised as part of the annual exercise for each station.

Provided that such personnel shall be exercised at least once each year as part of an annual exercise for one of the licensee's operating reactor facilities, and

Provided that the licensee shall furnish adequate headquarters support personnel to provide full corporate support to each exercise in which a State government is participating on a full scale basis.

The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 6th day of January 1984.

For the Nuclear Regulatory Commission,
Darrell G. Eisenhut,
Director, Division of Licensing, Office of Nuclear Reactor Regulation.

(FR Doc. 84-013 Filed 1-11-84. 8:45 am)
BILLING CODE 7550-01-M

[Docket Nos. 50-315 and 50-316]

**Indiana and Michigan Electric Co.
(Donald C. Cook Nuclear Power Plant
Unit Nos. 1 and 2); Exemption**

I

Indiana and Michigan Electric Company (the licensee) is holder of Facility Operating License Nos. DPR 53 and DPR-74, which authorize operation of the Donald C. Cook Nuclear Power Plant, Unit Nos. 1 and 2 (Cook or the facilities). These licenses provide, among other things, that they are subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities are pressurized water reactors located at the licensee's site in Berrien County, Michigan.

II

Section III.G.2 of Appendix R to 10 CFR Part 50 requires that one train of cables and equipment necessary to achieve and maintain safe shutdown be maintained free of fire damage by one of the following means:

a. Separation of cables and equipment and associated non-safety circuits of redundant trains by a fire barrier having a 3-hour rating. Structural steel forming a part of or supporting such fire barriers shall be protected to provide fire resistance equivalent to that required of the barrier;

b. Separation of cables and equipment and associated non-safety circuits of redundant trains by a horizontal distance of more than 20 feet with no intervening combustibles or fire hazards. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area; or

c. Enclosure of cables and equipment and associated non-safety circuits of one redundant train in a fire barrier having a 1-hour rating. In addition, fire detectors and an automatic fire suppression system shall be installed in the fire area.

If these conditions are not met, Section III.G.3 requires alternative shutdown capability independent of the fire area of concern. It also requires a fixed suppression system in the fire area of concern if it contains a large concentration of cables or other combustibles.

Section III.O of Appendix R to 10 CFR Part 50 requires that the reactor coolant pump shall be equipped with an oil collection system if the containment is not inerted during normal operation. Section III.O also requires, among other things, that the leakage shall be collected and drained to a vented closed container that can hold the entire lube oil system inventory.

III

By letters dated December 30, 1982, March 31, 1983 and August 22, 1983, the licensee requested exemptions from Section III.G and one exemption from Section III.O of Appendix R to 10 CFR Part 50.

Fire Zone 1 contains eight individual cubicles containing the redundant residual heat removal (RHR) pumps and containment spray (CTS) pumps for both units. Each pump cubicle has a controlled access screen mesh door which is located behind a missile shield wall.

Manual fire suppression equipment and a detection system are provided in the area. The fire load in the area is low.

The licensee proposes to upgrade the walls between the redundant pumps to a 3-hour fire resistance rating by sealing all penetration openings and installing fire dampers in common HVAC duct work. One train of power cables will be enclosed in a 1-hour rated barrier. The entrances to the RHR pumps have screen mesh doors which are not fire barrier.

This area does not comply with Section III.G because it does not have automatic suppression, the entrances to the RHR pump are not fire barriers, and the unprotected pump power cables are located less than 20 feet from each other.

The combustible loading in this area is low. An early warning smoke detection system is provided. If a fire occurred in this area, it is our opinion that the 3-hour walls between the RHR pumps and 1-hour barrier on one train of cables in the corridor will provide reasonable assurance that one train of RHR pumps will be maintained free of fire damage in the interval needed for the fire brigade to respond and manually extinguish the fire.

Based on the above evaluation, the existing protection for the RHR pumps in conjunction with the proposed fire barrier modifications provide a level of fire protection equivalent to the technical requirements of Section III.G. The exemption should, therefore, be granted.

The Unit 1 and Unit 2 transformer rooms, fire zones 14 and 20, contain the pressurizer heater transformer and the emergency diesel test breakers. The two fire zones are separated by several hundred feet. If a fire occurred in either area, the equipment of one unit could be used to safely shut down the other unit. Manual fire suppression equipment is provided in the area. The licensee proposes to install a detection system in the area.

These areas do not meet Section III.G because fixed suppression systems are not provided in an area where alternative shutdown capability is provided.

These two areas contain primarily electrical equipment in metal cabinets, and have a low in-situ combustible loading. With a detection system installed as proposed, a fire in either of these areas would be of limited severity and duration. The installation of a fixed suppression system would not appreciably enhance the fire protection for safe shutdown capability.

Based on the above evaluation and with the proposed modification, the fire protection system for the transformer rooms of Unit 1 and 2 provides a level of protection equivalent to the technical

requirements of Section III.G and therefore, the exemption should be granted.

Fire zones 29 a, b, c, d, and f contains the essential service water (ESW) pumps and motor control centers. The ESW pumps of one unit can be used as a backup for the other unit. The fire load in the area is low. This exemption request is limited to the need for a fixed suppression system in the ESW pump rooms. Manual suppression equipment is provided in the area. The licensee proposes to install a detection system throughout the area.

This area does not comply with Section III.G because a fixed extinguishing system is not provided.

In this area, the only combustibles are a few cables and the 2 gallons of lubricating oil from the pump motors totally enclosed in the pump casing. With a detection system installed, as proposed, a fire in either of these areas would be of limited severity and duration. The installation of a fixed suppression system would not appreciably enhance the fire protection for safe shutdown capability.

Based on the above evaluation, with the proposed modifications, the fire protection for the ESW pumps of Units 1 and 2 provides a level of protection equivalent to the technical requirements of Section III.G and therefore, the exemption should be granted.

Fire zone 29G is the basement level below the essential service water pump rooms of both units and contains two motor control centers not required for safe shutdown. The fire zone has an open hatch with a ladder up to the Unit 2 ESW southeast pump cubicle and a stairway which opens to the northwest Unit 1 pump cubicle.

The licensee proposes to modify the open hatchway to include a 3-hour hatch cover. The Unit 1 and Unit 2 ESW pumps will therefore be separated by a complete 3-hour barrier in compliance with Section III.G. This area does not meet the requirement, however, for installation of automatic suppression in areas where redundant trains of safe shutdown cables are routed.

The arrangement of the stairway and exhaust ventilation system provides a means for high-level venting of smoke, heat, and combustion products emanating from fire zone 29G. This will preclude a buildup of a hot gas layer at the ceiling level in fire zone 29G where the ESW pump cables are located. Additional protection is provided by one-hour rated fire barriers on all four trains of ESW pump cables. We agree that the proposed modifications in conjunction with the low fuel load in the area provides reasonable assurance that

one train of an ESW pump will be maintained free of fire damage.

Based on the above evaluation, the level of protection provided for the ESW pumps (Fire Zone 29G) provides a level of fire protection equivalent to the technical requirements of Section III.G. The exemption should be granted.

The Unit 1 and 2 east main steam enclosures, fire areas 33, 33a, 33b, 34, 34a and 34b, contain main steam lines and the non-essential service water valve gallery. These areas also contain the main steam pressure transmitters, the electropneumatic transmitters for the steam generator power operated relief valves, auxiliary feedwater inlet valves from the turbine driven pump, the local shutdown indication panel and the power operated relief valves and safety valves. The main steam valves are also located in these areas.

The combustible loading in the area is low. Alternate shutdown capability is provided independent of the areas. The licensee proposes to install a detection system and 1-hour rated fire dampers.

These areas do not comply with Section III.G because a fixed suppression system is not provided.

These areas contain primarily cable insulation, however the amount of insulation is distributed throughout the area and in its present configuration does not pose a significant hazard. With a detection system installed, as proposed, a fire in either of these areas would be of limited severity and duration. The installation of a fixed suppression system would not appreciably enhance the fire protection for safe shutdown capability. Based on the above evaluation and the proposed modification, the fire protection system for the Unit 1 and Unit 2 main steam enclosures provides a level of fire protection equivalent to the technical requirements of Section III.G. The exemption should, therefore, be granted.

The component cooling water pump area, fire zone 44S, contains a number of Unit 2 safe shutdown cables, five component cooling water (CCW) pumps, two Unit 2 CCW heat exchangers, and associated valves.

This area does not comply with Section III.G because the redundant CCW systems are not separated by 3-hour rated fire barriers.

The licensee proposes to install an increased coverage automatic suppression system over the CCW pumps and to separate the pumps by a partial height 3-hour barrier. It was our concern that due to the low ceiling, and close proximity of redundant equipment a fire in this area could damage all CCW

pumps for both units prior to response of the fire brigade.

The partial height barrier will prevent a floor level exposure fire from damaging redundant CCW pumps. A stratified layer of hot combustion gases will not form in the area immediately above the pumps due to the high level venting provided by the change in ceiling height in the area adjacent to the pumps. In addition, a high density sprinkler system will be provided over the pumps, with extended coverage heads provided at the height of the pumps, as well as the ceiling. This combination of protection provides reasonable assurance that one train of CCW pumps will remain functional until the response of the fire brigade.

Based on the above evaluation, the level of existing protection in conjunction with the proposed modifications provides a level of fire protection for the component cooling water pump area (Fire Zone 44S) equivalent to the technical requirements of section III.G. The exemption should be granted.

Five areas 53 and 54 are the control rooms for Units 1 and 2. The control rooms contain all the normal control panels for plant operation and most relay and instrument cabinets associated with plant control. In addition, the Unit 2 hot shutdown panel is located in the south-west corner of the Unit 1 control room and vice versa.

The control room area is protected from other fire zones by three-hour rated floors, ceilings and wall except for 2 ceiling and 2 floor hatches, both of which have two-hour ratings. Also, the common connection door between the control rooms is unrated. There are ionization detectors located in each control room along with six CO₂ fire extinguishers and two 1-hour breathing apparatus. Located outside the control room are water hose reels and two CO₂ hose reels. The licensee proposes to upgrade the two floor hatches and the common connecting door to a 3-hour rating.

This area does not comply with Section III.G because the control room is not provided with fixed suppression where alternate shutdown capability exists.

The control room is equipped with area fire detectors, a hose station, and fire extinguishers for manual fire fighting. The fire load in the area is low. The fire protection features currently installed in the control room and the continuous manning of the control room by operators that constitute a continuous fire watch provide adequate defense-in-depth fire fighting capability for these areas. In addition, an alternate

shutdown system is provided with control capabilities for those systems necessary to maintain safe-shutdown capability which is independent of the main control room. Manual fire suppression in the event of a fire would be prompt and effective and, thus, a fixed suppression system will not enhance the fire protection in this area.

Based on the above evaluation, the existing fire protection program for the control room provides a level of fire protection equivalent to the technical requirements of Section III.G. The exemption should, therefore, be granted.

Each unit has four reactor coolant pumps with an oil collective system which drains to a vented closed collection tank. The quantity of lubricating oil in each pump is 265 gallons; the capacity of the oil collection tank is 275 gallons.

The collection tank is arranged such that if a failure of more than one RCP motor lube system occurred, the oil collection tank would overflow onto the lower containment floor. There are no ignition sources at the floor level of the lower containment.

The RCP motor lube oil system does not comply with Section III.O because the oil collection tank is not sized to contain the entire lube oil system inventory.

The RCP motor lube oil system is capable of withstanding the safe shutdown earthquake. The oil collection tank is provided with sufficient capacity to hold the total lube oil inventory of one reactor coolant pump with margin and is designed so that any overflow will be drained to a safe location. We agree with the licensee that this combination of features is acceptable.

Based on the above evaluation, the existing RCP motor lube oil collection system provides a level of safety equivalent to the technical requirements of Section III.O and, therefore, the exemption should be granted.

IV

The exemptions are contingent upon the licensee's maintenance of administrative control of transient combustibles which are equivalent to those specified in Section III.K.1 through III.K.8 of Appendix R to 10 CFR Part 50 and any characterization of transient combustibles or design features which are specifically discussed in our Safety Evaluation (SE). This SE was transmitted to the licensee by letter dated December 23, 1983.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, these exemptions in the areas identified above are authorized by law and will not endanger life or property or

the common defense and security, are otherwise in the public interest, and are hereby granted.

The Commission has determined that the granting of this Exemption will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

This Exemption is effective upon issuance.

Dated at Bethesda, Maryland, this 23rd day of December 1983.

For the Nuclear Regulatory Commission,
Darrell G. Eisenhut,
Director, Division of Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 84-004 Filed 1-11-84; 8:45 am]

BILLING CODE 7530-01-11

[Docket No. 40-2061-ML; ASLBP No. 84-495-01 ML]

Kerr-McGee Chemical Corp. (West Chicago Rare Earths Facility);
Prehearing Conference

January 6, 1984.

Please take notice that a prehearing conference in this proceeding will take place on February 2, 1984, at the U.S. Court of Appeals, Room 2781, 219 South Dearborn Street, Chicago, Illinois, 60604, beginning at 9:30 AM. The purpose of the conference is to consider petitions to intervene and contentions filed by the Attorney General of Illinois on behalf of the people of that state and the Chamber of Commerce of the City of West Chicago.

Bethesda, Maryland January 6, 1984.

For the Atomic Safety and Licensing Board,
John H. Frye, III,
Chairman, Administrative Judge.

[FR Doc. 84-003 Filed 1-11-84; 8:45 am]

BILLING CODE 7530-01-11

[Docket No. 50-333]

Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Exemption

I

The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-59 (the license) which authorizes operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York at steady state reactor core power levels not in excess of 2436 megawatts thermal. This license

provides, among other things, that it is subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

II

On October 2, 1980, the Commission proposed rulemaking on "Interim Requirements Related to Hydrogen Control and Certain Degraded Core Considerations." The proposed amendments to 10 CFR Part 50 would improve hydrogen management in light-water reactor facilities and provide specific design and other requirements to mitigate the consequences of accidents.

On January 4, 1982, the proposed rule became effective and as part of the amendments, it required hydrogen recombiner capability to reduce the likelihood of venting radioactive gases following an accident. The hydrogen recombiner capability applies to light-water nuclear power reactors that rely upon purge/repressurization systems as the primary means of hydrogen control.

Section 50.44(c)(3)(ii) of 10 CFR Part 50 requires that by the end of the first scheduled outage after July 5, 1982 and of sufficient duration to permit required modifications, each light-water power reactor, that relies upon a purge/repressurization system as the primary means for controlling combustible gases following a Loss-of-Coolant Accident, shall be provided with either an internal recombiner or the capability to install an external recombiner following the start of an accident.

III

In a June 29, 1983 submittal, as supplemented by letter dated July 19, 1983, the licensee requested an exemption from the requirement of § 50.44(c)(3)(ii) for provision of either an internal recombiner or the capability to install an external recombiner following the start of an accident. The request was based on BWR Owners Group studies of combustible gas control submitted for NRC review by letter dated June 21, 1982. In the event that the Commission is unable to issue promptly its decision on request for exemption from the equipment requirements of § 50.44(c)(3)(ii), the licensee requested an extension of the schedule requirements of 10 CFR 50.44 (c)(3)(ii). By letter dated August 22, 1983 the Commission granted an extension of the scheduler requirements through December 31, 1983. By letter dated December 9, 1983 the licensee requested a further extension in the event that the NRC had not completed its review by December 31, 1983.

We have very nearly completed our review of the BWR Owners Group studies on which the licensee's exemption request was based. We will be able to consider the licensee's request for permanent exemption following completion of that review.

During the interim period, with respect to combustible gas control in the event of a loss-of-coolant accident, the FitzPatrick plant can use the existing containment atmosphere control systems, in conjunction with the standby gas control systems, to avoid unacceptable combustible gas concentrations. The containment atmosphere control system maintains an inert atmosphere during normal operation and the Containment Atmosphere Dilution (CAD) system is used to control combustible gas concentrations after an accident. By means of the CAD system, hydrogen and oxygen concentrations are monitored as nitrogen is added to the containment atmosphere to dilute combustible gases. In the unlikely prospect of high containment vessel pressure, the pressure may be relieved by venting through the standby gas control system. A detailed procedure has been developed by the licensee, with operating personnel trained to use these systems in the control of combustible gases. We find these means of combustible gas control acceptable for interim operation of the James A. FitzPatrick Nuclear Power Plant through June 30, 1984.

IV

Accordingly, the Commission has determined that pursuant to 10 CFR 50.12, an exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest.

Therefore, the Commission hereby approves the following exemption request.

Exemption is granted from the scheduler requirement of § 50.44 (c)(3)(ii) to extend the required date from "the end of the first scheduled outage beginning after July 5, 1982 and of sufficient duration to permit modifications" to no later than June 30, 1984, or, if the plant is shutdown on that date, before the resumption of operation thereafter.

The Commission has determined that the granting of this exemption will not result in any significant environmental impact and that, pursuant to 10 CFR 51.5(d)(4), an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with this action.

Dated at Bethesda, Maryland this 30th day of December, 1983.

For the Nuclear Regulatory Commission,
Darrell G. Eisenhut,
Director, Division of Licensing.
[FR Doc. 84-635 Filed 1-11-84; 8:43 am]
BILLING CODE 7550-01-M

Applications for Licenses To Export and Import Nuclear Facilities or Materials

Correction

In FR Doc. 83-32296 beginning on page 54549 in the issue of Monday, December 5, 1983, make the following corrections:

1. On page 54550, in the table, fifth column "County of designation" should read "Country of designation".

2. On the same page, in the table, fifth column, Country of designation, first entry, "For United Kingdom", should read "From United Kingdom".

BILLING CODE 1505-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Hydropower Assessment Steering Committee; Meeting

AGENCY: Hydropower Assessment Steering Committee of the Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of meeting to be held pursuant to the Federal Advisory Committere Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Hydro database pilot study
- Proposal for cumulative impacts methods study
- Proposal for designation of protected areas
- Criteria for use in site ranking study
- Other
- Public comment.

Status: open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Hydropower Assessment Steering Committee..

DATE: January 18, 1984. 9:30 a.m.

ADDRESS: The meeting will be held at the Conucil Hearing Room in Portland, Oregon.

FOR FURTHER INFORMATION CONTACT:

Peter Paquet, (503) 222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 84-798 Filed 1-11-84; 8:45 am]

BILLING CODE 0000-00-M

**SECURITIES AND EXCHANGE
COMMISSION****Forms Under Review by Office of
Management and Budget**Agency Clearance Officer—Kenneth
Fogash, (202) 272-2700.Upon written request copy available
from: Securities and Exchange
Commission, Office of Consumer Affairs
and Information Services, Washington,
D.C. 20549.**Extension**

Form 144—No. 270-112

Notice is hereby given that pursuant
to the Paperwork Reduction Act of 1980
(44 U.S.C. 3501 *et seq.*), the Securities
and Exchange Commission has
submitted for clearance Form 144
relating to the resale of restricted
securities effected without registration
pursuant to Rule 144 (17 CFR 230.144)
under the Securities Act of 1933. Form
144 is a notification of resale of
securities without registration in
reliance on Rule 144.

Submit comments to OMB Desk
Officer: Katie Lewin (202) 395-7231,
Office of Information and Regulatory
Affairs, Room 3235 NEOB, Washington,
D.C., 20503.

Dated: January 3, 1984.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-831 Filed 1-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20534 (SR-AMEX-83-28)]

**American Stock Exchange, Inc.; Order
Approving Proposed Rule Change**

January 6, 1984.

The American Stock Exchange, Inc.
("Amex"), 86 Trinity Place, New York,
N.Y. 10006, submitted on October 28,
1983, copies of a proposed rule change
pursuant to Section 19(b)(1) of the
Securities Exchange Act of 1934 (the
"Act") and Rule 19b-4 thereunder, to
amend Sections 125 and 710 of the
Amex Company Guide. Section 125
requires that an indenture under which
bonds (or debentures) are to be listed on
the Amex provide that the Trustee will,

upon default, enforce any remedy
provided in the indenture if so requested
by holders of a specified percentage (not
more than 30% in principal amount) of
such bonds, unless such request is later
rescinded by a majority in principal
amount. The Amex proposes to modify
Section 125 to limit its provisions to
apply only to indentures not qualified
under the Trust Indenture Act of 1939.

Section 710 of the Amex Company
Guide, which governs shareholder
voting for listing purposes, requires, in
addition to a favorable majority vote at
a duly convened meeting, that the total
vote cast on the matters set forth in
Sections 711-714 must "represent over
50% in interest of all securities entitled
to vote". On all other matters, the
quorum requirements of Section 123 of
the Amex Company Guide apply. The
Amex states that the existing
requirement of Section 710 can become
troublesome where securities holders
abstain from voting on a given proposal;
i.e., a listing proposal may be defeated
by a small percentage of holders
abstaining, even though present at a
meeting for quorum purposes.
Accordingly, the Amex proposes to
rescind the clause requiring that the vote
cast must represent over 50% in interest
of all securities entitled to vote on the
proposal.

Notice of the proposed rule change
together with the terms of substance of
the proposed rule change was given by
the issuance of a Commission Release
(Securities Exchange Act Release No.
20392, November 17, 1983) and by
publication in the Federal Register (48
FR 53612, November 28, 1983). No
comments were received with respect to
the proposed rule filing.

The Commission finds that the
proposed rule change is consistent with
the requirements of the Act and the
rules and regulations thereunder
applicable to a national securities
exchange and, in particular, the
requirements of Section 6, and the rules
and regulations thereunder.

It is therefore ordered, pursuant to
Section 19(b)(2) of the Act, that the
above-mentioned proposed rule change
be, and hereby is, approved.

For the Commission, by the Division of
Market Regulation pursuant to delegated
authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-873 Filed 1-11-84; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-20539; File No. SR-NYSE-
83-52; Amdt. No. 1]**Self-Regulatory Organizations;
Proposed Rule Change By New York
Stock Exchange, Inc.**

Pursuant to Section 19(b)(1) of the
Securities Exchange Act of 1934, 15
U.S.C. 78s(b)(1), notice is hereby given
that on January 5, 1984, the New York
Stock Exchange, Inc. filed with the
Securities and Exchange Commission
the proposed rule change as described
in Items I, II, and III below, which Items
have been prepared by the self-
regulatory organization. The
Commission is publishing this notice to
solicit comments on the proposed rule
change from interested persons.

**I. Self-Regulatory Organization's
Statement of the Terms of Substance of
the Proposed Rule Change**

On October 26, 1983, the Exchange
filed a proposed rule change respecting
options on 13 industry index stock
groups ("industry index options"), File
No. SR-NYSE-83-52, (the "October
Filing"). Amendment No. 1 provides for
the deletion of one of the Exchange's
index groups, the Airlines group, due to
the Exchange's revision of its stock
group qualification criteria and adjusts
its Regional Banks group and its three
telecommunications groups as to their
composition and market weight. The
amendment also indicates that the
Exchange intends initially to list options
only upon the NYSE Telephone
Companies Index (calculated from the
prices of "New" AT&T and of the stocks
of the seven Regional Holding
Companies) and the NYSE
Telecommunications Index, and
specifies a January cycle for the
Exchange's longer-term industry index
series. In addition, the amendment
incorporates into the October Filing, as
appropriate, comments received from
the Commission staff following its
review of the October Filing and makes
various minor technical corrections and
improvements in the Exchange's option
rules. Those changes are discussed
below.

(A) Economic Uses

As noted above, the Exchange intends
initially to trade industry index options
on the NYSE Telephone Companies
Index and the NYSE
Telecommunications Index. The
Exchange believes that the introduction
of those options at this time is
particularly useful to investors, given
the high investor interest generated by
AT&T's divestiture of the Regional
Holding Companies, the related

uncertainties and the resulting utility of hedging devices to limit the risks associated with those uncertainties.

(B) Selection of Industry Groups

In the October Filing, the Exchange identifies the following three index group characteristics as relevant to concerns regarding the potential for manipulation of industry index options through activity in one or more underlying stocks: (A) The extent of inter-industry diversity among the stocks within a group, (B) the number of stocks within the group and (C) the size and liquidity of the market for each stock within the group. In specifying guidelines addressing characteristic (C), the October Filing proposes standards that would have applied to each stock in a group of less than 25 stocks, but which are somewhat relaxed relative to those applicable to stocks underlying individual stock options. At the suggestion of the Commission staff, the Exchange has reformulated its guidelines in a manner that permits the incorporation of the standards that apply to stocks underlying individual stock options. The relevant rules as revised by Amendment No. 1, in applying those standards, require that stocks accounting for at least 50 percent of the underlying group's index value meet them. As noted above, the revised guidelines affect the qualification of only one of the 13 of the industry index groups proposed in the October Filing.

(C) Exchange Trading of Underlying Stocks

In the October Filing, the Exchange proposes provisions designed to detect and prevent manipulation through concurrent activity in an industry index option and in underlying stocks whose prices tend to have a disproportionate impact on the index value. The October Filing designated a 30 percent threshold as the amount of the index value a stock included in an underlying industry group must contribute before those provisions apply to the stock. In accommodating the Commission staff's comments, Amendment No. 1 reduces that threshold. While the Exchange continues to believe that the 30 percent level provides a comfortable margin of protection, the Exchange is acquiescing in the initial application of the even more conservative thresholds suggested by the Commission staff in the interest of a timely commencement of Exchange trading of industry index options. By acquiescing in the reduction, the Exchange does not wish to imply that it believes the lower thresholds are necessary or appropriate for the protection of investors.

Among the provisions affected by the threshold reduction is a prohibition upon an equity specialist acting as either an options specialist or a Competitive Options Trader ("COT") in any industry index option whose underlying group includes any of his specialty stocks that accounts for the threshold amount of the index value. As revised, the relevant Exchange rules provide that the prohibition on concurrent market making is triggered if a specialty stock contributes five percent or more of the underlying group's index value or if specialty stocks collectively contribute ten percent or more of the index value.

In addition to lowering the thresholds regarding concurrent market making, Amendment No. 1 extends the Exchange's prohibitions on a specialist and his associated persons trading in options on his specialty stocks to include industry index options whose underlying groups include any of his specialty stocks. The amendment also makes clear that the Exchange will not permit any communications by members between its equity and options Floors that are not available between its equities Floor and the floors of the other options exchanges.

The Exchange believes that these changes and the spatial separation of the Exchange's equities Floor from its options Floor (noted in the October Filing), taken together with enhancements to its surveillance program geared to industry index options, the ongoing implementation of its equity audit trail and the completion by the end of March of automation of the options audit trail, will assure that the Exchange has in place a physical and regulatory environment capable of frustrating any unique manipulative opportunities presented by a single self-regulatory organization operating both a market for industry index options and the primary market for most of the underlying stocks.

In Amendment No. 1, the Exchange also discusses at length factors in connection with the two industry indexes that it intends to trade initially that make them particularly unlikely candidates for manipulation. In its discussion, the Exchange notes how widely held and actively traded "New" Telephone is. The Exchange then discusses the formidable task facing a person who seeks to manipulate either index through purchases of "New" Telephone, noting the various factors that would bear on the manipulator's carrying costs or risk analysis or on the market effects of his own activity. The Exchange also notes the various points

during the manipulative activity where the potential for detection by the Exchange is high.

The discussion concludes by pointing out that, by identifying the immensity of the undertaking, the difficulties in its execution and the risks associated with it, the Exchange does not purport to demonstrate that a "New" Telephone/industry index manipulation is impossible. But it does suggest that when a stock such as "New" Telephone "dominates" an industry index, the immense size and daily trading volume of the stock makes manipulation of the index impractical. When that impracticality is coupled with the sophisticated tools now available to the Exchange permitting it to detect such a manipulation, the potential risk to the Exchange's market for either the NYSE Telephone Companies Index option or the NYSE Telecommunications Index option is comparable to, if not less than, those extant in many other Commission-regulated market places.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—The purposes of Amendment No. 1 are (a) to incorporate into the October Filing, as appropriate, comments received from the Commission staff following its review of the October Filing and (b) to make various minor technical corrections and improvements in the Exchange's option rules.

The particular purposes of the changes of substance included in the amendment are summarized in the Exchange's response to Item I.

(2) *Statutory Basis*—The statutory basis for Amendment No. 1 is the same as the October Filing. Please see the notice of that filing, Release No. 34-20343 (November 3, 1983), 48 FR 51995 (November 15, 1983).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the October Filing as amended by Amendment No. 1 will not impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding Amendment No. 1. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 6, 1984.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-075 Filed 1-11-84; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 13700; (812-5599)]

VMS Capital Corp.; Filing of Application

January 6, 1984.

Notice is hereby given that VMS Capital Corporation ("Applicant"), 69 West Washington Street, Chicago, IL 60602, an Illinois corporation, filed an application on July 12, 1983, and amendments thereto on November 15, and December 20, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1930 ("Act"), exempting Applicant from all of the provisions of the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations made therein, which are summarized below, and to the Act for the text of its relevant provisions.

Applicant states that it is a wholly-owned subsidiary corporation of VMS Realty, Inc., an Illinois corporation all of whose shares are owned by VMS Realty Partners, an Illinois general partnership. VMS Realty, Inc., was formed in 1980 and since that date has operated as a general partner of certain real estate limited partnerships and a "servicing entity" to help maintain the business operations of the limited partnerships of which it, VMS Realty Partners, and/or its affiliates act as a general partner. Applicant states that its sole business will consist of making loans to those partnerships.

Applicant states that VMS Realty, Inc., currently employs approximately 200 people providing a variety of services including acquisition, marketing, financing, data processing and property analysis, and that VMS Realty, Inc., and its affiliates provide business services only to the limited partnerships and their general partners. Applicant states that the limited partnerships are in the business of acquiring, owning, managing and disposing of real estate or interests therein, and that VMS Realty Partners or its affiliates act as general partner to approximately 60 such limited partnerships that own only real estate or interests therein with a fair market value in excess of \$700,000,000.

Applicant represents that an investor in one of the limited partnerships typically pays a cash portion of between 5% and 15% of the purchase price per partnership unit and executes a fully negotiable, secured, promissory note requiring payments to be made in varying amounts periodically for the next several (generally five) years after subscription, with fixed interest on any unpaid balance ("Investor Partnership Notes"). Applicant states that the cash proceeds received by each limited partnership from the sale of limited partnership units are applied to the purchase price of the real estate investments, certain expenses of the offering of interests in the limited partnership, other expenses, and operating reserves. Additional sources of financing are used to fund the balance of the cash needs of the limited partnership. The real estate investments are financed in one or more of several ways, including conventional and purchase money financing. VMS Realty, Inc., among its other functions, assists in arranging for financing the limited partnerships through lines of credit. Applicant states that Investor Partnership Notes currently are pledged as collateral to one or more commercial lenders in return for loans equal to a substantial percentage of the principal amount of the Investor Partnership Notes, with the proceeds of these loans being used as described above. Applicant further states that repayment of such loans is generally made at approximately the same time as principal and interest on the Investor Partnership Notes is received by each limited partnership.

Applicant states that in order to expedite and possibly make more economical the arrangement of financing for future limited partnerships, VMS Realty, Inc., has organized the Applicant as its wholly-owned subsidiary to operate as follows. One or more real estate syndications of limited partnerships will be completed which in the aggregate will have outstanding Investor Partnership Notes of several million dollars. The Investor Partnership Notes will each be secured by each investor's units in each limited partnership and by a surety bond issued by an unaffiliated insurance carrier providing for full and timely payment of principal and interest of each Partnership Note until its maturity. The premium for each surety bond will be paid by the limited partnership, either directly or through Applicant. The limited partnership will then pledge its Investor Partnership Notes, the limited partnership units securing them, and the

surety bonds, as collateral for notes ("Working Capital Notes") that it will sell to Applicant. Applicant will publicly offer notes with a fixed interest rate and terms for payment of principal and interest which will include periodic repayment of outstanding principal during the term of the notes ("Finance Notes") in order to raise funds to purchase the Working Capital Notes. In no event will the maturity of the Finance Notes exceed the maturity of the Investor Partnership Notes. The Finance Notes will be offered for sale and sold pursuant to an effective registration statement under the Securities Act of 1983, as amended.

The prospectus through which the Finance Notes will be offered will prominently disclose the existence of the surety bond, and also that the Finance Notes (which will be collateralized by the Working Capital Notes) are issued by, and are backed by the credit of, the Applicant and not by the credit of VMS Realty Inc., or its affiliated entities. Applicant will loan the proceeds of the sale of its Finance Notes to the limited partnerships and will at about the same time receive a Working Capital Note from each limited partnership in the principal sum of the amount being loaned to each limited partnership. Cash flow to be received by Applicant from the limited partnerships will exceed or be equivalent to all obligations of Applicant, including repayment of principal and interest on its Finance Notes and ongoing administration, accounting and legal expenses expected over the life of the Finance Notes. The security for the Working Capital Notes will be the Investor Partnership Notes, together with a security interest on the proceeds of the Investor Partnership Notes as they are paid from time to time pursuant to their terms and a security interest in the investor's partnership units in the limited partnership pledged as security for repayment of the Investor Partnership Notes, and the surety bond issued by the insurance carrier. Concurrently with the execution of a Working Capital Note the Investor Partnership Notes will be transferred to Applicant. Applicant will not disburse the funds under the Working Capital Note to the particular limited partnership unless the trustee of Applicant has received the surety bond guaranteeing payment under the Investor Partnership Notes. The investors in the limited partnership will then be advised of the closing of the loan transaction under the Working Capital Note and will be instructed to make their future capital contribution

payments under their Investor Partnership Notes directly to the trustee of Applicant at a prearranged "lock box" account rather than to the limited partnerships themselves. Thus, the trustee will be immediately aware of any defaults by limited partners on their Investor Partnership Notes. In the event of a default, the trustee, who will hold the surety bond on behalf of Applicant, will make claims to the surety company for any default and upon receipt of the funds from the surety will immediately make them available to Applicant pursuant to the trust indenture so that the holders of the Finance Notes will receive timely payments.

Applicants assert that there will be no need for Applicant to conduct any operations aside from the investment in Working Capital Notes or to make any investment decisions in order for Applicant to have sufficient positive and unencumbered cash flow to meet its full obligations for repayment of principal and interest of Finance Notes on a timely basis. In effect, after the issuance of the Finance Notes pursuant to the registration statement under the Securities Act of 1933, as amended, Applicant will have no operational responsibility, thereby becoming a "flow through" entity, and the trustee will make all other decisions. All decisions on actions to be taken in the event of any default will be made consistent with a trust indenture in effect pursuant to the Trust Indenture Act of 1939 by a bank trustee who shall be unaffiliated with Applicant, the limited partnerships or any of the insurance carriers. Amounts received in connection with the reduction of obligations evidenced by Investor Partnership Notes will be held by Applicant and maintained by the bank trustee in cash, cash items or investments in United States government obligations and appropriate amounts distributed to the Finance Note holders. No Finance Notes will be issued once the public offering has been concluded and prior to repayment of the Finance Notes. Financing for Investor Partnership Notes of additional limited partnerships will be obtained through other means or facilities not involving Applicant or affecting its capital structure.

In support of the relief requested, Applicant asserts that each limited partnership with Applicant enters into (or will enter into) credit relationships could itself directly finance its capital needs by pledging its Investor Partnership Notes for loans from unaffiliated financial institutions. Prior to the organization of Applicant, this has been the practice of VMS Realty, Inc.,

when indirectly arranging similar financing. As a special purpose corporation established solely to issue Finance Notes to obtain funds to make advances to the limited partnerships for the uses described, Applicant believes its operations are functionally the equivalent of its parent company (VMS Realty, Inc.) directly securing financing through a debt offering for the purpose of financing its related activities. Applicant asserts that if VMS Realty, Inc., were directly to engage in Applicant's business, it would be exempt from the definition of an investment company pursuant to Section 3(b)(1) of the Act. Other than Applicant's common stock (which has not been and will not be offered publicly), Applicant's only outstanding securities will be the Finance Notes, and the entire net proceeds of Applicant's sales of the Finance Notes will be used to purchase Working Capital Notes.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than January 31, 1984, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 84-874 Filed 1-11-84; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[License No. 04/04-0225]

Blackburn-Sanford Venture Capital Corp; Issuance of License To Operate as a Small Business Investment Company

On October 4, 1983, a notice was published in the Federal Register (48 FR 45328), stating that an application had been filed by Blackburn-Sanford

Venture Capital Corp., 3120 First National Tower, Louisville, Kentucky 40202, with the Small Business Administration (SBA) for a license to operate as a small business investment company (SBIC), pursuant to § 107.102 of the Regulations governing SBICs (13 CFR 107.102 (1983)).

Interested parties were given until the close of business October 19, 1983, to submit their written 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, and after having considered the application and all other information, SBA issued License No. 04/04-0225 on November 30, 1983, to Blackburn-Sanford Venture Capital Corp. to operate as an SBIC.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 5, 1984.

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

[FR Doc. 84-023 Filed 1-11-84; 8:45 am]
BILLING CODE 8025-01-11

[License No. 02/02-0418]

Key Venture Capital Corp.; Notice of Issuance of a License To Operate as a Small Business Investment Company

On October 11, 1983, a notice was published in the Federal Register (48 FR 46127) stating that Key Venture Capital Corp., 60 State Street, Albany, New York 12207 had filed an Application with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), for a license as a small business investment company (SBIC).

Interested parties were given until the close of business October 26, 1983, to submit their comments. No comments were received.

Notice is hereby given that, having considered the application and all other pertinent information, SBA on December 20, 1983 issued License No. 02/02-0418 to Key Venture Capital Corp., pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: January 5, 1984.
Robert G. Lineberry,
Deputy Associate Administrator for Investment.
[FR Doc. 84-023 Filed 1-11-84; 8:45 am]
BILLING CODE 8025-01-11

Presidential Advisory Committee on Small and Minority Business Ownership; Public Meeting

The Presidential Advisory Committee on Small and Minority Business Ownership, located in Washington, D.C., will hold a public meeting at 9:00 a.m. until 5:00 p.m., Monday, January 23, 1984, at the Hyatt Regency Hotel, James L. Knight Center, 400 S. E. Second Avenue, Miami, Florida 33131, to discuss such business as may be presented by the Committee members. The meeting will be open to the interest public, however, space is limited.

Persons wishing to present written statements should notify Mr. Milton Wilson, Jr., Office of Capital Ownership Development, Small Business Administration, Room 602, 1441 L Street, N.W., Washington, D.C. 20416 in writing or by telephone (202) 653-6528, no later than January 18, 1984.

Dated: January 3, 1984.

Jean M. Nowak,
Director, Office of Advisory Councils.

[FR Doc. 84-023 Filed 1-11-84; 8:45 am]
BILLING CODE 8025-01-11

President's Advisory Committee on Women's Business Ownership; Public Meeting

The President's Advisory Committee on Women's Business Ownership will hold a public meeting on Tuesday, January 31 from 9:00 am to 5:00 pm and Wednesday, February 1 from 9:00 am to 12:00 noon at the Colony Square Hotel, Atlanta, Georgia, to discuss such business as may be presented by the Committee members. The meeting will be open to the public, however, space is limited.

Persons wishing to present written statements should notify Ms. Carolyn Gray, Office of Women's Business Ownership, Small Business Administration, Room 414, 1441 L Street, N.W., Washington, D.C. 20416 in writing or by telephone (202) 653-6820 no later than January 20.

Jean M. Nowak,
Director, Office of Advisory Councils.

January 9, 1984.
[FR Doc. 84-037 Filed 1-11-84; 8:45 am]
BILLING CODE 8025-01-11

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences; Information on Imports During First 10 Months of 1983

This notice is for information only and has no legal effect. It is provided in order to inform the public of certain import statistics covering the period of January through October 1983. These statistics are relevant to the "competitive need" limits set forth in section 504(c) of the Trade Act of 1974 (19 U.S.C. 2464(c)), pertaining to the Generalized System of Preferences (GSP). Those limits provide, in effect, that any GSP eligible beneficiary country that exported to the United States during the most recent calendar year a quantity of any one GSP eligible article in excess of (1) a specified dollar limit adjusted annually to reflect changes in the U.S. Gross National Product or (2) 50 percent of the value of total U.S. imports of the article, is to be removed from GSP eligibility not later than 90 days after the close of that calendar year. Based on preliminary data and subject to revision, the aforementioned dollar limit is expected to be approximately \$57.9 million for calendar year 1983.

Section 1111 of the Trade Agreements Act of 1979 amends section 504(c)(1)(B) of the Trade Act of 1974 so that the President may disregard the 50 percent "competitive need" limit with respect to any eligible article if the value of total imports of the article during the most recent calendar year did not exceed \$1 million, adjusted annually to reflect changes in the U.S. Gross National Product. This "de minimis" level is expected to be approximately \$1.37 million dollars for calendar year 1983.

An Executive order will be issued to be effective March 30, 1984, making the adjustments that are required by section 504(c) of the Trade Act, on the basis of official data covering all of calendar year 1983. It should be emphasized that the information set forth below covers only the first 10 months of 1983. While this is not complete information, it is being published now in order to provide the maximum possible advance indication as to adjustments that may be made to meet the requirements of section 504(c) of the Trade Act.

List I below shows countries which have already exceeded competitive need limitations (country supplied over \$57.9 million during January-October 1983) or have been graduated from the GSP in earlier years pursuant to the President's discretionary authority.

List II below shows countries which are approaching the competitive need limitations (country accounted for over 47 percent of the value of total U.S. imports and/or over \$48 million during January-October 1983).

List III below shows countries which, despite accounting for more than 40 percent of the value of total U.S. imports of an article, may be eligible to receive GSP benefits through the de minimis

waiver (country accounted for over 50 percent of the value of total U.S. imports of the item and the value of total U.S. imports was less than \$1.37 million during January-October 1983).

List IV below shows countries which are currently ineligible for the GSP but which may be eligible for redesignation to GSP status pursuant to the President's discretionary authority (country accounted for less than 50 percent of the

value of U.S. imports and the value of total U.S. imports was less than \$48 million during January-October 1983).

The column headed "TSUS" in the lists below set forth item numbers of the Tariff Schedules of the United States (19 U.S.C. 1202), representing categories of imported articles.

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

BILLING CODE 3190-01-M

LIST I : COUNTRIES GRADUATED OR EXCEEDING COMPETITIVE NEED LIMITS
JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
68815	MEXICO	45.7%	688,235,711	\$192,915,907
68843	HONG KONG	14.2%	662,327,809	6437,813,406
69232	MEXICO	12.0%	\$206,104,923	\$1,712,053,015
69232	BRAZIL	2.9%	\$69,042,591	\$6,592,035
69635	TAIWAN	38.9%	\$2,561,632	\$211,417,304
69660	KOREA, SOUTH	99.5%	\$210,364,783	\$20,872,171
70639	KOREA, SOUTH	14.1%	\$2,939,301	\$20,872,171
70639	HONG KONG	13.0%	\$2,711,434	\$20,872,171
70661	TAIWAN	57.2%	\$11,938,815	\$18,257,743
70661	HONG KONG	25.8%	\$4,702,954	\$18,257,743
70661	TAIWAN	40.6%	\$7,413,374	\$152,679,797
70845	TAIWAN	46.5%	\$70,965,998	\$173,106,689
70847	HONG KONG	10.2%	\$17,682,864	\$11,091,358
70915	ISRAEL	0.6%	\$61,370	\$9,776,805
70940	HONG KONG	29.1%	\$2,849,844	\$6,230,480
72532	TAIWAN	46.5%	\$2,898,657	\$70,106,027
72711	HONG KONG	12.1%	\$8,469,371	\$7,470,953
72723	TAIWAN	37.2%	\$2,779,870	\$451,095,384
72735	TAIWAN	22.3%	\$100,444,931	\$313,927,366
72755	TAIWAN	27.5%	\$86,332,974	\$11,610,647
72822	TAIWAN	80.4%	\$9,336,049	\$2,427,866
73094	KOREA, SOUTH	35.2%	\$854,153	\$716,123
73130	TAIWAN	17.3%	\$123,921	\$19,696,394
73411	TAIWAN	49.1%	\$9,663,431	\$470,331,059
73420	HONG KONG	21.3%	\$100,039,342	\$470,331,059
73430	TAIWAN	39.0%	\$183,375,552	\$19,442,785
73509	TAIWAN	50.3%	\$9,784,384	\$2,632,129
73512	TAIWAN	59.6%	\$1,568,409	\$73,441,498
73520	TAIWAN	38.3%	\$63,452,948	\$13,349,804
73715	HONG KONG	35.5%	\$26,077,261	\$41,118,390
73721	HONG KONG	46.8%	\$14,709,047	\$83,922,680
73723	TAIWAN	56.3%	\$47,277,185	\$24,737,905
73730	KOREA, SOUTH	38.2%	\$9,462,193	\$258,215,196
73780	HONG KONG	20.0%	\$51,582,293	\$10,110,323
73795	HONG KONG	20.8%	\$278,947	\$2,483,546
74011	ISRAEL	0.9%	\$23,624	\$258,165,502
74012	HONG KONG	0.5%	\$1,399,069	\$316,096,303
74013	HONG KONG	9.5%	\$30,066,775	\$76,347,706
74014	HONG KONG	50.0%	\$38,189,371	\$1,797,114
74125	HONG KONG	29.0%	\$521,363	\$24,715,717
75225	HONG KONG	32.2%	\$9,671,977	\$302,770,107
77143	TAIWAN	9.7%	\$67,314,161	\$1,036,976,333
77251	KOREA, SOUTH	2.7%	\$100,832,961	\$23,507,248
77260	KOREA, SOUTH	34.4%	\$8,090,180	\$401,618,800
77455	TAIWAN	15.5%	\$62,399,464	\$141,160,090
79115	KOREA, SOUTH	45.7%	\$64,527,724	

* See LIST III

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
* 10785	BRAZIL	66.4%	\$524,613	\$789,757
* 10788	BRAZIL	57.6%	\$50,784,008	\$88,150,495
* 10780	ARGENTINA	73.6%	\$2,681,495	\$3,663,510
* 11045	ARGENTINA	77.2%	\$751,906	\$973,883
* 11301	THAILAND	61.5%	\$2,083,313	\$3,389,258
* 11406	KOREA, SOUTH	59.2%	\$1,266,773	\$2,438,355
* 12155	INDIA	68.4%	\$2,726,971	\$3,989,713
* 12164	INDIA	59.7%	\$1,199,361	\$2,007,730
* 12165	ARGENTINA	69.4%	\$14,551,656	\$20,962,183
* 13032	ARGENTINA	47.4%	\$363,356	\$767,098
* 13037	ARGENTINA	79.9%	\$751,667	\$940,329
* 13040	KOREA, SOUTH	100.0%	\$3,478	\$3,478
* 13135	THAILAND	68.8%	\$334,687	\$777,418
* 13514	PORTUGAL	74.3%	\$13,827	\$18,612
* 13541	ISRAEL	62.8%	\$305,551	\$486,211
* 13580	NICARAGUA	89.6%	\$12,410	\$13,856
* 13590	MEXICO	97.3%	\$24,322,439	\$24,985,693
* 13599	MEXICO	80.8%	\$473,248	\$778,138
* 13600	DOMINICAN REPUBLIC	60.6%	\$4,327,588	\$5,671,837
* 13630	MEXICO	66.1%	\$6,618,159	\$10,005,861
* 13661	MEXICO	84.9%	\$1,740,253	\$2,048,664
* 13680	MEXICO	93.0%	\$3,720,617	\$4,001,820
* 13695	DOMINICAN REPUBLIC	69.5%	\$73,409	\$105,618
* 13702	DOMINICAN REPUBLIC	96.8%	\$1,389,372	\$1,435,000
* 13711	MEXICO	73.0%	\$2,380,227	\$3,260,998
* 13775	MEXICO	96.4%	\$1,314,677	\$1,364,214
* 13779	MEXICO	99.9%	\$1,336,651	\$1,338,331
* 13789	DOMINICAN REPUBLIC	98.6%	\$1,153,186	\$1,169,200
* 13793	DOMINICAN REPUBLIC	73.6%	\$361,838	\$691,948
* 13905	MEXICO	59.1%	\$12,156,090	\$20,577,618
* 13835	COSTA RICA	87.1%	\$1,500,927	\$1,722,877
* 14014	THAILAND	57.6%	\$424,419	\$736,622
* 14035	TURKEY	91.1%	\$4,795,348	\$5,262,535
* 14054	ISRAEL	50.4%	\$177,821	\$352,953
* 14135	TURKEY	76.1%	\$307,750	\$404,604
* 14177	TURKEY	59.6%	\$168,266	\$282,381
* 14550	MEXICO	55.4%	\$10,941,680	\$19,755,915
* 14622	TURKEY	78.7%	\$6,761,761	\$88,677
* 14642	ECUADOR	75.0%	\$284,129	\$9,011,818
* 14644	PHILIPPINES	47.2%	\$2,510,575	\$601,803
* 14690	CHILE	70.4%	\$497,239	\$3,567,565
* 14733	JAMAICA	82.7%	\$281,449	\$601,015
* 14736	HAITI	97.8%	\$9,366	\$287,650
* 14754	COLOMBIA	65.9%	\$9,328	\$14,215
* 14785	BRAZIL	71.9%	\$40,228	\$55,979
* 14812	MEXICO	35.8%	\$418,671	\$487,896
* 14819	MEXICO	67.0%	\$2,523,069	\$3,764,198
* 14825	ISRAEL	100.0%	\$27,072	\$27,072
	MEXICO	98.2%	\$2,191,752	\$2,232,156

LIST II : COUNTRIES APPROACHING COMPETITIVE NEED LIMITS
JAN-OCT 1983

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JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
14872	CHILE	90.9%	68,357,373	69,195,599	* 24012	BRAZIL	71.3%	6394,652	6553,583
* 14915	COSTA RICA	63.8%	6456,196	6716,895	* 24016	HONG KONG	100.0%	6376	6376
14950	MEXICO	71.7%	61,342,354	61,871,939	* 24019	TAIWAN	77.1%	6614,300	6796,892
* 14960	THAILAND	49.8%	61,596,969	63,208,342	24021	MEXICO	51.8%	63,416,667	66,600,163
* 15200	PANAMA	63.7%	61,552	62,435	24038	PHILIPPINES	58.0%	63,776,920	66,507,008
* 15243	DOMINICAN REPUBLIC	65.3%	6187,091	6286,390	* 24052	BRAZIL	100.0%	6214,897	6214,897
15254	BRAZIL	62.8%	6963,568	61,535,300	* 24054	TAIWAN	51.1%	68,941	61,751
* 15320	PHILIPPINES	100.0%	6790	6790	* 24058	INDONESIA	53.3%	6534,047	61,003,515
* 15440	HAUTITIUS	47.0%	6380,083	6807,894	* 24500	CHILE	48.9%	68,992	618,366
15453	TAIWAN	52.5%	61,330,952	62,536,642	* 24545	MEXICO	51.1%	6185,481	6363,254
15535	DOMINICAN REPUBLIC	69.5%	62,424,927	63,491,005	* 25120	MEXICO	99.1%	665,461	666,072
* 16165	ARGENTINA	61.6%	6355,529	657,687	* 25125	TAIWAN	100.0%	61,487	61,487
* 16175	ISRAEL	47.1%	6107,124	6227,479	* 25273	MEXICO	74.7%	64,210	65,635
* 16183	INDIA	55.0%	63,477,569	66,322,177	* 25456	MEXICO	83.9%	6178,123	6212,338
* 16184	KOREA, SOUTH	68.7%	6620,560	6903,264	* 25660	KOREA, SOUTH	61.7%	620,124,644	632,599,014
* 16211	JAMAICA	59.6%	612,321	620,678	* 27390	HONG KONG	50.6%	6105,583	6208,859
* 16813	TRINIDAD ISLAND	99.3%	6534,716	620,678	* 30440	THAILAND	94.9%	67,434	67,942
* 16842	YUGOSLAVIA	86.4%	695,139	6538,406	* 30444	TAIWAN	62.0%	6775	61,249
* 16854	YUGOSLAVIA	52.9%	6107,144	6110,137	* 30448	BRAZIL	97.8%	645,421	645,421
* 16861	YUGOSLAVIA	92.7%	627,875	6202,358	* 30522	INDIA	67.0%	6369,833	652,360
* 16947	TAIWAN	71.6%	66,700	630,070	* 30588	INDIA	58.7%	61,028,508	61,751,049
* 16949	MEXICO	49.6%	620,520	641,344	* 30560	PHILIPPINES	49.2%	6941,647	61,914,997
* 16958	YUGOSLAVIA	100.0%	63,900	63,900	* 30671	MEXICO	55.0%	67,552	613,734
* 17015	CAMEROON	61.1%	6312,474	6511,778	* 31530	MEXICO	30.3%	659,703	673,077
* 17712	KOREA, SOUTH	100.0%	61,460,389	61,460,389	* 31555	BRAZIL	69.1%	6149,743	6216,554
* 18453	TRUST TERR OF PACIFI	77.3%	6679	6679	* 31580	THAILAND	91.9%	6816,240	6880,331
* 19035	BAHANNAS	64.2%	6365,619	6472,730	* 31585	THAILAND	99.2%	6193,711	6195,203
19205	MEXICO	66.7%	62,541,212	62,541,212	* 31590	THAILAND	96.1%	609,602	607,804
20091	HONDURAS	60.7%	62,598,946	64,279,245	* 31595	THAILAND	100.0%	67,635	67,635
20262	MEXICO	90.9%	63,134,317	635,236,073	* 31650	HONG KONG	47.5%	610,352	639,707
* 20320	HONDURAS	56.2%	648,000	685,442	* 31901	INDIA	90.0%	61,945,612	61,900,613
20640	TAIWAN	65.3%	66,600,236	67,039,539	* 31903	INDIA	96.2%	61,566,804	61,566,804
20647	TAIWAN	74.2%	61,999,238	62,694,958	* 31905	INDIA	97.7%	62,421,590	62,421,590
20660	MEXICO	55.6%	619,139,062	634,627,190	* 31907	INDIA	94.5%	6306,952	6324,955
* 20665	TAIWAN	59.0%	6377,563	6755,849	* 33550	INDIA	61.4%	6183,775	6129,921
* 20690	TAIWAN	97.9%	638,070,518	669,353,237	* 34730	BAHGLADESH	51.7%	6302,637	6240,754
* 22010	PORTUGAL	93.6%	6110,951	6110,950	* 36035	INDIA	90.0%	6026,700	6037,007
22020	PORTUGAL	86.2%	61,882,247	62,169,216	* 36121	PHILIPPINES	100.0%	63,323	63,323
22025	PORTUGAL	36.2%	61,232,077	61,462,576	* 36409	ROMANIA	59.0%	621,346	630,865
* 22035	PORTUGAL	99.1%	631,610	632,110	* 36514	HONG KONG	69.0%	68,050	614,007
* 22037	PORTUGAL	80.4%	637,840	642,813	* 36529	TAIWAN	100.0%	62,193	62,193
22040	PORTUGAL	80.0%	62,294,663	63,772,304	* 36584	PHILIPPINES	50.5%	62,275,101	64,500,915
22210	HONG KONG	61.0%	65,560,036	69,004,119	* 36604	PHILIPPINES	63.1%	62,615,630	63,029,927
* 22232	TAIWAN	100.0%	645,101	645,101	* 41056	ROMANIA	49.2%	666,003	6139,601
* 22236	TAIWAN	72.0%	6176,010	6244,385	* 41222	BAHANNAS	51.7%	645,946,952	660,010,303
* 24010	BRAZIL	99.7%	61,006,740	61,009,540	* 41231	ISRAEL	56.6%	6210,156	6370,568
					* 41300	MEXICO	51.9%	6390,131	6752,632
					* 41336	ROMANIA	50.8%	6311,785	6613,656
					* 41610	TURKEY	74.9%	62,452,320	63,273,314

* See LIST III

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JAN-OCT 1983

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* 41754	BOLIVIA	95.5%	\$101,091	\$105,880	* 52037	INDIA	50.7%	\$61,428	\$121,101
* 41800	MEXICO	67.2%	\$161,389	\$240,235	* 52351	TAIWAN	77.6%	\$3,360	\$4,329
* 41824	INDIA	87.2%	\$117,812	\$135,145	* 53315	TAIWAN	67.0%	\$353,404	\$527,611
* 41878	MEXICO	62.1%	\$577,023	\$929,871	* 53474	TAIWAN	55.4%	\$2,614	\$4,720
* 41900	PERU	93.7%	\$34,829	\$37,168	* 53476	TAIWAN	60.0%	\$339,673	\$566,103
* 41960	MEXICO	67.0%	\$1,417,118	\$2,114,701	* 53481	TAIWAN	49.0%	\$1,921,778	\$3,919,654
* 42002	ISRAEL	72.2%	\$206,289	\$285,824	* 53491	TAIWAN	54.2%	\$4,233,370	\$9,080,982
* 42024	ISRAEL	62.1%	\$585,570	\$942,392	* 53494	TAIWAN	43.8%	\$52,186,571	\$119,106,083
* 42082	ISRAEL	96.2%	\$830,644	\$863,581	* 53531	MEXICO	52.2%	\$6,086,476	\$11,657,980
* 42160	MEXICO	97.8%	\$50,554	\$51,694	* 53611	ISRAEL	56.0%	\$640,251	\$1,146,266
* 42186	MEXICO	92.6%	\$471,589	\$509,064	* 54021	MEXICO	49.1%	\$2,245,357	\$4,573,096
* 42274	MEXICO	94.1%	\$350,400	\$372,336	* 54534	TAIWAN	83.5%	\$8,688	\$10,406
* 42500	TAIWAN	69.4%	\$876,500	\$1,262,100	* 54553	MEXICO	77.6%	\$1,001,579	\$1,290,453
* 42512	BRAZIL	99.1%	\$39,486	\$39,841	* 54585	TAIWAN	60.1%	\$685,662	\$1,141,795
* 42584	NETHERLANDS ANTILLES	47.0%	\$396,805	\$846,140	* 54587	TAIWAN	47.5%	\$3,838,711	\$8,077,344
* 42634	ARGENTINA	78.4%	\$1,062,732	\$1,355,858	* 54737	TAIWAN	47.1%	\$5,694,562	\$12,091,843
* 42702	DOMINICAN REPUBLIC	100.0%	\$6,930	\$6,930	* 54741	HONG KONG	51.5%	\$99,026	\$192,413
* 42716	ARGENTINA	85.4%	\$500	\$500	* 60133	MEXICO	81.7%	\$2,164,917	\$2,649,747
* 42735	MEXICO	47.9%	\$454,076	\$531,995	* 60210	PERU	83.8%	\$4,080,132	\$4,866,122
* 42826	MALAYSIA	50.1%	\$47,876	\$99,948	* 60360	CHILE	48.5%	\$5,244,464	\$10,821,991
* 42836	MALAYSIA	50.1%	\$115,131	\$115,131	* 60566	SINGAPORE	53.7%	\$27,576	\$51,389
* 42850	BRAZIL	68.9%	\$7,772	\$15,905	* 60668	PORTUGAL	56.3%	\$27,523	\$457,270
* 42858	BRAZIL	57.0%	\$1,776,068	\$3,116,857	* 61063	INDIA	65.6%	\$45,102	\$68,726
* 42922	BRAZIL	80.0%	\$637,769	\$796,833	* 61065	KOREA, SOUTH	68.7%	\$1,361,375	\$1,980,336
* 43113	INDIA	86.4%	\$75,780	\$87,734	* 61066	KOREA, SOUTH	100.0%	\$3,629	\$3,629
* 43716	INDIA	100.0%	\$172,328	\$172,328	* 61070	TAIWAN	60.7%	\$644,316	\$1,060,807
* 44610	MALAYSIA	65.7%	\$238,791	\$363,206	* 61202	MEXICO	100.0%	\$37,982	\$37,982
* 45228	ISRAEL	84.2%	\$52,199	\$61,967	* 61203	CHILE	66.7%	\$52,296,609	\$78,402,831
* 45516	COLOMBIA	89.9%	\$7,747	\$8,622	* 61215	MEXICO	54.1%	\$356,644	\$658,824
* 46115	BERMUDA	79.1%	\$148,084	\$187,110	* 61230	YUGOSLAVIA	72.4%	\$348,311	\$481,247
* 46525	CAYMAN ISLANDS	58.9%	\$70,634	\$83,196	* 61236	KOREA, SOUTH	99.1%	\$32,504	\$32,583
* 46605	JAMAICA	53.6%	\$31,251	\$53,082	* 61243	TAIWAN	100.0%	\$121,756	\$121,756
* 47018	BRAZIL	53.0%	\$77,681	\$145,061	* 61315	TAIWAN	52.5%	\$136,447	\$259,871
* 47336	CYPRUS	90.3%	\$34,000	\$64,106	* 61318	TAIWAN	50.0%	\$2,310,341	\$4,622,945
* 47338	CYPRUS	60.3%	\$23,796	\$26,355	* 61802	GHANA	12.3%	\$56,560,705	\$18,208,788
* 47352	MEXICO	99.4%	\$51,604	\$85,575	* 61815	VENEZUELA	47.9%	\$8,719,828	\$18,208,788
* 47382	KOREA, SOUTH	99.8%	\$4,094,053	\$4,120,568	* 62050	ZIMBABWE	73.4%	\$68,210	\$92,900
* 49010	MALAYSIA	62.8%	\$405,924	\$406,816	* 62217	COLOMBIA	94.9%	\$27,262	\$28,738
* 49012	MALAYSIA	67.1%	\$363,968	\$579,451	* 62320	BRAZIL	59.6%	\$597,585	\$1,002,702
* 49404	TAIWAN	73.5%	\$329,031	\$490,583	* 62325	BOLIVIA	93.6%	\$146,745	\$156,736
* 51131	MEXICO	95.6%	\$12,765	\$17,379	* 62424	MEXICO	57.1%	\$6,000	\$10,508
* 51224	MEXICO	72.9%	\$361,585	\$378,172	* 62434	MEXICO	68.3%	\$49,745	\$72,811
* 51231	MEXICO	53.2%	\$188,261	\$258,321	* 63260	PERU	67.0%	\$499,927	\$746,193
* 51454	MEXICO	53.2%	\$4,694	\$8,824	* 64245	MEXICO	78.0%	\$322,144	\$412,751
* 51624	BRAZIL	95.3%	\$24,896	\$26,129	* 64270	TAIWAN	47.2%	\$12,575	\$26,638
* 51671	INDIA	89.2%	\$52,500	\$58,846	* 64424	BRAZIL	87.8%	\$31,036	\$35,330
* 51673	INDIA	94.4%	\$514,410	\$544,984	* 64606	TAIWAN	77.4%	\$97,475	\$125,976
* 51674	INDIA	100.0%	\$17,471	\$17,471	* 64636	KOREA, SOUTH	50.9%	\$295,976	\$580,964
		86.3%	\$128,652	\$149,253	* 64647	TAIWAN	74.5%	\$169,269	\$227,230

* See LIST III

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JAN-OCT 1983

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JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
* 64682	TAIWAN	55.9%	673,121	6130,887	* 68542	KOREA, SOUTH	98.8%	648,550	649,151
* 64687	HONG KONG	49.0%	638,560	678,717	* 68630	TAIWAN	61.7%	68,566,971	614,362,694
* 64688	TAIWAN	96.7%	69,000	69,310	* 68742	TAIWAN	62.7%	6371,279	6591,800
* 64690	MEXICO	63.7%	63,436,126	65,390,578	* 68810	TAIWAN	84.8%	643,011,005	650,737,043
* 64695	MEXICO	88.6%	6326,515	6368,344	* 68843	TAIWAN	12.7%	655,713,552	6437,813,406
* 64855	TAIWAN	64.0%	61,520,132	62,375,637	* 69015	MEXICO	86.2%	613,670,000	615,853,391
* 64857	MEXICO	48.1%	6303,060	6629,695	* 69229	MEXICO	48.7%	6795,650	61,632,207
* 64871	TAIWAN	100.0%	6504	6504	* 69232	TAIWAN	3.0%	650,651,265	61,712,053,015
* 64891	TAIWAN	87.4%	61,341,450	61,535,056	* 69260	TAIWAN	56.5%	624,459,690	643,278,594
* 64895	TAIWAN	51.6%	61,721,911	63,336,175	* 69610	TAIWAN	37.5%	653,236,911	6142,012,996
* 64927	TAIWAN	57.6%	6243,164	6421,899	* 69640	TAIWAN	49.1%	61,788,606	63,645,687
* 64973	KOREA, SOUTH	100.0%	64,083	64,083	* 70090	MEXICO	94.5%	611,270,910	611,930,472
* 64975	HONG KONG	65.2%	675,589	6115,920	* 70215	HONG KONG	47.4%	62,568	65,623
* 65031	MEXICO	48.6%	672,144	6148,522	* 70232	MEXICO	75.8%	6227,285	6300,019
* 65047	TAIWAN	78.5%	6237,745	6302,895	* 70235	MEXICO	63.3%	640,510	663,960
* 65083	HONG KONG	95.2%	69,134	69,598	* 70245	MEXICO	100.0%	616,045	616,045
* 65087	HONG KONG	79.1%	644,822	656,640	* 70314	MEXICO	99.2%	611,591,636	611,591,636
* 65104	KOREA, SOUTH	66.0%	63,105	64,705	* 70320	HONG KONG	100.0%	61,710	61,710
* 65107	MEXICO	58.1%	6126,784	6218,050	* 70434	TAIWAN	100.0%	641,230	641,230
* 65115	TAIWAN	59.1%	6231,115	6397,789	* 70633	PHILIPPINES	92.4%	665,076	670,462
* 65121	TAIWAN	63.7%	65,169,009	68,114,227	* 70637	TAIWAN	68.7%	6110,738	6161,168
* 65133	HONG KONG	50.7%	63,752,937	65,424,902	* 70645	HONG KONG	53.7%	61,131,378	62,107,241
* 65137	TAIWAN	52.4%	68,098,983	615,463,295	* 70650	TAIWAN	70.8%	634,832	6483,030
* 65153	TAIWAN	57.6%	61,652,022	62,868,766	* 70861	ISRAEL	78.6%	6269,863	6366,902
* 65162	THAILAND	82.2%	61,675	612,985	* 70863	ISRAEL	58.4%	6178,535	6305,722
* 65213	MEXICO	53.0%	61,765	63,328	* 70907	HONG KONG	50.5%	690,232	6154,136
* 65219	TAIWAN	47.0%	61,563	63,328	* 70954	TRINIDAD ISLAND	59.1%	62,202,507	63,726,433
* 65260	TAIWAN	47.8%	61,941,177	64,062,833	* 71067	TAIWAN	50.5%	610,041	619,865
* 65303	MEXICO	63.6%	6295,554	6464,975	* 71130	TAIWAN	51.9%	689,443	689,443
* 65305	INDIA	53.2%	65,423	65,833	* 71131	BRAZIL	75.5%	6354,106	6354,106
* 65339	TAIWAN	54.5%	647,997,273	688,145,739	* 71138	MEXICO	50.0%	63,589,077	67,176,231
* 65345	TAIWAN	47.6%	65,536,403	611,635,010	* 71307	TAIWAN	94.2%	6100,440	6106,500
* 65347	TAIWAN	91.9%	61,216,855	61,323,652	* 71317	MEXICO	67.7%	65,561,637	60,212,184
* 65370	HONG KONG	73.0%	640,435	665,670	* 71319	HONG KONG	73.7%	61,149,794	61,559,043
* 65305	TAIWAN	92.7%	63,620,776	63,904,009	* 71319	HONG KONG	63.6%	6490,216	61,559,143
* 65399	TAIWAN	67.5%	63,319,410	66,917,313	* 72214	TAIWAN	49.8%	6654,430	61,275,100
* 65412	TAIWAN	59.4%	63,565,413	63,900,262	* 72219	TAIWAN	51.1%	6102,442	6356,763
* 65414	BRAZIL	63.0%	61,231,226	61,907,117	* 72292	TAIWAN	47.2%	674,646	6150,302
* 65724	TAIWAN	73.4%	66,657,705	66,342,079	* 72350	MEXICO	74.7%	6201,210	6376,296
* 65735	TAIWAN	47.0%	620,925,230	661,503,055	* 72520	INDIA	62.0%	694,741	6115,493
* 66000	TAIWAN	54.3%	6450,515	6030,372	* 72550	TAIWAN	56.7%	616,750,639	630,651,720
* 66610	TAIWAN	11.9%	655,030,509	6462,010,599	* 72552	TAIWAN	49.6%	61,063,565	62,116,092
* 67216	TAIWAN	60.2%	651,510,176	6106,000,615	* 72625	TAIWAN	61.2%	64,063,371	67,232,401
* 67652	KOREA, SOUTH	3.0%	6430,152	62,541,073,170	* 72706	MEXICO	63.1%	647,330,111	674,932,725
* 68059	MEXICO	50.3%	6430,152	6055,002	* 72711	PHILIPPINES	47.0%	632,934,712	670,106,077
* 68235	MEXICO	52.9%	646,200,131	608,504,949	* 72750	TAIWAN	50.7%	621,007,034	641,466,376
* 68300	HONG KONG	72.3%	65,209,439	67,319,371	* 72706	TAIWAN	67.7%	62,202,263	64,709,277
* 68410	TAIWAN	53.4%	63,045,235	65,701,000	* 73020	TAIWAN	52.9%	640,114	640,997
* 68415	SINGAPORE	67.3%	620,421,491	643,160,204	* 73029	PHILIPPINES	90.1%	640,012	6540,160

* See LIST III

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JAN-OCT 1983

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JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
* 73041	BRAZIL	99.9%	\$477,589	\$478,286	75022	TAIWAN	56.9%	\$1,055,689	\$1,855,510
* 73051	HAITI	100.0%	\$3,610	\$3,610	75025	HONG KONG	54.4%	\$2,538,921	\$4,671,311
* 73077	BRAZIL	76.3%	\$9,304	\$12,187	75035	TAIWAN	66.8%	\$1,302,138	\$1,950,472
* 73090	KOREA, SOUTH	73.9%	\$4,432,942	\$5,998,730	* 75060	HONG KONG	58.6%	\$3,227,232	\$5,508,293
* 73110	TAIWAN	59.1%	\$409,944	\$693,304	* 75080	KOREA, SOUTH	61.7%	\$780,691	\$1,266,272
* 73120	KOREA, SOUTH	53.1%	\$1,928,359	\$3,634,622	* 75105	TAIWAN	72.1%	\$218,836	\$303,480
* 73130	KOREA, SOUTH	53.8%	\$385,277	\$716,123	* 75110	TAIWAN	81.2%	\$46,871,256	\$57,718,058
* 73142	HONG KONG	100.0%	\$89,365	\$89,365	* 75111	TAIWAN	58.9%	\$33,104	\$56,250
* 73250	TAIWAN	82.3%	\$496,840	\$603,658	* 75115	TAIWAN	84.2%	\$942,098	\$1,716,697
* 73260	TAIWAN	67.1%	\$12,105,765	\$18,041,021	* 75120	TAIWAN	100.0%	\$22,447	\$22,447
* 73410	HONG KONG	53.6%	\$3,241,906	\$3,983,366	* 75530	MALTA	91.6%	\$1,345,891	\$1,469,912
* 73420	HONG KONG	85.6%	\$1,797,220	\$3,350,094	* 75621	INDIA	67.4%	\$248,529	\$368,825
* 73434	HONG KONG	54.5%	\$463,767	\$518,528	* 75623	INDIA	74.4%	\$8,558	\$11,508
* 73442	TAIWAN	70.9%	\$499,878	\$916,596	* 75635	TURKEY	75.9%	\$34,110	\$44,932
* 73451	TAIWAN	82.2%	\$233,600	\$329,319	* 75640	HONG KONG	54.1%	\$328,216	\$606,842
* 73454	TAIWAN	82.2%	\$2,947,462	\$3,586,149	* 75645	HONG KONG	55.6%	\$20,408	\$20,408
* 73456	HAITI	51.9%	\$15,059,051	\$28,989,437	* 76056	TAIWAN	67.2%	\$174,535	\$259,633
* 73460	TAIWAN	60.5%	\$27,179,230	\$44,957,633	* 77105	ISRAEL	69.3%	\$325,900	\$470,053
* 73470	KOREA, SOUTH	61.1%	\$157,952	\$258,689	* 77145	TAIWAN	96.0%	\$665,021	\$692,398
* 73471	TAIWAN	57.2%	\$8,408,581	\$14,834,607	* 77235	TAIWAN	80.6%	\$2,058,054	\$3,396,084
* 73472	TAIWAN	64.9%	\$282,993	\$435,852	* 77270	TAIWAN	88.6%	\$49,133,776	\$55,479,188
* 73486	TAIWAN	57.9%	\$1,118,546	\$1,931,416	* 77305	TAIWAN	48.3%	\$791,933	\$1,641,222
* 73487	TAIWAN	68.6%	\$21,135,198	\$30,808,622	* 77420	INDIA	55.6%	\$2,369,225	\$4,259,644
* 73490	TAIWAN	75.1%	\$8,927,420	\$11,883,532	* 77435	HONG KONG	51.2%	\$3,023	\$5,901
* 73507	KOREA, SOUTH	87.3%	\$5,731,215	\$6,563,435	* 77445	HONG KONG	62.8%	\$21,541	\$34,302
* 73511	TAIWAN	54.4%	\$5,142,565	\$9,456,414	* 79003	TAIWAN	50.2%	\$7,934,502	\$15,798,233
* 73726	TAIWAN	90.4%	\$239,820	\$265,423	* 79010	TAIWAN	51.6%	\$6,308,575	\$12,222,213
* 73743	HONG KONG	49.3%	\$1,827,835	\$3,707,542	* 79039	TAIWAN	56.3%	\$3,988,868	\$7,086,863
* 73747	HONG KONG	61.7%	\$1,594,000	\$2,582,099	* 79070	KOREA, SOUTH	89.8%	\$43,026,059	\$47,922,590
* 73749	HONG KONG	61.1%	\$1,109,854	\$1,815,825	* 79110	HONG KONG	84.2%	\$29,155,535	\$34,637,509
* 73750	TAIWAN	72.4%	\$7,341,554	\$10,433,926	* 79117	BRAZIL	48.1%	\$155,335	\$322,959
* 73751	KOREA, SOUTH	62.1%	\$50,820	\$81,774	* 79120	BRAZIL	66.9%	\$32,658	\$48,825
* 73760	HONG KONG	83.3%	\$15,942,336	\$19,137,935	* 79135	TAIWAN	65.5%	\$2,713	\$80,499
* 73765	TAIWAN	49.8%	\$2,754,376	\$5,529,356	* 79180	TAIWAN	47.9%	\$3,790	\$7,917
* 74011	PERU	52.5%	\$4,214,356	\$8,024,515	* 79230	TAIWAN	54.4%	\$197,799	\$363,597
* 74030	HONG KONG	62.5%	\$6,317,134	\$10,110,323	* 79250	PHILIPPINES	59.7%	\$15,497	\$25,957
* 74034	HONG KONG	51.6%	\$827,843	\$1,602,961	* 79260	HONG KONG	63.8%	\$4,022,499	\$6,300,839
* 74070	PERU	91.0%	\$1,952,661	\$2,145,485	* 79275	HONG KONG	64.4%	\$3,990,528	\$6,194,683
* 74120	HONG KONG	51.1%	\$7,609,939	\$14,881,498			83.4%	\$2,615,707	\$2,960,257
* 74120	HONG KONG	49.7%	\$1,250,928	\$2,516,241					
* 74120	HONG KONG	92.1%	\$162,813	\$176,817					
* 74552	MALAYSIA	55.5%	\$286,336	\$515,745					
* 74556	MALAYSIA	50.1%	\$1,197,324	\$2,391,681					
* 74570	TAIWAN	77.2%	\$291,617	\$377,681					
* 74812	HAITI	53.8%	\$73,657	\$136,953					
* 74815	TAIWAN	76.9%	\$345,411	\$449,207					
* 75005	HONG KONG	50.0%	\$10,207,201	\$20,626,342					
* 75020	TAIWAN	81.5%	\$254,422	\$312,042					
		55.6%	\$5,819,300	\$10,462,498					

* See LIST III

* See LIST III

LIST III : POSSIBLE de MINIMIS ITEMS
JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
10745	BRAZIL	66.4%	824,613	878,757	20665	TAIWAN	50.0%	377,558	875,849
11045	ARGENTINA	77.2%	875,906	8973,883	22010	PORTUGAL	97.9%	61,105,734	61,129,110
13032	ARGENTINA	47.4%	363,356	6767,098	22015	PORTUGAL	93.6%	6110,951	6118,590
13037	ARGENTINA	79.9%	751,667	9940,339	22035	PORTUGAL	99.1%	31,818	32,118
13040	KOREA, SOUTH	100.0%	3,478	63,478	22037	PORTUGAL	88.4%	37,840	42,813
13135	THAILAND	68.8%	834,487	777,418	22232	TAIWAN	100.0%	45,181	45,181
13514	PORTUGAL	74.3%	313,827	618,612	22236	TAIWAN	99.7%	176,018	244,385
13541	ISRAEL	62.8%	305,551	948,211	24010	BRAZIL	61,006,748	61,009,548	
13580	NICARAGUA	89.6%	112,410	613,856	24012	BRAZIL	71.3%	394,652	553,583
13599	MEXICO	60.8%	9473,248	778,138	24016	HONG KONG	100.0%	6376	6376
13695	DOMINICAN REPUBLIC	69.5%	873,409	6105,618	24019	TAIWAN	77.1%	661,300	976,892
13779	COSTA RICA	96.4%	61,364,677	61,364,214	24052	BRAZIL	100.0%	6214,897	6214,897
13789	DOMINICAN REPUBLIC	99.9%	61,336,651	61,338,331	24054	TAIWAN	51.1%	88,941	17,511
13793	DOMINICAN REPUBLIC	98.6%	61,153,186	61,159,200	24058	INDONESIA	53.3%	533,047	61,002,515
14014	THAILAND	73.6%	361,838	9491,948	24500	CHILE	48.9%	88,992	18,386
14035	TURKEY	57.6%	424,419	673,622	24545	MEXICO	51.1%	6185,481	363,254
14054	ISRAEL	50.4%	177,821	352,953	25120	MEXICO	99.1%	665,461	666,072
14135	TURKEY	76.1%	307,750	804,604	25125	TAIWAN	100.0%	61,487	61,487
14590	MEXICO	59.6%	168,266	282,381	25273	MEXICO	74.7%	64,210	65,635
14642	ECUADOR	78.7%	69,965	88,877	25456	MEXICO	83.9%	6178,123	6212,338
14690	CHILE	47.2%	284,129	661,803	27390	HONG KONG	50.6%	6105,583	6208,859
14733	JAMAICA	82.7%	497,239	6601,015	30440	THAILAND	94.9%	89,434	91,942
14736	HAITI	97.8%	231,449	6287,650	30444	TAIWAN	62.0%	61,249	61,249
14754	COLOMBIA	65.9%	69,366	14,215	30448	BRAZIL	97.8%	44,421	45,422
14785	BRAZIL	71.9%	440,258	655,979	30522	INDIA	67.0%	369,833	552,360
14819	ISRAEL	85.8%	418,671	6487,896	30671	MEXICO	55.0%	67,552	613,734
14915	COSTA RICA	100.0%	627,072	627,072	31530	MEXICO	80.3%	58,703	673,077
14915	COSTA RICA	63.8%	456,196	6714,895	31555	BRAZIL	69.1%	6149,743	6216,554
15200	PANAMA	63.7%	91,552	62,435	31580	THAILAND	91.9%	816,249	888,331
15243	DOMINICAN REPUBLIC	100.0%	6187,091	6286,390	31585	THAILAND	99.2%	6193,711	6195,208
15320	PHILIPPINES	65.3%	6790	6790	31590	THAILAND	96.1%	64,402	687,804
15440	MAURITIUS	67.0%	380,083	6807,894	31595	THAILAND	100.0%	67,635	67,635
16165	ARGENTINA	61.6%	355,529	657,687	31650	HONG KONG	47.5%	618,852	639,707
16175	ISRAEL	47.1%	6107,124	627,479	31650	HONG KONG	100.0%	618,852	639,707
16184	KOREA, SOUTH	68.7%	660,554	903,264	31950	INDIA	94.5%	306,952	324,955
16211	JAMAICA	59.6%	612,321	620,678	34730	BANGLADESH	51.7%	6105,775	6129,921
16813	TRINIDAD ISLAND	99.3%	534,716	538,406	36035	INDIA	98.8%	632,637	670,754
16842	YUGOSLAVIA	56.4%	695,139	6110,137	36121	PHILIPPINES	100.0%	632,637	637,007
16854	YUGOSLAVIA	52.9%	6107,144	6202,350	36409	ROMANIA	621,346	63,323	63,323
16861	YUGOSLAVIA	92.7%	627,875	630,070	36514	HONG KONG	71.0%	60,050	63,065
16947	TAIWAN	71.6%	66,700	69,360	36529	TAIWAN	59.0%	60,050	614,007
16949	MEXICO	69.6%	60,520	641,344	41056	ROMANIA	100.0%	62,193	62,193
16953	YUGOSLAVIA	100.0%	63,900	63,900	41231	ISRAEL	56.6%	666,003	6135,681
17015	CAMEROON	61.1%	6312,474	6511,778	41231	ISRAEL	51.9%	6214,156	6370,560
17112	KOREA, SOUTH	100.0%	6679	6679	41200	MEXICO	51.9%	6390,131	6752,302
18453	TRUST TERR OF PACIFI	77.3%	365,619	6472,730	41336	ROMANIA	50.0%	6311,785	6613,656
18465	TAIWAN	64.2%	6156,944	6244,209	41754	BOLIVIA	95.5%	6101,091	6105,000
19085	BAHAMAS	56.2%	629,492	624,446	41800	MEXICO	67.2%	6161,309	6240,235
20320	HONDURAS	56.2%	640,000	635,442	41824	INDIA	87.2%	6117,012	6135,145
					41878	MEXICO	62.1%	6577,023	6929,071

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JAN-OCT 1983

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JAN-OCT 1983

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JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
41900	PERU	93.7%	934,829	\$37,168	54565	MEXICO	77.6%	\$1,001,579	\$1,290,653
42002	ISRAEL	72.2%	\$206,289	\$285,824	54585	TAIWAN	60.1%	\$685,662	\$1,141,795
42034	ISRAEL	62.1%	\$942,392	\$630,581	54741	HONG KONG	51.5%	\$99,026	\$192,413
42082	ISRAEL	96.2%	\$830,664	\$630,581	60566	SINGAPORE	53.7%	\$27,576	\$51,389
42160	MEXICO	97.8%	\$50,554	\$509,064	60648	PORTUGAL	56.3%	\$257,523	\$457,270
42186	MEXICO	92.6%	\$471,589	\$372,336	61063	INDIA	65.6%	\$45,102	\$68,726
42274	MEXICO	94.1%	\$350,400	\$1,252,100	61066	KOREA, SOUTH	100.0%	\$3,629	\$1,060,807
42276	MEXICO	69.6%	\$876,500	\$39,841	61070	TAIWAN	60.7%	\$644,316	\$37,982
42500	TAIWAN	99.1%	\$39,846	\$696,805	61202	MEXICO	100.0%	\$37,982	\$658,824
42512	BRAZIL	47.0%	\$396,805	\$844,140	61215	MEXICO	54.1%	\$36,444	\$481,247
42584	NETHERLANDS ANTILLES	78.4%	\$1,062,732	\$1,355,858	61230	YUGOSLAVIA	72.4%	\$348,311	\$32,583
42634	ARGENTINA	100.0%	\$6,930	\$6,930	61233	KOREA, SOUTH	99.1%	\$121,304	\$121,756
42702	DOMINICAN REPUBLIC	100.0%	\$500	\$500	61243	TAIWAN	100.0%	\$121,756	\$259,871
42716	ARGENTINA	85.4%	\$454,076	\$531,995	61315	TAIWAN	52.5%	\$136,447	\$92,900
42725	MEXICO	47.9%	\$47,876	\$99,948	62050	ZIMBABWE	73.4%	\$68,210	\$28,738
42836	MALAYSIA	50.1%	\$57,648	\$115,131	62217	COLOMBIA	94.9%	\$27,262	\$57,585
42850	BRAZIL	48.9%	\$7,772	\$15,905	62220	BRAZIL	59.6%	\$57,585	\$156,736
42922	BRAZIL	80.0%	\$637,799	\$796,833	62225	BOLIVIA	93.6%	\$146,745	\$10,508
43713	INDIA	86.4%	\$75,780	\$87,734	62454	MEXICO	57.1%	\$6,000	\$72,811
43716	INDIA	100.0%	\$172,328	\$172,328	62454	MEXICO	68.3%	\$9,765	\$746,193
44610	MALAYSIA	65.7%	\$238,791	\$363,206	63230	PERU	67.0%	\$492,927	\$412,751
45228	ISRAEL	84.2%	\$52,199	\$61,967	64245	MEXICO	47.2%	\$322,144	\$26,638
45516	COLOMBIA	89.7%	\$7,747	\$8,622	64270	TAIWAN	47.8%	\$12,576	\$35,330
45518	COLOMBIA	79.1%	\$148,084	\$187,110	64424	BRAZIL	87.8%	\$31,036	\$125,976
46115	BERNUDA	84.9%	\$70,634	\$83,196	64606	TAIWAN	77.4%	\$97,475	\$580,964
46525	BERNUDA ISLANDS	58.9%	\$31,251	\$53,082	64647	KOREA, SOUTH	50.9%	\$169,269	\$237,230
46605	JAMAICA	53.6%	\$77,681	\$145,061	64682	TAIWAN	74.5%	\$73,121	\$130,887
47018	BRAZIL	53.0%	\$34,000	\$64,106	64688	TAIWAN	49.0%	\$38,360	\$78,717
47336	GYRRUS	90.3%	\$23,796	\$26,355	64698	MEXICO	88.6%	\$326,515	\$368,344
47382	KOREA, SOUTH	60.3%	\$51,604	\$85,575	64857	MEXICO	48.1%	\$303,060	\$629,695
49010	MALAYSIA	99.8%	\$405,924	\$406,816	64871	TAIWAN	100.0%	\$504	\$421,899
49012	MALAYSIA	62.8%	\$363,908	\$579,451	64973	KOREA, SOUTH	57.6%	\$44,184	\$64,083
49404	TAIWAN	67.1%	\$329,031	\$490,583	64975	HONG KONG	65.2%	\$75,589	\$115,924
51131	MEXICO	73.5%	\$12,765	\$17,379	65031	MEXICO	48.6%	\$72,144	\$148,522
51224	MEXICO	95.6%	\$361,585	\$378,172	65047	TAIWAN	78.5%	\$237,745	\$302,895
51231	MEXICO	72.9%	\$188,261	\$258,321	65087	HONG KONG	95.2%	\$9,134	\$9,598
51254	MEXICO	53.2%	\$4,694	\$8,824	65104	KOREA, SOUTH	79.1%	\$44,822	\$56,640
51624	BRAZIL	95.3%	\$24,896	\$26,129	65107	MEXICO	66.0%	\$3,105	\$4,795
51671	INDIA	89.2%	\$52,500	\$58,846	65115	TAIWAN	58.1%	\$126,784	\$218,050
51673	INDIA	94.4%	\$514,410	\$544,984	65162	THAILAND	82.2%	\$10,675	\$12,885
51674	INDIA	100.0%	\$17,471	\$17,471	65213	MEXICO	53.0%	\$1,765	\$3,328
52037	INDIA	86.3%	\$128,852	\$149,253	65213	TAIWAN	47.0%	\$1,563	\$3,328
52351	TAIWAN	50.7%	\$61,428	\$121,101	65303	MEXICO	63.6%	\$295,554	\$464,975
53315	TAIWAN	77.6%	\$3,360	\$4,329	65305	INDIA	53.2%	\$8,423	\$15,833
53474	TAIWAN	67.0%	\$353,404	\$527,611	65347	TAIWAN	91.9%	\$1,216,855	\$1,323,652
53476	TAIWAN	55.4%	\$2,614	\$4,720					
53611	ISRAEL	60.0%	\$339,673	\$566,103					
54534	TAIWAN	83.5%	\$640,251	\$1,144,266					
			\$8,688	\$10,406					

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JAN-OCT 1983

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JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL	TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
65370	HONG KONG	73.8%	648,435	665,670	75050	KOREA, SOUTH	61.7%	6780,691	61,266,272
66080	TAIWAN	54.3%	6450,515	6830,372	75080	TAIWAN	72.1%	6218,836	6303,480
68059	MEXICO	50.3%	6430,152	6855,082	75110	TAIWAN	58.9%	633,104	656,250
68542	KOREA, SOUTH	98.8%	648,550	649,151	75115	TAIWAN	100.0%	622,447	622,447
68742	TAIWAN	62.7%	6371,279	6591,800	75530	MALTA	67.4%	6248,529	6368,625
70215	HONG KONG	47.4%	62,668	65,623	75621	INDIA	74.4%	68,558	611,508
70232	MEXICO	75.8%	640,510	6300,019	75623	INDIA	634,110	644,932	644,932
70235	MEXICO	63.3%	6227,285	663,960	75635	TURKEY	6328,216	6606,842	6606,842
70245	MEXICO	100.0%	616,045	616,045	75640	HONG KONG	54.1%	611,338	620,408
70320	HONG KONG	100.0%	61,710	61,710	75645	HONG KONG	67.2%	6174,535	6259,633
70434	TAIWAN	100.0%	641,220	641,220	76056	TAIWAN	69.3%	6325,900	6470,053
70633	PHILIPPINES	92.4%	665,076	670,462	77105	ISRAEL	96.0%	6665,021	6692,398
70637	TAIWAN	68.7%	6110,738	6161,168	77420	INDIA	51.2%	63,023	65,901
70650	TAIWAN	70.8%	6341,882	6483,030	77435	HONG KONG	62.8%	621,541	634,302
70863	ISRAEL	73.6%	6269,863	6366,902	79110	HONG KONG	48.1%	6155,335	6322,959
70863	ISRAEL	58.4%	6178,535	6305,722	79117	BRAZIL	66.9%	632,658	648,825
70907	HONG KONG	58.5%	690,232	6154,136	79120	BRAZIL	65.5%	652,713	680,499
71067	TAIWAN	50.5%	610,041	619,865	79135	TAIWAN	47.9%	63,790	67,917
71131	BRAZIL	51.9%	6357,825	6689,448	79180	TAIWAN	54.4%	6197,799	6363,597
71307	TAIWAN	94.2%	6100,440	6354,186	79230	TAIWAN	59.7%	615,497	6251,957
71319	TAIWAN	83.6%	6498,216	6106,580					
72214	TAIWAN	49.0%	624,438	6596,143					
72290	TAIWAN	51.1%	6183,642	61,275,180					
72292	TAIWAN	47.2%	674,646	6356,768					
72320	MEXICO	74.7%	6281,218	6158,302					
72520	INDIA	82.0%	694,741	6376,296					
73029	PHILIPPINES	53.9%	643,114	6115,498					
73041	BRAZIL	99.9%	6477,589	6540,168					
73051	HAITI	100.0%	63,610	6478,286					
73077	BRAZIL	76.3%	69,304	63,610					
73110	TAIWAN	59.1%	6409,944	612,187					
73130	KOREA, SOUTH	53.0%	6305,277	6693,304					
73142	HONG KONG	100.0%	609,365	6716,123					
73250	TAIWAN	82.3%	6496,040	609,365					
73430	HONG KONG	65.6%	6443,767	6603,653					
73434	HONG KONG	54.5%	6233,600	6510,520					
73442	TAIWAN	70.9%	6499,073	6916,596					
73660	TAIWAN	61.1%	6187,952	6329,319					
73471	TAIWAN	64.9%	6282,993	6350,609					
73511	TAIWAN	90.4%	6239,020	6435,652					
73750	TAIWAN	63.1%	650,020	6265,423					
74120	HONG KONG	92.1%	6162,013	601,774					
74552	MALAYSIA	55.5%	6206,336	6176,017					
74570	TAIWAN	77.2%	6291,617	6515,745					
74812	HAITI	53.0%	673,657	6377,801					
74815	TAIWAN	76.9%	6345,411	6449,207					
75005	HONG KONG	81.5%	6254,422	6312,042					

LIST IV : POSSIBLE REDESIGNATION ITEMS
JAN-OCT 1983

TSUS	COUNTRY	% OF WORLD	COUNTRY TOTAL	WORLD TOTAL
11221	PERU	22.4%	\$824,568	\$3,683,159
12162	INDIA	39.6%	\$6,813,665	\$17,214,780
14830	MEXICO	28.5%	\$1,854,133	\$6,516,039
15272	HONDURAS	44.6%	\$1,119,373	\$2,511,384
15520	THAILAND	0.7%	\$5,831,536	\$823,971,042
15535	BARBADOS	28.5%	\$994,515	\$3,491,005
30412	EGYPT	11.4%	\$138,621	\$1,216,347
30530	BANGLADESH	16.7%	\$153,862	\$922,713
31525	MEXICO	35.7%	\$1,753,193	\$4,909,200
40872	KOREA, SOUTH	17.9%	\$3,372,618	\$18,791,561
42570	MEXICO	36.3%	\$1,903,720	\$5,247,435
43760	ARGENTINA	42.8%	\$1,642,834	\$3,838,609
49382	MEXICO	40.1%	\$901,213	\$2,249,038
52394	MEXICO	41.7%	\$931,610	\$2,232,095
53222	KOREA, SOUTH	44.9%	\$2,038,205	\$4,536,925
60210	HONDURAS	13.8%	\$673,488	\$4,866,122
60360	CHILE	48.5%	\$5,244,464	\$10,821,991
60350	CHILE	44.7%	\$4,998,590	\$11,176,878
61806	GHANA	2.6%	\$4,466,757	\$396,490,018
61815	YUGOSLAVIA	24.5%	\$854,769	\$18,208,788
65203	KOREA, SOUTH	29.1%	\$1,941,177	\$2,934,527
65260	TAIWAN	47.8%	\$2,915,511	\$4,062,833
66165	ISRAEL	31.6%	\$3,327,017	\$9,235,868
66235	MEXICO	44.5%	\$20,421,491	\$7,483,064
68415	SINGAPORE	47.3%	\$8,320,342	\$43,160,284
68455	MEXICO	37.1%	\$42,611,819	\$22,450,373
68524	SINGAPORE	8.8%	\$41,979,729	\$486,351,407
68540	KOREA, SOUTH	2.3%	\$190,035	\$1,788,192,996
70247	MEXICO	32.6%	\$232,100	\$582,069
72214	MACAO	18.2%	\$590,956	\$1,275,180
72665	MEXICO	39.8%	\$1,939,313	\$1,486,368
72712	PHILIPPINES	37.7%	\$32,926,027	\$5,138,051
72729	YUGOSLAVIA	22.8%	\$8,667,816	\$144,610,543
73707	HONG KONG	45.1%	\$2,547,625	\$19,233,340
73728	KOREA, SOUTH	40.8%	\$24,769,230	\$6,251,750
73740	KOREA, SOUTH	31.0%	\$335,775	\$79,852,134
73747	TAIWAN	18.5%	\$1,316,406	\$1,815,825
73749	TAIWAN	13.0%	\$26,717	\$10,133,926
73750	HONG KONG	32.7%	\$112,866	\$81,774
73751	HONG KONG	0.6%	\$501,598	\$19,137,935
73751	TAIWAN	2.6%	\$2,754,376	\$5,529,356
73760	HONG KONG	49.8%	\$391,654	\$1,051,634
74075	KOREA, SOUTH	37.2%	\$5,032,546	\$10,936,574
75045	KOREA, SOUTH	46.0%	\$3,898,159	\$31,883,187
79128	INDIA	12.2%	\$884,180	\$3,479,593
79210	MEXICO	25.4%		

[FR Doc. 84-748 Filed 1-11-84; 8:45 am]
BILLING CODE 3150-01-C

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 84-006]

Great Lakes Registered Pilotage;
Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date and proposed agenda of a meeting regarding Great Lakes Registered Pilotage.

DATE: February 15, 1984.

ADDRESS: Federal Building, Conference Room, 31st Floor, 1240 East Ninth Street, Cleveland, Ohio 44199.

FOR FURTHER INFORMATION CONTACT: Captain George R. Skuggen, Director, Great Lakes Pilotage Staff, U.S. Coast Guard, 1240 East Ninth Street, Cleveland, Ohio 44199. Telephone: (216) 522-3930.

SUPPLEMENTARY INFORMATION: The Coast Guard is having an open meeting for all interested parties regarding Great Lakes Registered Pilotage. The meeting will be held on February 15, 1984, commencing at 10 a.m. The subject of the meeting will be limited to pilotage required by the Great Lakes Pilotage Act of 1960, that is, pilotage involving foreign vessels and U.S. registered vessels. This meeting is intended to be a frank and open discussion of issues. The following is a proposed agenda, however, interested persons are encouraged to submit (to Captain Skuggen by February 8) any additional items they wish to have added to the agenda:

- Traffic projections for future years
- Pilotage rates
- Pilot workload
- Pilot compensation
- "B" Certificates

- Canadian Saltie/Lakers
- Port rates
- Safety

Dated: January 8, 1984.

Clyde T. Lusk, Jr.,
Rear Admiral, U.S. Coast Guard, Chief, Office
of Merchant Marine Safety.

[FR Doc. 84-004 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-14-M

Federal Highway Administration

Environmental Impact Statement,
Spokane, Spokane County,
WashingtonAGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for the proposed Ray Street Extension project in the City of Spokane, Spokane County, Washington.

FOR FURTHER INFORMATION CONTACT:

Mr. P. C. Gregson, Division
Administrator, Federal Highway
Administration, Suite 501, Evergreen
Plaza, 711 South Capitol Way,
Olympia, Washington 98501,
Telephone (206) 753-2120.

Mr. Clyde L. Slemmer, P.E., Project
Development Engineer, Washington
State Department of Transportation,
Highway Administration Building,
Olympia, Washington 98504,
Telephone (206) 753-6101.

Mr. Irving B. Reed, Public Works
Director, Skywalk Level, City Hall,
Spokane, Washington 99201,
Telephone (509) 456-4300.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation and the City of Spokane, will prepare an environmental impact statement (EIS) on a proposal that

would provide an extension of Ray Street (a principal arterial) from 34th Avenue south to the Palouse Highway.

Alternatives under consideration include (1) taking no action; (2) constructing the new section of road straight south to the Palouse Highway; (3) constructing a crossover southeast to Freya Street and then south to the Palouse Highway; and (4) constructing a crossover southeast to Thor Street and then south to the Palouse Highway.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A series of public meetings will be held in Spokane in the early part of 1984.

In addition, upon completion of the draft EIS, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the addresses previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A-95 regarding state and local clearinghouse review of Federal and federally assisted programs and projects apply to this program.)

Issued on: January 3, 1984.

Richard Schimelfenyz,

Area Engineer, Olympia, Washington.

[FR Doc. 84-702 Filed 1-11-84; 8:45 am]

BILLING CODE 4310-22-M

Sunshine Act Meetings

Federal Register

Vol. 49, No. 8

Thursday, January 12, 1984

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	<i>Items</i>
Federal Deposit Insurance Corporation	1-3
Federal Election Commission.....	4
Federal Home Loan Bank Board.....	5
Federal Maritime Commission.....	6
Nuclear Regulatory Commission.....	7
Parole Commission.....	8
Securities and Exchange Commission.	9

1

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 5:00 p.m. on Friday, January 6, 1984, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to (1) receive bids for the purchase of certain assets of and the assumption of the liability to pay deposits made in Farmers Bank and Trust, Winchester, Tennessee, which was closed by the Commissioner of Financial Institutions for the State of Tennessee on Friday, January 6, 1984; (2) accept the bid for the transaction submitted by Mid-South Bank & Trust Company, Murfreesboro, Tennessee, and insured State nonmember bank; (3) approve the application of Mid-South Bank & Trust Company, Murfreesboro, Tennessee, for consent to purchase certain assets of and to assume the liability to pay deposits made in Farmers Bank and Trust, Winchester, Tennessee, and for consent to establish the four offices of Farmers Bank and Trust as branches of Mid-South Bank & Trust Company; and (4) provide such financial assistance, pursuant to section 13(c)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(c)(2)), as was necessary to facilitate the purchase and assumption transaction.

In calling the meeting, the Board determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Mr. Doyle L. Arnold, acting in the place and stead of Director

C. T. Conover (Comptroller of the Currency), that Corporation business required its consideration of the matters 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 matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: January 9, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-84-884 Filed 1-10-84; 8:45 am]

BILLING CODE 6714-01-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 2:30 p.m. on Monday, January 16, 1984, 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.

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:

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)(8) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(8)).

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: January 9, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-84-878 Filed 1-9-84; 8:45 am]

BILLING CODE 6714-01-M

3

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of 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, January 16, 1984, 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:

First National Bank of the Valley, Luray, Virginia, for consent to merge, under its charter and with the title "Jefferson National Bank," with Old Dominion Savings Bank, Winchester, Virginia, a non-FDIC insured institution.

Application for consent to establish a remote a service facility:

Barnett Bank of Palm Beach County, Rivera Beach, Florida, for consent to establish a

remote service facility at Palm Beach Mall, 1801 Palm Beach Lakes Boulevard, West Palm Beach, Florida.

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 45,889-L, The First National of Midland, Midland, Texas.

Memorandum re: Nationwide Servicer for Mortgage Loans.

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 of 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: Sale of Property - Consolidated Costa Mesa, California Liquidation Office (Case No. 45,897)

Discussion Agenda:

Memorandum and resolution re: Proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Clarification of Definition of Deposit Insurance Coverage" which concern insurance coverage of brokered deposits.

The meeting will be held in the Board on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 389-4425.

Dated: January 9, 1984.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,
Executive Secretary.

[S-84-879 Filed 1-9-84 8:45 am]

BILLING CODE 6714-01-M

4

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 17, 1984, 10:00 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance. Litigation. Audits. Personnel.

* * * * *

DATE AND TIME: Thursday, January 19, 1984, 10:00 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C. (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
Eligibility Report for Candidates to Receive Presidential Primary Matching Funds

Presidential Matching Funds for Candidates who owe Repayments of Civil Penalties—Larouche Eligibility Report

Draft Advisory Opinion #1983-43, Frank M. Northam on behalf of U.S. Defense Committee and Patrick Reilly

Request for Reagan for President Committee for stay of Commission's Final Repayment Determination Pending Appeal—(Continued from January 5, 1984)

Briefing on Government Space Program by Mr. William B. Jenkins, Director of GSA Real Estate Division

Routine Administrative Matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Information Officer, Telephone 202-523-4065.

Marjorie W. Emmons,

Secretary of the Commission.

[S-84-980 Filed 1-10-84; 2:59 pm]

BILLING CODE 6715-01-M

5

FEDERAL HOME LOAN BANK BOARD

TIME AND DATE: 2:00 P.M., January 16, 1984.

PLACE: 1700 G Street, N.W., 6th Floor, Washington, D.C.

STATUS: Open Meeting.

CONTACT PERSON FOR MORE INFORMATION: Ms. Gravlee (202-377-6970).

MATTERS TO BE CONSIDERED: Brokered Deposits.

J. J. Finn,

Secretary.

[No. 66, January 10, 1984]

[S-835 Filed 1-10-84; 3:51 pm]

BILLING CODE 6720-01-M

6

FEDERAL MARITIME COMMISSION

TIME AND DATE: 9:00 A.M.—January 18, 1984.

PLACE: Hearing Room One—1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: 1.

Agreement No. 10318-1: Extension of the United States-European Trade Carriers Cooperative Study Arrangement.

CONTACT PERSON FOR MORE INFORMATION: Bruce A. Dombrowski, Assistant Secretary, (202) 523-5725.

[S-84-933 Filed 1-10-84; 3:53 pm]

BILLING CODE 6730-01-M

7

NUCLEAR REGULATORY COMMISSION

DATE: Week of January 16, 1984.

PLACE: Commissioners' Conference Room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE DISCUSSED

Monday, January 16

10:00 a.m.

Discussion of Corrosion in PORV's at TMI-1 (Public Meeting).

2:00 p.m.

Discussion of Future Steps in TMI-1 Restart (Closed—Ex. 5 & 10).

Tuesday, January 17

9:00 a.m.

Comments by Parties on Diablo Canyon Criticality and Low Power Operation (Public Meeting).

11:30 a.m.

Discussion of Pending Investigation (Closed—Ex. 5 & 7).

ADDITIONAL INFORMATION: Briefing on BWR Pipe Crack Issues (Public Meeting) scheduled for Thursday, January 12, time change from 10:00 a.m. to 2:00 p.m.

TO VERIFY THE STATUS OF MEETINGS

CALL: (Recording)—(202) 634-1498.

CONTACT PERSON FOR MORE

INFORMATION: Walter Magee (202) 634-1410.

Walter Magee,

Office of the Secretary.

[S-84-823 Filed 1-10-84; 8:45 am]

BILLING CODE 7550-01-M

8

PAROLE COMMISSION

Public Announcement; Pursuant To The Government In The Sunshine Act Pub. L. 94-409 (5 U.S.C. Section 552b).

AGENCY HOLDING MEETING: U.S. Parole Commission, National Commissioners (the Commissioners presently maintaining offices at Chevy Chase, Maryland Headquarters).

TIME AND DATE: Thursday, January 12, 1984—2:00 p.m.

PLACE: Room 420-F, One North Park Building, 5550 Friendship Boulevard, Chevy Chase, Maryland 20315.

STATUS: Closed pursuant to a vote to be taken at the beginning of the meeting.

MATTER TO BE CONSIDERED: Referrals from Regional Commissioners of approximately 5 cases in which inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

CONTACT PERSON FOR MORE

INFORMATION: Linda Wines Marble, Chief Case Analyst, National Appeals

Board, United States Parole Commission, (301) 492-5987.

Date: January 9, 1984.

Joseph A. Barry,
General Counsel United States Parole Commission.

[S-84-951 Filed 1-10-84; 8:45 am]

BILLING CODE 4410-01-M

9

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of January 16, 1984, at 450 Fifth Street, NW., Washington, D.C.

Open meetings will be held on Tuesday, January 17, 1984, at 9:30 a.m. and on Wednesday, January 18, 1984, at 3:00 p.m.

A closed meeting will be held on Tuesday, January 17, 1984, following the 9:30 a.m. open meeting.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may

be considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10).

Chairman Shad and Commissioners Treadway and Cox voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Tuesday, January 17, 1984, 9:30 a.m., will be:

1. Consideration of whether to adopt Rule 17Ad-14 under Section 17A(d)(1) of the Securities Exchange Act of 1934. That rule would require registered transfer agents acting for bidders as "tender agents"—i.e., as "depositaires" during tender offers or as "exchange agents" during exchange offers—to establish special accounts with certain securities depositories. These accounts would permit depository participants (e.g., broker-dealers and banks) to deliver tendered securities to, or receive withdrawn securities from, the tender agent by book-entry. Tender agents would have to establish these accounts with all registered securities depositories that have Commission-approved automated tender offer procedures, within two business days after the tender or exchange offer begins. For further information, please contact Thomas V. Sjoblom at (202) 272-7379.

2. Consideration of whether to propose for public comment amendments to rule 12d-1 and rescission of rule 2a-3 under the Investment Company Act of 1940 and related disclosure requirements. The proposed amendments to rule 12d-1 would permit investment companies to invest in securities

issued by persons engaged in securities activities, directly or indirectly, as a broker, dealer, underwriter, or investment adviser. For further information, please contact Elizabeth K. Norsworthy at (202) 272-2048.

The subject matter of the closed meeting scheduled for Tuesday, January 17, 1984, following the 9:30 a.m. open meeting, will be:

Formal orders of investigation.
Dissolution of injunctive action.

The subject matter of the open meeting scheduled for Wednesday, January 18, 1984, at 3:00 p.m., will be: The Commission will meet with representatives from the American Society of Corporate Secretaries to discuss matters of mutual interest. For further information, please contact Steven L. Molinari at (202) 272-2589.

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: JoAnn Zuercher at (202) 272-2014.

George A. Fitzsimmons,
Secretary.

January 10, 1984.

[S-84-963 Filed 1-10-84; 8:45 am]

BILLING CODE 8010-01-M

Thursday
January 12, 1984

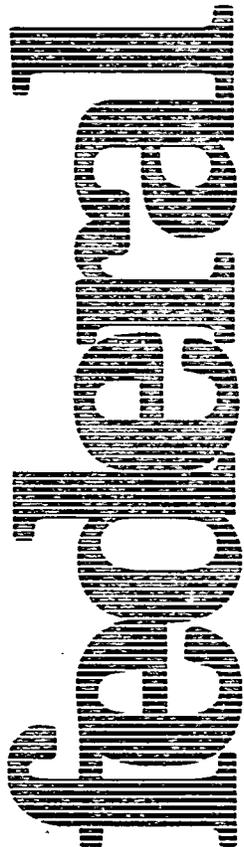


Part II

**Department of
Energy**

Federal Energy Regulatory Commission

**Determinations by Jurisdictional Agencies
Under the Natural Gas Policy Act of
1978; Notice**



DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Vol. 1035]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 6, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated

annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

- Section 102-1: New OCS lease
102-2: New well (2.5 Mile rule)
102-3: New well (1000 Ft rule)
102-4: New onshore reservoir
102-5: New reservoir on old OCS lease

- Section 107-DP: 15,000 feet or deeper
107-GB: Geopressed brine
107-CS: Coal Seams
107-DV: Devonian Shale
107-PE: Production enhancement
107-TF: New tight formation
107-RT: Recompletion tight formation

- Section 108: Stripper well
108-SA: Seasonally affected
108-ER: Enhanced recovery
108-PB: Pressure buildup

Kenneth F. Plumb, Secretary.

NOTICE OF DETERMINATIONS

Table with columns: JD NO, JA DKT, API NO, D SEC(1), SEC(2), WELL NAME, FIELD NAME, PROD, PURCHASER. Includes entries for Kansas Corporation Commission, Americo Petroleum Inc, Associated Petroleum Consultants, Benjamen F Springer, Benson Mineral Group, Bow Valley Petroleum Inc, Burk Leroy E, Centennial Energy Co, Cities Service Oil & Gas Corp, Coastal Oil & Gas Corp, Deck Oil Co, Dome Petroleum Corp, Energy Group Inc, F G Holl, and Hawley #1-13.

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD TYPE	PROD	RESERVE
-GRAVES DRILLING CO INC					RECEIVED: 12/05/83 JA: KS			
8410494	K-83-0537	1500720091	108		HAYNES #1	NO	20.1	PEOPLES NATURAL G
-HERITAGE EXPLORATION INC					RECEIVED: 12/05/83 JA: KS			
8410496	K-83-0534	1512525055	102-2		WEST POMELL 2D	CHERRYVALE - COFFEYVI	36.5	NORTHWEST CENTRAL
8410495	K-83-0535	1525125249	102-2		WEST POMELL 3D	CHERRYVALE - COFFEYVI	36.5	NORTHWEST CENTRAL
-HINKLE OIL COMPANY					RECEIVED: 12/05/83 JA: KS			
8410475	K-83-0567	1515121203	103		CARVER #1	ILKA-COMI CN	91.0	CENTRAL STATES GA
-INTEGRATED ENERGY INC					RECEIVED: 12/05/83 JA: KS			
8410501	K-83-0167	1515520539	103		SOPER #2	FRIENDSHIP	36.5	PEOPLES NATURAL G
-J MARK RICHARDSON					RECEIVED: 12/05/83 JA: KS			
8410484	K-83-0479	1515121104	102-2		HARPER FARMS B #1	COPPER ROBBINS	45.0	PANHANDLE EASTERN
-JONES ROBERT & TAYLOR WILLIAM					RECEIVED: 12/05/83 JA: KS			
8410455	K-83-0524	1512925490	102-2		TAYLOR #1	CHERRYVALE COFFEYVILL	14.5	NORTHWEST CENTRAL
-KAISER-FRANCIS OIL COMPANY					RECEIVED: 12/05/83 JA: KS			
8410433	K-83-0501	1517500000	103		BLACK #1	IFIG	255.5	
-KBW OIL & GAS CO					RECEIVED: 12/05/83 JA: KS			
8410497	K-83-0530	1500721544	103		AUBLEY #1	MILICAT	2.7	PEOPLES NATURAL G
8410483	K-83-0480	1500721515	103		DOHM #1	MT SYDNEY	15.0	PEOPLES NATURAL G
-L C G GAS CO					RECEIVED: 12/05/83 JA: KS			
8410491	K-82-1252	1509921783	108		JOHN KULF #1		18.3	H G WACKERLE CO I
8410492	K-82-1251	1509921765	108		MARVIN KULF #1	CO 1/4 NE 1/4 S13 T35	15.3	H E WACKERLE CO I
8410465	K-83-0490	1509921868	108		ZIEGLER #2	NE 1/4 C13 T29 R3E	3.7	H E WACKERLE CO I
-LEAR PETROLEUM EXPLORATION INC					RECEIVED: 12/05/83 JA: KS			
8410494	K-83-0525	1503320593	102-2		BIRD #1-32	DEED SOUTH	53.0	MICHIGAN WISCONSIN
8410493	K-83-0526	1503320595	102-2		NIELSON-DUPON 32-32	DIPD SOUTH	300.0	MICHIGAN WISCONSIN
-MCGINNIS OIL COMPANY					RECEIVED: 12/05/83 JA: KS			
8410476	K-83-0542	1500721546	103		F OHLSON #1	HARTNER	215.0	KANSAS GAS SUPPLY
-MIDWESTERN EXPLORATION CO					RECEIVED: 12/05/83 JA: KS			
8410498	K-83-0529	1512920648	103		GRIMWOOD 2-13	GREENWOOD GAS FIELD	60.0	COLORADO INTERSTA
-MOBIL OIL CORP					RECEIVED: 12/05/83 JA: KS			
8410439	K-83-0575	1518920615	103		HINSHAM ESTATE UNIT #2	PANAMA COUNCIL GROVE	36.0	NORTHWEST CENTRAL
-MOLZ OIL CO					RECEIVED: 12/05/83 JA: KS			
8410482	K-83-0481	1500721597	103		STERLING #1	STRATHMAN	30.0	KANSAS GAS SUPPLY
-NIELSON ENTERPRISES INC					RECEIVED: 12/05/83 JA: KS			
8410466	K-83-0476	1511920472	108		ADAMS 1-30	ADAMS RANCH	15.0	COLORADO INTERSTA
8410469	K-83-0473	1502320181	108		BURR #B-1	CO ST FRANCIS GAS APE	8.0	PEOPLES NATURAL G
8410467	K-83-0475	1502320179	108		FRITZ #A-1	CO ST FRANCIS GAS APE	4.0	PEOPLES NATURAL G
8410468	K-83-0474	1502320180	108		HARKINS #A-1	CO ST FRANCIS GAS APE	5.0	PEOPLES NATURAL G
-NORTHERN NATURAL GAS PRODUCING CO					RECEIVED: 12/05/83 JA: KS			
8410459	K-83-0466	1505520522	103		DROWN #14 FARM WELL #15	PANAMA COUNCIL GROVE	52.1	NORTHERN NATURAL
8410472	K-83-0574	1518920638	103		THOMAS T HOLY UNIT WELL #2	WACKERLE LOWER MAPD	112.5	NORTHERN NATURAL
-OIL PROPERTY MANAGEMENT INC					RECEIVED: 12/05/83 JA: KS			
8410456	K-83-0522	1515121004	103		POLLOCK #1	YUMA-CADMI	23.0	CENTRAL STATES GA
8410429	K-83-0521	1515121044	103		POLLOCK #2 "TWIN"	YUMA-CADMI	26.0	CENTRAL STATES GA
-OILWELL OPERATORS INC					RECEIVED: 12/05/83 JA: KS			
8410485	K-83-0478	1500721571	103		SPICER #1 NEW LEASE	CANEMA	200.0	PEOPLES NATURAL G
8410467	K-83-0489	1500721607	103		SPICER #2 NEW LEASE	CANEMA	144.0	PEOPLES NATURAL G
-R & D PETROLEUM					RECEIVED: 12/05/83 JA: KS			
8410503	K-83-0150	1515121166	103		GRIFFITH "D" #1	FRIEDIE NE	120.0	CENTRAL STATES GA
-ROXANA CORP					RECEIVED: 12/05/83 JA: KS			
8410502	K-83-0166	1518521713	103		TURNER #6	CRISMAN NORTH	27.0	CENTRAL STATES GA
-TEXAS ENERGIES INC					RECEIVED: 12/05/83 JA: KS			
8410468	K-83-0471	1500721578	102-4		HINZ "C" 1-22	MILICAT	15.0	REPUBLIC NATURAL
8410469	K-83-0472	1500721576	102-4		HOAGLAND 2-22	MILICAT	23.0	REPUBLIC NATURAL
8410479	K-83-0485	1515121246	103		STOTTIS 2-3	CARVER-ROBBINS	110.0	CENTRAL STATES GA
-TGT PETROLEUM CORPORATION					RECEIVED: 12/05/83 JA: KS			
8410466	K-83-0492	1509720946	103		VICKS #1	EINSEL	9.0	PANHANDLE EASTERN
-THE MAURICE L BROWN COMPANY					RECEIVED: 12/05/83 JA: KS			
8410432	K-83-0516	1509720932	103		YOST GAS UNIT #3	ALFORD NORTH	73.0	KANSAS GAS SUPPLY
-TOM KAT LTD					RECEIVED: 12/05/83 JA: KS			
8410440	K-83-0577	1504721079	103		CAREY #1	WILL C 5/2 SE SE SE 2	10.0	CENTRAL STATES GA
-TXO PRODUCTION CORP					RECEIVED: 12/05/83 JA: KS			
8410480	K-83-0484	1509521344	102-2		ALBERS "D" #2	KCMAREK	360.0	DELHI COPP
8410478	K-83-0540	1509521359	102-2		ALBERS "C" #1	ST LEO	150.0	DELHI COPP
8410458	K-83-0467	1500720413	103		FINDLEY #1	SULLIVAN EAST	75.0	NORTHERN GAS PROD
8410493	K-83-0539	1509521332	103		KELLY #2	MAPLE GROVE	33.0	
8410481	K-83-0483	1500721510	102-2		LARSON "D" #1	BROOKS YOUNGER	150.0	
8410438	K-83-0569	1503310589	103		KCANINCH-GREGG #2	CHINER	30.0	KANSAS GAS SUPPLY
8410437	K-83-0568	1509521361	102-2		NEISES #1	KCMAREK	150.0	DELHI COPP

LOUISIANA OFFICE OF CONSERVATION								

-ADCO PRODUCING COMPANY INC					RECEIVED: 12/05/83 JA: LA			
8410339	82-1313	1710720407	102-4	103	PEARCE #3 LT MASS RA SU C	FOX LAKE	124.0	LOOUST RIDGE GAS
-AMOCO PRODUCTION CO					RECEIVED: 12/05/83 JA: LA			
8410397	83-1406	1770520107	103		S/L C62 #14	VEPHILION BLOCK 14 FT 3000.0		TRUNKLINE GAS CO
-ARAPAHO PETROLEUM INCORPORATED					RECEIVED: 12/05/83 JA: LA			
8410424	83-0631	1701700000	103		MILBANKS #1	RODESSA	7.0	BRECKENRIDGE CASD
-ARCO OIL AND GAS COMPANY					RECEIVED: 12/05/83 JA: LA			
8410419	83-0712	1703100000	108		MAE FLETCHER #2 PETTIT SUE	LOOANSPOIT (PETTIT)	19.0	SOUTHERN NATURAL
-ART MACHIN & ASSOCIATES INC					RECEIVED: 12/05/83 JA: LA			
8410405	83-1542	1711920408	103		WALKER #1 PET RA SUDH	NORTH SUNDALCO - RED	0.0	UNITED GAS PIPE L
-ASPEN EXPLORATION					RECEIVED: 12/05/83 JA: LA			
8410355	82-3313	1700121060	103		WINDSOR DAIGLE #1 HELL	CHURCH POINT FIELD	1014.0	MONTREPEY PIPELINE
-BASS ENTERPRISES PRODUCTION CO					RECEIVED: 12/05/83 JA: LA			
8410338	83-1107	1706120279	102-4	103	R E ROBERSON #1 CV DAVIS PD C'S	MIDDLEFORK	110.0	UNITED GAS PIPELI
-BROWN JOEL B					RECEIVED: 12/05/83 JA: LA			
8410292	82-0228	1701723055	102-4		HOBBS #1 CV RA SUD	CADD PINE ISLAND	1005.0	ARKANSAS LOUISIAN
-CALLON PETROLEUM COMPANY					RECEIVED: 12/05/83 JA: LA			
8410383	83-1174	1706320096	102-4		CROWN ZELLERBACH #3 WELL	LOCKHART CROSSING (HI)	135.0	LOUISIANA INTRAST
8410332	83-0992	1706320104	102-4		CROWN ZELLERBACH #9 1ST IY RA SUD	LOCKHART CROSSING (HI)	68.0	LOUISIANA INTRAST
8410347	83-0994	1706320109	102-4		CROWN ZELLERBACH #5 1ST IY RA SUD	LOCKHART CROSSING (HI)	70.0	LOUISIANA INTRAST
8410333	83-0991	1706320098	102-4		I J FAPRIS #1 1ST IY PA CUT	LOCKHART CROSSING (HI)	68.0	LOUISIANA INTRAST
8410348	83-0993	1706320086	102-4		I P CO #3 1ST IY RA SUD	LOCKHART CROSSING (HI)	126.0	SOUTHERN NATURAL
8410334	83-0990	1706320103	102-4		M I STEWART #1 1ST IY RA SUD	LOCKHART CROSSING (HI)	105.0	LOUISIANA INTRAST
-CITIES SERVICE COMPANY					RECEIVED: 12/05/83 JA: LA			
8410286	82-3177	1702721053	102-4		GREER D #1	CALQUIIT	210.0	ARKANSAS LOUISIAN
8410294	82-1074	1702720991	102-4		ODUM A-1 HA RD SUC	CALQUIIT	566.0	
-CONOCO INC					RECEIVED: 12/05/83 JA: LA			
8410317	82-2249	1705320718	102-4		H A WILKINSON #1 VU A	EAST BOANCKE FIELD	1500.0	LOUISIANA GAS SYS
8410316	83-1177	1705320795	102-4		M W BRISKEE #1 HBY RA SUD	EAST BOANCKE FIELD	2000.0	LOUISIANA GAS SYS
8410331	83-1457	1705320779	102-4		S J LEJEUNE #1 HBY RA SUD	EAST BOANCKE FIELD	1500.0	LOUISIANA GAS SYS
-CRYSTAL OIL AND LAND COMPANY					RECEIVED: 12/05/83 JA: LA			
8410576	83-1330	1701724847	103		CLEMENTS "R" #4	NORTH MISSIONARY LAKE	32.1	ARKANSAS LOUISIAN

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8410315	83-1181	1704920195	102-4		DAVIS BROTHERS "D" #1	VERNON	1325.0	UNITED GAS PIPE L
8410343	83-1163	1701521900	102-4		FOSTER "B" #1-D CV RB SU49	ARKANA	12.8	ARKANSAS LOUISIAN
8410412	83-0979	1701521922	102-4		GEASLIN #1 SLI RB SUH	ARKANA	53.4	ARKANSAS LOUISIAN
8410410	83-0976	1701521781	102-4		INTL PAPER CO "I" #1 SLI RB SUA	ARKANA	40.2	ARKANSAS LOUISIAN
8410314	83-1180	1704920202	102-4		OXFORD #2 HOSS RA SUX	VERNON	930.8	UNITED GAS PIPE L
8410381	83-1537	1708120391	103		POSEY #1	GANAGAN	83.4	LOUISIANA INTRAST
-DAVID CROW				RECEIVED:	12/05/83	JA: LA		
8410344	83-1162	1701718434	102-4		GRAVES "A" #1 SLI RC SU 92	CADDO-PINE ISLAND	0.0	ARKANSAS LOUISIAN
-DESCO OIL CO				RECEIVED:	12/05/83	JA: LA		
8410307	83-1521	1702321503	103		CUTLER #3 M-16 RA SUA	THIN ISLAND	14.6	LOUISIANA RESOURC
-DESOTO OIL & GAS CORP				RECEIVED:	12/05/83	JA: LA		
8410420	83-0731	1703120455	108		ELEANOR SAMPLE SCOTT #1 9146239	GAY ISLAND	0.0	LOUISIANA INTRAST
8410386	83-1513	1703121905	103		SAMPLE SCOTT #2 SERIAL #180753	GAY ISLAND	0.0	LOUISIANA INTRAST
8410395	83-1512	1703121965	103		SAMPLE SCOTT #5 SERIAL #181603	GAY ISLAND	0.0	LOUISIANA INTRAST
-DIAMEX CO				RECEIVED:	12/05/83	JA: LA		
8410340	82-2229	1705320676	102-4		POWELL LUMBER COMPANY #1	EDNA 3583 (PERMITTED)	75.0	TENNESSEE GAS PIP
-EDWIN L BERRY R COX				RECEIVED:	12/05/83	JA: LA		
8410345	83-1161	1700120684	102-4		ARDOIN #2 ORTEGO A RB SUA	TEPETATE WEST	300.0	LOUISIANA GAS SYS
-EDWIN L COX				RECEIVED:	12/05/83	JA: LA		
8410346	83-1160	1700120780	102-4		HENSCHENS #2 UNIT-1 RB SUA	ELLIS	360.0	LOUISIANA GAS SYS
-EXCALIBUR RESOURCES INC				RECEIVED:	12/05/83	JA: LA		
8410394	83-1511	1701724494	103		EGAN-WEBB #2	CASPIANA	130.0	ARKANSAS LOUISIAN
8410391	83-1506	1703121659	103		LOHREY #3	RED RIVER - BULL BAYO	100.0	SADINE - DESOTO P
-EXCHANGE OIL & GAS CORPORATION				RECEIVED:	12/05/83	JA: LA		
8410384	83-1173	1705520240	102-4		DECLOUET #1 BOL MEX 3 RA SUB	NORTH MAURICE	2155.0	LOUISIANA INTRAST
-EXXON CORPORATION				RECEIVED:	12/05/83	JA: LA		
8410313	82-1244	1707520274	102-2		S L 6894 A #8	MAIN PASS BLOCK 74	15.0	UNITED GAS PIPE L
8410323	83-1468	1707523093	103		SL 1927 #67 SEP I-6 RA SU	SOUTHEAST PASS	100.0	TENNESSEE GAS PIP
8410320	83-1349	1707522450	103		SL 2090 #14 IS R4A SUA	SOUTHEAST PASS	600.0	TENNESSEE GAS PIP
-FLAMINGO OIL & GAS INC				RECEIVED:	12/05/83	JA: LA		
8410368	83-1183	1702120977	102-4		GOUGH #1 WX RA SUG	PISTOL THICKET	0.0	LOUISIANA INTRAST
-FRANK HALE				RECEIVED:	12/05/83	JA: LA		
8410363	83-1322	1701724528	103		HINDSMAN PARKER B #2 SLI RCSU 31	CADDO PINE ISLAND	220.0	ARKANSAS LOUISIAN
8410372	83-1327	1701724529	103		HINDSMAN PARKER B #3 SLI RC SU 30	CADDO PINE ISLAND	220.0	ARKANSAS LOUISIAN
-FRONTIER EXPLORATION INC				RECEIVED:	12/05/83	JA: LA		
8410326	83-1501	1706900000	103		ARCO A LEASE 1	ASHLAND	214.0	UNITED GAS PIPE L
-GAS RESOURCES INC				RECEIVED:	12/05/83	JA: LA		
8410295	83-0354	1711123706	103		MANVILLE 748 #2	MONROE GAS	13.0	IMC PIPELINE CO I
-GENERAL AMERICAN OIL COMPANY OF TEX				RECEIVED:	12/05/83	JA: LA		
8410312	82-2217	1702300000	103		CAMERON PARISH SCHOOL BOARD #28	JOHNSON BAYOU (K-3A S	400.0	TRANSCONTINENTAL
-GETTY OIL COMPANY				RECEIVED:	12/05/83	JA: LA		
8410302	83-1531	1703100000	103		PAGE A #2 CV-RA-SUD	LOGANSPOUT	0.0	TENNESSEE GAS PIP
-GOLDKING PRODUCTION COMPANY				RECEIVED:	12/05/83	JA: LA		
8410382	83-1175	1708720221	102-4		SL 9295 #1 7900 RB SUA	EAST STUARDS BLUFF	276.0	LOUISIANA INTRAST
8410416	83-1464	1703320170	103		TERRACE LAND CO #2-D	SIEGEN	81.0	UNITED GAS PIPEL
-GRACE PETROLEUM CORPORATION				RECEIVED:	12/05/83	JA: LA		
8410377	83-1533	1701724367	103		BAYLISS #1 HOSS RA SU FF	LONGGODD	0.0	SOUTHWESTERN ELEC
8410398	83-1365	1706120340	103		STEWART #1	SINSFORD	0.0	LOUISIANA GAS PUR
-GRAHAM EXPLORATION LTD DRILLING PAR				RECEIVED:	12/05/83	JA: LA		
8410369	83-1185	1705120575	102-4		MO PAC ALT #1 CIB 01 RB SUA	NESTIAGO	501.0	LOUISIANA GAS SER
-GRIGSBY PETROLEUM INC				RECEIVED:	12/05/83	JA: LA		
8410318	82-2273	1700121092	102-4		E L BERTRAND #1 #178099 RD SUA	IOTA	400.0	LOUISIANA GAS SYS
8410321	83-1502	1704920192	103		MS A MATHEWS #1 #180301 RA SUG	HODGES 4517	250.0	ARKANSAS LOUISIAN
-GUERNSEY PETROLEUM CORPORATION				RECEIVED:	12/05/83	JA: LA		
8410379	83-1535	1703121986	103		BISHOP #1 LAF RA SUG	RED RIVER BULL BAYOU	54.0	TEXAS EASTERN TRA
8410378	83-1534	1703121988	103		MARSHALL A CALHOUN #3 LAF RA SUS	RED RIVER BULL BAYOU	36.0	TEXAS EASTERN TRA
8410375	83-1333	1703121794	103		WANDA BEAM #1	WILDCAT	36.0	LOUISIANA INTRAST
-GULF OIL CORPORATION				RECEIVED:	12/05/83	JA: LA		
8410364	83-1526	1707523091	103		B D 'D' #1	SOUTH PASS BLOCK 24	55.0	SOUTHERN NATURAL
8410360	83-1424	1707523069	103		BLD 'E' #163 VU 202	WEST BAY FIELD	88.0	TEXAS EASTERN TRA
8410310	83-1523	1707523028	103		BLD 'E' 161 VU 62-	WEST BAY FIELD	299.3	TEXAS EASTERN TRA
8410407	83-1544	1708920336	103		DELTA SECURITIES CO INC #134	BAYOU COUBA	47.5	TRANSCONTINENTAL
8410408	83-1545	1708920337	103		DELTA SECURITIES CORP INC #135	BAYOU COUBA	0.3	TRANSCONTINENTAL
8410309	83-1529	1701920989	103		FONTENOT #1-D CAM 1 RB SUA	SOUTH BELL CITY	507.0	TEXAS GAS TRANSMI
8410396	83-1420	1707523021	103		J G TIMOLAT 'C' #12	WEST BAY	20.0	TEXAS EASTERN TGA
8410304	83-1517	1707521512	103		S L 1772 #119	TIMBALIER BAY	108.0	TENNESSEE GAS PIP
8410351	83-1435	1707522777	103		S L 195 QQ #101-D Q-1 SUQ	WEST BLACK BAY FIELD	0.0	SOUTHERN NATURAL
8410414	83-1445	1707522844	103		S L 195 QQ WELL #318	QUARANTINE BAY FIELD	1.5	UNITED GAS PIPEL
8410365	83-1527	1707522935	103		S L 195 QQ WELL #323	QUARANTINE BAY FIELD	15.6	UNITED GAS PIPEL
8410328	83-1448	1707523006	103		S L 195 QQ WELL #326	QUARANTINE BAY FIELD	49.3	UNITED GAS PIPEL
8410327	83-1447	1707523032	103		S L 195 QQ WELL #86 HBLB N-1 RA SU	NORTH BLACK BAY	21.9	SOUTHERN NATURAL
8410370	83-1186	1707523148	102-4		S/L 195 'QQ' #338	QUARANTINE BAY FIELD	300.0	UNITED GAS PIPEL
-HADDOX PETROLEUM CORP				RECEIVED:	12/05/83	JA: LA		
8410428	83-0629	1711123045	108		MOBIL IP #5	MONROE	16.4	MID LOUISIANA GAS
-HARVEY BROYLES & MUNDOCO CO				RECEIVED:	12/05/83	JA: LA		
8410356	83-1364	1707321948	103		G R CLEMENT #1 HOSS C RA SUE	CHENIERE CREEK	0.0	MANVILLE FOREST P
-HOGAN EXPLORATION INC				RECEIVED:	12/05/83	JA: LA		
8410367	83-1182	1702120968	102-4		GORDY #1 HEGLEY RA SUB	MELCO'IE HOME	35.0	LOUISIANA INTRAST
-JAMES CHARLIE G				RECEIVED:	12/05/83	JA: LA		
8410300	83-0988	1702120937	102-4		COLUMBIA HEIGHTS #1	WILDCAT	0.0	INTRA-STATE GAS C
8410335	83-0989	1702120896	102-4		E FINNEY CLAY #2	WILDCAT	0.0	LOUISIANA INTRAST
-JEEMS BAYOU PRODUCTION CORP				RECEIVED:	12/05/83	JA: LA		
8410390	83-1507	1708120446	103		DUPREE ROD RA	RED OAK LAKE 7644	85.3	LOUISIANA INTRAST
8410415	83-1446	1703122084	103		RIEMER CALHOUN B	BUFFALO BAYOU	146.0	MID-LOUISIANA GAS
-LEA EXPLORATION INC				RECEIVED:	12/05/83	JA: LA		
8410350	83-1436	1701120425	103		LOHIX BOYER #1 VUA	EAST FERKINS	250.0	UNITED GAS PIPE L
-LOUISIANA LAND & EXPLORATION CO				RECEIVED:	12/05/83	JA: LA		
8410417	83-1465	1709720663	103		JOE BOUDREAUX #1	VELTIN	0.0	UNITED GAS PIPEL
-LUFFEY GAS CORP				RECEIVED:	12/05/83	JA: LA		
8410422	83-0632	1711123929	103		B J HAYES #1	MONROE	7.2	WEST MONROE GAS O
-M & M RENTALS				RECEIVED:	12/05/83	JA: LA		
8410341	83-1081	1707321958	103	108	A H JOHNSON #2	MONROE	9.0	PETRO LEHIS CORP
-MAJESTIC ENERGY CORP				RECEIVED:	12/05/83	JA: LA		
8410406	83-1543	1701521717	103		LOUIS KAUFMAN ET AL #1 CV RA SU 23	ELM GROVE	547.5	UNITED GAS PIPEL
-MALLARD DRILLING CORP				RECEIVED:	12/05/83	JA: LA		
8410400	83-1441	1708120480	103		CAMPBELL #1	GAHAGAN	0.0	LOUISIANA INTRAST
8410399	83-1440	1708120497	103		CAMPBELL #2 SERIAL #181005	GAHAGAN	0.0	LOUISIANA INTRAST
8410349	83-1437	1703122054	103		J BARNES #1	PLEASANT HILL	0.0	LOUISIANA INTRAST
8410413	83-1443	1708120494	103		RIVED #1	GAHAGAN	0.0	LOUISIANA INTRAST
8410401	83-1442	1708120498	103		STUART #001	GAHAGAN	0.0	LOUISIANA INTRAST
-MARATHON OIL COMPANY				RECEIVED:	12/05/83	JA: LA		
8410337	83-1352	1711920406	103		MOC GLEASON #3 CV JRS SU	COTTON VALLEY	401.5	UNITED GAS PIPE L
-MAY PETROLEUM INC				RECEIVED:	12/05/83	JA: LA		
8410389	83-1505	1703121911	103		LELA WILLIAMS "A" #1-D PSU-N	BETHANY LONGSTREET	182.5	ARKANSAS LOUISIAN

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
-MCRAE EXPLORATION INC					RECEIVED: 12/05/83 JA: LA			
8410409	83-1538	1702721025	103		BYRD #2 CV RA SU P	SUCKAP CREEK	1000.0	LOUISIANA GAS INT
-MCRAE OIL CORP					RECEIVED: 12/05/83 JA: LA			
8410380	83-1536	1706120317	103		REED LUMDER CO #1 LCV RA SUY	TEEPVILLE	75.0	LOUISIANA GAS PIP
-MICH-LA OIL & GAS EXPLORATION					RECEIVED: 12/05/83 JA: LA			
8410392	83-1509	1703102202	102-3		MARTIN TIMBER CO #1	CROGAN	110.0	TENNESSEE GAS PIP
8410358	83-1428	1703121978	103		H T J RAMSEY ET AL #1	CROGAN	89.0	TENNESSEE GAS PIP
8410393	83-1510	1703122048	103		HALLAGE #1	CROGAN	110.0	TENNESSEE GAS PIP
-MID LOUISIANA GAS COMPANY					RECEIVED: 12/05/83 JA: LA			
8410426	83-0611	1711123979	103		MLGC FEE GAS #1210	MONROE GAS FIELD	21.6	MID LOUISIANA GAS
8410427	83-0612	1711123971	103		MLGC FEE GAS #1212	MONROE GAS FIELD	21.6	MID LOUISIANA GAS
8410425	83-0610	1711123981	103		MLGC FEE GAS #1213	MONROE GAS FIELD	21.6	MID LOUISIANA GAS
-MITCHELL ENERGY CORPORATION					RECEIVED: 12/05/83 JA: LA			
8410411	83-0977	1704920133	102-4		T J GREEN #1 CV RA SHC	KELLEYS	250.0	LOUISIANA GAS PIP
-NRG RESOURCES INC					RECEIVED: 12/05/83 JA: LA			
8410306	83-1520	1701921118	103		CORBELLO #1	NORTHWEST CHALKLEY	100.0	TENNESSEE GAS PIP
-PENNZOIL PRODUCING COMPANY					RECEIVED: 12/05/83 JA: LA			
8410361	83-1421	1703121830	103		A M SMITH #1 HOSS SUWN	LOGANSPORT/PALIS FEA	500.0	DELHI GAS PIPELIN
8410362	83-1318	1703121822	103		HG ANTHONY A 1 HOSS RA SUC	SPIDERWHEELS	250.0	DELHI GAS PIPELIN
8410373	83-1325	1703121849	103		HG ANTHONY 1 HOSS SU QQ	LOGANSPORT-WOJSTON	100.0	DELHI GAS PIPELIN
-PETROFUNDUS INC					RECEIVED: 12/05/83 JA: LA			
8410402	83-1539	1701320549	103		CONTINENTAL CAN CO #5 HOSS B SU C	WEST BRUCELAND	600.0	LOUISIANA GAS PIP
8410308	83-1523	1701320549	103		CONTINENTAL CAN CO #5-D HOSS A SU C	WEST BRUCELAND	600.0	LOUISIANA GAS PIP
-PHILLIPS PETROLEUM COMPANY					RECEIVED: 12/05/83 JA: LA			
8410301	83-1530	1701320531	103		STARK B #3 HOSS B RA SUWN	ADA	237.0	SOUTHWESTERN ELEC
-PICKENS CO INC					RECEIVED: 12/05/83 JA: LA			
8410421	83-0926	1705320650	102-4		N A EBLANG #1 ID 168377	WEST TEPETATE	183.0	LOUISIANA GAS SYS
-PLACID OIL COMPANY					RECEIVED: 12/05/83 JA: LA			
8410387	83-1514	1710121311	103		SHADYSIDE #14 RD-1 RC SU J	PATTERSON	1095.0	TENNESSEE GAS PIP
-REALTOS ENERGY CORP					RECEIVED: 12/05/83 JA: LA			
8410329	83-1451	1703121752	103		HILLMEYETTE #1 U HOSS RA SUY	BELLE BONER	100.0	ARKANSAS LOUISIAN
-ROBERSON WELL SERVICE					RECEIVED: 12/05/83 JA: LA			
8410319	83-1082	1711123932	103	108	G A MCCORMICK #2	MONROE	9.0	PETRO LEUIS CORP
-SAMANTHA PETROLEUM CORP					RECEIVED: 12/05/83 JA: LA			
8410342	82-3442	1708120473	102-2	103	GUILLOT A-1	CAY ISLAND	50.0	UNITED GAS PIPE L
-SEVARG COMPANY INC					RECEIVED: 12/05/83 JA: LA			
8410330	83-1466	1709720717	103		WILSON COURVILLE #1	OPELOUSAS	350.0	FLORIDA GAS TRANS
-SHELL OFFSHORE INC					RECEIVED: 12/05/83 JA: LA			
8410324	83-1469	1772120362	103		SL 1008 #D-55 SPD 27 FLD #4A PA SU	SOUTH PASS BLOCK 27 F	6.0	TENNESSEE GAS PIP
8410366	83-1170	1770920231	102-4		SL 7870 #1 EY 15 52 RC SU	EUGENE ISLAND BLOCK 1	0.0	MID-LOUISIANA GAS
8410404	83-1541	1772120285	103		SP 27 FLD SL 1012 #260	SOUTH PASS BLOCK 27 F	10.0	TENNESSEE GAS PIP
-SHELL OIL CO					RECEIVED: 12/05/83 JA: LA			
8410291	82-0615	1772120319	103		SL 1012 #295 SP 27 #4D RD SU	SOUTH PASS BLOCK 27 F	7.0	TENNESSEE GAS PIP
-SPIRIT PETROLEUM					RECEIVED: 12/05/83 JA: LA			
8410423	83-0679	1702120890	102-4		MIXON #1 (100748) L WX RA SUJ	WELCHME HOME	100.0	LOUISIANA INTRAST
-STONE PETROLEUM CORP					RECEIVED: 12/05/83 JA: LA			
8410293	82-2538	1705721960	103		LATERRE #1 RD SUA	GOLDEN READER	1570.0	
-SUN EXPLORATION & PRODUCTION CO					RECEIVED: 12/05/83 JA: LA			
8410325	83-1470	1700121200	103		HAYES D #4 EGM CAM RC SU	EGAN	65.0	TRANSCONTINENTAL
-SUPERIOR OIL CO					RECEIVED: 12/05/83 JA: LA			
8410418	83-1463	1711321058	103		A S LAPOINT #1 15950' RA SUA	KAPLAN	300.0	UNITED GAS PIPELI
8410388	83-1515	1710922606	103		R M DUCKLEY UNIT 10 #3	FOUR ISLE COME	1000.0	UNITED GAS PIPELI
8410356	83-1361	1704721605	103		SCHWING L & S CO #75	DAYOU BLEU	1.0	DM INTRASTATE GA
8410374	83-1324	1704720661	103		SCHWING L & S CO #81	DAYOU BLEU	25.0	DM INTRASTATE GA
-TEXACO INC					RECEIVED: 12/05/83 JA: LA			
8410299	82-1241	1710121183	102-4		BAL SU WKL #53	DATAMN LAKE	2071.0	CITY OF MORGAN CI
-TEXAS GAS EXPLORATION CORP					RECEIVED: 12/05/83 JA: LA			
8410354	83-1432	1705120570	103		STATE LEASE 7016 #1A	SATURDAY ISLAND	212.0	SUNAR DEN'L GAS CO
-THE DOW CHEMICAL COMPANY					RECEIVED: 12/05/83 JA: LA			
8410311	83-1524	1709900547	103		IBERVILLE #1 H RA SUA	HAPPYTON	17.0	
8410303	83-1532	1709920682	103		WILLIAMS INC "A" #1 L PLAN P4 RA	DAYOU LONG	400.0	
-TIPCO					RECEIVED: 12/05/83 JA: LA			
8410357	83-1430	1772720078	103		STATE LEASE 2220 #48	ELOI DAY	8.0	SOUTHERN NATURAL
8410353	83-1433	1772720084	103		STATE LEASE 2220 #52-D	ELOI DAY	13.0	SOUTHERN NATURAL
8410352	83-1434	1772720098	103		STATE LEASE 2220 #54	ELOI DAY	51.0	SOUTHERN NATURAL
8410359	83-1425	1772720100	103		STATE LEASE 2220 #55	ELOI DAY	44.0	SOUTHERN NATURAL
-TWIN CITY GAS					RECEIVED: 12/05/83 JA: LA			
8410297	83-0376	1707321942	103		LOHCK #1	MONROE	0.0	INC PIPELINE CO I
-TXO PRODUCTION CORP					RECEIVED: 12/05/83 JA: LA			
8410371	83-0987	1704920132	102-4		MARTIN "FM" #1	CLAY	24.8	ARKANSAS-LOUISIAN
8410322	83-1503	1701724607	103		WERNER SAHILL #1 C/ D PA SUTP	CREEKWOOD-WACON	455.8	UNITED GAS PIPE L
8410298	83-0390	1706120337	102-4		YOUNG "L" #1	POSTON	1000.0	DELHI GAS PIPELIN
-W B MCCARTER JR INC					RECEIVED: 12/05/83 JA: LA			
8410385	83-1178	1705320595	102-4		R J HINE ESTATE #1	ROBERTS CULLY FIELD	61.2	UNITED GAS PIPELI
-WEAVER OIL AND GAS CORPORATION					RECEIVED: 12/05/83 JA: LA			
8410305	83-1518	1770320086	103		STATE LEASE 6289 #1	EAST CAMERON BLOCK 4	1400.0	LOUISIANA RESOURC
-WILLIAMSON & SMITHERMAN					RECEIVED: 12/05/83 JA: LA			
8410403	83-1540	1711920380	103		MCGINTY #1 SN 179472	SIBLEY FIELD	100.0	UNITED GAS PIPE L

** DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, ALBUQUERQUE, NM								

-AMOCO PRODUCTION CO					RECEIVED: 11/28/83 JA: NM			
8409524	NM-1254-83PB	3004511687	108-PB		CALLEGOS CANYON UNIT #2U	DASH	0.0	EL PASO NATURAL G

[FR Doc. 84-751 Filed 1-11-84; 8:45 am]

BILLING CODE 6717-01-C

[Vol. 1036]

Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

Issued: January 6, 1984.

The following notices of determination were received from the indicated jurisdictional agencies by the Federal Energy Regulatory Commission pursuant to the Natural Gas Policy Act of 1978 and 18 CFR 274.104. Negative determinations are indicated by a "D" before the section code. Estimated annual production (PROD) is in million cubic feet (MMCF).

The applications for determination are available for inspection except to the extent such material is confidential under 18 CFR 275.206, at the Commission's Division of Public Information, Room 1000, 825 North Capitol St., Washington, D.C. Persons objecting to any of these determinations may, in accordance with 18 CFR 275.203 and 275.204, file a protest with the Commission within fifteen days after publication of notice in the Federal Register.

Source data from the Form 121 for this and all previous notices is available on magnetic tape from the National Technical Information Service (NTIS). For information, contact Stuart Weisman (NTIS) at (703) 487-4808, 5285 Port Royal Rd, Springfield, Va 22161.

Categories within each NGPA section are indicated by the following codes:

- Section 102-1: New OCS lease
 - 102-2: New Well (2.5 Mile rule)
 - 102-3: New Well (1000 Ft rule)
 - 102-4: New onshore reservoir
 - 102-5: New reservoir on old OCS lease
 - Section 107-DP: 15,000 feet or deeper
 - 107-GB: Geopressed brine
 - 107-CS: Coal Seams
 - 107-DV: Devonian Shale
 - 107-PE: Production enhancement
 - 107-TF: New tight formation
 - 107-RT: Recompletion tight formation
 - Section 108: Stripper well
 - 108-SA: Seasonally affected
 - 108-ER: Enhanced recovery
 - 108-PB: Pressure buildup
- Kenneth F. Plumb,
Secretary.

NOTICE OF DETERMINATIONS

JD NO	JA DKT	API NO	D	SEC(1)	SEC(2)	WELL NAME	ISSUED JANUARY 6, 1984	FIELD NAME	PROD	PURCHASE
***** TEXAS RAILROAD COMMISSION *****										
***** ADA OIL EXPLORATION CORP *****										
							RECEIVED: 12/05/83 JA: TX			
8410591	F-03-069742	4205100000		102-2		JOHN NEUMAN #10		GIDDINGS (AUSTIN) CHAL	0.0	PHILLIPS PETROLEUM
8410610	F-03-071594	4205100000		102-2		WEST BIRCH CREEK PARK #5		GIDDINGS	0.0	PHILLIPS PETROLEUM
8410635	F-03-072150	4205100000		102-2		WEST BIRCH CREEK PARK #7		GIDDINGS	0.0	PHILLIPS PETROLEUM
***** ADOBE OIL & GAS CORPORATION *****										
							RECEIVED: 12/05/83 JA: TX			
8410679	F-7B-074074	4225332649		103		D L BRISTEN #4		HINTER	12.0	
***** AMOCO PRODUCTION CO *****										
							RECEIVED: 12/05/83 JA: TX			
8410762	F-8A-075301	4221933880		103		ELLWOOD "A" #151		SHYER	0.0	AMOCO PRODUCTION
8410761	F-8A-075300	4221933881		103		ELLWOOD "A" #152		SHYER	0.0	AMOCO PRODUCTION
8410765	F-8A-075304	4221533884		103		ELLWOOD "A" #156		SHYER	0.0	AMOCO PRODUCTION
8410802	F-8A-075402	4221934010		103		LEVELLAND UNIT #791		LEVELLAND	77.5	AMOCO PRODUCTION
8410800	F-8A-075400	4221934008		103		LEVELLAND UNIT #793		LEVELLAND	74.0	AMOCO PRODUCTION
8410801	F-8A-075401	4221924012		103		LEVELLAND UNIT #794		LEVELLAND	101.0	AMOCO PRODUCTION
8410804	F-8A-075404	4221933960		103		MAY MONTGOMERY UNIT #79		LEVELLAND	37.0	AMOCO PRODUCTION
8410803	F-8A-075403	4221933959		103		MAY MONTGOMERY UNIT #80		LEVELLAND	33.1	AMOCO PRODUCTION
8410799	F-8A-075399	4221933956		103		MAY MONTGOMERY UNIT #83		LEVELLAND	26.0	AMOCO PRODUCTION
8410760	F-8A-075299	4221933961		103		MAY MONTGOMERY UNIT #84		LEVELLAND	41.0	AMOCO PRODUCTION
8410759	F-8A-075298	4221933955		103		MAY MONTGOMERY UNIT #85		LEVELLAND	35.2	AMOCO PRODUCTION
8410763	F-8A-075302	4221933890		103		W G FRAZIER #132		SLAUGHTER	0.0	AMOCO PRODUCTION
8410798	F-8A-075398	4221933892		103		W G FRAZIER UT #133		SLAUGHTER	0.2	AMOCO PRODUCTION
***** ARCO DIL AND GAS COMPANY *****										
							RECEIVED: 12/05/83 JA: TX			
8410641	F-04-072291	4221531347		102-4		MACBEAN UNIT #1		MERCEDES (7500) PFD	20.0	TEMPERSEE GAS CO
***** AUDAX ENERGY CORP *****										
							RECEIVED: 12/05/83 JA: TX			
8410721	F-08-074959	4200333568		103		BROWN "12" #5		FURNMAN-MASCHO	9.1	PHILLIPS PETROLEUM
***** BEST PETROLEUM EXPLORATION INC *****										
							RECEIVED: 12/05/83 JA: TX			
8410729	F-09-075157	4223735286		103		RITA "8" #1 (OIL)		DEARING (CARDO)	45.0	LOVE STAR GAS CO
***** BILL FENN INC *****										
							RECEIVED: 12/05/83 JA: TX			
8410628	F-03-071899	4228731411		102-4		SUSIE B NO 1 RRC ID #N/A		GIDDINGS (AUSTIN) CHAL	0.0	PERRY PIPELINE CO
***** BILL FORNEY INC *****										
							RECEIVED: 12/05/83 JA: TX			
8410640	F-02-072269	4225530650		102-4		J H SPURLOCK #1		SOUTHWEST MCCASKILL	100.0	ELIZABETHIAN GAS
***** BIRDWELL BAKER *****										
							RECEIVED: 12/05/83 JA: TX			
8410669	F-05-073825	4247130244		102-4		CENTRAL COAL & COKE #2		HORGAS EAST JACKSON	50.0	MORGAS CO
***** BORGER WELDING INC *****										
							RECEIVED: 12/05/83 JA: TX			
8410707	F-10-074510	4206500000		103		O'NEAL #1		PANHANDLE CARSON	50.0	PETTY OIL CO
***** BRC PETROLEUM INC *****										
							RECEIVED: 12/05/83 JA: TX			
8410578	F-03-066907	4207100000		102-4		W L PATILLO #1		PROPOSED TURTLE BAY (0.0	LIMITED TEXAS TRAP
***** BUFFTON OIL & GAS INC *****										
							RECEIVED: 12/05/83 JA: TX			
8410609	F-09-071472	4223700000		103		PALK-PATTON #3		BOONVILLE BEND (LONG	102.5	LOVE STAR GAS CO
***** BURK ROYALTY CO *****										
							RECEIVED: 12/05/83 JA: TX			
8410622	F-10-07424	4235731254		103	107-TF	B F SCHULTZ #2		PEFRYON W (CLEVELAND)	0.0	NORTHERN NATURAL
***** C F LAWRENCE & ASSOC INC *****										
							RECEIVED: 12/05/83 JA: TX			
8410723	F-08-074968	4237134431		103		MCMURTRY #13		LENN-APCO	0.0	APACHE GAS CORP
***** C R GOBER *****										
							RECEIVED: 12/05/83 JA: TX			
8410659	F-7B-073499	4244733395		102-4		R C LITTLE #1		KINGS CREEK (MISS)	3.0	HST GATHERING CO
8410658	F-7B-073499	4244700000		102-4		R C LITTLE #2		KINGS CREEK (CADD)	0.0	HST GATHERING CO
***** CABOT PETROLEUM CORP *****										

BILLING CODE 6717-01-M

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PURCHASER
8410737	F-10-075242	4239330922	103		LOME 850-A-2	LEOPICK RANCH 5 (UPPE	82.0	TRANSWESTERN PIPE
8410736	F-7C-075234	4241331284	103		WHITTEN "AM" #2 (106759)	ELECTROD (CANYON)	44.0	FARMLAND INDUSTRI
8410731	F-7B-075206	4215131649	103		RECEIVED: 12/05/83	SYLVESTER (STRIP#4)	27.4	PALO DURO PIPELIN
8410599	F-01-069565	4250700000	103		J F DOZIER #2	MINDEN W (TAVAS FEAK	109.0	TEXAS UTILITIES F
8410587	F-01-070670	4250731954	103		RECEIVED: 12/05/83	ESCONDIDO	2263.0	ESPERANZA TRANSMI
8410558	F-7C-058935	4210533242	107-TF		RECEIVED: 12/05/83	FEORNER RANCH (ECONOMIA	3564.0	PRODUCERS GAS CO
8410694	F-08-07428	4232900000	108		RECEIVED: 12/05/83	SFRADEREY	5.0	PHILLIPS PETROLEU
8410656	F-7C-073318	4210524386	103		RECEIVED: 12/05/83	ADAMS-EGGERT FIELD	90.0	DETROIT-TEXAS GAS
8410825	F-08-075486	4222733011	103		RECEIVED: 12/05/83	IATAN EAST HOWARD	18.3	GETTY OIL CO
8410820	F-08-075479	4222733065	103		RECEIVED: 12/05/83	IATAN EAST HOWARD	6.6	GETTY OIL CO
8410821	F-08-075480	4233532530	103		RECEIVED: 12/05/83	IATAN EAST HOWARD	5.8	GETTY OIL CO
8410822	F-08-075481	4233532529	103		RECEIVED: 12/05/83	IATAN EAST HOWARD	5.5	GETTY OIL CO
8410823	F-08-075482	4222733157	103		RECEIVED: 12/05/83	IATAN EAST HOWARD	5.8	GETTY OIL CO
8410824	F-08-075485	4233532464	103		RECEIVED: 12/05/83	IATAN EAST HOWARD	9.1	GETTY OIL CO
8410677	F-06-074031	4231597501	108		RECEIVED: 12/05/83	ROBESSA (MILL SOUTH)	0.0	BRECKENRIDGE GAS
8410758	F-8A-075296	4216532595	103		RECEIVED: 12/05/83	SCINDALE WEST	39.0	CITIES SERVICE OI
8410667	F-7B-073764	4213335084	102-4	103	RECEIVED: 12/05/83	DAVENPORT (RANDED H)	130.0	LOVE STAR GAS CO
8410808	F-7B-075445	4213335112	103		RECEIVED: 12/05/83	EASTLAND COUNTY RECU	11.3	LOVE STAR GAS CO
8410722	F-7C-074962	4210534507	103		RECEIVED: 12/05/83	ESCONDIDO H II	355.0	
8410618	F-8A-071629	4216931600	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410697	F-08-074317	4238931410	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	51.8	EL PASO NATURAL G
8410608	F-8A-071455	4216900000	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	827.0	MID PLAINS PETRO
8410617	F-8A-071628	4216900000	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	40.0	MID PLAINS PETRO
8410616	F-8A-071627	4216900000	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410615	F-8A-071626	4216900000	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410614	F-8A-071625	4216900000	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410613	F-8A-071624	4216931199	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410612	F-8A-071623	4216931536	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410611	F-8A-071622	4216931758	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410623	F-8A-071641	4216931753	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410622	F-8A-071640	4216931752	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410621	F-8A-071638	4216931948	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410620	F-8A-071637	4216931942	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410619	F-8A-071636	4216931941	102-4	103	RECEIVED: 12/05/83	HUNTLEY EAST (SAN AND	400.0	MID PLAINS PETRO
8410755	F-08-075291	4213533092	108		RECEIVED: 12/05/83	NIGHT "187" #2 ID 25220	3.4	AMOCO PRODUCTION
8410757	F-08-075293	4213500000	108		RECEIVED: 12/05/83	NIGHT UNIT #64 ID 20661	4.5	AMOCO PRODUCTION
8410756	F-08-075292	4213531789	108		RECEIVED: 12/05/83	NIGHT UNIT #55 ID 20661	0.4	AMOCO PRODUCTION
8410715	F-04-074810	4270330301	102-4		RECEIVED: 12/05/83	STATE TRACT 691-L SW/4 WELL #3-L	0.0	HOUSTON PIPELIN
8410585	F-10-069335	4239300000	108-PB		RECEIVED: 12/05/83	R D MILLS #1	0.0	MICHIGAN-MISSOURI
8410738	F-7B-075244	4241735288	102-4		RECEIVED: 12/05/83	JOHN SECHICK #15	2.4	MIDTEX PETROLEUM
8410691	F-06-074237	4206730429	102-4		RECEIVED: 12/05/83	BLANCHARD #1	1.1	BRECKENRIDGE GAS
8410633	F-01-072082	4231131719	102-4	103	RECEIVED: 12/05/83	EVE #1	0.0	EMJET INC
8410584	F-06-069026	4242330644	102-4		RECEIVED: 12/05/83	W L OHEAL #3	12.8	ETEXAS PRODUCERS
8410643	F-7B-073566	4242900000	108		RECEIVED: 12/05/83	BLANCHE WINSTON FIC #14840	0.0	LOVE STAR GAS CO
8410632	F-8A-072072	4216900000	102-4	103	RECEIVED: 12/05/83	NORTHWEST GARZA UNIT #209 I D 61053	1.1	MID PLAINS PETRO
8410631	F-8A-072059	4216900000	102-4	103	RECEIVED: 12/05/83	NORTHWEST GARZA UNIT #107 I D 61053	1.1	MID PLAINS PETRO
8410630	F-8A-072047	4216900000	102-4		RECEIVED: 12/05/83	NORTHWEST GARZA UNIT #705 I D 61053	1.1	MID PLAINS PETRO
8410675	F-8A-073938	4231732712	103		RECEIVED: 12/05/83	LAUDERDALE #1	0.0	TEXACO INC
8410739	F-09-075246	4250300000	102-4		RECEIVED: 12/05/83	CEARLEY #2	0.0	SOUTHWESTERN GAS
8410547	F-10-052824	4221131217	108-PB		RECEIVED: 12/05/83	MEEK #1	0.0	EL PASO NATURAL G
8410535	F-10-041791	4217923689	108-PB		RECEIVED: 12/05/83	BARNES #2	0.0	EL PASO NATURAL G
8410572	F-10-064107	4217923691	108-PB		RECEIVED: 12/05/83	BEASLEY #2	0.0	EL PASO NATURAL G
8410529	F-10-036504	4208726022	108-PB		RECEIVED: 12/05/83	BETENDOUGH #2	0.0	EL PASO NATURAL G
8410549	F-10-053982	4208726026	108-PB		RECEIVED: 12/05/83	BETENDOUGH #54	0.0	EL PASO NATURAL G
8410581	F-10-067613	4208726028	108-PB		RECEIVED: 12/05/83	BETENDOUGH D #1	0.0	EL PASO NATURAL G
8410565	F-7C-062007	4217923696	108-PB		RECEIVED: 12/05/83	CALLHAM #1	0.0	EL PASO NATURAL G
8410544	F-10-049577	4221130262	108-PB		RECEIVED: 12/05/83	CAMPBELL #1	0.0	EL PASO NATURAL G
8410522	F-10-022715	4221130555	108-PB		RECEIVED: 12/05/83	CHANDLER #1	0.0	EL PASO NATURAL G
8410510	F-7C-002531	4243530142	108-PB		RECEIVED: 12/05/83	COLLIER SHURLEY 18 #6	0.0	EL PASO NATURAL G
8410534	F-10-041022	4217923699	108-PB		RECEIVED: 12/05/83	COUSINS #1	0.0	EL PASO NATURAL G
8410541	F-10-047501	4217923702	108-PB		RECEIVED: 12/05/83	DARSEY #2	0.0	EL PASO NATURAL G
8410532	F-7C-038781	4243519207	108-PB		RECEIVED: 12/05/83	DEBERRY A #2	0.0	EL PASO NATURAL G
8410513	F-7C-003276	4243519209	108-PB		RECEIVED: 12/05/83	DEBERRY A #7	0.0	EL PASO NATURAL G
8410512	F-7C-003115	4243500000	108-PB		RECEIVED: 12/05/83	DEBERRY A #4	0.0	EL PASO NATURAL G
8410569	F-7C-062723	4243530702	108-PB		RECEIVED: 12/05/83	DEBERRY A #5	0.0	EL PASO NATURAL G
8410560	F-7C-059278	4243519203	108-PB		RECEIVED: 12/05/83	DEBERRY-BOYETT UNIT #1	0.0	EL PASO NATURAL G
8410526	F-7C-033032	4243530555	108-PB		RECEIVED: 12/05/83	DEBERRY-BOYETT UNIT #2	0.0	EL PASO NATURAL G
8410518	F-7C-018052	4243531003	108-PB		RECEIVED: 12/05/83	HALBERT #3	0.0	EL PASO NATURAL G
8410627	F-10-071872	4248326095	108-PB		RECEIVED: 12/05/83	HALL A #1	0.0	EL PASO NATURAL G
8410552	F-10-054499	4217923711	108-PB		RECEIVED: 12/05/83	HARNER X #1	0.0	EL PASO NATURAL G
8410551	F-10-054313	4217923712	108-PB		RECEIVED: 12/05/83	HERRINGTON #1	0.0	EL PASO NATURAL G
8410521	F-10-023815	4217923720	108-PB		RECEIVED: 12/05/83	JOHNSON #1	0.0	EL PASO NATURAL G
8410556	F-10-058236	4217923728	108-PB		RECEIVED: 12/05/83	KROLL B #1	0.0	EL PASO NATURAL G
8410582	F-10-067614	4208726119	108-PB		RECEIVED: 12/05/83	KROUCH #1	0.0	EL PASO NATURAL G
8410517	F-10-013291	4217923731	108-PB		RECEIVED: 12/05/83	LUTES A #1	0.0	EL PASO NATURAL G
8410550	F-10-053984	4208726155	108-PB		RECEIVED: 12/05/83	MAGEE #1	0.0	EL PASO NATURAL G
8410548	F-10-052827	4217923735	108-PB		RECEIVED: 12/05/83	MAGNOLIA A #2	0.0	EL PASO NATURAL G
8410566	F-10-062009	4248326160	108-PB		RECEIVED: 12/05/83	MARTIN #1	0.0	EL PASO NATURAL G
8410538	F-7C-045746	4243519213	108-PB		RECEIVED: 12/05/83	MCDONNELL #5	0.0	EL PASO NATURAL G
8410524	F-10-029850	4208726179	108-PB		RECEIVED: 12/05/83	MCDONNELL #6	0.0	EL PASO NATURAL G
8410562	F-10-060460	4208726180	108-PB		RECEIVED: 12/05/83			

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	FROD	PURCHASER
8410527	F-7C-033181	4243519221	108-PB		MECKEL #5	SONORA-CANYON UPPER	0.0	EL PASO NATURAL G
8410537	F-7C-042712	4243530316	108-PB		MECKEL #7	SONORA-CANYON UPPER	0.0	EL PASO NATURAL G
8410555	F-10-057622	4248326201	108-PB		NELSON #1	PANHANDLE EAST	0.0	EL PASO NATURAL G
8410626	F-10-071854	4208725203	108-PB		NEIKIRK #2	PANHANDLE EAST	0.0	EL PASO NATURAL G
8410531	F-10-037519	4217923744	108-PB		REEVES #1	PANHANDLE WEST	0.0	EL PASO NATURAL G
8410543	F-7C-049576	4243500000	108-PB		SIMMONS #1	SONORA CANYON UPPER	0.0	EL PASO NATURAL G
8410516	F-7C-009196	4243530557	108-PB		THOMSON C #4	SONORA - CANYON UPPER	0.0	EL PASO NATURAL G
8410525	F-7C-030872	4243519227	108-PB		THOMSON 62 #1	SONORA-CANYON UPPER	0.0	EL PASO NATURAL G
8410519	F-10-020926	4217923757	108-PB		WILSON #1	PANHANDLE WEST	0.0	EL PASO NATURAL G
8410539	F-10-047226	4208726316	108-PB		WISCHKAEMPER A #1	PANHANDLE EAST	0.0	EL PASO NATURAL G
-ENERGY RESERVES GROUP INC			RECEIVED:	12/05/83	JA: TX			
8410749	F-7C-075280	4208131139	103		J E CHAPPELL "A" #17	JAMEDON (STRAIN)	10.3	UNION TEXAS PETRO
-ENERGY RESOURCES GIL & GAS CORP			RECEIVED:	12/05/83	JA: TX			
8410709	F-01-074628	4201331558	102-4		J T PESEK #1	JOURDANION (ANACACHO)	275.0	REATA INDUSTRIAL
-ENERSCH EXPLORATION INC			RECEIVED:	12/05/83	JA: TX			
8410704	F-7B-074446	4242900000	103		J M STURDIAWANT #3	IRAEELL	0.0	
8410689	F-7B-074203	4236732577	103		J M STURDIAWANT #3	SPRINGTOWN	0.0	
8410716	F-09-074837	4219730559	103		LOVE #200 UNIT 4	LOVE (MISSISSIPPIAN)	0.0	LOVE STAR GAS CO
8410649	F-05-073147	4221330371	103		T H WALLACE #3	TRJ-CITIES (TRAVIS PE	0.0	LOVE STAR GAS CO
-ESENJAH PETROLEUM CORP			RECEIVED:	12/05/83	JA: TX			
8410598	F-04-070538	4224931668	103		AMELIA TORRANS #1	ALICE (STILLWELL 5340	500.0	VALLEY GAS TRANSF
-EVEPEST MINERALS CORP			RECEIVED:	12/05/83	JA: TX			
8410570	F-03-062791	4228731314	102-2	103	DOROTHY SIMMANG WELL #2	GIDDINGS (AUSTIN CHAL	210.0	PHILLIPS PETROLEU
-EXCELSIOR OIL CORP			RECEIVED:	12/05/83	JA: TX			
8410829	F-06-075490	4240100000	103		WILLIE ANN LINER #1	DANVILLE (PETTIT LOWE	36.0	APALCATED GAS P
-EXXON CO USA			RECEIVED:	12/05/83	JA: TX			
8410533	F-03-040326	4223900000	103-PB		MARY E TURNER D #3	AZALEA	0.0	
-EXXON CORPORATION			RECEIVED:	12/05/83	JA: TX			
8410810	F-06-075447	4207330534	103		CARTER STATE (NECHES CONS OU-15) #4	NECHES (WOODBINE)	35.5	UNITED GAS PIPELI
8410807	F-03-075443	4233930586	103		CONROE FIELD UNIT #119	CONROE	325.0	MOBAN UTILITIES C
8410809	F-06-075440	4207330531	103		HARRY LEE CARTER "C" #14	NECHES (WOODBINE)	36.5	UNITED GAS PIPELI
8410806	F-06-075442	4207330531	103		HARRY LEE CARTER "C" #6	NECHES (WOODBINE)	63.9	UNITED GAS PIPELI
8410655	F-08-073303	4210333186	103		JUDKINS GAS UNIT #2 WELL 279	SAND HILLS (JUDKING)	51.0	EL PASO NATURAL G
8410727	F-06-075124	4207330507	102-4	107-TF	P C PINKERTON JR #1	OVERTON	322.0	ARMCO STEEL CORP
8410717	F-06-074852	4234731017	103		SAN B HAYTER ESTATE #3	DOUGLASS W (TRAVIS PE	263.0	ARMCO STEEL CORP
8410657	F-04-073336	4204730954	103		SANTA FE #171 (ID PENDING)	SANTA FE EAST (I-05)	549.0	NATIONAL GAS PIPEL
8410526	F-06-069477	4206320475	102-4		VERA MIDDLETON GAS UNIT #1 #1	REKLAU (TRAVIS PEK)	570.0	ARMCO STEEL CORP
-FIRST TRIAD CORP			RECEIVED:	12/05/83	JA: TX			
8410695	F-7D-074300	4236732543	102-4		WOODRUFF-BLAIR #2 (GAS)	DENNIS WEST (STRAIN)	300.0	PICKER GAS INC
-FLYNN ENERGY CORP			RECEIVED:	12/05/83	JA: TX			
8410606	F-02-071368	4229700000	102-4		HERRING RANCH 67 #4	MAXINE EAST (6900')	400.0	UNITED TEXAS TRAN
-GETTY OIL COMPANY			RECEIVED:	12/05/83	JA: TX			
8410781	F-8A-074411	4207900000	103		SOUTHWEST LEVELLAND UNIT #48	LEVELLAND	2.0	CITIES OF & GAS
-GLENN COPE			RECEIVED:	12/05/83	JA: TX			
8410794	F-10-075391	4208700000	103		MELVIN BAILEY #1	EAST PANHANDLE	0.0	MICH PLAINS NATUR
-GOLIATH OIL CORP			RECEIVED:	12/05/83	JA: TX			
8410720	F-01-074949	4231131865	102-4	103	T J MARTIN GAS UNIT #2 WELL #1-T	ROOS (1050')	73.0	TEMPERSEE GAS PIP
-GREENWOOD INDUSTRIES INC			RECEIVED:	12/05/83	JA: TX			
8410583	F-7B-068344	4209331084	102-4		MOORE #2	MOORE (MARBLE FALLS)	2000.0	ENERGY PIPELINE C
-GULF OIL CORPORATION			RECEIVED:	12/05/83	JA: TX			
8410559	F-10-059225	4219530014	103-PB		BUCKNER BAPTIST #1	CLEMENTINE	0.0	NORTHERN NATURAL
8410542	F-10-040146	4219535319	108-PB		CLEMENTINE #1	CLEMENTINE	0.0	NORTHERN NATURAL
8410685	F-10-074127	4229530858	107-TF		HAROLD PEERY #3-766	PEERY (MARMATON)/CLEV	19.4	TRANSGASTERN PIPE
8410684	F-10-074126	4229531005	107-TF		HAROLD PEERY #4-766	PEERY (CLEVELAND)/CLE	17.5	TRANSGASTERN PIPE
8410687	F-10-074129	4229531004	107-TF		HAROLD PEERY #5-766	PEERY (CLEVELAND)/CLE	184.6	TRANSGASTERN PIPE
8410683	F-10-074125	4229531226	107-TF		HAROLD PEERY #7-766	PEERY (CLEVELAND)/CLE	93.5	TRANSGASTERN PIPE
8410682	F-10-074124	4229531211	107-TF		HAROLD PEERY #8-766	PEERY (MARMATON)/CLE	72.1	TRANSGASTERN PIPE
8410681	F-10-074123	4229531210	107-TF		HAROLD PEERY #9-766	PEERY (MARMATON)/CLE	26.5	PHILLIPS PETROLEN
8410754	F-08-075287	4247532919	103		HUTCHINGS STOCK ASSN #1245	HARD-ESTES NORTH	8.0	CADOT CORP
8410753	F-08-075286	4247532845	103		HUTCHINGS STOCK ASSN #1246	HARD-ESTES NORTH	3.4	CADOT CORP
8410752	F-08-075285	4247532878	103		HUTCHINGS STOCK ASSN #1248	HARD-ESTES NORTH	9.6	CADOT CORP
8410571	F-08-063972	4238932143	103		J R F MOORE ET AL #1	HAMON NORTHWEST (DELA	50.0	TRANSGASTERN PIPE
8410676	F-08-073988	4210331500	103		J T MCLEROY CONSOL #975	MCLEROY	7.0	PHILLIPS PETROLEN
8410553	F-10-054816	4221130642	108-PB		JENKIE CAMPBELL #1-1	S W CANADIAN	0.0	TRANSGASTERN PIPE
8410653	F-09-073190	4223795041	108		NORTH RIGGS WELL #1	BOONVILLE BEND CONCL	6.2	SOUTHWESTERN GAS
8410680	F-10-074122	4229531006	107-TF		PEARL WHEAT #2-765	PEERY (CLEVELAND)/CLE	179.4	TRANSGASTERN PIPE
8410686	F-10-074128	4229531209	107-TF		PEARL WHEAT #4-765	PEERY (CLEVELAND)/CLE	8.0	TRANSGASTERN PIPE
8410568	F-10-062128	4235760082	108-PB		R H HOLLAND A #1	FRANTZ	0.0	PANHANDLE EASTERN
8410567	F-10-062153	4219535314	108-PB		W B BARNES #1	HANSFORD-UPPERMORROU	0.0	NORTHERN NATURAL
8410575	F-10-065570	4231130916	108-PB		W CAMPBELL #3-56	RED DEER CREEK	0.0	TRANSGASTERN PIPE
-HAMMAN OIL & REFINING CO			RECEIVED:	12/05/83	JA: TX			
8410594	F-03-069891	4208931310	102-4		CRANZ #1	STARR-LITE N (WILCOX	2.5	
8410573	F-03-064351	4207131303	102-4		WILCOX HEIRS #3	TRINITY RIVER DELTA (182.5	UNITED TEXAS TRAN
-HANLEY PETROLEUM INC			RECEIVED:	12/05/83	JA: TX			
8410714	F-08-074793	4213534061	103		FOSTER "A" WELL #1	EDWARDS WEST (CANYON)	40.0	PHILLIPS PETROLEN
-HANSON MINERALS CO			RECEIVED:	12/05/83	JA: TX			
8410664	F-02-073640	4229733292	102-4		MEIDER GAS UNIT WELL #2	COQUAT (10,500')	1.1	PANHANDLE GAS CO
-HCN EXPLORATION INC			RECEIVED:	12/05/83	JA: TX			
8410814	F-09-075463	4223732410	108		CAMPBELL-WOOD #2 ID #086279	NEWFORT SOUTH (ATOKA	6.7	CITIES SERVICE CO
8410812	F-09-075460	4223732445	108		J D COLLIE #1 ID #082414	MARINA-MAG (CONGLOM)	11.4	SOUTHWESTERN GAS
8410813	F-09-075461	4223733478	108		LOYD CLAY #1 ID #021298	JACK COUNTY REGULAR	3.5	LOVE STAR GAS CO
8410816	F-7B-075466	4236731962	108		MILK ANDERSON #1 ID #091455	REMO (CONGLOMERATE)	2.0	LOVE STAR GAS CO
8410815	F-7B-075465	4236731304	108		ROBERT BRYANT #1 ID #087913	REMO (CONGLOMERATE)	3.5	LOVE STAR GAS CO
-HERD PRODUCING CO & WESSLEY			RECEIVED:	12/05/83	JA: TX			
8410665	F-05-073642	4229330667	103	107-TF	TRIPLE H RANCH GU ND 1 WELL #2	FARRAR (COTTON VALLEY	1505.0	TEXAS UTILITIES F
-HIGHLAND RESOURCES INC			RECEIVED:	12/05/83	JA: TX			
8410662	F-02-07352	4228531309	102-4	103	BRUSHY CREEK GAS UNIT WF#1 #7	BRUSHY CREEK (YEGUA 5	250.0	TEXAS EASTERN TRA
8410643	F-02-072403	4228531716	103		BRUSHY CREEK GAS UNIT WELL #8	BRUSHY CREEK (5150) F	100.0	TEXAS EASTERN TRA
-HUSTON OIL & GAS CO INC			RECEIVED:	12/05/83	JA: TX			
8410791	F-7B-075374	4208333534	102-4		FAUBION #1 (19826)	HRUEITZ (ELLENBURGER)	1.0	UNION TEXAS PETRO
8410790	F-7B-075373	4239932789	102-4		FAUBION #2 (19826)	HRUEITZ (ELLENBURGER)	75.0	UNION TEXAS PETRO
8410789	F-7B-075372	4208333573	102-4		FAUBION #3 (19826)	HRUEITZ (ELLENBURGER)	43.0	UNION TEXAS PETRO
8410783	F-7B-075371	4239932788	102-4		ROSSON #1 (20077)	HRUEITZ (ELLENBURGER)	36.0	UNION TEXAS PETRO
-HPC INC			RECEIVED:	12/05/83	JA: TX			
8410564	F-02-061315	4228531361	102-4	103	HUGH R GOODRICH #1	LAVACA RIVER (1700')	79.0	TEXAS EASTERN TRA
-HRUEITZ OIL CO			RECEIVED:	12/05/83	JA: TX			
8410817	F-7B-075468	4208333590	102-4		LUCY GRAY #2	HRUEITZ (ELLEN)	0.5	LOVE STAR GAS CO
8410818	F-7B-075469	4208333622	102-4		LUCY GRAY #3	HRUEITZ (ELLEN)	0.5	LOVE STAR GAS CO
-J A WILBURN			RECEIVED:	12/05/83	JA: TX			
8410751	F-7B-075282	4215131457	103		E L OGDEN #1	CLAYTONVILLE (CANYON	15.0	TIFFERARY CORP
8410750	F-7B-075281	4215131462	103		L L STUART "C" #1	CLAYTONVILLE (CANYON	17.0	TIFFERARY CORP
-J H HUBER CORPORATION			RECEIVED:	12/05/83	JA: TX			
8410828	F-10-075489	4219530851	103		STEELE COLLARD "B" #2L	HANSFORD (MARMATON)	29.0	PHILLIPS PETROLEN
8410827	F-10-075488	4219530850	103		STEELE COLLARD "B" #3	HANSFORD (MARMATON)	20.0	PHILLIPS PETROLEN

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	FPOD	PRODUCER
-J R HAMILTON					RECEIVED: 12/05/83	JA: TX		
8410670	F-04-073831	4213100000	102-4		OLVERA #4	J R (2000)	100.0	VALERO TRANSMISSION
-J-O'B OPERATING CO					RECEIVED: 12/05/83	JA: TX		
8410674	F-06-073937	4207330495	102-4		WOMACK-HERRING #1	PECKY C REELER (TRAVIS)	183.0	UNITED GAS PIPE L
-JAMES K ANDERSON INC					RECEIVED: 12/05/83	JA: TX		
8410696	F-7C-074309	4239932639	102-4		PITCHFORD-STATE #1	MELANIE A (JEWETT'S S	800.0	UNION TEXAS PETRO
8410700	F-7B-074388	4244132397	102-4		SEARS "D" #1	E J BORTH (FRY)	200.0	UNION TEXAS PETRO
-JOHN L COX					RECEIVED: 12/05/83	JA: TX		
8410645	F-7C-072583	4246131579	103		DOLLIE #1 RRC 10256	SPADOFFY (TA)	10.0	PHILLIPS PETROLEU
8410772	F-08-075321	4217331419	103		GLENN RILEY #5	SPADOFFY (TA)	10.0	EL PASO NATURAL G
8410580	F-7C-087417	4238500000	103		ROCKER B "70" #1	SPADOFFY (TA)	10.0	EL PASO NATURAL G
8410636	F-7C-072229	4238332884	103		ROCKER B "M" #21 RRC 05172	SPADOFFY (TA)	10.0	EL PASO NATURAL G
8410637	F-7C-072230	4238332885	103		ROCKER B "M" #19 RRC 05172	SPADOFFY (TA)	10.0	EL PASO NATURAL G
8410639	F-7C-072235	4238332891	103		ROCKER B "M" #14 RRC 05509	SPADOFFY (TA)	10.0	EL PASO NATURAL G
8410638	F-7C-072234	4238332883	103		ROCKER B "M" #14 RRC 05509	SPADOFFY (TA)	10.0	EL PASO NATURAL G
8410589	F-7C-069663	4238332533	103		ROCKER B "117" #1	SPADOFFY (TA)	10.0	EL PASO NATURAL G
8410590	F-7C-069666	4238332531	103		ROCKER B "153" #1 RRC 010117	SPADOFFY (TA)	10.0	EL PASO NATURAL G
8410642	F-7C-072553	4238332576	103		ROCKER B "153" #2 RRC010117	SPADOFFY (TA) #2	10.0	EL PASO NATURAL G
-KAARI OIL CO					RECEIVED: 12/05/83	JA: TX		
8410741	F-10-075261	4206531455	103		W E COBB #3 (ID# 0544)	FANNINBLE COPEN	40.0	CREST PIPELINE CO
-KATLACO OPERATING CO INC					RECEIVED: 12/05/83	JA: TX		
8410561	F-7B-060341	4213334074	108		GARL GORR #1 (12735)	KLEINER (LAME SAND)	40.0	EL PASO HYDROCARB
-KORHAN OPERATING INC					RECEIVED: 12/05/83	JA: TX		
8410778	F-7C-075342	4232900000	108		VOLKMAN #1	WILHELM LANE W STRAIN	11.0	SUN OIL CO
-L R SPRADLING					RECEIVED: 12/05/83	JA: TX		
8410705	F-10-074509	4206500000	103		O'NEAL #3	FANNINBLE COPEN COLN	50.0	CETTY OIL CO
-LACY & BYRD INC					RECEIVED: 12/05/83	JA: TX		
8410795	F-08-075392	4232931209	103		HACKLEY #1 RRC 020367	FOFFS (PENNSYLVANIAN)	40.0	MEDIL PRODUCTION
-LEDD PETROLEUM CORPORATION					RECEIVED: 12/05/83	JA: TX		
8410699	F-7C-076366	4210534454	103	107-TF	S HILLSPAUGH #16-4	COZA (CONCHO SAND)	100.0	AMERICAN PIPELINE
-MALOUF ABRAHAM CO INC					RECEIVED: 12/05/83	JA: TX		
8410678	F-10-074044	4221131592	103		CAMPBELL #1 HELL	CAMPBELL SA (CONCRETE	0.0	WESTAR TRANSMISSI
-MARSHALL EXPLORATION INC					RECEIVED: 12/05/83	JA: TX		
8410688	F-03-074149	4231330453	102-4	103	M Y VICK #5	MADISONVILLE NE COOP	200.0	LOVE STAR GAS CO
-MCCORD EXPLORATION					RECEIVED: 12/05/83	JA: TX		
8410595	F-04-069895	4240900000	102-4		ROUNTREE #2	PLYMOUTH FIELD	0.0	PLUSTON PIPELINE
-MCKENZIE OPERATING CO INC					RECEIVED: 12/05/83	JA: TX		
8410698	F-7B-074320	4236332622	102-4		WIGGINGTON #1	MINERAL WELLS S (CONC	125.0	SOUTH WESTERN GAS
-MCMURREY PETROLEUM INC					RECEIVED: 12/05/83	JA: TX		
8410602	F-03-071135	4204130937	102-4	103	BRIGHT SKY RANCH #3 ID #16490	MURTEL	0.0	FERGUSON CROSSING
8410693	F-03-074267	4204130980	102-4	103	CHEAPSIDE #1 RRC PERMIT NO 200034	DFY27	0.0	LAMARCO PIPELINE
8410673	F-03-073880	4204130926	102-4	103	TRANT #1 RRC LEASE NO 16739	DFY28	0.0	
-MCR OIL CORP OF TEXAS					RECEIVED: 12/05/83	JA: TX		
8410605	F-10-071307	4221131575	103		STATE #3-156	CANADIAN S E (COLECLAG	216.0	ARKANSAS LOGGING I
-MICHAEL F CUSACK					RECEIVED: 12/05/83	JA: TX		
8410603	F-04-071234	4213100000	103		DUVAL COUNTY RANCH CO 3-55	LOTER NORTH (COLE)	0.0	UNITED TEXAS TRAN
-MID-AMERICA PETROLEUM INC					RECEIVED: 12/05/83	JA: TX		
8410780	F-7C-075345	4238332263	103		JIM DIXON #6	SPADOFFY (TRENDA AREA	9.0	NORTHERN NATURAL
8410782	F-7C-075348	4238332278	103		SHAN #5	SPADOFFY (TRENDA AREA	9.0	NORTHERN NATURAL
8410784	F-7C-075352	4238332280	103		SHAN #6	SPADOFFY (TRENDA AREA	9.0	NORTHERN NATURAL
8410785	F-7C-075353	4238332279	103		SHAN #7	SPADOFFY (TRENDA AREA	13.0	NORTHERN NATURAL
8410781	F-7C-075347	4238332180	103		TURNER #5	SPADOFFY (TRENDA AREA	9.0	NORTHERN NATURAL
8410783	F-7C-075351	4238332181	103		TURNER #6	SPADOFFY (TRENDA AREA	9.0	NORTHERN NATURAL
-MITCHELL ENERGY CORPORATION					RECEIVED: 12/05/83	JA: TX		
8410725	F-8A-075046	4250132362	103		COOPER-SLOAN #1	SABLE (SON MATERS)	0.0	
8410557	F-09-058556	4223700000	108-PB		EUGENE MOSER #2	GRAFFON WEST	0.0	CITIES SERVICE OI
8410577	F-09-066238	4249732473	102-4	103	J D KARNES #7-1	NE. FKA EAST (BARNETT	213.9	NATURAL GAS PIPEL
8410726	F-09-075047	4236732521	103		J M HART #2	ROCKWELL (BEND COND	294.6	LOVE STAR GAS CO
8410740	F-09-075251	4249700000	108		JAMES D DENTLEY #2 049167	ROCKWELL (BEND COND	0.0	NATURAL GAS PIPEL
8410528	F-03-036061	4231300000	108-PB		JAMES LANG #1	ROCKWELL (BEND COND	0.0	LOVE STAR GAS CO
8410730	F-09-075164	4249732605	103		S R BAILEY #2	ROCKWELL (BEND COND	276.7	FAIRFAX GAS PIPEL
8410819	F-09-075472	4249732546	103		TARRANT CITY WATERPAD #20 #17350	ROCKWELL (BEND COND	162.5	NATURAL GAS PIPEL
8410690	F-09-074230	4249732566	103		W S COLEMAN #2	ROCKWELL (BEND COND	170.9	NATURAL GAS PIPEL
-MOBIL PRDG TEXAS & NEW MEXICO INC					RECEIVED: 12/05/83	JA: TX		
8410563	F-7C-060795	4244300000	108-PB		BROWN MONNICH EST #3	BROWN BASSETT	0.0	EL PASO NATURAL G
8410713	F-10-07478	4229531341	103		WILLIAM T BROMBLEC #4	HOLLY STON (MA OIL)	9.1	PHILLIPS PETROLEU
-MONTECO OPERATING INC					RECEIVED: 12/05/83	JA: TX		
8410694	F-7C-075334	4235331463	103		JAMESON "A" #1	SILVER (CONCHO)	0.0	SUN EXPLORATION &
-MORAN EXPLORATION INC					RECEIVED: 12/05/83	JA: TX		
8410719	F-7C-07492	4223531550	108		MAYER "AM" WELL #1 RRC 03568	SPADOFFY (TRENDA AREA	0.0	NORTHERN NATURAL
8410718	F-7C-07492	4223530698	108		ROCKER B-10# WELL #1 RRC 73677	ELA SUGG (WOLFMAN)	17.4	NORTHERN NATURAL
-MR OIL CO					RECEIVED: 12/05/83	JA: TX		
8410771	F-08-075316	4247532796	103		JOHNSON -D- #15	IMPD-ESTES NORTH	19.0	WESTERN COUNTIES
-MMJ PRODUCING COMPANY					RECEIVED: 12/05/83	JA: TX		
8410668	F-08-073810	4217331217	103		TXL 27 "A" #2	SPADOFFY (TRENDA AREA	42.0	TEXACO INC
-NATURAL RESOURCES CORP					RECEIVED: 12/05/83	JA: TX		
8410733	F-03-075221	4208900000	107-PE		NRC HERDER #1 RRC NO 045739	EAST RANNEY	0.0	AMCO PRODUCTION
-NEWTON OIL & GAS CORP					RECEIVED: 12/05/83	JA: TX		
8410703	F-01-074428	4228330968	102-4		LYSSY #1	TRI BAR NORTH (CONC)	191.0	PLUSTON PIPE LINE
-NORTHERN NATURAL GAS PRODUCING CO					RECEIVED: 12/05/83	JA: TX		
8410576	F-10-066200	4206500000	108-PB		BURNETT SEC 80 #1020	FANNINBLE WEST	0.0	NORTHERN NATURAL
-NORTHTRIDGE OIL CO					RECEIVED: 12/05/83	JA: TX		
8410779	F-09-075344	4207733130	103		BURKMAN "D" D-1	BLUE CROCK (CONC)	6.0	FRACADU ENERGY CO
8410769	F-09-075313	4223735258	102-4		LEASE #23385	DARFIELD (CONC)	26.0	TEXAS UTILITIES F
8410770	F-09-075314	4223735343	102-4		LEASE #23395	DARFIELD (CONC)	9.0	TEXAS UTILITIES F
-OLYMPIA OIL CO INC					RECEIVED: 12/05/83	JA: TX		
8410728	F-7B-075156	4208333364	103		HALE #1 (106767)	FRUEY2 (WELLS) #2	1277.0	UNION TEXAS PETRO
-PATTERSON PETROLEUM INC					RECEIVED: 12/05/83	JA: TX		
8410601	F-03-070821	4214931546	102-2		H D HAVERNATH #1	GIDDINGS (AUSTIN CHAL	420.0	PHILLIPS PETROLEU
8410647	F-03-073096	4214931491	102-2		T A EMBESI #1	GIDDINGS (AUSTIN CHAL	475.0	PHILLIPS PETROLEU
-PED OIL CORP					RECEIVED: 12/05/83	JA: TX		
8410625	F-7C-071800	4246100000	103		X B COX #2	SPADOFFY (TRENDA AREA	0.0	PHILLIPS PETROLEU
-PEND OREILLE OIL & GAS CO					RECEIVED: 12/05/83	JA: TX		
8410629	F-03-072011	4216730925	102-4		RUTH MARSHALL ET AL CU #1	SAN LUCIA	1460.0	PLUSTON LIGHTING
-PERRY OIL & GAS CO					RECEIVED: 12/05/83	JA: TX		
8410661	F-03-073511	4214931575	102-3		MATTHEW UNIT #1	CIDCO CO (AUSTIN CHAL	73.0	SOUTH CENTER GAS
-PETRO-MEGA INC					RECEIVED: 12/05/83	JA: TX		
8410787	F-7B-075369	4208333542	103		DANIELS #2 (19541)	WILLIAMS	23.0	UNION TEXAS PETRO
-PHILLIPS OIL CO					RECEIVED: 12/05/83	JA: TX		
8410644	F-06-072415	4242330665	103		BISHOP MOSELEY #2	CHAPEL HILL N E (TAV	120.0	ETEXAS PRODUCERS
-PHILLIPS PETROLEUM COMPANY					RECEIVED: 12/05/83	JA: TX		
8410776	F-08-075327	4249531274	108		BASH #13 (150911)	KEYSTONE (CONC)	5.0	SID PICKERSON CO
8410773	F-08-075323	4200304520	108		EMBAR-B #22 (08769)	GOLDSMITH (5600)	24.0	EL PASO NATURAL G
8410774	F-08-075324	4200304521	108		EMBAR-B #23 (08769)	GOLDSMITH (5600)	22.0	EL PASO NATURAL G

JD NO	JA DKT	API NO	D SEC(1)	SEC(2)	WELL NAME	FIELD NAME	PROD	PROPCHASER
8410766	F-10-075307	4234100000	108		JOANNA #2	PANHANDLE WEST	0.0	EL PASO NATURAL G
8410511	F-10-002739	4221100000	108-PB		JOHNS N #2	FELDMAN - CHEROKEE	0.0	PANHANDLE EASTERN
8410777	F-08-075328	4249503453	108		MCCABE F P #6 (21555)	HALLEY	3.0	EL PASO NATURAL G
8410767	F-10-075308	4223300000	108		POOL R L #1	PANHANDLE WEST	0.0	EL PASO NATURAL G
8410775	F-08-075326	4249510859	108		UNIVERSITY LANDS-R #1 (42188)	WAR-WINK (5085 DELMIA	21.0	EL PASO NATURAL G
-PIONEER PRODUCTION CORPORATION			RECEIVED:	12/05/83	JA: TX			
8410596	F-10-070498	4239300000	102-4	103	GILL #2-32R	GILL FIELD	0.0	NESTAR TRANSMISSI
8410514	F-10-070777	4229500000	108-PB		JOE BARTON #1	NORTH CREEK NORTH	0.0	NORTHERN NATURAL
8410566	F-10-052244	4229500000	108-PB		MUGG ESTATE #1	NORTH CREEK NORTH	0.0	NORTHERN NATURAL
8410536	F-10-061791	4229500000	108-PB		REDELSPERGER #1	NORTH CREEK NORTH	0.0	NORTHERN NATURAL
8410515	F-10-007079	4229500000	108-PB		SCHULTZ UNIT #1	NORTH CREEK - NORTH	0.0	NORTHERN NATURAL
-PITTS ENERGY CO			RECEIVED:	12/05/83	JA: TX			
8410724	F-08-074996	4231732711	103		BURCHETT #1	SPRABERRY (TREND AREA	13.1	PHILLIPS PETROLEU
-QUANICO OIL & GAS INC			RECEIVED:	12/05/83	JA: TX			
8410604	F-7B-071297	4204933530	102-4		J W ADAMS #1	TRICKHAM (CAPPS)	7.3	EL PASO HYDROCARB
8410660	F-7B-073495	4204933609	102-4		J W ADAMS #2	TRICKHAM (CAPPS)	7.3	EL PASO HYDROCARB
-R A W ENERGY CORP			RECEIVED:	12/05/83	JA: TX			
8410671	F-7B-073851	4236732507	102-4		G WARD-AIRPORT #1	MINERAL WELLS S (STRA	250.0	SOUTHWESTERN GAS
8410702	F-7B-074417	4236732423	102-4		WILEY "A" #1-B	DICKEY S (STRAIN)	100.0	TEXAS UTILITIES F
-REATA OIL & GAS CORP			RECEIVED:	12/05/83	JA: TX			
8410574	F-03-065513	4231330412	102-4		MARY C BRADFORD #1	MADISONVILLE W (GEORG	0.0	LOVE STAR GAS CO
-REUBEN B KNIGHT			RECEIVED:	12/05/83	JA: TX			
8410768	F-09-075312	4249731234	108		J R SINGLETON #1	BOONESHAW (TEND CON	20.0	NATURAL GAS PIPEL
-RICHARDS PRODUCING CO			RECEIVED:	12/05/83	JA: TX			
8410710	F-03-074652	4232131274	103		DYKES & SHANSON #1	SUGAR VALLEY N (UNION	100.0	HOUSTON PIPE LINE
-ROSE O E			RECEIVED:	12/05/83	JA: TX			
8410735	F-7B-075227	4213300000	108		M L WOODS #2 (037199)	EASTLAND COUNTY REGU	243.0	LOVE STAR GAS CO
-RUTHERFORD OIL CORP			RECEIVED:	12/05/83	JA: TX			
8410811	F-03-07545	4236130464	102-4		HELEDA C STARK #2	PEVETU (9,600)	730.0	TEXAS GAS CORP
-SANTA FE ENERGY PRODUCTS CO			RECEIVED:	12/05/83	JA: TX			
8410796	F-06-075394	4222530463	102-2		EASTMAN STATE FARM #2	EASTMAN STATE FARM (G	500.0	SOUTH TEXAS BATHI
8410797	F-03-075395	4214931536	102-2		MATTINGLY #1	GIDDINGS (AUSTIN CHAL	140.0	
-SCANDRILL INC			RECEIVED:	12/05/83	JA: TX			
8410624	F-09-071661	4223735325	102-4		KILLEN #3	POSELAND (ATOKA CONGL	159.9	LOVE STAR GAS CO
-SOUTHLAND ROYALTY CO			RECEIVED:	12/05/83	JA: TX			
8410522	F-7C-025359	4243500000	108-PB		B M HALBERT #2	SONORA - CANYON HCTR	0.0	EL PASO NATURAL G
8410505	F-7C-000284	4240530216	108-PB		CLEGG 1-83	OZONA	0.0	NORTHERN NATURAL
8410506	F-7C-000291	4210530215	108-PB		DOLLY COATES 1-69 #1	OZONA	0.0	NORTHERN NATURAL
8410530	F-7C-036652	4210500000	108-PB		IRA CARSON #2-54	OZONA	0.0	NORTHERN NATURAL
8410523	F-7C-025360	4210500000	108-PB		MOODY ESTATE #1-53	OZONA	0.0	NORTHERN NATURAL
8410507	F-7C-000297	4243500000	108-PB		SHURLEY B-1	SHURLEY RANCH CANYON	0.0	EL PASO NATURAL G
8410509	F-7C-000299	4216530226	108-PB		ZIPP RANCH 1-34 #1	OZONA	0.0	NORTHERN NATURAL
8410508	F-7C-000298	4210530229	108-PB		ZIPP RANCH 2-34 #1	OZON	0.0	NORTHERN NATURAL
-STEVE STAMPER			RECEIVED:	12/05/83	JA: TX			
8410793	F-09-075384	4223700000	103		T D WILLIAMS #1	JACK COUNTY REGULAR	47.0	
-SUN EXPL. & PROD. CO.			RECEIVED:	12/05/83	JA: TX			
8410826	F-7C-075487	4210536188	103		UNIVERSITY #D #15	FARMER (SAN ANDRES)	7.0	J L DAVIS
-SUN EXPLORATION & PRODUCTION CO			RECEIVED:	12/05/83	JA: TX			
8410764	F-8A-075303	4221933850	103		CENTRAL LEVELLAND UNIT #279	LEVELLAND	8.0	AMOCO PRODUCTION
8410540	F-7C-047488	4210500000	108-PB		COX #1-22	OZONA CANYON S/HO	0.0	NORTHERN NATURAL
8410708	F-04-074568	4242700000	108		I V MONTALVO -A- #9L	SUN	15.0	TRANSCONTINENTAL
8410732	F-7B-075218	4215131185	103		PEARCE HOLLAND #2	PAFDUE	7.0	
-SUPERIOR OIL CO			RECEIVED:	12/05/83	JA: TX			
8410634	F-03-072105	4228731372	102-2	103	SHELLY BRANCH UNIT #3 WELL #2	GIDDINGS (AUSTIN CHAL	116.0	FERRY PIPELINE CO
-TAUBERT STEED GUNN & MEDDERS			RECEIVED:	12/05/83	JA: TX			
8410712	F-8A-074737	4226931150	102-4		S B BURNETT ESTATE "NA" 34	ANNE TANDY (STRAIN 54	17.0	LOVE STAR GAS CO
-TED TRUE INC			RECEIVED:	12/05/83	JA: TX			
8410652	F-10-073171	4234130965	103		BRENT 65-5	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8410651	F-10-073169	4234130962	103		BRENT 65-7	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
8410650	F-10-073168	4234130963	103		BRENT 65-8	PANHANDLE MOORE COUNT	0.0	HOUSTON PIPE LINE
-TELSTAR CORP			RECEIVED:	12/05/83	JA: TX			
8410711	F-7B-074716	4236732562	102-4		RICHARDS #1 ID NUMBER APPLIED FOR	DENNIS WEST (STRAIN)	65.0	TEXAS UTILITIES F
-TEXACO INC			RECEIVED:	12/05/83	JA: TX			
8410648	F-08-073144	4243131343	102-4		"STERLING "M" FEE #5	CONGER SW	318.3	VALEPO TRANSMISSI
8410646	F-8A-072951	4216532598	103		WHARTON UNIT #132	HARRIS	1.5	PHILLIPS PETROLEU
-TEXAS INTERNATIONAL PET CORP			RECEIVED:	12/05/83	JA: TX			
8410588	F-03-069650	4205131489	102-2		BOHACEK #3	BIG "A" TAYLOR FIELD	0.0	CLAJON GAS CO
-THOMPSON J CLEO JAMES CLEO JR			RECEIVED:	12/05/83	JA: TX			
8410705	F-7C-074486	4210534583	102-4	107	UNIVERSITY 31-30E #2	UNIVERSITY 31 (STRAIN	300.0	
-TRACY OIL INC			RECEIVED:	12/05/83	JA: TX			
8410742	F-10-075265	4217931370	103		HOLT #2 (ID# 05419)	PANHANDLE GRAY	47.0	CITIES SERVICE CO
-TUCKER DRILLING COMPANY INC			RECEIVED:	12/05/83	JA: TX			
8410579	F-7C-067316	4243500000	108-PB		COLLIER SHURLEY #4	SANYER (CANYON)	15.0	EL PASO NATURAL G
8410809	F-7C-07544	4223532139	102-2	103	MAGRUDER #3	ROCK PEN (CANYON)	164.3	
8410545	F-7C-049816	4243500000	108-PB		NED DUNBAR #7	SAUYER (CANYON)	15.0	EL PASO NATURAL G
-TXO PRODUCTION CORP			RECEIVED:	12/05/83	JA: TX			
8410597	F-02-070532	4223931866	102-4		BLANKENSHIP G U 4	MORALES	0.0	DELHI GAS PIPELIN
8410600	F-02-070741	4229700000	102-4		MCCLELLAND D-1	OAKVILLE (MILCOX 9700	0.0	DELHI GAS PIPELIN
8410592	F-02-069743	4223931854	102-4		MUSSELMAN I-1	MCDANIEL (1990')	0.0	REATA INDUSTRIAL
-U S OPERATING INC			RECEIVED:	12/05/83	JA: TX			
8410593	F-03-069801	4228731331	102-2		JOAN #2 RRC ID # NA	GIDDINGS (AUSTIN CHAL	0.0	FERRY PIPELINE CO
-VOLVO PETROLEUM INC			RECEIVED:	12/05/83	JA: TX			
8410607	F-09-071410	4209700000	102-2		MARJORIE J MCMAHON #4	NEST HANDY	0.0	LOVE STAR GAS CO
-WARREN PETR CO A DIV OF GULF OIL CO			RECEIVED:	12/05/83	JA: TX			
8410786	F-08-075367	4210333219	103		P J LEA ETAL (TR A) #152	LEA (SAN ANDRES)	50.9	EL PASO NATURAL G
-WILLIAM MOSS PROPERTIES INC			RECEIVED:	12/05/83	JA: TX			
8410666	F-7C-073709	4238532594	103		ROCKER "B" #12-1	SPRABERRY/TREND AREA	22.3	
-WILSON ENERGY INC			RECEIVED:	12/05/83	JA: TX			
8410745	F-7C-075270	4210500000	108		UNIVERSITY 12 #1	FARMER (SAN ANDRES)	0.5	J L DAVIS
8410746	F-7C-075271	4210500000	108		UNIVERSITY 12 #2	FARMER (SAN ANDRES)	1.0	J L DAVIS
8410748	F-7C-075273	4210533332	108		UNIVERSITY 2 "A" #1	FARMER (SAN ANDRES)	1.0	J L DAVIS
8410747	F-7C-075272	4210533282	108		UNIVERSITY 2 "A" #4	FARMER (SAN ANDRES)	1.0	J L DAVIS
8410744	F-7C-075269	4210500000	108		UNIVERSITY C #1	FARMER (SAN ANDRES)	1.0	J L DAVIS
8410743	F-7C-075268	4210500000	108		UNIVERSITY 9 #3	FARMER (SAN ANDRES)	1.0	J L DAVIS
-WY-VEL CORP			RECEIVED:	12/05/83	JA: TX			
8410792	F-10-075381	4217931338	103		AEBERSOLD (04904) #8	PANHANDLE	76.2	CAROT COPP
8410734	F-10-075223	4223331603	103		SOUTHLAND (04341) #17	PANHANDLE	16.8	PHILLIPS PETROLEU
-ZERO CORP OF TEXAS			RECEIVED:	12/05/83	JA: TX			
8410672	F-01-073854	4228300000	102-4		SOUTH TEXAS SYNDICATE #33-3	MULA PASTURE N (4700)	66.0	ESPERANZA TRANSMI

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REGISTRATION
STATE
DEPARTMENT
OF
HEALTH
AND
HUMAN
SERVICES

Part III

**Department of
Health and Human
Services**

Office of the Secretary

**45 CFR Part 84
Nondiscrimination on the Basis of
Handicap; Procedures and Guidelines
Relating to Health Care for Handicapped
Infants; Final Rule**

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 84

Nondiscrimination on the Basis of Handicap; Procedures and Guidelines Relating to Health Care for Handicapped Infants

AGENCY: Office of the Secretary, HHS.

ACTION: Final rules.

SUMMARY: These are final rules on procedures and guidelines relating to nondiscrimination on the basis of handicap in connection with health care for handicapped infants. These rules are issued under the authority of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of handicap in programs and activities receiving Federal financial assistance.

EFFECTIVE DATE: February 13, 1984.

FOR FURTHER INFORMATION CONTACT: Susan Shaloub, Office for Civil Rights, Department of Health and Human Services, 330 Independence Avenue, SW., Room 5514, Washington, D.C. 20201; telephone (202) 245-6585. TDD No. (202) 472-2916.

SUPPLEMENTARY INFORMATION:

I. Synopsis

These rules are the product of a careful analysis of nearly 17,000 comments submitted to the Department during the comment period provided by the proposed rules of July 5, 1983. On the basis of this analysis, the Department has made significant modifications to the proposed rules. These modifications are designed to establish a framework under which the substantial controversy that has attended the Department's efforts to strengthen enforcement of section 504 in this area can be replaced by a more cooperative effort involving the Federal Government, the medical community, private advocacy groups and state governments.

These final rules continue the Department's efforts to put in place an effective mechanism for enforcing section 504 in connection with health care for handicapped infants.

But they also initiate new efforts to make unnecessary the use of those Federal enforcement mechanisms by encouraging hospitals to establish policies and procedures to implement the principle that treatment decisions for handicapped infants be based on reasonable medical judgments, and medically beneficial treatment not be withheld solely on the basis of an

infant's present or anticipated mental or physical impairments.

In seeking to forge a cooperative approach, the Department is encouraged by the recent development of "Principles of Treatment of Disabled Infants" by the following major medical and disability organizations: American Academy of Pediatrics, National Association of Children's Hospitals and Related Institutions, Association for Retarded Citizens, Down's Syndrome Congress, Spina Bifida Association of America, American Coalition of Citizens with Disabilities. The Association for the Severely Handicapped, American Association on Mental Deficiency, and American Association of University Affiliated Programs for the Developmentally Disabled. Announced November 29, 1983, in Washington, D.C., these principles state:

When medical care is clearly beneficial, it should always be provided. * * * Considerations such as anticipated or actual limited potential of an individual and present or future lack of available community resources are irrelevant and must not determine the decisions concerning medical care. The individual's medical condition should be the sole focus of the decision. These are very strict standards.

It is ethically and legally justified to withhold medical or surgical procedures which are clearly futile and will only prolong the act of dying. However, supportive care should be provided, including sustenance as medically indicated and relief of pain and suffering. The needs of the dying person should be respected. The family also should be supported in its grieving.

In case where it is uncertain whether medical treatment will be beneficial, a person's disability must not be the basis for a decision to withhold treatment. * * * When doubt exists at any time about whether to treat, a presumption always should be in favor of treatment.

In the issuance of these final rules, the Department seeks to build upon the spirit of cooperation underlying this landmark statement of principles. The major elements of the final rules are as follows:

First, the Department adopts the recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research that the Federal government encourage hospitals to establish review procedures concerning life and death decisions affecting seriously ill newborns. The rules include a model Infant Care Review Committee to assist hospitals in this effort.

Second, the rules require the posting in hospitals of an informational notice regarding the legal rights of handicapped infants. The notice

requirements have been revised to permit hospitals to highlight their own policies and internal review procedures, in addition to the federal law and government contact points.

Third, the rules require that state child protective services agencies have established procedures for applying their own state laws protecting children from medical neglect.

Fourth, the appendix to the rules sets forth interpretative guidelines for applying the law in these cases. These guidelines restate the Department's interpretation that section 504 requires that health care providers not withhold nourishment or medically beneficial treatment from a handicapped infant solely on the basis of present or anticipated physical or mental impairments, but it does not interfere with reasonable medical judgments, nor require the provision of futile treatments.

Fifth, the appendix to the rules sets forth guidelines for HHS investigations of alleged civil rights violations relating to health care for handicapped infants. These guidelines provide for the participation of hospital Infant Care Review Committees, the avoidance of unnecessary investigations, the involvement of qualified medical consultants, and the protection of confidential information.

The Department hopes the issuance of these rules, which become effective in 30 days, will end the controversy that has surrounded their development. But more importantly, it is hoped the rules will foster a new process of cooperative efforts and sensible approaches to advance the principle that life and death medical treatment decisions be based on informed judgments of medical benefits and risks, and not on stereotypes and prejudices against handicapped persons.

II. Background

On April 30, 1982, President Reagan instructed the Secretary of Health and Human Services:

to notify health care providers of the applicability of section 504 of the Rehabilitation Act of 1973 to the treatment of handicapped patients. That law forbids recipients of federal funds from withholding from handicapped citizens, simply because they are handicapped, any benefit or service that would ordinarily be provided to persons without handicaps. Regulations under this law specifically prohibit hospitals and other providers of health services receiving federal assistance from discriminating against the handicapped.

* * * * *

Our nation's commitment to equal protection of the law will have little meaning

if we deny such protection to those who have not been blessed with the same physical or mental gifts we too often take for granted. I support federal laws prohibiting discrimination against the handicapped, and remain determined that such laws will be vigorously enforced.

The President's instructions followed reports of the death, in Bloomington, Indiana, of an infant with Down's syndrome, from whom available surgical treatment to repair a detached esophagus was withheld.

On May 18, 1982, HHS issued to approximately 7,000 hospitals a notice stating:

Under section 504 it is unlawful for a recipient of federal financial assistance to withhold from a handicapped infant nutritional sustenance or medical or surgical treatment required to correct a life-threatening condition if: (1) the withholding is based on the fact that the infant is handicapped; (2) the handicap does not render the treatment or nutritional sustenance medically contraindicated.

Soon after this notice, the HHS Office for Civil Rights (OCR) established expedited investigative procedures to deal with any case of a suspected discriminatory withholding of lifesustaining nourishment or medical treatment from a handicapped infant.

On March 7, 1983, HHS issued, with a scheduled effective date of March 22, 1983, an interim final rule requiring recipient hospitals to post "in a conspicuous place" in pertinent wards a notice advising of the applicability of section 504 and the availability of a telephone "hotline" to report suspected violations of the law.

On April 14, 1983, the Honorable Gerhard Gesell, United States District Judge for the District of Columbia, declared the interim final rule invalid on the grounds that it was "arbitrary and capricious" and that there was inadequate justification for waiving a public comment period prior to issuance of the regulation. *American Academy of Pediatrics v. Heckler*, 561 F. Supp. 395 (D.D.C. 1983). Judge Gesell declined to order the Department to discontinue use of the hotline.

On July 5, 1983, HHS issued a proposed rule in which the notice requirement was revised; provisions were added concerning state child protective service agencies; an appendix of standards and examples was added; and a 60-day comment period was provided. 48 FR 30846.

The Department received 16,739 comments; of which 16,331 (97.5%) supported the proposed rule, and 408 (2.5%) opposed it. Other aggregate descriptions are:

- Of 322 nurses, 314 (97.5%) supported, and 8 (2.5%) opposed it.
- Of 141 pediatricians or newborn care specialists, 39 (27.7%) favored, and 102 (72.3%) opposed it.
- Of 253 physicians, not including pediatricians or newborn care specialists, 140 (55.3%) favored, and 113 (44.7%) opposed it.
- Of 137 comments from hospital officials and medical, hospital, nursing and other health related association, 31 (22.6%) supported and 106 (77.4%) opposed it.
- Of 77 comments from associations representing the handicapped, all supported the proposed rule.
- Of 100 parents of handicapped persons, 95 (95%) supported and 5 (5%) opposed it.

In addition to the written comments received, a number of meetings were held after issuance of the proposed rule with representatives of interested groups. The principal HHS officials involved in these meetings were the Under Secretary and the Surgeon General. Minutes of these meetings were kept and have been included in the public comment file.

Every comment was read and analyzed. Readers determined whether the commenter was in favor of, or opposed to, the proposed rule and identified particular points made by the commenter. The decisions made by the Department in connection with the rule are based not on the volume of comments advancing any point, but on thorough consideration of the merits of the comments submitted.

III. Provisions of the Final Rules

A. INFANT CARE REVIEW COMMITTEES

The March 1983 report of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research included the following recommendation:

The Commission concludes that hospitals that care for seriously ill newborns should have explicit policies on decisionmaking procedures in cases involving life-sustaining treatment for these infants. . . . Such policies should provide for internal review whenever parents and the attending physician decide that life-sustaining therapy should be foregone. . . .

Such a review could serve several functions and the review mechanism may vary accordingly. First, it can verify that the best information available is being used. Second, it can confirm the propriety of a decision that providers and parents have reached or confirm that the range of discretion accorded to the parents is appropriate. Third, it can resolve disputes among those involved in a decision, if necessary, by siding with one party or

another in a dispute. Finally, it can refer cases to public agencies (child protection services, probate courts, or prosecuting attorneys) when appropriate.

In response to a question included in the preamble, the Department received many comments regarding hospital review boards. Many commenters who expressed opposition to the rule, particularly health care providers, expressed a strong preference for the hospital review board approach over the proposed rule or any implementation or enforcement of section 504. Others opposed hospital review boards, particularly as an alternative to the proposed rule and existing HHS procedures.

The American Academy of Pediatrics, which submitted the most detailed proposal, suggested, as an alternative to the proposed rule, that all hospitals, as a condition of participation in the Medicare program (not as a requirement of section 504), establish a review committee. Under this proposal (also endorsed by the National Association of Children's Hospitals and Related Institutions, and in concept, the American Hospital Association) the committee would have three functions: (1) To develop hospital policies and guidelines for management of specific types of diagnoses; (2) to monitor adherence through retrospective record review; and (3) to review, on an emergency basis, specific cases when the withholding of life-sustaining treatment is being considered. When the committee disagreed with a parental or physician decision to withhold treatment, the case would be referred to the appropriate court or child protective agency, and treatment would be continued pending a decision.

Committee membership would include a hospital administrator, a representative of a disability group, a lay community member, a member of the hospital's medical staff, and a practicing nurse.

Among the arguments advanced in favor of the creation of hospital review boards, as a substitute for the approach set forth in the proposed rule, were:

(a) They would represent a cooperative approach between the government and the health care community, rather than a confrontational approach.

(b) They would provide a vehicle by which facility "self-evaluations" can be conducted.

(c) They would assure an indepth review by persons of varied perspectives of individual, complex cases involving critically ill infants.

(d) They would provide a mechanism for ensuring that hospitals, physicians

and parents are informed of the most recent medical information concerning treatment of handicapped infants and of community services, counselling, parent support groups, and such alternative care options as adoption, foster care, and other out-of-home placements.

(e) They would lead to the involvement of child protective agencies and of the courts where it is indicated that the interests of the child are not being served.

Many commenters who expressed support for the proposed rule also expressed strong opposition to the alternative approach of hospital review boards because:

(a) Such boards cannot replace State and federal government responsibilities to protect the rights of citizens. The use of review boards would not assure that all individuals with disabilities would receive nondiscriminatory treatment as guaranteed by section 504.

(b) Such boards are virtually untested as a viable mechanism to protect handicapped infants from discriminatory practices.

A number of commenters, including the American Medical Association, the Catholic Health Association, the Federation of American Hospitals, the American College of Hospital Administrators, the American College of Physicians, the American Nurses Association, and other medical groups, expressed support for the concept of review boards, but opposed any mandate that review boards be established. The AMA added:

While we do not support federal intervention in treatment decisions concerning seriously ill newborns, the attention brought about by the government's action should provide a continued stimulus to develop mechanisms to deal with these sensitive matters without the intrusion of the federal government into an area where it does not belong.

Response

The Department believes there is much merit in many of the comments submitted both in favor of, and in opposition to, utilization of hospital review boards to assist in the development of standard policies and protocols and to review individual cases. The Department's conclusions are as follows.

First, the Department believes review committees cannot be given an exclusive role in reviewing medical decisions concerning the withholding or withdrawal of medical or surgical treatments from handicapped infants, and thus, cannot accept the proposal of hospital review boards as a *substitute* for mechanisms to enforce section 504.

The Department does not seek to take over medical decisionmaking regarding health care for handicapped infants. HHS agrees that the best decisionmakers are generally the parents and the physicians directly involved. However, there is, and must be, a framework within which the decisionmakers, the parents and physicians, operate.

That framework is established by laws. With respect to health care professionals providing services under programs or activities receiving federal financial assistance, the framework includes section 504, which prohibits discrimination on the basis of handicap in programs or activities receiving Federal financial assistance. With respect to parents, the laws are state laws establishing limitations on parental authority. With respect to both the federal law and the respective state laws, each specifically provides implementation mechanisms involving government agencies.

The fundamental issue involved in deciding whether review boards should be a substitute for enforcement of section 504 is whether the legal framework within which the decisionmaking parents and physicians are supposed to function (and generally do function) will be utilized.

Under the proposal that review boards act in lieu of government, whether physicians or hospital review boards adhere to the principles of section 504 would be determined by those physicians and boards alone. Whether parents, physicians, or review boards adhere to state laws on the limitations of parental authority would be decided by the same physicians and boards. Whether they ever utilize the implementation schemes established by law to ensure that those principles are adhered to would also be decided by those parents, physicians, and review boards.

The Department concludes that the essential element of this alternative proposal—that it separates the process from the established legal framework governing decisionmaking by parents and physicians, with no meaningful provision to ensure that they function in accord with this framework—makes the proposal unacceptable as a substitute for the proposed rule. This alternative proposal simply does not provide sufficient safeguards that the requirements of section 504 will be met. Because section 504 is applicable to the provision of health care services to handicapped infants in programs and activities receiving Federal financial assistance, the Department believes it would not be justifiable for the

Department to refrain from exercising a regulatory role to enforce the statute.

Second, the Department concludes that, although unacceptable as a substitute, review boards can be very valuable. The Department agrees with the rationale of the President's Commission and many commenters that input from a committee that includes individuals with medical expertise and people with non-medical perspectives and that is guided by proper standards and protocols can be very helpful in bringing about informed, enlightened and fair decisionmaking regarding these difficult issues. The Department, therefore, adopts the recommendation of the President's Commission that the government encourage establishment of hospital review boards.

Third, the Department concludes that the creation of hospital review boards should not be mandated by the Federal government. The Department agrees with the President's Commission that because review boards are "largely untried", they are not so demonstrably effective as to justify making them mandatory for nearly 7,000 hospitals nationwide. Also, there would be very substantial practical problems in seeking to enforce such a mandate with respect to so many hospitals. To make such a mandate viable, it would have to be accompanied by detailed standards on how to organize and operate the committee. The Department agrees with the President's Commission that flexibility is needed for each hospital to consider the best approach for itself. For example, the review board procedures may be unnecessary for small or rural hospitals that rarely encounter cases involving severely impaired newborns and that handle such cases by immediately transferring the infant to the appropriate specialty hospital.

In addition, in view of the strong opposition by major medical organizations to mandatory committees, there would likely be protracted legal proceedings challenging the regulation, whether adopted pursuant to section 504 or pursuant to authority under the Social Security Act to establish conditions of participation and standards for the Medicare and Medicaid programs.

For these reasons, the Department has concluded that Infant Care Review Committees should be encouraged, but not mandated by the federal government.

Fourth, the Department concludes that the establishment of review boards will be facilitated by the development of a model committee. Therefore, § 84.55(f) of the rules sets forth a model Infant Care Review Committee (ICRC). This model

calls for broad representation and significant involvement of the ICRC in developing standard policies and protocols for the hospital and in promptly reviewing specific cases. The model is based substantially on comments submitted by the American Academy of Pediatrics.

The Department has revised the Academy's model somewhat to underscore that the purpose of the ICRC is to advance the basic principles embodied in section 504, the recommendations of the President's Commission and the landmark "Principles of Treatment of Disabled Infants." The Department has also revised the Academy's model to provide, in connection with review of specific cases, for the designation of one member of the ICRC as "special advocate" for the infant. While recognizing that all members of the ICRC should be advocates for the best interests of the infant, the role of the special advocate will be to ensure that all considerations in favor of the provisions of life-sustaining treatment are fully evaluated and considered. As the President's Commission stated, "it is all too easy to undervalue the lives of handicapped infants." The special advocate feature of the model ICRC provides a mechanism to counteract this tendency.

This model is also consistent with the recommendations of the President's Commission and the comments of the American Hospital Association and other medical organizations. The Department also acknowledges the comment of the American Medical Association that the government's actions provide "a continued stimulus" for the medical community "to develop mechanisms to deal with these sensitive matters." HHS strongly encourages medical organizations to follow through on their suggestions and provide all possible assistance to their member institutions and medical professionals in establishing and operating these ICRC's.

B. INFORMATIONAL NOTICE

The proposed rules required that recipient hospitals post "in a conspicuous place in each nurse's station" of appropriate wards a notice stating:

DISCRIMINATORY FAILURE TO FEED
AND CARE FOR HANDICAPPED INFANTS
IN THIS FACILITY IS PROHIBITED BY
FEDERAL LAW.

* * * * *

Any person having knowledge that a handicapped infant is being discriminatory denied food or customary medical care should immediately contact:

Handicapped Infant Hotline

* * * * *

Failure to feed and care for infants may also violate the criminal and civil laws of your state.

A number of commenters expressed a concern that the posting of the required notice would itself have a disruptive effect on the provision of health care to newborn infants by creating the impression to an infant's parents, already in a very stressful situation, that the physician, nursing staff, and hospital should not be trusted to provide proper care to their child. In connection with this point, the Catholic Health Association suggested that hospitals be permitted to use an alternative notice allowing the hospital to state its agreement with the policy of nondiscrimination and indicate the appropriate hospital contact person. Another comment suggested alternatives to posting, such as placing the notice on the admitting document or on consent forms used by the hospital.

Some commenters considered the wording of the notice very ambiguous in its references to "discriminatory failure" and "customary medical care" and in its failure to make reference to futile treatments, deference to legitimate medical judgments, the nonapplicability of section 504 to parental decisions, and many distinctions and nuances relating to the applicability of section 504 in this context.

Other criticisms were that the words "should immediately contact" improperly implied a legal obligation to report; the reference to "this facility" implied prior misconduct by that facility; and the reference to violations of "the criminal and civil laws of your state" is inappropriate because it does not relate to the purpose of the notice to inform people about civil rights protections.

A number of commenters suggested additions to the notice, including: a reference to the sanctions for noncompliance; express inclusion of handicapped infants born alive after abortions; reference to physical, mental, or emotional abuse or injury or withholding of fluids, oxygen, medications, warmth, and routine nursing care; and a statement that callers are not required to identify themselves.

Other commenters urged that hospitals be required to notify HHS that the notice has been posted.

Response

In an effort to accommodate many of these concerns, the Department has made a number of changes regarding the wording of the informational notice and

the locations where it is to be posted. However, the Department remains convinced of the need for a notice to advise individuals in a position to know about potentially discriminatory conduct of the requirements of the law and of the mechanisms available to report suspected violations expeditiously so that, should a violation be occurring, corrective action can be taken in time to save the infant's life.

In many other contexts of civil rights enforcement and enforcement of scores of other statutes, speed is not essential because the victim of discrimination can be essentially "made whole" through reinstatement in a job, admission to a school or hospital, retroactive benefit payments, or the like. However, in the context of life and death medical decisions, the matter must be handled with the utmost urgency. For this reason, the Department continues to believe that it is essential to meaningful implementation of the requirements of section 504 to have a mechanism for immediate reports of suspected violations.

However, the Department has concluded that it can, without detracting from this overriding objective, eliminate the unintended adverse effects of the notice many commenters perceived. Therefore, the informational notice requirements set forth in § 84.55(b) reflect significant modifications from those set forth in the proposed rules.

First, the Department has adopted the suggestion of the Catholic Health Association that hospitals be permitted to post a notice reflecting that the hospital's policy is consistent with the nondiscrimination requirements of section 504 and that the hospital also has a mechanism to review suspected noncompliance with this policy. This change eliminates any perception that the notice implies improper conduct by the hospital.

The only requirement contained in the rule for the use of this notice (identified in the regulation as "Notice A") is that the content of the notice be truthful as it relates to that hospital. To be truthful, the hospital must have a policy that nourishment and medically beneficial treatment, as determined with respect for reasonable medical judgments, should not be withheld from handicapped infants solely on the basis of their present or anticipated mental or physical impairments. Furthermore, the hospital must have a procedure for review of treatment deliberations and decisions concerning health care for handicapped infants. Also, so that potential callers will be assured that the hospital's procedures will be

implemented in good faith, the hospital's policies must provide for the confidentiality of the identity of, and prohibitions of retaliation against, potential callers who, in good faith and nonmaliciously, provide information about possible noncompliance. A hospital need not, in order to post Notice A, have an Infant Care Review Committee in conformance with the model ICRC, nor forego management prerogatives with respect to anyone who might abuse the hospital's procedures by, for example, willfully making false or malicious calls. Hospitals for which the content of "Notice A" is not truthful must post the notice identified as "Notice B."

Second, the requirement regarding the location where copies of the notice must be posted has been changed. Consistent with the Department's intent to target the notice to nurses and other health care professionals, the proposed rule required that the notice be posted at the nurses' stations of appropriate wards, rather than more generally in the wards as had been stated in the March interim final rule. In view of the concern expressed by a number of commenters that posting in the nurses' stations would continue to make the notice conspicuous to distressed parents, the final rules do not require that copies of the notice be posted at nurses' stations. Rather, the notice is to be posted at any location(s) where nurses and other medical professionals who are engaged in providing health care related services to infants will be aware of the content of the notice. Locations such as locker rooms and lounge areas will suffice as long as placement in these locations ensures that the appropriate personnel will see the notice. Under these circumstances the notice would not have to be posted at nurse's stations or any other location where posting would have adverse effects on parents. The number of copies which must be posted in the hospital is similarly determined on the basis of ensuring that the appropriate personnel will see it.

Third, in view of this more specific targeting, the size of the notice has been reduced from the 8 1/2 x 11 inches requirement in the proposed rule (and the 17 x 14 inch notices distributed in connection with the March rule) to 5 x 7 inches.

Fourth, the wording of the informational notice has been revised in connection with the language which attempts to convey in simple terms the basic protection of the law. The new language reflects the law's deference to reasonable medical judgments, refers to "medically beneficial treatment" and

clarifies that the concept of handicapped discrimination relates to decisions made solely on the basis of present or anticipated mental or physical impairments. The reference in the text of the notice and elsewhere in the rules to "present or anticipated mental or physical impairments" is based on the definition of "handicapped person" in existing regulations, 45 CFR 84.3(j). The Department believes this phrase conveys a better understanding than use of the word "handicap."

The Department has also changed the heading of the notice to eliminate what many perceived to be a negative statement. The revised notice adopts the same heading, "Principles of Treatment of Disabled Infants", adopted by the coalition of leading disability and medical organizations in their landmark statement of principles.

In seeking to compose the wording of the notice, the Department has sought to set forth a simple, understandable, and accurate description of the requirement of the law. To a significant degree, the application of section 504 in this context defies a simple and precise restatement. The wording of the notice, however, does not establish a legally mandated rule of conduct; it merely conveys information. In recognition of the impossibility of setting forth a statement that covers all possible dimensions and nuances of the statute, the notice advises that callers may obtain further information by calling the designated contact points.

The Department believes this statement resolves many of the concerns regarding ambiguity of the prior version of the notice without becoming so cumbersome and complicated that it confuses more than it informs.

Concerning other comments, the Department is not adopting the suggestion that hospitals be required to notify HHS that the notice has been posted. There are insufficient benefits accruing from establishing a mechanism for checking off approximately 7,000 unverified notifications of posting to justify the administrative burden on the Department and recipients.

In addition, consistent with the objective of targeting the notice to nurses and other medical professionals, and in view of concerns about frightening parents, the Department is not adopting the suggestion that the nondiscrimination notice be required on hospital admission or consent forms. However, the Department encourages hospitals and Infant Care Review Committees to consider seriously developing some written information for parents with respect to hospital policies

and procedures in connection with this issue. Such information could include an explanation of rights and responsibilities of parents, infants, and hospitals, the operation of the ICRC, available social services, and other pertinent information.

The Department is also not adopting numerous suggestions for additions to the notice because they are unnecessary and would make the notice cumbersome and possibly confusing. Statements concerning the existence of sanctions for noncompliance, the applicability of section 504 to infants born alive after abortions, the lawfulness of withholding futile treatments, and the applicability of section 504 to a wide range of aspects of medical care are all quite correct, but their inclusion in the notice is unnecessary.

The Department is not adopting the suggestion that the notice state that callers are not required to identify themselves. Although the Department will take appropriate follow-up action on anonymous calls that convey credible and specific information, the Department does not wish to encourage callers to remain anonymous because there is great value in having the ability to recontact the complainant as the inquiry or investigation progresses. The Department believes the statements contained in the notice regarding confidentiality of the identity of callers and prohibitions against retaliation are adequate to overcome the understandable reluctance a sincere potential complainant may have.

Finally, although the statement is correct, the Department adopts the suggestion that the reference to violations of state criminal and civil laws be deleted because it is unnecessary and potentially inflammatory.

C. RESPONSIBILITIES OF CHILD PROTECTIVE SERVICES AGENCIES

A number of commenters addressed the provision of the proposed rule requiring that state child protective services agencies establish and maintain written methods of administration and procedures to ensure full utilization of their authorities pursuant to state law to prevent instances of medical neglect of handicapped infants.

Several child protective services agencies and their representatives opposed this provision. As stated by the National Council of State Public Welfare Administrators:

While the NCSPPWA agrees there is a need to establish additional protections for infants born with handicapping conditions. * * * we

believe the child protective services agency is not, as a rule, the appropriate authority to establish standards for medical treatment, to police the medical profession, or to make the kinds of medical/ethical judgments required in this area.

The State of Nebraska Department of Public Welfare expressed support for increased involvement of state child protective services agencies:

We feel that the agency with primary responsibility for investigation and enforcement of this law should be the State Protective Services Agency. We further would suggest that hospital administration be charged with the responsibility for reporting any possible violations of this law to the State Protective Services Agency. * * * The State Protective Services Agency should be responsible for reporting to the Office of Civil Rights the results of any actions taken as a result of the report. * * *

Some commenters urged deletion of the requirement that state agencies report cases to OCR because it conflicts with the confidentiality requirements of state child abuse and neglect statutes and presents an unnecessary administrative burden. Other commenters suggested that this requirement be expanded to require reports to OCR at each step of an agency's investigation. Other commenters suggested that state child protective services agencies be required to involve state protection and advocacy systems for the developmentally disabled in all of its activities related to this issue.

Response

Section G, below, includes a discussion of the applicability of section 504 in cases where a refusal to provide medically beneficial treatment is a result, not of decisions by a health care provider, but of decisions by parents. As explained in that section, it is the responsibility of the hospital in such a case to report the circumstances to the state child protective services agency. If that agency receives Federal financial assistance in its child protective services program, it may not fail, solely on the basis of the infant's present or anticipated physical or mental impairments, to utilize its full authority pursuant to state law to protect the infant. Although there are some variations among state child protective statutes, all have the following basic elements: a requirement that health care providers report suspected cases of child abuse or neglect, including medical neglect; a mechanism for timely receipt of such reports; a process for administrative inquiry and investigation to determine the facts; and the authority and responsibility to seek an

appropriate court order to remedy the apparent abuse and neglect, if it is found to exist.

Consistent with the applicability of section 504 to child protective services agencies and with the typical elements of state child protective statutes, the proposed rule included a subsection requiring that, within 60 days of the effective date, "each recipient state child protective services agency shall establish and maintain written methods of administration and procedures to assure that the agency utilizes its full authority pursuant to state law to prevent instances of medical neglect of handicapped infants."

This provision was modeled after an existing provision in the Department's regulation implementing title VI of the Civil Rights Act of 1964, 45 CFR 80.4(b), which requires all continuing state programs to have "such methods of administration for the program as are found by the responsible department official to give reasonable assurance" of compliance.

The proposed rule went on to specify several elements which must be included in the agency's methods of administration and procedures. Four of these elements precisely mirror the common fundamental components of state child protective statutes.

The proposed rule also called for immediate notification to the Department of each report of suspected medical neglect of a handicapped infant, the steps taken by the agency to investigate such report, and the agency's final disposition of such report. This requirement was also based upon an existing regulation, 45 CFR 80.6(b), which requires compliance reports "in such form and containing such information" as the Department may require. Therefore, the proposed rule's requirement for notification to OCR is simply a specification of a type of compliance report the Department deems necessary to monitor the recipient's compliance.

With respect to the comments concerning the potential conflict between this notification requirement and the confidentiality provisions of state child abuse and neglect statutes, this provision is entirely consistent with existing regulatory requirements of recipient child protective services agencies under 45 CFR 80.6(c), which includes the statement: "Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this part."

In addition, HHS regulations requiring, as a condition of receiving

Federal funds, state child protective services agencies to protect the confidentiality of child abuse and neglect information also make clear that HHS and the Comptroller General of the United States must have access to documents and other records "pertinent to the HHS grant." 45 CFR 1340.14, 74.24.

The Department has not adopted the suggestion that more detailed requirements be established for state child protective services agencies because the requirements should be flexible enough to be easily incorporated into existing agency procedures.

Section 84.55(c)(1) of the final rules adopts the corresponding provision of the proposed rules without substantive change. In summary, it simply restates existing section 504 responsibilities of recipient state child protective services agencies; requires standard procedures to assure compliance (as has been long required for continuing state programs under title VI); specifies the basic elements of those procedures (which precisely mirror the standard components of state statutes); and specifies a form of compliance reports required under existing agency responsibilities. Consistent with the Department's investigative guidelines, § 84.55(c)(2) encourages state agencies to involve Infant Care Review Committees in connection with the agencies' actions pursuant to its state law and procedures.

D. EXPEDITED ACCESS TO RECORDS

The final rules create a limited exception to the Department's existing regulations pertaining to access to sources of information. The existing regulation, 45 CFR 80.6(c), made applicable to section 504 cases by 45 CFR 84.61, states:

Each recipient shall permit access by the responsible Department official or his designees during *normal business hours* to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this part. (Emphasis supplied.)

The proposed rules included a modification to specify that access to pertinent records and facilities of a recipient "shall not be limited to normal business hours when, in the judgment of the responsible Department official, immediate access is necessary to protect the life or health of a handicapped individual." The final rules adopt this change in § 84.55(d).

A number of commenters expressed support for this provision as essential to efforts to save lives. Others objected on the grounds that investigations are

highly disruptive, the OCR officials are not qualified to make a judgment regarding the degree of danger to the life or health of a handicapped individual and that the rule should specify circumstances warranting access and procedures applicable to investigations after normal business hours.

Response

The Department views this as a minor, technical clarification. Access to recipient facilities and sources of information is required by existing regulations and is essential for the Department to carry out its statutory obligation to determine whether recipients are in compliance with civil rights laws. The provision in existing regulations regarding "normal business hours" is nothing more than a recognition that many recipients conduct their federally assisted programs and activities only during those hours.

The furnishing of inpatient medical services, however, is not a 9:00 a.m. to 5:00 p.m., Monday through Friday undertaking. Rather, the "normal business hours" for nurseries and neonatal intensive care units are 24 hours a day, seven days a week. The Department, therefore, has the authority to seek pertinent records at any time even in the absence of this revision. Nonetheless, the Department adopts this change to clarify its authority and recipients' obligations. The objections expressed regarding this provision are substantially the same as objections to investigative procedures generally, and are discussed in section H, below.

This modification makes clear where the circumstances indicate a risk of imminent, irrevocable harm due to suspected noncompliance, the Department will, as it must, initiate immediate action to determine compliance.

E. EXPEDITED ACTION TO EFFECT COMPLIANCE

The final rules include a slight revision to existing regulatory procedures concerning remedies for noncompliance. Existing regulations, 45 CFR 80.8(a) and (d) (made applicable to section 504 cases by 45 CFR 84.61), provide:

If there appears to be a failure or a threatened failure to comply with this regulation . . . compliance with this part may be effected by the suspension or termination of or refusal to grant or to continue Federal financial assistance or by any other means authorized by law. Such other means may include . . . a reference to the Department of Justice with a recommendation that appropriate proceedings be brought to

enforce any rights of the United States under any law of the United States . . . or any assurance or other contractual undertaking. . . .

No action to effect compliance by any other means authorized by law shall be taken until (1) the responsible Department official has determined compliance cannot be secured by voluntary means, (2) the recipient or other person has been notified of its failure to comply and of the action to be taken to effect compliance, and (3) the expiration of at least 10 days from the mailing of such notice to the recipient or other person.

The proposed rule included a provision that the normal requirement of providing 10-days notice "shall not apply when, in the judgment of the responsible Department official, immediate remedial action is necessary to protect the life or health of a handicapped individual." The final rule, in § 84.55(e), adopts this revision.

A number of commenters expressed support for this provision as essential to efforts to save lives; others objected because the rule did not identify standards for waiving the 10-day notice or alternate procedure to be followed.

Response

The Department considers this a minor, technical change. The 10-day notice was designed to facilitate pursuit of informal compliance in circumstances where noncompliance did not imminently threaten lives. The failure to provide nourishment or treatment to a handicapped infant, however, may have such a consequence.

As a matter of legal interpretation, the Department believes the normal 10-day notice rule would, even absent the proposed change, be inapplicable in a case where the government seeks a temporary restraining order to sustain the life of a handicapped infant in imminent danger of death. Such actions would often be for the purpose of preserving the status quo, such as by continuing the provision of nourishment and routine care, pending a more definitive determination of compliance or noncompliance with section 504, rather than "to effect compliance" following a determination of noncompliance. In addition, the Department believes federal judges would be appropriately loathe to allow minor procedural technicalities to defeat totally the accomplishment of the statutory purpose. Nonetheless, the Department proposed this limited exception to the normal 10-day notice rule to clarify its authorities and corresponding recipient responsibilities.

The determination of the need to waive the 10-day notice will be made in accordance with the standard

investigative procedures, explained in section H, below. Concerning alternate notice procedures, the final rule provides that oral or written notice will be provided as soon as practicable.

F. GUIDELINES RELATING TO HEALTH CARE FOR HANDICAPPED INFANTS

Most of the comments submitted during the comment period dealt with issues well beyond the specific provisions of the proposed rules, such as the applicability of section 504 to this subject matter and the Department's section 504 enforcement process.

Like the proposed rules, the final rules contain four discrete requirements applicable to recipients of Federal financial assistance. First, hospitals must post an informational notice. Second, the normal 10-day notice before initiating action to effect compliance can be waived when immediate action is necessary. Third, access by the Department to pertinent records and facilities can be obtained after "normal business hours" when immediate access is necessary. Fourth, state child protective services agencies must establish procedures to utilize their full authority under state law to prevent medical neglect of handicapped infants.

To bring these specific provisions further back into focus, it is useful to note what the final rules, like the proposed rules, do *not* do. They do not establish the applicability of section 504 to the provision of health care to handicapped infants. The applicability of section 504 is already established by the statute and the existing HHS regulations. They do not establish the authority or procedures of HHS to investigate reports of suspected noncompliance with section 504. Authority and procedures are already established by the statute, existing regulations and administrative practices. They do not establish a toll-free telephone number, which has been established and is in operation. Although most of the controversy concerning the rules relates to the broader issues, the mandatory aspects of the final rules deal only with several discrete points.

Nonetheless, many of the comments relating to the broader issues were highly relevant and valuable. Other comments on the broader issues reflected a lack of understanding of how the Department interprets the applicability of section 504 in this area and the Department's compliance procedures. To clarify these issues, the final rules include an appendix, which sets forth guidelines relating to health

care for handicapped infants. This appendix includes interpretative guidelines relating to the applicability of section 504 and guidelines for HHS investigations in this area. These guidelines do not independently establish rules of conduct or substantive rights and responsibilities, which are established by the statute and existing regulations. The Department will apply these guidelines flexibly to take into account the circumstances presented in each case regarding both the determination of compliance or noncompliance and the conduct of the investigation. These guidelines are set forth as an appendix to the final rules simply to assist recipients and the public in understanding the Department's general interpretations and procedures. This appendix becomes a part of the permanent Code of Federal Regulations.

G. INTERPRETATIVE GUIDELINES RELATING TO THE APPLICABILITY OF SECTION 504

Medically Beneficial Treatment

As stated in the preamble to the proposed rules, the Department interprets section 504 as requiring that medically beneficial treatment not be withheld, solely on the basis of handicap, from a handicapped infant.

Three of the questions on which the July 5 notice of proposed rulemaking specifically solicited comments concerned the issue of medically beneficial treatment as the standard to guide treatment decisions, including further explanations that would assist health care providers and the public in understanding the requirements of Section 504, implications concerning cost and the allocation of medical resources, and the impact of perceived economic, emotional and marital effects on parents.

Among commenters supporting the standard of providing medically beneficial treatment was the Down's Syndrome Congress:

Some children may be unwanted by their parents. . . . The Down's Syndrome Congress does not seek to judge those parents who do not feel that they can adequately parent because of the handicap. Rather, we seek to make available those adoption homes that want children who have Down's syndrome.

Also typical of comments in support of the standard of providing medically beneficial treatment was the comment of the Association for Retarded Citizens:

No quality of life or other such considerations are acceptable to the ARC. Although we are primarily a parent organization and many ARC members have had significant difficulty (financial, emotional, etc.) raising their mentally

retarded child, we come down strongly on the side of the child.

Available medical and other technology is not able to fully predict the future capacity of most mentally retarded children, especially in the first days and weeks of life. Our members can cite numerous examples of improper and wrong advice given to them by physicians about the future capacities of their children.

A number of commenters argued that the medically beneficial treatment standard is inappropriate. For example, the Department received the following comment from a Texas physician:

[N]ot only is the "very strict standard" advocated by the President's Commission "not being uniformly followed," [as stated in the HHS July 5 NPRM] it is probably close to *uniformly not* being followed. The "very strict standard" the Secretary of Health and Human Services is trying to foist on the medical community is contrary to the usual practices of that community. (Emphasis in original.)

Similarly, the following comment was submitted by an Alabama physician:

Recently I have treated a 13-month old black child who has congenital heart disease, spastic encephalopathy, vomiting, repeated bouts of bilateral pneumonia, internal squint of the left eye, and mental deficiency. He is one of the thousands of children who are the victims of the neonatal intensive care units located in every medical center. He was born premature, weighing two pounds and ten ounces. With modern treatment and instruments he survived. These children have no future and are a terrible burden on their parents and this nation.

* * * What good is it treating these premature babies? Will it not be better if they are left to die? * * * We are compounding our problems by bringing into life thousands of congenitally sick babies which nature has rejected.

A number of commenters, particularly medical organizations, suggested different articulations of standards. For example, the American Medical Association combines a number of notions in articulating the standard to be applied, including consideration of "quality of life", and deference to parental decisions unless there is "convincing evidence to the contrary." The full text of the AMA position is as follows:

QUALITY OF LIFE. In the making of decisions for the treatment of seriously deformed newborns or persons who are severely deteriorated victims of injury, illness or advanced age, the primary consideration should be what is best for the individual patient and not the avoidance of a burden to the family or to society. Quality of life is a factor to be considered in determining what is best for the individual. Life should be cherished despite disabilities and handicaps, except when prolongation would be inhumane and unconscionable. Under these circumstances, withholding or removing life

supporting means is ethical provided that the normal care given an individual who is ill is not discontinued. In desperate situations involving newborns, the advice and judgment of the physician should be readily available, but the decision whether to exert maximal efforts to sustain life should be the choice of the parents. The parents should be told the options, expected benefits, risks and limits of any proposed care; how the potential for human relationships is affected by the infant's condition; and relevant information and answers to their questions. The presumption is that the love which parents usually have for their children will be dominant in the decisions which they make in determining what is in the best interest of their children. It is to be expected that parents will act unselfishly, particularly where life itself is at stake. Unless there is convincing evidence to the contrary, parental authority should be respected.

Another articulation of standards, submitted by the Biomedical Ethics Committee of the University of Minnesota Hospitals, includes the following ethical principles:

When the burden of treatment lacks compensating benefit or treatment is futile, the parent(s) and attending physician need not continue or pursue it.

Therapies lack compensating benefit when: (a) they serve merely to prolong the dying process; (b) the infant suffers from intolerable, intractable pain, which cannot be alleviated by medical treatment; (c) the infant will be unable to participate even minimally in human experience.

Probably the most poignant comments regarding the standard which should be applied relating to the provision of medical care to handicapped infants were submitted by parents of handicapped children. Of 100 commenters who identified themselves as parents of handicapped persons, 95 supported the proposed rule and five opposed it. From a Montana mother:

My daughter Keough was born in November 1929 with Down's syndrome and a host of birth defects in her digestive system similar to Baby Doe's problems * * * Twenty minutes after her birth our then pediatrician offered to let her starve in the hospital nursery * * *

* * * There are times when I am getting up for the tenth time during the night to suction my daughter's trach tube so she can breathe that I would give anything not to have to deal with the situation, but I will never regret having her as part of the family.

From a mother and father, both physicians, in California:

[A]s the parents of an eight-year-old boy with Down's Syndrome, who suffers from marked retardation and a severe cardiopulmonary condition, we do appreciate both the deep anguish and the countless joys that derive from caring for and caring about a

severely handicapped child. There is no limit set on the strength, the growth and the fulfillment that his love continues to bring us every day. For his sake and for the sake of all the handicapped newborn, it is urgent that safeguards be enacted. Let merciful caring, not mercy-killing, be our answer to their needs.

Another dimension of the comments concerning the interpretation of section 504 as requiring that medically beneficial treatment not be withheld solely on the basis of handicap relates to the difficulty of determining the "medically beneficial treatment." As stated by the Children's Hospital of Boston:

[The NPRM] states that the denial of treatment where there is no medical benefit to the individual would not be discriminatory because the individual would not be a "qualified handicapped person" within the meaning of section 504. . . . [A problem with this analysis is that] it relies on outcome which cannot always be predicted or, even if predicted is not always accurate, may be affected by other factors, and may not even be known for an indeterminate time. If section 504 is to provide guidance in treatment situations, its applicability should be known at the outset. Otherwise staff will be subjected to an after-the-fact scrutiny which may well be inaccurate and oppressive.

Another comment regarding the role of medical judgements was submitted by presiding Judge John G. Baker, Monroe Superior Court, Division III, the Judge who decided the *Bloomington Infant Doe* case:

The question in the *Infant Doe* case was, when parents are confronted with two competent medical opinions, one suggesting that corrective surgery may be appropriate and the other suggesting that corrective surgery and extraordinary measures would only be futile acts, does the law allow the parents to select which medical course to follow? It was the decision of the Indiana Court that the law provided the parents with the responsibility of choosing which medical course to follow without governmental intervention.

Response

The Department's position remains unchanged. Section 504 provides:

No otherwise qualified handicapped individual shall, solely by reason of his handicap, be excluded from participation, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. . . .

The statute defines a "handicapped individual" as:

Any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, . . . or (iii) is regarded as having such an impairment.

A key issue in applying section 504 in any context is that the handicapped individual who is allegedly excluded from participation in, denied the benefits of, or subject to discrimination under a federally assisted program or activity be "otherwise qualified" to participate in, or benefit from, the program or activity, in spite of his or her handicap. In the context of receiving medical care, the ability to benefit for a handicapped person is the ability to benefit medically from treatment or services. If the handicapped person is able to benefit medically from the treatment or service, in spite of the person's present or anticipated physical or mental impairments, the individual is "otherwise qualified" to receive that treatment or service, and it may not be denied solely on the basis of the handicap.

Therefore, the analytical framework under the statute for applying section 504 in the context of health care for handicapped infants is that health care providers may not, solely on the basis of present or anticipated physical or mental impairments of an infant, withhold treatment or nourishment from the infant who, in spite of such impairments, will medically benefit from the treatment or nourishment.

Not only is this analytical framework directed by the statute, the Department believes the medically beneficial treatment standard is the appropriate guiding principle for providing health care services to handicapped infants. The Department agrees with the President's Commission that "it is all too easy to undervalue the lives of handicapped infants," and that it is "imperative to counteract this" by excluding "consideration of the negative effects of an impaired child's life on other persons" and to treat handicapped infants "no less vigorously than their healthy peers."

The Department also agrees with the essential principle contained in the joint statement of November 29, 1983, by the coalition of medical groups and disability organizations, including the American Academy of Pediatrics, the National Association of Children's Hospitals and Related Institutions, the Association for Retarded Citizens, the Spina Bifida Association of America, and others:

When medical care is clearly beneficial, it should always be provided. . . . The individual's medical condition should be the sole focus of the decision.

Consistent with the recommendations of the President's Commission and the principles agreed to by the coalition of medical and disability groups,

paragraphs (1), (2) and (3) of section (a) of the appendix state the basic interpretative guidelines of the Department for applying section 504 in this context. These interpretative guidelines make clear that health care providers may not, solely on the basis of present or anticipated physical or mental impairments of an infant, withhold treatment or nourishment from the infant, who, in spite of such impairments, will medically benefit from the treatment or nourishment. They also made clear that futile treatments or treatments that will do no more than temporarily prolong the act of dying of a terminally ill infant are not required by section 504, and that, in determining whether certain possible treatments will be medically beneficial to an infant, reasonable medical judgments in selecting among alternative courses of treatment will be respected. The principle of respecting reasonable medical judgments reflects the Department's recognition that in many cases the process of medical decisionmaking is not mechanical and precise. Analyses of medical risks, medical benefits, possible outcomes, complications, and the like require experience and judgments. Most of all, they must be specifically based on the actual circumstances presented in any given case. The statutory framework does not provide for, nor will the Department seek to engage in, second-guessing of reasonable medical judgments regarding medically beneficial care.

The principle of respecting reasonable medical judgments in the context of applying section 504 is also consistent with analogous case law. For example, the Supreme Court has made it clear that the application of constitutional protections do not interfere with *bona fide* medical judgments so as to authorize a court "to specify which of several professionally acceptable [treatment] choices should have been made." *Youngberg v. Romeo*, 457 U.S. 307, 321 (1982).

However, the Department also recognizes that not every opinion expressed by a doctor automatically qualifies as a reasonable medical judgment. For example, a doctor's opinion that available corrective surgery to save the life of a Down's syndrome infant should be withheld is contrary to the opinion of the President's Commission and comments submitted to the Department by the American Academy of Pediatrics, the National Association of Children's Hospitals and Related Institutions, and other medical organizations. It is not within the

bounds of reasonable medical judgment and is not entitled to deference.

Parental Decisions

A number of commenters argued that the Department's analysis of section 504's applicability fails to take into account the lack of authority hospitals and physicians have to perform treatment to which the parents have not consented. Some commenters expressed a belief that the Department purports to require physicians and hospitals unilaterally to overrule parental decisions. As stated by the American Medical Association:

If section 504 is applied as the Department claims it should be, physicians and hospitals will be required to treat a handicapped infant in all cases, regardless of parental consent, for fear of sanctions allegedly authorized by section 504.

Similarly, the National Association of Children's Hospitals and Related Institutions stated:

Nor does the rule recognize that, in lieu of indications to the contrary, decisions of care of the infant made by these parents, based on their determination of the child's best interest, are theirs to make, a right and responsibility assigned to them universally by state statute. . . .

Also in connection with the issue of a recipient's section 504 responsibilities in cases where parents refuse to consent to medically beneficial treatment, a number of commenters criticized a statement included in the Department's May 18 notice to health care providers that:

Health Care providers should not aid a decision by the infant's parents or guardian to withhold treatment or nourishment discriminatorily by allowing the infant to remain in the institution.

The criticism was that to discharge the infant, as the statement implied the hospital should do, would be unlikely to advance the objective of assuring that the infant receive medically beneficial treatment.

Response

The Department's position has been, and continues to be, that the lack of parental consent does have an impact on a recipient hospital's section 504 responsibilities, but that the lack of parental consent to provide particular treatment does not remove from hospitals the obligation to operate other aspects of their program without discrimination.

Although the need may not arise frequently, it is an accepted part of the operation of hospitals to contest the denial of parental consent when such a decision is not in the best interest of a

child. Most hospitals have established procedures to petition courts to order medical care when parents do not provide consent for treatment that is medically needed and appropriate.

In addition to the internal hospital procedures, state laws generally establish responsibilities of health care professionals where treatment is being withheld because of improper denial of parental consent. Health care professionals are generally required by state law to report cases of abuse, neglect, or other threats to a child's health. These laws, whether explicitly or implicitly, include the denial of needed medical treatment as an event requiring reporting.

The requirement that health care providers report instances of improper denial of medical care is no less a part of their program than is the provision of care itself. Both arise from the recipients's program of administering to the medical interests of its patients. Section 504 prohibits discrimination on the basis of handicap in the operation of federally assisted programs and activities. Thus, a recipient that, as a matter of practice or law, reports to State authorities the withholding of needed medical treatment from an infant may not deny the same service or benefit to a qualified handicapped infant because the infant is handicapped.

Section 504 applies only to programs or activities receiving federal financial assistance; it does not apply to decisions made by parents. Where a non-treatment decision, no matter how discriminatory, is made by parents, rather than by the hospital, section 504 does not mandate that the hospital unilaterally overrule the parental decision and provide treatment notwithstanding the lack of consent. But it does require that recipient hospitals not fail, on the basis of handicap, to report the apparently improper parental decision to the appropriate State authorities, or to seek judicial review itself, so as to trigger the system provided by State law to determine whether the parental decision should be honored. Action by hospitals to seek judicial review is not uncommon in cases where, for example, parents have objected on religious grounds to a medically necessary blood transfusion for their child.

The Department agrees with the criticism of the sentence in the May 18, 1982 notice. This statement reflected a recognition by the Department that section 504 does not require hospitals unilaterally to overrule parental decisions, and that hospitals cannot provide treatment without parental consent. The point should have been

better stated that a recipient hospital may not blindly implement improper and discriminatory parental decisions. Rather, the hospital should resort to the system provided by state law to determine whether a parental decision should be implemented.

Therefore, the proper analysis of the applicability of section 504 in cases where the failure to provide medically indicated treatment is due to a lack of parental consent is that a recipient hospital is not required to seek to unilaterally overrule the parents, but it must adhere to the standard practice, as required by state law, to make a report to the state agency charged under state law with responsibility to initiate the determination as to whether the parental decision was proper, or to seek judicial review itself. This interpretative guideline is set forth in section (a)(4) of the appendix.

Rather than representing an improper Federal government attempt to "question and overturn the decisions of parents concerning their children's medical treatment," the Department is simply requiring that the long-standing requirements and mechanisms of state law for defining the limits of parental authority not be rendered, through discriminatory actions of recipient hospitals, *de facto* inoperative.

Examples

The July 5 proposed rule was accompanied by an appendix explaining the manner in which section 504 applies to the provision of health care services to handicapped infants and providing several examples of its applicability to particular factual situations. A number of commenters criticized statements contained in that appendix. Criticisms and comments were as follows: (a) Use of phrases such as "futile therapies", "services generally provided", and "dubious medical benefit" are ambiguous. (b) The characterization of the infants with intracranial hemorrhage as analogous to anencephaly is incorrect. Intracranial hemorrhages vary greatly in severity, and are generally treatable and treated. (c) The American Society for Parenteral and Enteral Nutrition stated that although there are no circumstances justifying "withholding oral feeding through a working digestive tract in any patient capable of digesting food, in whole or in part," there may be "limited circumstances" in which not providing nourishment through intravenous means "may be appropriate." (d) The appendix does not indicate the appropriate care for infants who have conditions with prognoses worse than Down's syndrome

but less severe than anencephaly, such as Trisomy 18, Trisomy 13, Holoprosencephaly, Hydranencephaly, Cornelia de Lange Syndrome, and many others.

(e) "It would be impossible to develop a complete list of handicaps to which the regulations apply. The limited ability to predict outcomes, and the rapid changes in diagnostic and therapeutic modalities make such a goal wholly impracticable."

Response

The application of constitutional and statutory civil rights protections in scores of contexts is difficult. A glance at the Supreme Court's docket confirms this, as every year difficult issues are presented to the Court for resolution. These cases often produce split decisions and multiple opinions.

Therefore, it is to be expected that definitive statements on various dimensions of the applicability of the handicapped discrimination law in connection with health care for handicapped infants, a subject no less difficult than many other aspects of civil rights law, would be few. The imprudence of seeking to speculate on the outcome of applying section 504 in a wide variety of specific factual circumstances was underscored by some of the comments received.

Keeping in mind the utility of providing some examples to assist in understanding the analytical framework of the statute, but also the need to allow individualized attention to specific factual circumstances, the guidelines included in the appendix (section (a)(5)) set forth examples dealing with Down's syndrome, spina bifida, anencephaly, and extreme prematurity.

The Department agrees with the comment that it would be impossible to establish a specific list of all handicapping conditions and the proper treatment in each case. None of the commenters who perceived ambiguities had convincing answers to the questions they raised.

It is appropriate that the law (and thus the government) does not prospectively and unequivocally answer every hypothetical question. In many cases, the law, like medical treatment, can only be applied on a case-by-case basis with a full appreciation for the facts presented.

But it is also appropriate that the law and government have an analytical framework for approaching the issue and a procedural framework for seeking, in cooperation with the medical community and advocacy groups, to narrow the "gray area." The final rules

seek to do no more, and importantly, no less.

H. GUIDELINES FOR HHS INVESTIGATIONS RELATING TO HEALTH CARE FOR HANDICAPPED INFANTS

Conduct of Investigations

The July 5 notice of proposed rulemaking solicited comments on HHS investigative procedures. A number of commenters argued that OCR complaint investigations are highly disruptive. The primary concerns expressed in this regard were:

(a) Due to the complexity of the subject matter, there are many erroneous complaints, either by well-intentioned, but ill-informed, persons or by disgruntled employees.

(b) Anonymous calls are not reliable.

(c) Investigations monopolize the time of physicians, nurses and other hospital staff, and make medical records, while under review by OCR investigators, unavailable.

(d) Investigations carry with them the potential for sensational media coverage, which can unjustly damage the good reputations of parents, hospitals and health care professionals.

(e) The presence of OCR investigators is likely to frighten other infants' parents who will assume that, because investigators are present, the hospital must be guilty of improper conduct.

Response

Although some potential for inconvenience or disruption exists in connection with any type of law enforcement investigation, because of the traumatic circumstances of an infant's illness, the potential for sensationalistic media coverage, and other factors, the Department is very sensitive to the special nature of "Infant Doe" investigations. As HHS has gained experience in conducting these investigations, revisions to investigative procedures have been implemented to minimize any disruptive effects. It is the policy of the Department to do everything possible, consistent with its statutory obligation to investigate effectively all complaints of violations of section 504, to minimize any disruptions that may be caused by OCR investigations.

OCR has made adjustments to investigative procedures. It now undertakes a careful screening of complaints in an effort to avoid unnecessary on-site investigations. This screening consists of immediately initiating a preliminary inquiry with the hospital to obtain information regarding the infant in question. The information

initially received from the complainant and that received from the hospital is then evaluated to determine whether there is a need for an on-site investigation. Particular factors taken into account are the source of the complainant's information (first-hand knowledge, overheard a discussion, etc.), the complainant's position to have reliable information (a nurse in the ward where the infant is being treated, a friend of a friend, etc.), the specificity of the information provided by the complainant and hospital, whether there is any indication of a lack of parental consent for the provision of all medically beneficial treatment, the analysis of the ICRC, whether the hospital is cooperative in connection with the inquiry, and other pertinent factors.

None of these factors considered in evaluating the information provided by the complainant and the hospital is, by itself, determinative. For example, the Department prefers that the complainant provide his or her name. Not only does it corroborate that the complainant takes the matter seriously and reflects some degree of confidence the complainant has in the accuracy of the information being conveyed, having the complainant's name also permits follow-up communications to seek clarification of the information gathered. However, the Department recognizes that a complainant may not be willing to provide his or her name due to fear of retaliation, and that anonymity does not necessarily suggest that the complaint is not valid, particularly if the specificity of the information provided and other factors support the credibility of the complaint. Therefore, the determination as to whether an on-site investigation is needed is made on the totality of the information available to OCR from the complainant, the hospital, and any other source consulted (such as an OCR medical consultant and the state child protective services agency).

HHS believes this procedure, if hospitals cooperate in its implementation, can avoid unnecessary on-site investigations, which inherently have a potential for some inconvenience. Although hospital officials may be properly reluctant to provide information over the telephone, they can confirm the credentials of the OCR investigator making the telephone contact by calling the toll-free telephone number to verify that the caller is, in fact, an OCR investigator.

Where, as a result of this preliminary inquiry, there appears to be no need for an immediate on-site investigation, none will be conducted. However, to assure

that HHS is adequately meeting its statutory responsibility, where there is a significant question as to compliance with section 504, doubt will be resolved in favor of initiating an on-site investigation.

This preliminary inquiry process is undertaken by OCR in an effort to accommodate the special circumstances presented in connection with "Infant Doe" complaints. This procedure should not be construed as suggesting that the Department believes there are any limitations to its legal authority to investigate all complaints or to otherwise collect information regarding recipient compliance in accordance with the Department's existing section 504 regulations. Nor does this preliminary inquiry process establish any legally enforceable procedural right or precondition to the conduct of on-site investigations.

When on-site investigations are conducted, OCR's procedures minimize any potential inconvenience or disruption. Every effort is made, consistent with the need to obtain prompt information, to accommodate the busy schedules of health care professionals to avoid diverting them from their important duties. Similarly, OCR has never had a problem working out access to medical records to avoid their being unavailable to health care professionals who also need access to them.

With respect to media interest, OCR has a firm policy of providing no comment to the press on the details of any open investigation. HHS believes organizations or individual complainants concerned about proper patient care should be extremely sensitive to threats to proper care inherent in making premature and unsupported comments to the media. Similarly, the media should be attentive to OCR's admonition, regularly given in response to media questions, that the fact that an investigation is being conducted does not imply that an allegation is true.

Section (b)(1) through (5) of the appendix spell out the basic guidelines, including the preliminary inquiry process, applicable to HHS investigations in this area. These guidelines make specific reference to the role of Infant Care Review Committees. Whenever a hospital has an ICRC, established and operated substantially in accordance with the suggested model, the Department will consult closely with the ICRC in connection with a preliminary inquiry or investigation and will give careful consideration to the analysis and recommendations of the ICRC.

The Department believes OCR procedures, including the initial inquiry process, minimize the potential for disruption. HHS will, on the basis of further experience gained, such as with ICRCs, continue to evaluate its procedures consistent with the policy of effective enforcement with a minimum of disruption. The Department also notes that there is probably an irreducible level of inconvenience associated with any effort to provide safeguards to prevent the fatal consequences of discriminatory decisions. It must be recognized, however, that the risks of a certain amount of inconvenience or disruption are significantly preferable to the risks of tragic loss of life due to discriminatory decisionmaking.

Use of Medical Consultants

Another concern expressed by commenters relates to the qualifications of the individuals involved in the administrative fact finding process to evaluate correctly the medical circumstances present in any particular case. For example:

The Alabama Hospital Association strongly feels that the [investigative] team should be comprised of highly trained and licensed medical personnel. Under no circumstances should anyone less than licensed medical personnel be allowed to intrude in this area of medical decisionmaking and impose alternative judgments or conclusions.

The Spina Bifida Association of America made a similar comment from a different perspective:

The key to effective enforcement is securing an independent medical examination of children allegedly being denied treatment, by a physician or medical team both skilled in modern treatment techniques and committed to the equal treatment principle. Such physicians do exist, particularly at expertise centers that have specialized in the care of children with spina bifida. The only way to ensure effective enforcement is to give disability rights groups like SBAA the ability to recommend *which* expertise centers and expert consultants are used by the regional OCR offices to conduct the independent medical examinations.

Response

HHS agrees that OCR investigators do not have the medical expertise to make independent judgments concerning difficult medical issues. For this reason, the Office for Civil Rights has made arrangements with qualified physicians to serve as medical consultants to OCR in "Infant Doe" investigations. This process is noted in section(b)(6) of the appendix.

The role of the OCR medical consultants is to provide OCR with an

analysis of the medical issues present in any particular case, and an opinion as to whether medically beneficial treatment was provided. Based on this analysis, OCR makes a determination as to whether any medically beneficial treatment may have been discriminatorily denied solely on the basis of the infant's handicap.

The extent of the involvement of the OCR medical consultant has varied depending upon the circumstances of particular cases. In all cases the OCR medical consultant reviews the pertinent medical records. In some cases the OCR medical consultant and the attending physician have discussed a case by telephone. HHS believes the experience to date with OCR medical consultants demonstrates the effectiveness of their involvement. HHS is aware of no case in which a recipient has challenged the quality of the medical consultant's evaluation or the OCR findings based upon it.

It is important that all interested groups understand the precise and limited role of the OCR medical consultants. Their function is *not* to take over the medical management of particular cases, to conduct a personal, independent examination of the infant, to make independent treatment recommendations to parents, or to otherwise engage in any direct practice of medicine concerning the infant.

The Department has no authority to compel unilaterally an independent medical examination of a child who is the subject of a section 504 complaint. Under applicable requirements of law, physicians may not practice medicine on an infant patient without the consent of the parents or an order of a court of competent jurisdiction.

In any given case, any of a wide variety of circumstances may be present regarding the actions of parents and health care providers. Regardless of the circumstances, the first step is to determine the facts. Only if the facts demonstrate that there is a need for governmental action can that action be pursued. A court will only issue an order if there is a showing of a need for the order, such as evidence that the hospital *is* out of compliance with section 504 or showing that the parents *are* medically neglecting the infant. Such a showing cannot be made on the basis of the bare allegations of a complaint or without a determination of the facts.

OCR's function in an investigation is to determine the facts, and the function of the medical consultant is to assist OCR in this effort. The process of determining the facts typically involves a review of medical records and

discussions with health care providers involved. The OCR medical consultants assist in this process by providing identification and expert analysis of the medical issues involved. These consultants do not, and may not under applicable law, take over the medical management of the case.

With respect to the suggestion that HHS give disability groups the opportunity to recommend qualified physicians to serve as OCR medical consultants, the Department would welcome such suggestions from all interested groups.

The Department is unable to commit itself to having a medical consultant participate in person in every on-site investigation. However, the guidelines contained in the appendix state that, to the extent practicable, the OCR medical consultant will discuss the case with the hospital's ICRC or appropriate medical personnel by telephone.

Prompt Report of Investigative Findings

Another complaint made by a number of commenters regarding OCR enforcement procedures concerns the sometimes lengthy delay between completion of the on-site investigation and receipt by the hospital of notification of the outcome of the investigation. Commenters expressed concern that, particularly in connection with investigations that may have attracted local media attention, where the OCR investigation found no evidence of a violation, the hospital should have the ability to reassure the public promptly that it was involved in no improper activity.

Response

The point is well taken. Office for Civil Rights procedures pertaining to all investigations require that before the office makes an official finding, whether it is of compliance or noncompliance, a thorough record is compiled and reviewed by supervisory officials. Experience in connection with "Infant Doe" cases is that formal findings have been made in less time than is typical in connection with other civil rights investigations. However, there is generally a need for careful review by an OCR medical consultant, an HHS attorney, and supervisory officials.

The Department recognizes that there are special circumstances in connection with Infant Doe cases, and is instituting a special notification to recipient hospitals in cases where an emergency on-site investigation has been conducted. As a matter of practice, on-site investigation of complaints alleging that an infant's life is in peril due to the discriminatory withholding of medically

beneficial care are conducted immediately for the primary purpose of determining whether there is a need to ask the Department of Justice to seek immediate injunctive relief to compel compliance with section 504. Generally, during the course of the investigation, when sufficient information has been obtained and discussed with the OCR medical consultant, a decision is made on whether there is such a need.

The new procedure is that, when a decision is made that there is no need to make an immediate referral to the Justice Department, the recipient hospital will be immediately notified of that decision. The investigator will, if still on-site, personally notify hospital officials. A letter to the same effect will then promptly be sent by OCR. This letter will notify the recipient hospital of the decision made concerning immediate referral to the Justice Department. It will not provide a formal finding concerning the investigation, which cannot be made until all information is analyzed and reviewed. (It may be, for example, that, although there is no emergency requiring immediate legal action by the Justice Department, there is, or was, noncompliance.)

The Department believes this immediate notification procedure, stated in section (b)(7) of the appendix, will provide a basis for the hospital to assure the press and public that OCR's initial conclusion in connection with the investigation is that no infant is in imminent peril due to discriminatory withholding of medically beneficial treatment.

Confidentiality of Records

A number of commenters criticized the enforcement process on the grounds that it infringes on the confidentiality of the physician-parent relationship and the privacy of medical records. Some of these commenters referred to the confidentiality requirements of state law and professional ethical standards.

As stated by the Federation of American Hospitals:

The physician may be required to inform the parents that anything they may say or decide must be disclosed to federal or state authorities if an investigation results. [P]arents will find that they have a choice between sharing vital information and counseling with their physician and having their thoughts and emotions revealed to a stranger or, alternatively, withholding information.

A suggestion for an additional confidentiality safeguard, submitted by the director of nursing of a Butte, Montana hospital, was to limit review of

records to one investigator, on-site, with no copies made.

Response

HHS believes there is no sound legal basis to challenge the Department's right to access to medical records for the purpose of determining compliance with section 504, and that adequate safeguards exist to protect the confidentiality of records obtained by OCR in the course of civil rights investigations.

With respect to legal authority, a state law, such as one restricting access to certain records, cannot, under the Supremacy Clause of the United States Constitution, be used to prevent accomplishment of the full congressional purpose of a Federal law. Similarly, standards of particular professional groups may not frustrate or defeat a Federal statutory duty.

Section 504 establishes certain responsibilities of recipients and authorizes and directs Federal agencies to enforce the law. Existing regulations, 45 CFR 80.6(c) (made applicable to section 504 by 45 CFR 84.61), require:

Each recipient shall permit access by the responsible Department official or his designee during normal business hours to such of its books, records, accounts, and other sources of information, and its facilities as may be pertinent to ascertain compliance with this Part. . . . Asserted considerations of privacy or confidentiality may not operate to bar the Department from evaluating or seeking to enforce compliance with this Part. Information of a confidential nature obtained in connection with compliance evaluation or enforcement shall not be disclosed except where necessary in formal enforcement proceedings or where otherwise required by law.

The requirement that recipients provide access to records necessary to determine compliance is essential to accomplishment of the congressional purpose in enacting section 504.

HHS has adequate safeguards to protect the confidentiality of medical records obtained during the course of a section 504 investigation. In addition to the regulatory provision (quoted above) protecting confidentiality, OCR does not release confidential information in connection with any Freedom of Information Act request. Nondisclosure is permitted under that Act for records, the release of which would constitute a clearly unwarranted invasion of personal privacy. As further protection, OCR permits deletion of the patient's and parents' names and other identifying information to the extent deletion will not impede OCR's ability to determine compliance.

The argument that the possibility that investigators will seek access to a medical file will cause parents to withhold vital information from the infant's physician is not persuasive. Courts and legislatures have repeatedly rejected arguments that exceptions to the principle of confidentiality of medical records and the physician-patient privilege would result in the withholding of information necessary to facilitate proper treatment. There are many established exceptions in the law to the principle of doctor-patient confidentiality in connection with criminal and civil proceedings where the effective administration of justice requires access to information in medical records or provided to physicians. It is also noteworthy in this regard that the Federal Rules of Evidence do not include an express doctor-patient privilege.

With respect to the suggestions for additional safeguards submitted by a commenter, OCR has in some cases been able to limit review of records to one individual at the hospital, without the need to obtain copies. However, no assurances can be made that OCR can meet its responsibility to conduct a thorough investigation under these conditions. Also, in many cases it may be preferable for the hospital to send OCR the pertinent records (with identifying information deleted), perhaps avoiding the need for any on-site investigation.

IV. Related HHS Activities

HHS has undertaken several other initiatives in cooperation with the medical community and disability organizations to improve the delivery of health care services to handicapped infants. Recently, a contract was awarded by the Office of Human Development Services, HHS to the John F. Kennedy Institute in Baltimore to develop a model for a working nationwide referral network for the developmentally disabled. Such a network, using today's sophisticated technology, will make it possible for the physician, parents, or care-takers of a developmentally disabled individual to query a single source for information about that disability and pinpoint the best or most appropriate places to get help any where in the country for that individual.

Under the terms of this award, the strong features of two important information systems are to be combined and regionalized. One is a data retrieval system for the particular use of practicing physicians. The other is accessible by the general public. The data base for the physician-oriented

system was developed by the Kennedy Institute in Baltimore, using data supplied by the 38 HHS supported university-affiliated facilities around the country. The American Medical Association has a contract with the Kennedy Institute to include the Institute's data as an additional offering of the A.M.A.'s nationwide medical information network, or "MINET." It is available to every "MINET" subscriber who has a desk-top computer and a telephone.

This enterprise pulls together government, the private nonprofit sector, and organized medicine, in this case, the A.M.A., to make information available to physicians concerning access to specialized care for their patients and as well as to a broad variety of support services in the community.

The more consumer-oriented data system is now functioning in South Carolina to benefit the citizens of that state. The system carries information on access to care and community support services within the state. Any individual or family member can gain access to the system merely by dialing a toll-free "800" number.

The Kennedy Institute has an excellent concept of how such a network will function. Under the contract recently awarded, it is hoped the South Carolina Model will be expanded to seven other states in the region. The next step should then be to extend the system nationally and thus make available to all citizens the best information and the most appropriate resources relative to handicapping conditions.

The availability of such a resource should do much to take the insecurity out of one effort to rally support services for the handicapped newborn.

In addition to this nationwide referral network, HHS and the Department of Education, in cooperation with the coalition of medical and disability organizations who signed the "Principles of Treatment of Disabled Infants," are organizing an effort to develop teaching models for health care professionals on improving infant care, aiding the decision-making process and use of the nationwide referral network.

The Department believes that informational and educational efforts of this kind are also of great importance in advancing the principles underlying the final rules.

V. Additional Analysis of Comments

Section III above includes an explanation of the provisions of the final rules, including an analysis of pertinent comments submitted to the Department during the comment period on the

proposed rules. This section is an analysis of other comments not directly related to specific provisions of the final rules.

A. LEGAL ISSUES

A significant number of commenters addressed legal issues relating to the application of section 504 to matters concerning health care for handicapped infants.

Statutory Construction of Section 504

A number of commenters argued that, as a matter of statutory construction, section 504 of the Rehabilitation Act of 1973 is inapplicable to matters concerning health care for handicapped infants. The arguments advanced by these commenters were:

(a) The statute does not specifically mention handicapped infants, and the statutory definition of "handicapped individual" should be construed as inapplicable to infants because its reference to substantial limitations on major life activities has no application to infants since all infants are dependent on the efforts of others for performance of all external life activities.

(b) The legislative history makes no mention of handicapped infants and indicates that the primary focus of Congress in enacting the Rehabilitation Act was matters relating to vocational rehabilitation, rather than medical matters; and although the statutory definition of handicapped individual was amended in 1974 to broaden its scope beyond vocational rehabilitation, including access to services such as medical care, there was no indication that the statute, as amended, was intended to cover medical judgments about the type of treatment given any handicapped individual. As stated by one commenter:

There is not even a hint in the legislative history of the Act or its amendments that would indicate Congressional intent to apply section 504 to medical treatment of severely handicapped infants. Rather, it is clear that Congress intended the Act to foster fruitful and independent living for handicapped individuals.

(c) The rulemaking history of the Department's section 504 regulations reveals previous HHS interpretations that section 504 is inapplicable.

Response

The Department's position remains unchanged. Section 504 clearly applies to matters concerning the provision of health care to handicapped infants, and nothing in the legislative history of the statute or rulemaking history of the

Department's regulations suggests a credible interpretation to the contrary.

Section 504 provides:

No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. . . .

The statute defines a "handicapped individual" as

any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, . . . or (iii) is regarded as having such an impairment.

An infant is a person. If an infant has a physical or mental impairment which substantially limits major life activities, or is regarded as having such an impairment, the infant is a "handicapped individual" within the meaning of the law. If a hospital engages in a program or activity which provides medical services to infants and if that program or activity receives Federal financial assistance, it is a "program or activity receiving Federal financial assistance" within the meaning of the law.

If an infant who is a "handicapped individual" is "otherwise qualified" to receive the benefits of a medical services program or activity receiving Federal financial assistance, and is denied, solely by reason of his handicap, the benefits of those medical services, that infant is within the protection of section 504.

A key issue, therefore, in applying section 504 in any context is that the handicapped individual who was allegedly excluded from participation in, denied the benefit of, or subjected to discrimination under, a federally assisted program or activity be "otherwise qualified" to participate in, or benefit from, the program or activity. To be "otherwise qualified," the handicapped individual must, in spite of his or her present or anticipated physical or mental impairment, be able to meet the essential requirements for participation in the program or activity.

In the context of receiving medical care, the ability to benefit for a handicapped person is the ability to benefit medically from treatment or services. If the handicapped person is able to benefit medically from the treatment or service, in spite of the person's handicap, the individual is "otherwise qualified" to receive that treatment or service, and it may not be denied solely on the basis of the handicap.

Therefore, the analytical framework under the statute for applying section 504 in the context of health care for handicapped infants is that medically beneficial treatment and services not be withheld from a handicapped infant solely on the basis of the handicap.

The legislative history makes clear that by enacting section 504 Congress intended to eliminate all of the "many forms of potential discrimination" against handicapped people through "the establishment of a broad governmental policy." S. Rep. No. 1297, 93d Cong., 2d Sess. 38 (1974). The statute applies to all federally funded programs or activities, specifically including those that provide "health services." *Id.*

The rulemaking history related to the 1977 promulgation of the Department's section 504 regulations explained that the Department was not seeking to regulate with respect to the highly controversial issue of the rights of institutionalized persons to receive treatment for the condition which led to their institutionalization. Additionally, the regulation specifies that the provision of health care services generally to handicapped persons is a matter covered by the Act and the Department's rules. 45 CFR 84.52.

It is difficult to understand the theory of statutory construction that would distinguish the provision of health care services to qualified handicapped infants from the provision of other federally assisted benefits and services to qualified handicapped individuals.

The Department cannot subscribe to the theory that the definition of "handicapped individual" should be construed as inapplicable to infants because infants are dependent upon others for all major life activities. This argument appears to be based on a much too narrow view of what constitutes "major life activities." The Department's section 504 regulations define "major life activities" at 45 CFR 84.3 (j)(2)(ii), as: "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." Infants undertake at least some of these major life activities from the moment of birth.

Moreover, if this is the theory, the Department is unaware of the basis to be used in determining at what age the protections of section 504 would begin to apply.

In summary, the Department can find no clue in any bit of legal analysis or rational policy analysis to commend the notion that there is or should be a distinction in the application of section 504 based on the age of the handicapped individual.

It appears the real basis for the contention that section 504 is inapplicable in this context is that medical care is involved, rather than what some may perceive as much less complicated matters like distributing welfare benefits, developing transportation systems, administering housing programs, delivering social services, providing educational services, making employment decisions, and the like.

The Department agrees that matters relating to the provision of medical care are in some ways different from other aspects of applying section 504. For one thing, the consequences of discriminatory treatment may be much higher—a matter of life and death. Also, the analysis involved in determining whether discrimination exists may, in some cases, be much more subtle and difficult. But one aspect that appears the same in all applications of section 504 is that decisions regarding whether handicapped persons will receive the services and benefits of programs and activities receiving Federal financial assistance are sometimes made, not on the basis of the individual's actual qualifications for, and ability to benefit from, those activities, but rather on stereotypes and prejudices concerning the limitations on major life activities faced by handicapped persons. Section 504 was enacted to eliminate these considerations from such decisions. And although the section 504 analysis may be more subtle (at least in some cases), it is an anomalous and bizarre theory that section 504 can properly be used to require that a ramp be built in a hospital to assure that handicapped persons not be denied access to medical services solely on the basis of their handicaps, but that statute may not properly be used to prevent the intentional act of allowing other handicapped persons to die in that hospital, solely because of their handicaps. The Department cannot subscribe to this theory.

In summary, the Department's position is unchanged. Section 504 clearly applies to the provision of health care for handicapped infants.

Separating the "Handicap" from the Condition Requiring Treatment

A number of commenters expressed views that the section 504 analysis summarized above is incapable of application in many or most cases because the handicapping condition and the condition requiring treatment are one and the same. This fact, the commenters argue, results in an inability to separate "medical judgments" from judgments relating to social, emotional,

economic, or other non-medical issues, concerning which unreasonable prejudices have often caused discrimination against handicapped individuals.

Response

Although perhaps subtle, the analysis required by the statutory framework is just as applicable in a case where the handicapping condition and the condition requiring treatment are the same as it is to the "simpler" case where two distinct conditions are involved.

In the "simple" case involving two distinct conditions, such as Down's syndrome and an intestinal obstruction, the Down's syndrome does not present a medical contraindication to surgical correction of the intestinal obstruction. There is no valid medical reason (assuming no other conditions) for treating the Down's syndrome infant differently than an infant with the same intestinal obstruction and no Down's syndrome.

The same analysis applies where the handicapping condition and the condition to be treated are the same. In such a case the "handicap" is the physical or mental impairment the infant has or will have (or "is regarded as having") after completion of the treatment under consideration. In the case of an infant born with myelomeningocele, for example, the treatment which must be considered is surgery to close the protruding sac to prevent infection and other potentially fatal consequences. The "handicap" is the physical and/or mental impairment the infant is regarded as likely to have in future life. To the extent the myelomeningocele itself or other complications (such as respiratory problems, infection, anesthetic risk, or other factors) present, in the exercise of reasonable medical judgement, contraindications to the surgery, the infant is not able to benefit, in spite of his or her handicap, from the surgery. However, if the surgery would be medically beneficial, in that it would be likely, in the exercise of reasonable medical judgment, to bring about its intended result of avoiding infection or other fatal consequences, then failure to perform the surgery because of the anticipated impairments in future life offends section 504, as the withholding of surgery is because of the handicap and in spite of the infant's being qualified to receive the surgery.

In both the Down's syndrome and myelomeningocele examples, this analytical framework accomplishes precisely what Congress intended in enacting section 504: to overcome stereotypes and prejudices against

handicapped persons who are, in spite of their handicaps, able to participate in, and benefit from, activities and services supported by Federal funds.

All of this is not to say that application of this analytical framework in every case will be easy. Nonetheless, in spite of the difficulties which may arise in case-by-case applications, the analytical framework focusing on the provision of medically beneficial treatment to handicapped infants is the correct one under the statute, and is capable of application.

Applicability of Section 504 When Hospital Is Incapable of Providing Treatment

A number of commenters questioned the applicability of section 504 in cases where the hospital, due to lack of sophisticated equipment, medical specialists, or other factors, is incapable of providing the treatment needed by a particular infant. These commenters appeared to suggest that the Department would find such a hospital to be in violation of section 504 because it did not provide the medically beneficial treatment it was unable to provide.

Response

The answer on the applicability of the law in such a case is as clear as the applicability of common sense. Common sense indicates that if a patient needs treatment which a hospital cannot provide, the hospital will try to refer the patient to a facility that can provide it. If the patient is handicapped, the common sense response is the same. The failure of the hospital to itself provide the treatment is not "on the basis of the handicap"; rather, nontreatment is based on the fact that the hospital is incapable of providing the treatment.

Similarly, if the medically indicated course of action for any individual with a condition the facility is incapable of treating is to arrange for that individual to be transferred to a facility where the treatment can be provided, then this transfer cannot be denied to a qualified handicapped person (one who will benefit medically from it) on the basis of the person's handicap.

Responsibilities of Hospitals as Opposed to Physicians

Another challenge to the Department's application of section 504 to health care for handicapped infants was submitted by the Federation of American Hospitals:

... A hospital cannot practice medicine. In fact, many state laws prohibit and punish the unauthorized practice of medicine. Nevertheless, the proposed rules place the responsibility for the physician's decision on

the hospital. Moreover, assuming that discrimination on the basis of handicap exists, it is *not* discrimination on the part of the hospital, it is the discrimination of the physician and/or parents who are not recipients of federal financial assistance as that term is defined under the Rehabilitation Act. Therefore, insofar as they apply to hospitals, not physicians and parents, the proposed rules are also totally misdirected.

Response

The Department disagrees with the comment's implications that the law in any way requires hospitals to engage in the unauthorized practice of medicine, and that hospitals have no authority to prohibit discrimination by physicians.

It is the Department's view that a hospital has the authority to condition a physician's staff membership or renewal of membership on an agreement to abide by the hospital's policy of nondiscrimination. Indeed, the Department's conditions for hospital participation in the Medicare program require that a hospital have "an effective governing body legally responsible for the conduct of the hospital as an institution." 42 CFR 405.1021. Those conditions also require that a hospital have:

a medical staff organized under bylaws approved by the governing body, and responsible to the governing body of the hospital for the quality of all medical care provided patients in the hospital and for the ethical and professional practices of its members.

42 CFR 405.1023.

Under those conditions the medical staff is also "responsible for support of . . . hospital policies." 42 CFR 405.1023(a). Standards set forth in the accreditation manual for hospitals, published by the Joint Commission on Accreditation of Hospitals, also recognize the responsibility of the governing body to adopt and approve bylaws consistent with all applicable laws and regulations. The accreditation manual also emphasizes that the governing body has the responsibility for the conduct of the hospital's operation and that the medical staff is responsible to the governing body.

It is the Department's position therefore that a hospital has the right to establish and implement a policy of nondiscrimination among its employees and medical staff, and that this does not constitute an unauthorized practice of medicine by the institution.

Applicability of Section 504 to Adults

Several commenters raised the issue whether section 504 would also be applicable to issues relating to medical care provided to adults. For example,

the Department received the following comment from a doctor in San Antonio, Texas:

As a doctor who practices on adult patients, what I find most worrisome about this whole sorry affair is that the reasoning behind the proposed rules applies at least as well to adults as to infants with congenital defects. Should every patient, no matter how old or ill, be forced to receive the "benefits" of cardiopulmonary resuscitation? Should a ninety-year-old man with a stroke which has caused him to develop pneumonia be subjected to weeks on a respirator in hopes of getting him well enough to go to a nursing home, where the same basic problem is sure to lead to another bout of pneumonia? Should a senile, combative eighty-year-old lady with a breast mass have a biopsy and mastectomy? Certainly a stroke and senility are handicaps if Down's syndrome is.

Response

Although section 504 is, of course, applicable to issues relating to health care provided to adults, the unique issues relating to health care for handicapped infants significantly affect the application of the law and justify the special procedures established by the final rules.

The special needs of infants and minors have long been recognized by most states, as its evidenced by the enactment of child abuse and neglect statutes. These statutes, in most instances, specifically reference the failure to provide necessary medical care to minors as constituting child abuse or neglect, and establish special remedial authorities.

In contrast, most adult patients are viewed by courts as being competent to give or withhold consent regarding medical treatment for themselves. In the case of adults incapable of making decisions, due to senility, mental retardation, or the like, courts have applied the "substituted judgment" doctrine to try to ascertain the incompetent patient's own wishes through available evidence and by asking what a reasonable person in the patient's situation would do.

The circumstances which give rise to the special procedures established by every state to protect children are the same circumstances which give rise to the special procedures established by the final rules to apply section 504 to matters relating to health care for handicapped infants.

Limitations on Obligations Imposed By Section 504

A number of commenters called attention to judicial decisions indicating limitations on the extent to which section 504 mandates that recipients of Federal financial assistance undertake

substantial changes in their programs or activities.

As stated by the American Academy of Pediatrics:

Case law interpreting section 504 suggests the existence of limitations beyond which the statute cannot reach, giving rise to the question of whether HHS' rule would impose on providers unwarranted affirmative action burdens. In *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), the Supreme Court considered the claims of a licensed practical nurse that her denial of admission to a college nursing program on the basis of her hearing disability violated section 504. The college had determined that Davis's impairment was such that, even with a hearing aid, she would be unable to participate fully in the program and function effectively as a nurse. According to the plaintiff, however, the college should not have taken her handicap into account in determining whether she was "otherwise qualified" for the program, but, rather, should have confined its inquiry to her academic and technical qualifications. The Court rejected this argument, finding that section 504 "by its terms does not compel educational institutions to disregard the disabilities of handicapped individuals. . . ." 442 U.S. at 405.

Davis argued further that HHS regulations implementing section 504 required that the nursing program be modified to accommodate her, to which the Court replied:

If these regulations were to require substantial adjustment in existing programs beyond those necessary to eliminate discrimination against otherwise qualified individuals, they would do more than clarify the meaning of § 504. Instead, they would constitute an unauthorized extension of the obligations imposed by that statute. *Id.* at 410. . . .

Response

The only affirmative step required of recipient hospitals by the final rules is to post an informational notice. As explained in the preamble, the Department has sought to tailor the notice, with respect to both its wording and the locations for its posting, so as to avoid any disruptive or administratively burdensome effects. The posting of notices to advise individuals of protections provided by Federal laws is very common in connection with a wide range of civil rights, health and safety, consumer protection, labor standards, and other Federal laws. The posting of this notice cannot be credibly argued to constitute the kind of excessive regulation prohibited by the *Davis* doctrine.

The other provisions of the final rule which affect hospitals, the clarification regarding access to records and the narrow exception to the ten-day notice rule, similarly impose no appreciable administrative burdens on hospitals. The provision of the final rules relating to state child protective services

agencies also, as explained in the preamble, imposes no significant burdens.

The case-by-case application of section 504 and existing regulations, entirely separate from any mandatory provision of the final rules, is, of course, subject to the *Davis* limitations. However, as clearly evidenced by the guidelines set forth in the appendix to the final rules, these limitations have been fully complied with in connection with the Department's interpretations of the application of section 504 and in its enforcement processes.

Section 504, as the *Davis* decision recognized, requires the operation of a recipient's program in a nondiscriminatory fashion. The Department's interpretations and procedures applicable in this context require no more. The guidelines in the appendix make clear the Department interprets section 504 as not requiring the provision of futile treatments and as respecting reasonable medical judgments. Further, they make clear that investigative procedures have been specially crafted to avoid substantial administrative burdens. The basis of the Supreme Court's decision in *Davis* was that because the Court found it unlikely that the plaintiff could benefit ultimately from the nursing program, the college's refusal to make substantial modifications to its educational program to accommodate the plaintiff was not discriminatory. The appendix guidelines make clear that the Department's interpretation of section 504 in this context carefully adheres to this ability to benefit requirement.

The *Davis* decision did not authorize the evasion of section 504 obligations under the guise that adhering to the nondiscrimination mandate may require some attention. However the courts ultimately refine the doctrine that there are limitations on the scope of section 504, it is the Department's firm position that those limitations are in no way touched by the mandatory requirements of the final rules, nor will they be touched by case-by-case application of the law consistent with the guidelines set forth in the appendix to the final rules.

Medicare and Medicaid as "Federal Financial Assistance"

A number of commenters also disputed the Department's legal authority for the rules on the grounds that participation by hospitals in the Medicare and Medicaid programs did not bring them within the coverage of section 504 on the grounds that Medicare and Medicaid are not

"Federal financial assistance" within the meaning of the Act.

Response

The Department's position, consistently held since the Medicare and Medicaid programs were originally enacted in 1965, that Medicare Part A payments to hospitals and Medicaid constitute Federal financial assistance for purposes of applicability of Title VI of the Civil Rights Act of 1964 and the nondiscrimination statutes modeled after it, including section 504, is unchanged.

Because the rules do not specifically refer to the Medicare or Medicaid programs, the validity of the rule is not dependent upon the Department's long-standing interpretation. However, hospital officials who believe their hospitals are not subject to these civil rights laws may wish to inform themselves of the Department's position and the substantial legal support for it.

The Department's position has been clear, unequivocal, and consistent. The appendix to the Department's title VI regulations lists Medicare and Medicaid as programs of Federal financial assistance. 45 CFR Part 80, Appendix A, Part 1, No. 121, and Part 2, No. 30. The appendix to HHS's section 504 regulations makes clear HHS's interpretation that the scope of jurisdiction of section 504 is the same as that for title VI. 45 CFR Part 84, Appendix A, Subpart A, No. 2.

The legislative history of the Medicare statute makes clear that Medicare payments to hospitals were intended to constitute Federal financial assistance for purposes of the applicability of title VI of the Civil Rights Act, and thus section 504 as well. Speaking on the floor of the Senate in support of the Medicare bill, Senators Ribicoff and Hart stated unequivocally that title VI was applicable to hospitals participating in Medicare. Senator Ribicoff: "[H]ospitals and other institutions have . . . to abide by Title VI of the Civil Rights Act." 111 Cong. Rec. 15803 (1965). Senator Hart:

In addition to the new economic independence it will create, I am hopeful that the bill will promote first class citizenship in another fashion also. We decided last year, and wrote into law, that federal tax dollars collected from all the people may not be used to provide benefits to institutions or agencies which discriminate on the grounds of race, color, or national origin. This principle will, of course, apply to hospital and extended care and home health services provided under the social security systems, and will require institutions and agencies furnishing these services to abide by Title VI of the Civil Rights Act of 1964. Id. at 15813 [emphasis supplied].

In addition, the legislative history of the Civil Rights Act supports this position. In the most complete analysis of title VI contained in the House Judiciary Committee's Report, the additional views of seven supporters of the legislation, uncontroverted in any section of the report, specifically made reference to the predecessor program to Medicaid and clearly stated congressional policy underlying title VI:

In a related fashion, racial discrimination has been found to exist in vendor payment programs for medical care of public assistance recipients. Hospitals, nursing homes, and clinics in all parts of the country participate in these programs and, in some, Negro recipients have received less than equal advantage.

* * * * *

In every essential of life, American citizens are affected by programs of Federal financial assistance. Through these programs, medical care, food, employment, education, and welfare are supplied to those in need. For the government, then, to permit the extension of such assistance to be carried on in a racially discriminatory manner is to violate the precepts of democracy and undermine the foundations of government.

H.R. Rep. No. 914, 88th Cong. 2d Sess. (Additional Views on H.R. 7152 of Hon. William M. McCulloch, et al.).

Courts which have dealt with this issue have found Medicare and Medicaid to constitute Federal financial assistance, for purposes of establishing civil rights jurisdiction. A recent such case is *United States v. Baylor University Medical Center*, 564 F. Supp. 1495 (N.D. Tex. 1983). Citing HHS regulations indicating that Medicare and Medicaid are Federal financial assistance, case law in which courts "have had little difficulty" in finding that they are Federal financial assistance, the legislative history of the Medicare statute, long-standing agency interpretation, and the broad construction which must be given to remedial civil rights statutes, the court found that Medicare and Medicaid are Federal financial assistance for purposes of section 504 coverage. The court also specifically rejected the medical center's argument that Medicare and Medicaid payments are exempt from the definition of "Federal financial assistance" on the grounds of being under contracts of insurance. The Court distinguished insurance programs, by noting that Medicare is funded by mandatory taxes and Medicaid by general revenues, rather than through a system of risk-based premiums.

Other cases supporting the position that Medicare and Medicaid payments are Federal financial assistance are *NAACP v. Wilmington Medical Center*,

657 F.2d 1332 (3d Cir. 1981) (the court noted its jurisdiction was based on the hospital's receipt of Medicare and Medicaid funding); *United States v. Cabrini Medical Center*, 497 F. Supp. 95, 96, n.1 (S.D.N.Y. 1980); *Cook v. Oschner*, No. 70-1989 (E.D. La., Feb. 12, 1979) (the defendants' argument that Medicare and Medicaid payments did not constitute Federal financial assistance was rejected by the district court during pre-trial motions); *Flora v. Moore*, 461 F. Supp. 1104, 1115 (N.D. Miss. 1978); and *Bob Jones University v. Johnson*, 396 F. Supp. 597 (D.S.C. 1974), *aff'd.*, 529 F.2d 514 (4th Cir. 1975) (court held that VA benefits to students constituted Federal financial assistance to the university and noted their similarity to Medicaid).

The basic congressional policy underlying title VI, section 504 and related statutes is that federally funded programs and services are to be administered in a nondiscriminatory fashion. The Medicare and Medicaid programs were established for the purpose of providing medical service to people who otherwise might not be financially able to obtain them. The argument that somehow these federally assisted medical services were not intended to be within the reach of the nondiscrimination rule is clearly contrary to the basic congressional policy. Underscoring this is the fact that HHS spends billions of dollars annually for health care services to the aged, disabled, and poor, and virtually all hospitals participate in these programs. According to data of the Health Care Financing Administration (HCFA), HHS, of approximately 6,930 hospitals, 6,737 participate in Medicare and virtually the same number in Medicaid. In fiscal year 1982, total hospital costs in the United States were \$136 billion. Of this, \$47.9 billion were HCFA expenditures (\$36.3 billion, Medicare, \$11.6 billion, Medicaid). Approximately 36 percent of all hospital costs in the United States are financed through the Medicare and Medicaid programs. See *HCFA Statistics* (Publication No. 03155, Sept. 1983).

It should also be noted that there are no persuasive arguments for distinguishing Medicaid and Medicare on the question of whether they constitute Federal financial assistance to hospitals. Although Federal Medicaid funds flow through the states, the states' relationship to the hospitals in Medicaid is essentially the same as that of the Federal government to the hospitals in Medicare. HHS regulations for both title VI and section 504 specify that recipients of Federal financial assistance include all subrecipients

which receive funds from a recipient. 45 CFR 80.13(i), 84.3(f).

In addition, Medicare and Medicaid cannot be considered procurement contracts for purposes of the statutory exemption from civil rights jurisdiction in connection with such contracts. Unlike the relationship that exists under procurement contracts, health care providers promise only that if they serve an eligible beneficiary of the program, they will look to the government for payment of all but specified items. In addition, under Medicare and Medicaid the level of services is determined by providers who are not acting as agents for the government and are not discharging an obligation the government has assumed. Rather they are—with Federal assistance—engaging in activities they have long performed. In this respect Medicare and Medicaid payments are indistinguishable from grants to pay the costs of medical services. Indeed, those payments often cover medical costs of indigent patients that hospitals would otherwise be required to absorb pursuant to their other legal obligations. In contrast, under a procurement contract the government acts on its own account as a consumer of goods, such as typewriters and paper clips, or services, such as hotel accommodations and rental car services for traveling employees. The level of services under procurement contracts is determined by the government and not, as under Medicaid or Medicare, by the provider.

Furthermore, the Medicare and Medicaid programs do not fall within the statutory exemption from the definition of Federal financial assistance for any payments pursuant to "a contract of insurance or guaranty." 42 U.S.C. 2000 d-1, 2000 d-4 (title VI); 45 CFR 84.3(h) (section 504). The principal object of the Medicare and Medicaid programs is to provide service. Medicare and Medicaid programs cannot properly be characterized as, or analogized to, a contract of insurance. Benefits under these programs are not measured by any fixed premium paid by the beneficiary to the government; the government reimburses for the reasonable cost incurred by the provider in rendering services. Missing from both reimbursement plans is that essential element of insurance—the assumption of risk. The Medicare and Medicaid programs do not purport to indemnify for nonpayment by the beneficiary. The hospital, in becoming a provider of services under these programs, agrees to look to the government for payment and to accept the reimbursement from the government as full payment, except for

the deductible and coinsurance. The beneficiary does not incur any obligation to pay for those services which are covered by the agreement between the provider and the government.

Nor do Medicare and Medicaid constitute contracts of guaranty. Essential to a definition of a contract of guaranty is a primary obligation on the part of the individual for whom the guaranty is given. A contract of guaranty is a promise to pay or an assumption of performance of some duty upon the failure of another who is primarily obligated in the first instance. In contrast, the reimbursement provisions of the Medicare and Medicaid programs are not activated by the failure of the individual recipient to pay for the medical services covered by agreement between the government and the hospital.

It is the absence of these elements which distinguishes Medicare and Medicaid from programs that Congress intended to be excluded under the contract of insurance or guaranty exception, such as mortgage guarantees under FHA or VA and depositors' insurance under FDIC, where the role of the government is clearly as an insurer or guarantor and Federal monies are involved only if the private party does not meet his or her obligation. It is also noteworthy that the American Hospital Association apparently concluded in 1966, when Medicare was instituted, that hospitals receiving Medicare were recipients of Federal financial assistance for title VI purposes. The AHA solicited and printed in its journal a question and answer article prepared by the former Department of Health, Education and Welfare to help hospitals understand what they were required to do to comply with title VI to receive Medicare funds. See "Hospitals and Title VI of the Civil Rights Act of 1964, Questions and Answers," *Hospitals*, June 1, 1966. Also, pursuant to 45 CFR 84.5, hospitals which participate in the Medicare and Medicaid programs have submitted assurances to HHS that they would comply with section 504 and the applicable regulations.

Accordingly, as demonstrated by this brief summary of points in support of the Department's long-standing position, hospitals which participate in the Medicare and Medicaid programs are recipients of Federal financial assistance for the purpose of establishing section 504 jurisdiction.

"Program or Activity" Receiving Federal Financial Assistance

Another argument presented by some commenters to dispute the legal

authority for the proposed rule is that even if Medicare and Medicaid are "Federal financial assistance," they are not "a program or activity" which provides medical care to handicapped infants. The argument appears to be that, purportedly following the analysis of the government's brief to the Supreme Court in the pending case of *Grove City College v. Bell*, 687 F.2d 684 (3d Cir. 1982), cert. granted, 51 USLW 3611, February 22, 1983 (#82-792), the "program or activity" which receives Federal financial assistance in the form of Medicare and Medicaid payments to a hospital is the fiscal accounting office of the hospital.

As stated by the American Academy of Pediatrics:

. . . to the extent, then, that the government believes that Title IX cannot extend beyond the financial aid office, is difficult to understand how section 504 could extend to nurseries, maternity wards, and neonatal intensive care units simply because the medical expenses of primarily elderly Medicare beneficiaries are reimbursed in the accounting office.

Response

The Department believes this argument is without merit. The position advanced by the government in *Grove City* is that in determining what constitutes the Federally assisted program, it is necessary to examine both the nature of the Federal program and the organizational practices of the recipient institutions. *Grove City* involves the Basic Education Opportunity Grants program (BEOG), in which grants are made to students and used by the students to pay for tuition, fees, room and board. The recipient institutions operate financial aid programs under the direction of a financial aid office, with a separate budget and a specific purpose, to provide financial aid to students who otherwise could not afford to attend the college. BEOG's are one component of the college's financial aid program. In view of the nature of the Federal BEOG program and the organizational practices of colleges, it is the college's financial aid program that receives the Federal assistance. Although, conceivably, an effort could be undertaken to "trace" the "ripple effects" of the BEOG money throughout the college, the government's position in *Grove City* is that this is not what Congress intended in enacting the program specificity requirement in the applicable civil right statutes.

The circumstances involved in connection with Medicare and Medicaid reimbursements to hospitals are entirely

different from those involved in BEOG's and colleges. Rather than providing assistance to a general financial aid program operated by the recipient, Medicare and Medicaid payments to hospitals are primarily for particular medical services provided to particular patients who received services in particular units of the hospital. It is services provided to particular beneficiaries by the hospital's operating room, x-ray department, laboratory, pediatrics ward, or other organizational units that give rise to the Federal reimbursements. In addition, the hospital's organizational and accounting practices provide for Federal reimbursement for a proportionate share of administrative costs, housekeeping, depreciation of physical plant, and other general expenses, all specifically itemized and specifically eligible for reimbursement.

Also unlike colleges, "tracing" Medicare and Medicaid reimbursements within hospitals is not dependent upon looking for "ripple effects" of the Federal funds. Rather, it is the specific identification of actual services and costs which gives rise to reimbursements based specifically thereon.

Therefore, the Federally assisted program of a hospital is not, as a commenter suggested, the accounting office of the hospital, any more than the Federally assisted program of a college is the accounting office or comptroller. An examination of the applicable Federal programs and the recipient's organizational practices makes clear that the issues presented in the *Grove City* case, and the positions taken by the government in that case, do not undermine the legal basis for the final rules or the application of section 504 to health care for handicapped infants.

It should also be noted that whatever subtleties or twists are ultimately associated with the interpretation of "program or activity," the final rules specifically accommodate the program specificity requirement pertaining to the posting of the informational notice as applicable to each recipient that provides health care services to infants "in programs or activities receiving Federal financial assistance." If, on the basis of the Supreme Court's eventual decision in *Grove City* or other factors, limitations evolve on what programs or activities of hospitals are covered by section 504, those limitations will be accommodated by the text of the rules.

Services vs. Employment as Jurisdictional Limitation

The Federation of American Hospitals advanced another argument in behalf of

the proposition that the Department has no legal authority to issue the final rules. The Federation commented:

The Rehabilitation Act of 1973 (Pub. L. 93-112) does not apply to hospitals. Federal circuit courts of appeal which squarely address the issue uniformly hold that the Act does not apply to hospitals as recipients of Medicaid or Medicare funds. These courts have held that the Rehabilitation Act applies to recipients of federal financial assistance if, and only if, that assistance has the primary objective of providing employment.

In *United States v. Cabrini*, 639 F.2d 803 (2d Cir. 1981), the Court . . . [held] that the Office for Civil Rights was not authorized to investigate a complaint by a hospital employee that he was discharged for mental disability. . . . *Tragesar v. Libbie Rehabilitation Center, Inc.*, 530 F.2d 87, 89 (4th Cir. 1978), cert. den'd, 442 U.S. 947; *Scanlon v. Atascadero State Hospital*, 677 F.2d 1271, 1272 (9th Cir. 1981); see, also, *Carmi v. Metropolitan St. Louis Sewer District*, 620 F.2d 672, 674-675 (8th Cir. 1980), cert. den'd, 101 S. Ct. 249 (1980) . . .

As there is no legal authority supporting the proposition that the Rehabilitation Act of 1973 applies to hospitals receiving Medicare and Medicaid funds since the primary objective of those programs is not employment; the proposed rules must be withdrawn.

Response

The Federation's legal argument is incorrect. The *Tragesar/Carmi/Cabrini/Scanlon* line of cases holds that section 504 does not provide jurisdiction over employment practices of recipients unless the Federal financial assistance has the primary objective of providing employment. These cases held that section 505(a)(2) of the Rehabilitation Act, making the "remedies, procedures, and rights set forth in title VI of the Civil Rights Act of 1964" applicable to section 504, incorporated the restriction in section 604 of the Civil Rights Act of 1964, which makes title VI inapplicable to employment practices unless the Federal financial assistance has the primary objective of providing employment. Two circuit courts have recently held that the reference to title VI procedures in section 505 did not intend to incorporate the employment restriction. *Jones v. Metropolitan Atlanta Rapid Transit Authority*, 681 F.2d 1376 (11th Cir. 1982), petition for cert. pending, No. 82-1159 (filed January 11, 1983); *LeStrange v. Consolidated Rail Corporation*, 687 F.2d 767 (3d Cir. 1982), cert. granted. The Supreme Court is expected to decide this issue during its present term.

Regardless of the merits of that issue, it has no relevance to the final rules. No case has held, as none could based on the clear statutory language and congressional intent of section 504, that

section 504 applies only to a very narrow segment of employment practices, and has no applicability to the provision of services and benefits under programs and activities receiving Federal financial assistance.

B. ENFORCEMENT PROCESSES

A prior section of this preamble discusses investigative procedures of the Department applicable in the context of health care for handicapped infants and an analysis of related comments. This section discusses other comments pertinent to this issue.

Sanction for Non-Compliance

A number of commenters stated objections to the sanction for non-compliance, termination of Federal financial assistance. The basic thrust of these comments was that termination of all or a portion of a hospital's Federal financial assistance would be unfair in the context of difficult treatment decisions, later judged by HHS to be in non-compliance with section 504. As stated by the American Hospital Association:

The penalty for even inadvertent violation would be severe. The Department asserts authority and threatens to terminate all federal financial assistance that the individual or institution may be receiving. Moreover, the threat of such penalties may encourage physicians and others to refuse to participate in programs funded by the Federal government, particularly those supporting specialized treatment facilities for the newborn. In cases where the institution depends for operation on significant federal funds unrelated to handicaps, this policy may, for example, cause the closing of neonatal units to avoid the risk of losing federal funds. Such a result could reduce access to needed care for many infants who could be helped with safe, timely and effective treatment.

Response

It is correct that under the law, non-compliance with section 504 can result in termination of Federal financial assistance to the particular program or activity, or part thereof, in which the noncompliance has been found. However, the existing procedural and legal requirements applicable to any action to terminate Federal financial assistance are more than adequate to protect against an unfair result.

The Rehabilitation Act provides, in section 505(a)(2), that the remedies, procedures and rights set forth in title VI of the Civil Rights Act of 1964 shall be applicable to actions to enforce section 504. These title VI procedures provide substantial due process protections.

First, before Federal financial assistance can be terminated, the

recipient must have an opportunity for a hearing before a court or administrative law judge, who must expressly find that there has been a failure to comply with the law or applicable regulations.

Second, before Federal financial assistance can be terminated, there must be a finding that compliance cannot be secured by voluntary means. Therefore, a recipient that has been found to have violated section 504 in connection with the health care provided to a handicapped infant will not lose its Federal funding unless it refuses to adopt the standards or procedures necessary to prevent future noncompliance.

Third, in any case, the burden of proof that there has been noncompliance and that it cannot be corrected by voluntary means is on the government. The standards for this determination are those set forth in the appendix to the final rules which includes the guideline regarding deference to reasonable medical judgments.

Fourth, the Department's regulations provide for appeal of adverse administrative law judge decisions to the Department's Civil Rights Reviewing Authority, which is independent from the Office for Civil Rights. Recipients may then seek review by the Secretary of the decisions of the Reviewing Authority. Further, the Department's final decision is subject to judicial review.

Therefore, there is no basis for an assertion that Federal financial assistance can be precipitously terminated on the basis of some subjective determinations by a handful of bureaucrats. In fact, due primarily to the statutory requirement that recipients be given full opportunity to voluntarily comply, the chance, based on all prior governmental experience under title VI and the statutes modeled after it, that any recipient will actually lose its Federal financial assistance is rather remote.

OCR Investigations at Strong Memorial Hospital and Vanderbilt University Hospital

In support of criticisms of OCR investigations, a number of commenters cited reports of hospitals which were subjects of OCR investigations at the time the interim final rule was put into effect in March. As stated by the American Hospital Association:

The mischief of the federal hotline enforcement mechanism was illustrated graphically during the short life of the March rule by the occurrences at Vanderbilt University Hospital in Nashville and Strong Memorial Hospital in Rochester, NY. In the Vanderbilt case, an anonymous hotline caller

alleged that ten named children at the hospital were not being fed or given proper medical care. A federal "Baby Doe squad" (consisting of lay officials from the regional and national staffs of the Office of Civil Rights and a hired neonatologist) arrived at the hospital that evening and met with the attending physicians for each of the children, the chief of pediatrics, the chief pediatric resident, and the associate director for nursing, after which the neonatologist examined each child. On the following day, the investigative team examined medical records and interviewed nursing staff, hospital administrators, and the chief of pediatrics.

[The investigation] resulted in the delayed discharge of one patient, delayed the transporting of children to scheduled surgery, necessitated the re-ordering of laboratory reports, diverted nurses from patient assignments, delayed nursing shift reports, and consumed, in total, substantial amounts of professional time that otherwise would have been devoted to the care of patients, including the infants who were the subjects of the investigation.

The Strong Memorial experience was strikingly similar and even more disturbing. An unidentified hotline caller, whose only information concerning the case apparently came from a newspaper report, triggered an investigation regarding the treatment of conjoined twins in that facility. An identically constituted investigative squad arrived at the hospital, though without any statement of investigative authority or written requests for hospital records. The hospital complied nonetheless with the investigators' requests, only to have the team disagree as to which of them was entitled to the information. The neonatologist member of the team subsequently departed upon learning that the investigators had failed to obtain the parents' consent to examine the infants.

The effects of the investigation in this case went well beyond the diversion of patient care resources and delays in treatment. The parents of the conjoined infants were subjected to substantial undesired publicity. Parents of other critically-ill children were led by this publicity and the lack of clarification from federal investigators to become apprehensive about the adequacy of care provided at Strong Memorial. Before the investigation concluded, one family removed its seriously-ill child from the facility prior to the completion of treatment, on the belief that the hospital was intentionally harming children.

Response

The Department strongly disputes the accounts of these investigations provided by personnel affiliated with the two hospitals. The reports referenced by commenters appear to be based upon affidavits prepared in connection with litigation initiated by the American Hospital Association challenging the implementation of the March interim final rule. Contrary to these reports, both of these investigations were conducted very

expeditiously and professionally, and every effort was made to minimize any disruption to the hospitals. In addition, during the course of these investigations (and prior to their being raised in the litigation), officials of neither hospital complained to OCR regarding the conduct of the investigations, nor, in either case, did hospital personnel complain to OCR personnel that the investigations were causing significant disruptions to the patient care activities of the hospital.

With respect to the Strong Memorial Hospital case, the following are the pertinent facts of the investigation:

a. On the morning of March 29, 1983 (seven days after the effective date of the interim final rule), a complaint was received on the hotline about conjoined infants recently born at Strong Memorial Hospital in Rochester, New York.

b. An investigative team consisting of one investigator from the Washington Office and two from the New York Regional Office was sent to the site to investigate. The team arrived at approximately 4:30 p.m. Arrangements were made to have a medical consultant also travel to the site.

c. The team met with a hospital administrative officer and the attending physician. The attending physician reviewed the infants' condition and status. He mentioned that there was a no-resuscitation order in effect for the twins, should cardiac arrest occur.

d. The attending physician told OCR that the parents were concerned about publicity. OCR assured him that OCR would not discuss the case with the media or otherwise publicize OCR's investigation.

e. The OCR team made no request to interview other staff at that time. The administrator produced a copy of the medical records. The Washington Office investigator received it and said it would not be necessary to produce another copy for the Regional Office. Throughout the investigation, the administrator and attending physician were cooperative and helpful. The attending physician asked the team leader to tell the OCR medical consultant that he could be called late and would be glad to come to the hospital and meet with him, show him the medical records, and let him view the infant. The administrator asked to be called when the medical consultant arrived. The OCR team left the hospital at about 7:30 p.m.

f. The OCR medical consultant arrived in Rochester about 9:15 p.m. and met with the investigative team. Apparently based on a misimpression of his role, the consultant stated he would not review

the records or go to the hospital to meet with the physician or view the infants unless the parents consented.

g. On the morning of March 30, 1983, the OCR team and the OCR medical consultant had a telephone conversation with the administrator. He said that he wished the OCR team would not return to the hospital because that investigation was receiving publicity. The team leader decided there was no need to return to the hospital.

h. In summary, the investigative team was on site only three hours in the late afternoon and early evening of March 29.

With respect to Vanderbilt University Hospital, following are the pertinent facts of the case:

a. OCR received a hotline telephone call at 11:45 a.m. on March 23, 1983 (the day after the effective date of the interim final rule), alleging that ten infants at Vanderbilt University Hospital were not receiving treatment and/or nourishment.

b. From 9:30 p.m. to 11:45 p.m. on March 23, 1983, the OCR investigative team, consisting of two investigators from the Atlanta Regional Office, one from the Washington Office, and the OCR medical consultant, met with various members of the hospital staff to discuss the current status of the ten infants.

c. After this meeting, from midnight until 12:30 a.m., the OCR medical consultant physically viewed the infants on the regularly scheduled "rounds" in the company of the Chief Pediatric Resident and the Chief of Pediatrics.

d. From 8:00 a.m. until 2:45 p.m. on March 24, 1983, the OCR investigators and medical consultant reviewed the available medical records of the ten children. Medical records were given to OCR in groups of four and retrieved as needed by the Associate Director of Nursing and other members of the Vanderbilt staff. The Associate Director of Nursing and the hospital staff members were very cooperative, and at no time did they indicate to the investigative team that the review of records was causing any problem. In only one instance did they indicate they needed a chart, and OCR immediately relinquished it. That chart was not subsequently made available for review that day, but a copy of it was mailed to OCR.^f

e. All records were reviewed with the understanding that if they were needed for patient care they would be retrieved. Computer printouts detailing the admitting diagnosis, age, physician assigned to the case, service area, and the date of admission or transfer for all ten children were given to the OCR

team. The Associate Director of Nursing stated that this printout was readily available because the information was kept on-line for billing purposes and this would not interfere with patient care. The bedside charts were copied and given to OCR at the end of day because they were needed for patient care.

f. Following the OCR review of the medical records, from approximately 2:45 p.m. to 4:00 p.m. on March 24, 1983, the OCR team interviewed the available nurses who were involved in the primary care of the infants. Five nurses were interviewed for approximately 10 to 15 minutes each. The selection of the nurses was left to the discretion of the Associate Director of Nursing; she scheduled them so that patient care would not be disrupted.

g. At no time did the Chief of Pediatrics or Associate Director of Nursing indicate that the OCR investigation was placing patients in jeopardy.

h. The hospital staff asked the OCR team for a preliminary statement of findings. The team leader responded that OCR investigators are not authorized to make findings during an investigation. An investigative report would have to be prepared following the investigation, and this would have to be reviewed before the agency could issue findings.

i. The total time spent on-site to investigate the circumstances relating to all ten infants was approximately eleven hours. The total time occupied of the two Vanderbilt doctors directly involved was seven and one-half hours. Every effort was made to minimize any disruption, and at no time during the investigation did hospital personnel complain to OCR that the investigation was disrupting patient care.

Therefore, contrary to the reports of hospital officials, prepared to support litigation against the Department, these investigations were conducted professionally and every effort was made to minimize any disruptions.

Concerning the report that, according to a hospital official, one family withdrew a seriously ill patient from the Strong Memorial Hospital before completion of treatment due to fears that the hospital was intentionally harming children, caused by their reading of local newspaper accounts of the investigation, the report provided no further details, and the department has no basis to confirm the event or the motivations for it. However, the firm policy of not commenting to the media regarding an open investigation was adhered to strictly in the Strong Memorial Hospital case. Media attention was not provoked by OCR, nor

did OCR make any statement to the media which could have implied any belief by OCR that the allegations of the complaint were substantiated.

Danger of Overtreatment

Several Commenters expressed the concern that the existence of OCR's enforcement process would cause hospitals and health care professionals to "overtreat" an infant. An example of this is a case in which the attending physician or physicians have concluded on the basis of reasonable medical judgment that treatment would be futile, but, due to a fear that an OCR investigation might come to a contrary conclusion, nevertheless provide futile treatment, which, while prolonging the process of dying, causes suffering to the infant and severe distress to the infant's parents. In connection with adverse ramifications of overtreatment, attention was called to the experiences of one family, as presented in a recent book, *The Long Dying of Baby Andrew* (Little, Brown and Co., Boston, 1933).

Response

The Department believes that whatever the dangers are that physician misjudgments will lead to "overtreatment" of infants, those dangers are not increased by the existence of section 504 or the determination of the Department to see that it is effectively enforced. As indicated above, section 504 does not require that futile treatments, which will do no more than prolong the act of dying, be provided. Moreover, OCR decisions concerning compliance or noncompliance with section 504, informed by the expert evaluation of qualified medical consultants, do not interfere with reasonable medical judgments. Also, in any case, reviewing whether certain care was medically indicated and denied on the basis of the infant's handicap, there are extensive due process protections to assure accuracy of fact finding. Furthermore, even where there is an ultimate finding, after exhaustion of all due process rights, of noncompliance of section 504, no sanction can be implemented unless the recipient hospital refuses to adopt procedures to bring it into compliance.

The Department agrees that in a "close case" it may be prudent to preserve the status quo pending additional consideration regarding whether certain possible treatments are medically indicated, whether that additional consideration is by specialists at the hospital, by medical professionals at a more specialized facility, by some internal hospital

review board, or by some state or federal agency. In such a case, the usual practice in most hospitals likely would be to continue life-sustaining care until the appropriate analysis has been secured.

C. ALTERNATIVE APPROACHES

In addition to proposals discussed in the preamble concerning establishment of Infant Care Review Committees, the Department received other suggested alternative approaches.

AMA Proposal: Further Study Prior to Action

The American Medical Association proposed that, rather than adopting any regulation, the Department should initiate a study to include: compilation of data on the incidences of each type of severe impairment in newborns and of successful treatment, unsuccessful treatment and nontreatment in each category; identification of the issues involved in medical management and of mechanisms currently used by hospitals and states; determination of the availability of facilities, financial resources, and public and private social services; and an assessment of the impact of the various alternative means of responding to situations involving severely impaired newborns, including such factors as the ongoing treatment of newborns, the families of severely impaired newborns, the operation of health care facilities, the confidentiality of patient-physician relationship, the malpractice and disciplinary risks of health care providers, the availability of facilities and resources, and the costs of care.

Response

The AMA's proposal for an elaborate study prior to taking any action concerning this matter is not acceptable to the Department. The Department does not believe it is necessary—or in some respects, even possible—to generate definitive data, information or conclusions on many of the issues identified in the AMA's study proposal.

Much of the data the AMA proposes be compiled concerning the incidence rates of every classification and degree of serious impairment, of respective modes of treatment, of rates of success, nonsuccess and nontreatment, and of issues, mechanisms, resources and costs is probably impossible to compile. These matters are the subject of an entire discipline of medical practice and study. To suggest that a government study will somehow generate conclusive information on these issues appears naive at best.

The call for a study of the resources available and the costs of care for newborns appears aimed at identifying an aggregate cost to society of putting into practice the principle of providing all handicapped infants with medically beneficial treatment. Because there are no reliable data available on the extent to which handicapped infants are now denied medically beneficial treatment, it would appear impossible to develop even reasonable guesses regarding aggregate costs. Of course, in the overall context of all health care expenditures in the United States, the costs are certain to be relatively small.

In question 6 included in the preamble to the July 5 proposed rule the Department sought input on this cost issue by asking for "examples of cases where medically indicated treatment would, but for the legal requirements of section 504, be withheld." No information was submitted to the Department in response to this question which provides a basis for meaningful cost projections. Although the AMA did not address the issue, other major medical organizations who commented on the cost issue indicated that cost should not be a determinative factor in deciding upon treatment for seriously impaired newborns.

The Department agrees there is utility in assessing the impact of various alternative means of addressing and responding to situations involving severely impaired newborns. Much of this preamble focuses on precisely this issue. Although the AMA did not identify the "various alternative means" it believes to exist to deal with this issue, based on the comments received by the Department, there would appear to be three major approaches: (1) Enforcement of section 504 (hereinafter "the section 504 approach"); (2) review by hospital review boards, such as Infant Care Review Committees (hereinafter "ICRC approach"); and (3) the traditional doctor-parent approach.

Concerning impact on treatment of newborns, the section 504 approach is most directly focused on the provision of medically beneficial treatment. The ICRC approach would be organized to have this as its objective, but lacks a mechanism to assure this as a relatively uniform result among thousands of hospitals. The connection between actual practice and this objective appears most potentially attenuated under the traditional doctor-parent approach, under which there are many thousands of individual decisionmaking units.

With respect to the impact on families to the extent some parents

would not consent to medically beneficial treatment, the traditional doctor-parent approach would appear least likely, given the lack of a mechanism to facilitate uniformity, to resort to the system provided by State law to review the propriety of parental decisions. The ICRC approach appears more likely, and the section 504 approach most likely, to produce this result in that they incorporate standards that the lack of parental consent for medically beneficial treatment must be brought to the attention of the appropriate state agencies.

Concerning the impact on the operation of health care facilities, the traditional doctor-parent approach would appear to have the least impact because the facilities have no formalized involvement in the decisionmaking process. Both the section 504 approach and the ICRC approach would likely result in greater involvement of the health care facility.

With respect to the confidentiality of patient-physician relationships, the traditional physician-parent approach is most protective of confidentiality in that it does not provide for the sharing of information with others. Both the section 504 approach and ICRC approach involve the sharing of information with others, but both incorporate adequate confidentiality safeguards.

With respect to the impact on malpractice and disciplinary risks (assuming that by disciplinary risks, the AMA is referring to revocation of medical licenses, or the like) of health care providers, to the extent physicians have malpractice or disciplinary vulnerabilities relating to incorrect diagnoses or inadequate knowledge of prevailing medical judgments regarding indicated treatments, approaches which facilitate the avoidance of failure to provide medically indicated treatment would appear to reduce those vulnerabilities. Because none of the approaches involve doctors or hospitals overruling parental decisions, and because reports to State agencies of suspected instances of neglect of children are immunized by state law from legal vulnerability, none appear to increase malpractice or disciplinary risks in the context of actions which would be taken when parents refuse consent for medically beneficial treatment.

With respect to the impact on costs, available resources, and available facilities, to the extent the different approaches affect the likelihood that handicapped infants will receive medically indicated treatment, these factors will be correspondingly affected.

However, the Department is unaware of any data base for quantifying these factors.

In summary, the Department believes adequate information is on the record to provide a basis for prudent and informed decisions on this issue. Regarding several of the issues raised by the AMA proposal, the Department agrees there would be advantages in having more detailed information and data. However, obtaining more definitive information on some of these issues is impracticable or impossible due to the lack of a reliable data base and a viable methodology to obtain better data. Therefore, the Department believes there would be very little to be gained from another government study of this issue.

D. FACTUAL BASIS FOR FINAL RULES

NPRM Explanation

A number of commenters challenged the Department's factual basis for the proposed rule, as set forth in the July 5 notice of proposed rulemaking. The points argued in support of the position that the factual basis did not provide a sufficient foundation for the regulation were:

(a) Judge Gesell questioned the factual basis for the March 7 rule.

(b) The 1973 article by Drs. Duff and Campbell of the Yale New-Haven Hospital documenting that of 299 consecutive deaths occurring in that special care nursery, 45 (14%) were related to withholding treatment, cited in the preamble to the proposed rule, was too old to be reliable.

(c) The several specific cases cited in the preamble had various probativity defects.

(d) The 1977 article reporting the results of a survey of pediatricians suggesting discriminatory attitudes was outdated, not statistically valid, and otherwise lacked current probative value.

(e) The findings of the report of the President's Commission for Study of Ethical Problems in Medicine and Biomedical and Behavioral Research entitled *Deciding to Forego Life-Sustaining Treatment* contradict the Department's factual basis.

(f) Because "discrimination against the handicapped in the delivery of health care services does not only involve handicapped newborns," there is "no compelling rationale for a set of rules targeted solely at this population."

Response

The Department continues to believe that a substantial factual basis exists for

the proposed rule. First, it should be noted that Judge Gesell, although he found many relevant factors to have been inadequately considered in connection with issuance of the March 7 rule, did not find the factual basis inadequate to support "undertaking a regulatory approach to the problem of how newborns should be treated in government-financed hospitals."

Second, the arguments that the well-documented Duff and Campbell study is outdated are based on the personal opinions of several commenters. These personal opinions, although in some cases those of highly-respected medical professionals, were not backed up by any empirical data even remotely resembling the very detailed evidence of the Duff and Campbell study.

Third, the conclusion of the President's Commission that decision-making about seriously ill newborns "usually adheres" to proper standards cannot be fairly represented as evidence that handicapped newborns should be exempt from basic protections of the law prohibiting discrimination on the basis of the handicap.

Fourth, regardless of the caveats concerning the age of particular cases or the lack of a conclusive finding of illegal discrimination, the several specific cases cited in the preamble to the proposed rule support the proposition that handicapped infants may be subjected to unlawful discrimination.

Fifth, in the absence of any empirical studies or data to bolster their personal opinions, the commenters who suggested that the results, published in 1977, of the survey of pediatricians' attitudes are outdated are not convincing. The article, "Ethical Issues in Pediatric Surgery: A National Survey of Pediatricians and Pediatric Surgeons," 60 *Pediatrics* 588, reported the results of a survey of 400 members of the Surgical Section of the American Academy of Pediatrics and an additional 308 chairpersons of teaching departments of pediatrics and chiefs of divisions of neonatology and genetics in departments of pediatrics. Responses were received from 267 of the former group (66.8%) and 190 of the latter (61.7%). Responses were anonymous. Among the results of the survey were:

—76.8% of the pediatric surgeons and 49.5% of the pediatricians said they would "acquiesce in parents' decision to refuse consent for surgery in a newborn with intestinal atresia if the infant also had Down's syndrome."

—23.6% of pediatric surgeons and 13.3% of pediatricians would encourage parents to refuse consent for treatment of a newborn with intestinal atresia and Down's syndrome. Only 3.4% of pediatric surgeons

and 15.8% of pediatricians would get a court order directing surgery if the parents refused.

—63.3% of the pediatric surgeons and 42.6% of the pediatricians said in cases of infants with duodenal atresia and Down's syndrome, where they "accept parental withholding of lifesaving surgery," they would also "stop all supportive treatment including intravenous fluids and nasal gastric suction."

—62% of all respondents who believe that children with Down's syndrome "are capable of being useful and bringing love and happiness into the home" would nevertheless acquiesce in parents' decisions not to allow surgery for the atresia. Only 7% who so believe indicate that they would go to court to require surgery.

Sixth, there is no requirement in law or policy for the government to prove the magnitude of illegality before establishing basic mechanisms to allow for effective enforcement of a clearly applicable statute.

Evidence of Problems Submitted by Commenters

Additional evidence of the risk that handicapped infants may be subjected to discrimination was submitted by commenters. For example, the Spina Bifida Association of America stated:

Unfortunately, the SBAA has direct experience of cases in which this principle [of nondiscrimination] has not been followed—instances in which children with spina bifida have been initially denied appropriate treatment. Pediatric neurosurgeon Dr. David McClone of Chicago Children's Memorial Hospital, a member of SBAA's Professional Advisory Committee, has found that 5% of the children with spina bifida referred to him have been victims of treatment denial. Most of these cases, he believes, resulted from ignorance of current therapies and their impressive outcomes.

The Department received a number of comments from practicing nurses regarding the problem and need for the proposed rule. For example, from a Lexington, Kentucky, nurse:

I am a registered nurse and have worked in the labor and delivery area, newborn nursery and intensive care nursery. . . . I think the average American would be shocked at the decisions that are made regarding "non-perfect" infants. I have personally heard physicians and nurses talk to new parents about their child and persuade the parents to "let the child die and therefore end its suffering"—which really meant "let us starve your child to death"—that is certainly not a humane way to "let a child die."

A nurse in Boca Raton, Florida wrote:

I am an RN with a speciality in maternal-child health. In the past few years I have had to witness the deaths of innocent children in hospitals where a decision was

made not to continue with medical care and assistance.

Another nurse wrote:

As a nurse (RN) in a neonatal ICU, I feel compelled to write and voice my support of the "Baby Doe rule" now proposed. . . . Many doctors and nurses openly support withholding or withdrawing medical care. . . . Due to the ethics of the medical director of the unit, this has only been done once or twice to my knowledge. I would report any cases of neglect I knew of if this number and service were available. . . . An outside third party is needed to police the cases. Please allow some method of reporting and investigating these babies' cases to be available.

From a nurse in San Diego, California came the following comment:

[A]s a practicing registered nurse myself, I believe such regulations permit nurses and staff to act in a patient's best interest—life itself—without fear of harassment and possible job loss.

In addition, some commenters who opposed the proposed rule appeared to acknowledge that there is a risk that handicapped infants will not receive medically beneficial treatment. For example, the American Society of Law and Medicine, a national, nonprofit professional association, stated:

There can be no question that some decisions to end life-sustaining care for newborns have been made inappropriately, even if the frequency of this problem has not been established.

Another example of this is the comment by the chairman of the division of pediatrics of a hospital in Illinois:

We are acutely aware that handicapped individuals (*not* must handicapped newborns) are systematically discriminated against in our society. We are also acutely aware that we, like virtually all members of our society, are guilty of having prejudicial beliefs and attitudes about the handicapped. That pediatricians and other health care providers have acted on these negative beliefs and attitudes should come as no surprise. That parents, at least in the initial phase of their relationship with a handicapped newborn, should wish to be spared what is perceived as a burden or even wish that the infant had never been born should come as no shock.

We wholeheartedly agree that in the past these obviously critically important decisions have not been accorded the degree of reflection and care they are due. Given the wide range of possible technological interventions now possible; given the changing conception of the appropriate role of physician and parents in such decisions; and given the need for public accountability for such decisions—we support the idea that the manner in which such decisions have been made in the past needs critical re-examination.

Another example is the comment of the American Academy of Pediatrics:

The traditional method of a single physician making such judgment [regarding treatment], without exposure to other persons having additional facts, experience, and points of view, may lead to decisions, which, in retrospect, cannot be justified.

Response

The Department believes these comments provide additional support for the Department's conclusions that available evidence indicates there are cases in which handicapped infants are at risk of having life-sustaining, nourishment or medically beneficial treatment withheld solely on the basis of their present or anticipated physical or mental impairments, and that this evidence constitutes a substantial foundation for the establishment of basic procedural mechanisms to facilitate enforcement of section 504.

OCR Investigations to Date

Another argument made by a number of commenters to support criticisms of the adequacy of the factual basis for the proposed rule was that the experience of the Office for Civil Rights to date in connection with section 504 enforcement activities relating to health care for handicapped infants indicate there is no significant evidence of a problem that the rule could reasonably be designed to deal with. As stated by the American Hospital Association:

The total absence of verifiable violations, notwithstanding hundreds of hotline calls, also compels the conclusion that either this mechanism is not an effective means to meet any alleged need or, as we believe to be the case, the violations that have been described are not occurring. In either case, a federal regulation is unnecessary.

Response

Rather than support the argument that there is no need for section 504 applicability or enforcement in connection with health care for handicapped infants, the OCR experience to date provides additional evidence that the assumption that handicapped infants will receive medically beneficial treatment is not always justified.

First, it must be noted that the vast majority of the several hundred calls made to the Department were not for the purpose of reporting suspected violations of section 504. Rather, the vast majority of calls were for administrative purposes, such as hospital officials asking questions about the provisions of the March interim final rule, individuals acting on their apparent curiosity to see if anyone would answer the telephone, and other peripheral

matters. It should also be noted that the Department's experience under the interim final rule does not provide an adequate basis to make conclusive judgements in any direction because the rule was only in effect for about three weeks, from March 22 until April 14, the day Judge Gesell declared it invalid.

Following is a summary of the Infant Doe cases handled to date, and current as of December 1, 1983.

1. *Bloomington, Indiana*. Investigation into April 1982, death of infant with Down's syndrome and esophageal atresia from whom surgery was withheld on the instructions of the parents. An investigation, delayed due to difficulties in obtaining information sealed by court order, has been conducted. Final administrative action has not yet been taken.

2. *Robinson, Illinois*. May 14, 1982 complaint that hospital (at the parents' request) failed to perform necessary surgery on an infant born with myelomeningocele. Prompt on-site investigation was conducted, involving OCR, the Justice Department and the state child protective services agency. The parents refused consent for surgery; the hospital referred the matter to state authorities, who accepted custody of the infant and arranged for surgery and adoption. The care provided to the infant while these actions were taken was in compliance with section 504. Finding: no violation.

3. *Madison, Wisconsin*. May 7, 1982, complaint that two infant survivors of abortions may have been denied treatment. On-site investigation revealed that two infants, of 26 and 22 weeks gestation, were born alive following abortions; life-saving procedures were applied: neither infant could survive due to extreme prematurity. Finding: no violation.

4. *Kettering, Ohio*. July 28, 1982, complaint that an infant with spina bifida and hydrocephalus was not being treated. Immediate on-site investigation revealed that surgery to correct the spina bifida condition was not performed immediately because the infant had medical complications. Surgery was performed after the infant's condition stabilized. The hospital provided all proper treatment. Finding: no violation.

5. *Barrington, Illinois*. September 17, 1982, complaint that a multi-handicapped infant was not receiving needed treatment. Immediate on-site investigation determined that given the nature and severity of the problems, there were no procedures or services which could have been provided which might have changed or otherwise

influenced the outcome for this infant, who died for days after birth. Finding: no violation.

6. *New Haven, Connecticut*. October 12, 1982, complaint (referred from the Department of Justice) that hospital engaged in a pattern and practice of denying medical treatment to handicapped infants. The complaint was included in a compliance review, already in progress. The investigation has been expanded to include several cases involving other Connecticut hospitals. The investigation, which has included review of hundreds of medical files, has not been completed.

7. *Tulsa, Oklahoma*. December 7, 1982, complaint that a baby was being deliberately dehydrated. Immediate on-site investigation determined that the infant had hydranencephaly (complete or almost complete absence of cerebral hemispheres) and transposition of the great vessels (reversal of main vessels into heart); notwithstanding all proper care, the severity of the anomalies made the prognosis very pessimistic. Finding: no violation.

8. *Duarte, California*. January 10, 1983, complaint that the hospital denied the complainant's son admission to the hospital for a bone marrow transplant solely because of his handicapping condition, Down's syndrome. An investigation has been conducted. Administrative action has not been completed.

9. *Austin, Texas*. January 17, 1983, complaint that newborn babies with serious birth defects have not received proper care. An investigation has been conducted. Administrative action has not been completed.

10. *Lansing, Michigan*. January 24, 1983, complaint that a handicapped infant born to a surrogate mother was treated for a streptococci infection over the objections of the father who had told the hospital not to care for the child. OCR inquiry determined the hospital took immediate steps to obtain an appropriate court order to assure that needed treatment was provided, notwithstanding objections from the father. Finding: no violation.

11. *San Antonio, Texas*. March 2, 1983, complaint that deaths of a number of infants at two hospitals may have been related to discriminatory withholding of care. OCR investigation postponed at request of District Attorney assisting in grand jury criminal investigation.

12. *Houston, Texas*. March 10, 1983, complaint that five infants were denied proper care in a neonatal intensive care unit. The investigation has not been completed.

13. *Jackson, Michigan*. March 14, 1983, complaint from a mother that her son,

who had Down's syndrome, died as a result of improper treatment. An investigation has been conducted. Administrative action not completed.

14. *Odessa, Texas*. March 18, 1983, hotline complaint that the hospital had failed to provide adequate medical care to a premature infant who died in 1982. On-site investigation and review of medical records by OCR medical consultant found that the infant, born March 18, 1982, after a 25-26-week gestation period, suffered from extreme immaturity, and died March 20, 1982. Finding: no violation.

15. *Nashville, Tennessee*. March 22, 1983, hotline complaint that an infant had been denied sustenance for three days. Immediate contact revealed the infant was not a patient at the facility and the alleged attending physician was not a member of the attending or resident medical staff. This was verified by the patient census data, the facility's physician roster, and contact with the county medical society. This case was administratively closed due to an insufficient complaint.

16. *Nashville, Tennessee*. March 22, 1983, anonymous hotline complaint that 10 children were not receiving adequate medical treatment. Immediate on-site investigation, including an OCR medical consultant, determined that no child was in imminent danger; all children were receiving nutritional sustenance; and all children were receiving proper care. Finding: no violation.

17. *Fayette, Alabama*. March 22, 1983, anonymous hotline complaint that a handicapped infant was denied nourishment and allowed to die in an Alabama hospital in December 1982. The caller could provide no other information. Investigation has been conducted. Administrative action awaiting report from medical consultant.

18. *Waxahachie, Texas*. March 23, 1983, anonymous hotline complaint that between Christmas and February, a premature infant was denied treatment and allowed to die at a hospital in Texas. An investigation has been conducted. Administrative action not yet completed.

19. *Baltimore, Maryland*. March 23, 1983, hotline complaint that a premature infant was not being provided nourishment and heat. An immediate on-site investigation determined that the infant, weight 1 lb., ½ ounce at birth, was pre-viable; the infant died several hours after birth; the infant had no congenital malformations or anomalies. Final administrative action on this case has not yet been taken.

20. *Newark, New Jersey*. March 27, 1983, anonymous hotline complaint that a premature infant, born as a result of a

third trimester abortion, was not receiving adequate care. Immediate on-site investigation revealed that the premature infant weighed about 700 grams, and showed few signs of life. The infant was aggressively resuscitated, placed on intravenous feeding, and provided other life supporting treatment. Appropriate care was being provided. Finding: no violation.

21. *Rochester, New York*. March 29, 1983, hotline complaint that Siamese twin infants were being denied treatment. Immediate on-site investigation determined that a team of specialists examined the infants and concluded the conjoined female infant would not survive any attempt to separate them. Full intensive care was provided. The infants were placed on a respirator and given antibiotics, fluid and the necessary nutrition. At the time of the on-site, March 29, 1983, it was determined that there was no basis for seeking emergency remedial action. Final administrative action has not yet been completed.

22. *Seattle, Washington*. March 30, 1983, hotline complaint that an infant was being denied food and water and would not live much longer than a day or two. The caller had no identifying or other information. Immediate on-site inquiry determined there were no infants at the facility meeting the description of the complaint. The case was administratively closed due to insufficient complaint.

23. *Miami, Florida*. April 4, 1983, hotline complaint alleging (based upon information in the newspaper) parents of a premature infant and the attending physician decided not to allow the infant to be resuscitated. Immediate inquiry determined the infant had died prior to receipt of the complaint. The premature infant had multiple catastrophic conditions, including complete liquefaction of the brain. Final administrative action awaiting report of medical consultant.

24. *Decatur, Alabama*. April 6, 1983, hotline complaint from a parent that her child's condition was misdiagnosed by a particular physician during a 2½ year period. Inquiry determined that the child suffers from food allergies; the prognosis is excellent, the child at one time was believed, apparently erroneously, to be retarded. This case was administratively closed because the inquiry failed to reveal information suggesting a possible violation of section 504.

25. *Melrose Park, Illinois*. April 8, 1983, anonymous hotline complaint. The caller provided no details concerning the infant's condition or treatment.

Immediate telephone inquiry discovered no information to suggest a section 504 violation. This case was administratively closed due to an insufficient complaint.

26. *Charlotte, North Carolina*. April 10, 1983, hotline complaint that a premature infant died in July 1979 due to withholding of treatment. The caller could not provide any other information. Due to the length of time since the alleged discriminatory act and the lack of specific information, this case was administratively closed due to an insufficient complaint.

27. *Hyde Park, New York*. April 13, 1983, anonymous hotline complaint that the hospital would have let a baby with Down's syndrome die if the parents had not been aggressive and insisted on care being provided. The caller could provide no identifying information. This case was administratively closed due to an insufficient complaint.

28. *Coquille, Oregon*. April 13, 1983, hotline complaint that parents of a handicapped infant and the attending physician were going to withhold all treatment. Immediate on-site investigation, including medical consultant's review of medical records, determined the infant had a severe congenital central nervous system defect incompatible with life and not amenable to surgical correction; hospital provided supportive care and attempted to provide fluid orally, but did not attempt to provide intravenous fluids or arrange immediate transfer to a tertiary level neonatal intensive care unit for more specialized evaluations. The OCR medical consultant and the specialists at the tertiary care facility to which the infant was transferred three days after birth concluded that no course of treatment which was available would have avoided imminent death of this infant; the most that could have been expected from more aggressive care would have been to prolong the act of dying. The infant died 10 days after birth. Finding: no violation.

29. *Athens, Tennessee*. April 18, 1983, anonymous hotline complaint that an infant born at 28 weeks gestation was denied treatment and nourishment and allowed to die at a Tennessee hospital. The caller could give no identifying information. Investigation has been conducted. Administrative action awaiting report of medical consultant.

30. *Shreveport, Louisiana*. April 20, 1983, hotline complaint that a particular physician at the hospital certified three infants born alive as stillborn and refused to provide care to another infant. Investigation, including medical consultant review, found no medically

beneficial treatment was withheld. Finding: no violation.

31. *Dayton, Ohio*. April 29, 1983, anonymous hotline complaint that an infant, identity unknown, weighing one pound and eight ounces was denied treatment and died. Inquiry revealed the deceased infant was premature (22 weeks gestation) and immature (organs were not developed); the infant had no anomalies; the hospital attempted to administer oxygen but the lungs were too small to function; no medically beneficial treatment was withheld. This case was administratively closed due to the lack of information suggesting possible violation of section 504.

32. *Los Angeles, California*. May 17, 1983, complaint that infant, believed stillborn, lived several hours and may not have received proper care. Administrative action has not been completed.

33. *Daytona Beach, Florida*. May 19, 1983, hotline complaint that an infant with spina bifida may not be receiving medical treatment. Immediate contact with hospital and state agency and prompt on-site investigation indicated that the parents did not consent to surgery for the infant; on May 18, eight days after birth, the state agency obtained a court order to provide surgery, which was performed May 22, 1983. An investigation has been conducted. Administrative action awaits report of medical consultant.

34. *Baton Rouge, Louisiana*. May 23, 1983, hotline complaint that medical services were denied a premature infant, who died soon after birth. Investigation has been conducted. Administrative action has not been completed.

35. *Colorado Springs, Colorado*. June 21, 1983, hotline complaint from a nurse that an infant with myelomeningocele and paralyzed vocal chords was being denied necessary surgery. Immediate on-site investigation indicated substantial uncertainty on whether treatment for the myelomeningocele would be provided immediately; physicians were providing nutrition and supportive care and were awaiting the results of several tests on the infant. During the afternoon, hospital personnel were advised that an on-site investigation would be initiated that evening; that the state child protective services agency would be asked to also investigate; and that OCR would notify the Justice Department of the investigation. Also during the afternoon, the OCR medical consultant discussed the case with the attending physician. That evening corrective surgery was performed on the myelomeningocele. Investigation, including review by medical consultant, determined that no

medically beneficial treatment was withheld on the basis of the infant's handicap. Finding: no violation.

36. *Brooklyn, New York*. June 23, 1983, complaint that premature infant who died in 1981 did not receive proper care. An investigation was conducted. Administrative action awaits report of medical consultant.

37. *Atlanta, Georgia*. June 27, 1983, hotline complaint that an infant, identity unknown, born with multiple anomalies was in a life-threatening situation because the doctors were planning to cease treatment of the infant. On-site investigation, June 28, indicated the premature infant, who weighed 950 grams at birth, received aggressive treatment, but the prognosis was not optimistic. At the time of the on-site investigation, it was determined there was no basis to seek emergency remedial action. Final administrative action is awaiting written report from medical consultant.

38. *Medford, Oregon*. July 7, 1983, anonymous hotline complaint that two infants died in 1982 because of improper medical treatment. The investigation has not been completed.

39. *Pinehurst, North Carolina*. July 21, 1983, hotline complaint that a three-week old infant with spina bifida and hydrocephalus would not live if surgical treatment was not provided. Immediate inquiry determined the appropriate surgery was performed July 8, 1983. Final administrative action has not been concluded.

40. *San Francisco, California*. August 2, 1983, hotline complaint that an infant with a cleft palate and heart defect was allowed to die at a California hospital in May 1979. The caller stated that a malpractice lawsuit is pending. The investigation has not been completed.

41. *Falls Church, Virginia*. August 9, 1983, hotline complaint that a baby, identity unknown, with possible brain damage, no ears or eyes, would not be given nourishment. A meeting with hospital officials failed to identify an infant meeting the description given by the complainant. An infant with somewhat similar circumstances was described; no information concerning this infant suggested a lack of appropriate care. Complainant refused to accept OCR calls seeking further information. This case was administratively closed due to an insufficient complaint.

42. *Wichita, Kansas*. August 11, 1983, complaint that infant whose body was discovered at incinerator site may have been denied proper treatment. An investigation has been conducted.

Administrative action has not been completed.

43. *Lincoln, Nebraska*. August 25, 1983, hotline complaint that two premature infants did not receive appropriate care and died. The investigation has not been completed.

44. *Boynton Beach, Florida*. September 20, 1983, hotline complaint that two handicapped infants were allowed to die immediately following birth. The investigation has not been completed.

45. *Norfolk, Virginia*. September 21, 1983, complaint that infant born alive following an abortion was not being fed or treated. Inquiry determined infant died September 20, 1983. Final administrative action has not been completed.

46. *Boise, Idaho*. September 30, 1983, hotline complaint that an abandoned premature infant with no brain tissue might be withdrawn from life support. Immediate inquiry determined the State child protective services agency had obtained custody of the infant and had no plans to discontinue life support. Final administrative action has not been completed.

47. *Philadelphia, Pennsylvania*. October 16, 1983, hotline complaint that infant, age approximately six weeks, with spina bifida, who received surgery, was not receiving appropriate follow-up care. Inquiry initiated October 16. Decision made that circumstances did not suggest need for immediate remedial action. Final administrative action has not been completed.

48. *Long Island, New York*. October 19, 1983, complaint, based on newspaper article, that infant with spina bifida not receiving surgery due to refusal of parents to consent; legal proceedings has been initiated in State court. Inquiry initiated October 19. On October 27, HHS asked Department of Justice to commence legal action to overcome refusal of hospital to permit review of pertinent records. On November 2, legal action was commenced. On November 17, district court ruled against the government. Appeal filed November 18.

49. *Phoenix, Arizona*. November 7, 1983 anonymous hotline complaint that infant with spina bifida and other conditions not receiving surgery. Immediate inquiry initiated; records obtained; OCR medical consultant discussed case with attending physician and hospital review committee. Decision made not to refer case to Justice Department for emergency remedial action. Final administrative action not yet completed.

The Department believes three of these cases demonstrate the utility of the procedural mechanisms called for in

the final rules. In the Robinson, Illinois case (listed as case 2, above), for example, the involvement of the state child protective services agency, working in cooperation with HHS and the Justice Department, was the most important element in bringing about corrective surgery for the infant. The state agency received a report from the hospital administrator pursuant to the state child protective services statute. Had there been no governmental involvement in the case, the outcome might have been much less favorable. Media reports one year later indicate the child's development was proceeding very well, with leg braces adequately compensating for the child's impairment.

In the Daytona Beach, Florida case (listed as case 33, above), action by the state child protective services agency, like that called for in the final rules, brought about needed corrective surgery. Without this action, the infant might have died or suffered more severe impairments.

In the Colorado Springs, Colorado case (listed as case 35, above) the prompt involvement of HHS, acting upon a complaint from a nurse, may have contributed to the decision to provide corrective surgery. Because the decisionmaking process was in progress at the time the OCR inquiry began, it is impossible to say the surgery would not have been provided without this involvement. However, the involvement of OCR and the OCR medical consultant was cooperatively received by the hospital and apparently constructive.

Although no case has resulted in a finding of discriminatory withholding of medical care, the Department believes these cases provide additional documentation of the need for governmental involvement and the appropriateness of the procedures established by the final rules.

E. OTHER ISSUES

Self-Evaluation

Among the questions on which the July 5 notice of proposed rulemaking solicited comments was question 1:

Should recipients providing health care services to infants be required to perform a self-evaluation, pursuant to 45 CFR 24.6(c)(1), with respect to their policies and practices concerning health services to handicapped infants?

A number of commenters expressed support for this requirement. Some commenters expressed the view that self-evaluations would be helpful and should be conducted, but they should not be a federal regulatory mandate. Some commenters suggested that if this were to be a requirement, it should be through mechanisms other than section

504, such as voluntary accreditation standards or Medicare conditions of participation.

Some commenters opposed a self-evaluation requirement on the grounds it would likely be unproductive. For example:

Americans United for Life is skeptical of any approach to the enforcement of section 504 that relies on the cooperation of those being regulated. Encouraging hospitals to perform "self-evaluation" is not likely to lead to accurate evaluation.

Response

The Department has not adopted a self-evaluation requirement as part of the final rules. The Department believes this function will be most effectively carried out in connection with the activities of Infant Care Review Committees encouraged by the final rules, and therefore will not seek to impose uniform standards for self-evaluations.

Information to Parents

Among the questions on which the July 5 notice of proposed rulemaking solicited comments was question 2:

Should such recipients be required to identify for parents of handicapped infants born in their facilities those public and private agencies in the geographical vicinity that provide services to handicapped infants?

A great many commenters expressed support for such a requirement on the ground that before parents are put into a position of having to make very difficult decisions concerning care for their handicapped child, the parents should be aware of the health and social services agencies and organizations and parental support groups available in the community. Other commenters opposed this requirement. Some commenters expressed the view that hospitals should provide this information as part of their own policies and procedures, but that it would be counterproductive to seek to impose rigid, uniform regulatory requirements in this regard.

Among those supporting such a requirement was the Spina Bifida Association of America (SBAA):

The SBAA strongly supports such a requirement; it might be the most important influential aspect of the entire regulation.

Parents of a newborn spina bifida child are expected to make rational life and death decisions when what was expected to be a joyous time has instead become an occasion for confronting the concerns of the unknown. The decisions must be made quickly and under great stress. Dr. Rosalyn Darling, a member of SBAA's Professional Advisory Committee, has written that decisions are often made by physicians and individuals who have very little contact with the

disabled community; consequently, decisions concerning treatment are often "stacked" against the newborn with a problem. Parents naturally turn to their physician for guidance, but he or she may have only outdated and unwarrantedly pessimistic information about spina bifida. Even if the physician is well-informed about the available treatment, he or she is rarely aware of the supportive services in the community or equipped to give the support and counselling that others who have gone through the same experience can't provide.

Clearly, new parents of a disabled child need the names of agencies and support groups available to assist the family unit. Other parents who have gone through the same situation can then share their knowledge of the disability and its treatment and give comfort and assistance.

The American Speech-Language-Hearing Association, which represents 39,000 speech-language pathologists and audiologists nationwide, stated:

[P]arents and physicians are largely unaware of what educational, habilitative, and rehabilitative services are available for handicapped children, how much success handicapped children receiving these services can have, the obligation of states to educate handicapped children, the extent of research now going on regarding handicapped children, and other federal, state and local governmental commitments to the handicapped. Unfortunately, physicians have all that they can do to maintain currency with medical information and are, therefore, frequently ill-informed as to what can be done for handicapped infants. . . .

* * * * *

. . . Recipients should be required to provide complete information to the parent about the appropriate handicap. This would include not only identification of public and private agencies that provide services to handicapped infants, but (1) detailed information on the handicap itself; (2) discussion of the educational and rehabilitation potential; (3) discussion of alternative care options such as foster homes, adoption, etc.; (4) identification of parent support groups; and (5) discussion of expectations for a self-sufficient future life. In providing the required information the recipient should use individuals knowledgeable about the handicap, including professionals, associations and parents of handicapped children. For example, the American Speech-Language-Hearing Association and its consumer affiliate, the National Association of Hearing and Speech Action (NAHSA) maintains a Help line (800-638-8255) that can be used to obtain information on (1) speech-language pathology and audiology services available in any area of the United States, (2) speech, language and hearing disorders, and (3) other agencies serving the communicatively handicapped. NAHSA provides informational brochures. . . . Many professional associations have similar documents that would be helpful to recipients.

Among those opposing a requirement that recipients provide information to

parents was Georgetown University Hospital, Washington, D.C. As an alternative, the hospital proposed:

DHHS should undertake the responsibility of providing a federal office charged with the task of identifying for parents of handicapped children those public and private agencies in the geographical vicinity of the parent's residence that provide service of handicapped infants, and for providing the necessary financial assistance to acquire such services. Hospitals should be required to furnish parents with a telephone number, and/or address of this federal office.

Response

The Department believes it is extremely important for parents of handicapped newborn infants to receive detailed information on the availability of health and social services for handicapped children in the communities. However, the Department has concluded the most effective way to advance this goal is not through an attempt to impose detailed regulatory requirements that would be very difficult to monitor and enforce.

Rather, the Department has undertaken several initiatives, discussed above in the preamble, to improve the furnishing of information to parents. In addition, this should be a central focus of the activities of the Infant Care Review Committees, which, under the model set forth in the final rules, include participation by representatives of disability groups or disability experts.

VI. Regulatory Information

Severability

It is the Secretary's intent that should any subsection, paragraph, clause, or provision of this rule be declared by a court of competent jurisdiction to be invalid, the remainder of the rule, not expressly so declared invalid, shall continue in effect.

Regulatory Impact Analysis

This proposed rule has been reviewed under Executive Order 12291. It is not a major rule as defined by the Order because it does not have an effect on the economy of \$100 million or more or meet the other definitional criteria contained in the Order, and thus does not require a regulatory impact analysis.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (Pub. L. 96-354) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. For each rule with a "significant impact on a substantial number of small entities" an analysis must be prepared describing the rule's impact on small entities.

The Secretary certifies that the final rules do not have a significant impact on a substantial number of small entities. As it relates to hospitals, the primary requirement of the final rules is to post an informational notice, which has no significant impact on the hospitals. The requirements concerning expedited access to records and expedited action to effect compliance also, as explained above, have no significant impact. Requirements in the final rules relating to state child protective services agencies have no substantial impact on those agencies, because those requirements, as explained above, are fully consistent with normal procedures of those agencies and existing regulatory requirements.

Matters addressed in the guidelines included in the final rules are not requirements of the rules. They reflect interpretations and procedures of the Department pursuant to the statute, existing regulations, and existing procedures.

Therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

Section 81.55(c) of the final rules contains information collection requirements. These requirements were submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1980, and approved for use through September 30, 1986. The OMB No. is 0990-0114.

Department of Justice Review

Pursuant to Executive Order 12250, these final rules have been reviewed and approved by the Department of Justice.

List of Subjects in 45 CFR Part 84

Civil rights, Education of handicapped, Handicapped, Physically handicapped.

Dated: December 30, 1983.

Approved:
Margaret M. Heckler,
Secretary.

PART 84--[AMENDED]

The authority citation for Part 84 is as follows:

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794974); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706); sec. 608, Education of the Handicapped Act (20 U.S.C. 1405), as amended by Pub. L. 94-142, 89 Stat. 795; sec. 321, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and

Rehabilitation Act of 1970, 84 Stat. 182 [42 U.S.C. 4581], as amended; sec. 497, Drug Abuse Office and Treatment Act of 1972, 86 Stat. 78 [21 U.S.C. 1174], as amended.

For the reasons set forth in the preamble:

1. 45 CFR Part 84 is amended by inserting after § 84.54 the following new § 84.55:

§ 84.55 Procedures relating to health care for handicapped infants.

(a) *Infant Care Review Committees.* The Department encourages each recipient health care provider that provides health care services to infants in programs receiving Federal financial assistance to establish an Infant Care Review Committee (ICRC) to assist the provider in delivering health care and related services to infants and in complying with this part. The purpose of the committee is to assist the health care provider in the development of standards, policies and procedures for providing treatment to handicapped infants and in making decisions concerning medically beneficial treatment in specific cases. While the Department recognizes the value of ICRC's in assuring appropriate medical care to infants, such committees are not required by this section. An ICRC should be composed of individuals representing a broad range of perspectives, and should include a practicing physician, a representative of a disability organization, a practicing nurse, and other individuals. A suggested model ICRC is set forth in paragraph (f) of this section.

(b) *Posting of informational notice.* (1) Each recipient health care provider that provides health care services to infants in programs or activities receiving Federal financial assistance shall post and keep posted in appropriate places an informational notice.

(2) The notice must be posted at location(s) where nurses and other medical professionals who are engaged in providing health care and related services to infants will see it. To the extent it does not impair accomplishment of the requirement that copies of the notice be posted where such personnel will see it, the notice need not be posted in area(s) where parents of infant patients will see it.

(3) Each health care provider for which the content of the following notice (identified as Notice A) is truthful may use Notice A. For the content of the notice to be truthful: (i) The provider must have a policy consistent with that stated in the notice; (ii) the provider must have a procedure for review of treatment deliberations and decisions to which the notice applies, such as (but

not limited to) an Infant Care Review Committee; and (iii) the statements concerning the identity of callers and retaliation are truthful.

Notice A:

PRINCIPLES OF TREATMENT OF DISABLED INFANTS

It is the policy of this hospital, consistent with Federal law, that, nourishment and medically beneficial treatment (as determined with respect for reasonable medical judgments) should not be withheld from handicapped infants solely on the basis of their present or anticipated mental or physical impairments.

This Federal law, section 504 of the Rehabilitation Act of 1973, prohibits discrimination on the basis of handicap in programs or activities receiving Federal financial assistance. For further information, or to report suspected noncompliance, call:

[Identify designated hospital contact point and telephone number] or

[Identify appropriate child protective services agency and telephone number] or

U.S. Department of Health and Human Services (HHS): 800-368-1019 (Toll-free; available 24 hours a day; TDD capability).

The identity of callers will be held confidential. Retaliation by this hospital against any person for providing information about possible noncompliance is prohibited by this hospital and Federal regulations.

(4) Health care providers other than those described in paragraph (b)(3) of this section must post the following notice (identified as Notice B):

Notice B:

PRINCIPLES OF TREATMENT OF DISABLED INFANTS

Federal law prohibits discrimination on the basis of handicap. Under this law, nourishment and medically beneficial treatment (as determined with respect for reasonable medical judgments) should not be withheld from handicapped infants solely on the basis of their present or anticipated mental or physical impairments.

This Federal law, section 504 of the Rehabilitation Act of 1973, applies to programs or activities receiving Federal financial assistance. For further information, or to report suspected noncompliance, call:

[Identify appropriate child protective services agency and telephone number] or

U.S. Department of Health and Human Services (HHS): 800-368-1019 (Toll-free; available 24 hours a day; TDD capability)

The identity of callers will be held confidential. Federal regulations prohibit retaliation by this hospital against any person who provides information about possible violations.

(5) The notice may be no smaller than 5 by 7 inches, and the type size no smaller than that generally used for similar internal communications to staff. The recipient must insert the specified information on the notice it selects. Recipient hospitals in Washington, D.C. must list 863-0100 as the telephone

number for HHS. No other alterations may be made to the notice. Copies of the notices may be obtained from the Department of Health and Human Services upon request, or the recipient may produce its own notices in conformance with the specified wording.

(c) *Responsibilities of recipient state child protective services agencies.* (1) Within 60 days of the effective date of this section, each recipient state child protective services agency shall establish and maintain in written form methods of administration and procedures to assure that the agency utilizes its full authority pursuant to state law to prevent instances of unlawful medical neglect of handicapped infants. These methods of administration and procedures shall include:

(i) A requirement that health care providers report on a timely basis to the state agency circumstances which they determine to constitute known or suspected instances of unlawful medical neglect of handicapped infants;

(ii) A method by which the state agency can receive reports of suspected unlawful medical neglect of handicapped infants from health care providers, other individuals, and the Department on a timely basis;

(iii) Immediate review of reports of suspected unlawful medical neglect of handicapped infants and, where appropriate, on-site investigation of such reports;

(iv) Provision of child protective services to such medically neglected handicapped infants, including, where appropriate, seeking a timely court order to compel the provision of necessary nourishment and medical treatment; and

(v) Timely notification to the responsible Department official of each report of suspected unlawful medical neglect involving the withholding, solely on the basis of present or anticipated physical or mental impairments, of treatment or nourishment from a handicapped infant who, in spite of such impairments, will medically benefit from the treatment or nourishment, the steps taken by the state agency to investigate such report, and the state agency's final disposition of such report.

(2) Whenever a hospital at which an infant who is the subject of a report of suspected unlawful medical neglect is being treated has an Infant Care Review Committee (ICRC) the Department encourages the state child protective services agency to consult with the ICRC in carrying out the state agency's authorities under its state law and methods of administration. In developing its methods of

administration and procedures, the Department encourages child protective services agencies to adopt guidelines for investigations similar to those of the Department regarding the involvement of ICRC's.

(The provisions of § 84.55(c) have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act. The OMB No. is 0990-0114.)

(d) *Expedited access to records.* Access to pertinent records and facilities of a recipient pursuant to 45 CFR 80.6(c) (made applicable to this part by 45 CFR 84.61) shall not be limited to normal business hours when, in the judgment of the responsible Department official, immediate access is necessary to protect the life or health of a handicapped individual.

(e) *Expedited action to affect compliance.* The requirement of 45 CFR 80.8(d)(3) pertaining to notice to recipients prior to the initiation of action to effect compliance (made applicable to this part by 45 CFR 84.61) shall not apply when, in the judgment of the responsible Department official, immediate action to effect compliance is necessary to protect the life or health of a handicapped individual. In such cases the recipient will, as soon as practicable, be given oral or written notice of its failure to comply, of the action to be taken to effect compliance, and its continuing opportunity to comply voluntarily.

(f) *Model Infant Care Review Committee.* Recipient health care providers wishing to establish Infant Care Review Committees should consider adoption of the following model. This model is advisory. Recipient health care providers are not required to establish a review committee or, if one is established, to adhere to this model. In seeking to determine compliance with this part, as it relates to health care for handicapped infants, by health care providers that have an ICRC established and operated substantially in accordance with this model, the Department will, to the extent possible, consult with the ICRC.

(1) *Establishment and purpose.* (i) The hospital establishes an Infant Care Review Committee (ICRC) or joins with one or more other hospitals to create a joint ICRC. The establishing document will state that the ICRC is for the purpose of facilitating the development and implementation of standards, policies and procedures designed to assure that, while respecting reasonable medical judgments, treatment and nourishment not be withheld, solely on the basis of present or anticipated physical or mental impairments, from

handicapped infants who, in spite of such impairments, will benefit medically from the treatment or nourishment.

(ii) The activities of the ICRC will be guided by the following principles:

(A) The interpretative guidelines of the Department relating to the applicability of this part to health care for handicapped infants.

(B) As stated in the "Principles of Treatment of Disabled Infants" of the coalition of major medical and disability organizations, including the American Academy of Pediatrics, National Association of Children's Hospitals and Related Institutions, Association for Retarded Citizens, Down's Syndrome Congress, Spina Bifida Association, and others:

When medical care is clearly beneficial, it should always be provided. When appropriate medical care is not available, arrangements should be made to transfer the infant to an appropriate medical facility. Consideration such as anticipated or actual limited potential of an individual and present or future lack of available community resources are irrelevant and must not determine the decisions concerning medical care. The individual's medical condition should be the sole focus of the decision. These are very strict standards.

It is ethically and legally justified to withhold medical or surgical procedures which are clearly futile and will only prolong the act of dying. However, supportive care should be provided, including sustenance as medically indicated and relief of pain and suffering. The needs of the dying person should be respected. The family also should be supported in its grieving.

In cases where it is uncertain whether medical treatment will be beneficial, a person's disability must not be the basis for a decision to withhold treatment. At all times during the process when decisions are being made about the benefit or futility of medical treatment, the person should be cared for in the medically most appropriate ways. When doubt exists at any time about whether to treat, a presumption always should be in favor of treatment.

(C) As stated by the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research:

This [standard for providing medically beneficial treatment] is a very strict standard in that it excludes consideration of the negative effects of an impaired child's life on other persons, including parents, siblings, and society. Although abiding by this standard may be difficult in specific cases, it is all too easy to undervalue the lives of handicapped infants; the Commission finds it imperative to counteract this by treating them no less vigorously than their healthy peers or than older children with similar handicaps would be treated.

(iii) The ICRC will carry out its purposes by:

(A) Recommending institutional policies concerning the withholding or withdrawal of medical or surgical treatments to infants, including guidelines for ICRC action for specific categories of life-threatening conditions affecting infants;

(B) Providing advice in specific cases when decisions are being considered to withhold or withdraw from infant life-sustaining medical or surgical treatment; and

(C) Reviewing retrospectively on a regular basis infant medical records in situations in which life-sustaining medical or surgical treatment has been withheld or withdrawn.

(2) *Organization and staffing.* The ICRC will consist of at least 7 members and include the following:

(i) A practicing physician (e.g., a pediatrician, a neonatologist, or a pediatric surgeon),

(ii) A practicing nurse,

(iii) A hospital administrator,

(iv) A representative of the legal profession,

(v) A representative of a disability group, or a developmental disability expert,

(vi) A lay community member, and

(vii) A member of a facility's organized medical staff, who shall serve as chairperson.

In connection with review of specific cases, one member of the ICRC shall be designated to act as "special advocate" for the infant, as provided in paragraph (f)(3)(ii)(E) of the section. The hospital will provide staff support for the ICRC, including legal counsel. The ICRC will meet on a regular basis, or as required below in connection with review of specific cases. It shall adopt or recommend to the appropriate hospital official or body such administrative policies as terms of office and quorum requirements. The ICRC will recommend procedures to ensure that both hospital personnel and patient families are fully informed of the existence and functions of the ICRC and its availability on a 24-hour basis.

(3) *Operation of ICRC—(i) Prospective policy development.* (A) The ICRC will develop and recommend for adoption by the hospital institutional policies concerning the withholding or withdrawal of medical treatment for infants with life-threatening conditions. These will include guidelines for management of specific types of cases or diagnoses, for example, Down's syndrome and spina bifida, and procedures to be followed in such recurring circumstances as, for example, brain death and parental refusal to consent to life-saving treatment. The

hospital, upon recommendation of the ICRC, may require attending physicians to notify the ICRC of the presence in the facility of an infant with a diagnosis specified by the ICRC, e.g., Down's syndrome and spina bifida.

(B) In recommending these policies and guidelines, the ICRC will consult with medical and other authorities on issues involving disabled individuals, e.g., neonatologists, pediatric surgeons, county and city agencies which provide services for the disabled, and disability advocacy organizations. It will also consult with appropriate committees of the medical staff, to ensure that the ICRC policies and guidelines build on existing staff by-laws, rules and regulations concerning consultations and staff membership requirements. The ICRC will also inform and educate hospital staff on the policies and guidelines it develops.

(ii) *Review of specific cases.* In addition to regularly scheduled meetings, interim ICRC meetings will take place under specified circumstances to permit review of individual cases. The hospital will, to the extent possible, require in each case that life-sustaining treatment be continued, until the ICRC can review the case and provide advice.

(A) Interim ICRC meetings will be convened within 24 hours (or less if indicated) when there is disagreement between the family of an infant and the infant's physician as to the withholding or withdrawal of treatment, when a preliminary decision to withhold or withdraw life-sustaining treatment has been made in certain categories of cases identified by the ICRC, when there is disagreement between members of the hospital's medical and/or nursing staffs, or when otherwise appropriate.

(B) Such interim ICRC meetings will take place upon the request of any member of the ICRC or hospital staff or parent or guardian of the infant. The ICRC will have procedures to preserve the confidentiality of the identity of persons making such requests, and such persons shall be protected from reprisal. When appropriate, the ICRC or a designated member will inform the requesting individual of the ICRC's recommendation.

(C) The ICRC may provide for telephone and other forms of review when the timing and nature of the case, as identified in policies developed by the ICRC, make the convening of an interim meeting impracticable.

(D) Interim meetings will be open to the affected parties. The ICRC will ensure that the interests of the parents, the physician, and the child are fully considered; that family members have

been fully informed of the patient's condition and prognosis; that they have been provided with a listing which describes the services furnished by parent support groups and public and private agencies in the geographic vicinity to infants with conditions such as that before the ICRC; and that the ICRC will facilitate their access to such services and groups.

(E) To ensure a comprehensive evaluation of all options and factors pertinent to the committee's deliberations, the chairperson will designate one member of the ICRC to act, in connection with that specific case, as special advocate for the infant. The special advocate will seek to ensure that all considerations in favor of the provision of life-sustaining treatment are fully evaluated and considered by the ICRC.

(F) In cases in which there is disagreement on treatment between a physician and an infant's family, and the family wishes to continue life-sustaining treatment, the family's wishes will be carried out, for as long as the family wishes, unless such treatment is medically contraindicated. When there is physician/family disagreement and the family refuses consent to life-sustaining treatment, and the ICRC, after due deliberation, agrees with the family, the ICRC will recommend that the treatment be withheld. When there is physician/family disagreement and the family refuses consent, but the ICRC disagrees with the family, the ICRC will recommend to the hospital board or appropriate official that the case be referred immediately to an appropriate court or child protective agency, and every effort shall be made to continue treatment, preserve the status quo, and prevent worsening of the infant's condition until such time as the court or agency renders a decision or takes other appropriate action. The ICRC will also follow this procedure in cases in which the family and physician agree that life-sustaining treatment should be withheld or withdrawn, but the ICRC disagrees.

(iii) *Retrospective record review.* The ICRC, at its regularly-scheduled meeting, will review all records involving withholding or termination of medical or surgical treatment to infants consistent with hospital policies developed by the ICRC, unless the case was previously before the ICRC pursuant to paragraph (f)(3)(ii) of this section. If the ICRC finds that a deviation was made from the institutional policies in a given case, it shall conduct a review and report the findings to appropriate hospital personnel for appropriate action.

(4) *Records.* The ICRC will maintain records of all of its deliberations and summary descriptions of specific cases considered and the disposition of those cases. Such records will be kept in accordance with institutional policies on confidentiality of medical information. They will be made available to appropriate government agencies, or upon court order, or as otherwise required by law.

Amendment to Table of Contents

2. The table of contents to 45 CFR Part 84 is amended by striking the designation of "84.55-84.60 [Reserved]" and by inserting in lieu thereof, the following:

Sec.
84.55 Procedures relating to health care for
handicapped infants.
84.56-84.60 [Reserved]

3. 45 CFR Part 84 is amended by inserting after Appendix B the following new appendix:

Appendix C—Guidelines Relating to Health Care for Handicapped Infants.

(a) *Interpretative guidelines relating to the applicability of this part to health care for handicapped infants.* The following are interpretative guidelines of the Department set forth here to assist recipients and the public in understanding the Department's interpretation of section 504 and the regulations contained in this part as applied to matters concerning health care for handicapped infants. These interpretative guidelines are illustrative; they do not independently establish rules of conduct.

(1) With respect to programs and activities receiving Federal financial assistance, health care providers may not, solely on the basis of present or anticipated physical or mental impairments of an infant, withhold treatment or nourishment from the infant who, in spite of such impairments, will medically benefit from the treatment or nourishment.

(2) Futile treatment or treatment that will do no more than temporarily prolong the act of dying of a terminally ill infant is not considered treatment that will medically benefit the infant.

(3) In determining whether certain possible treatments will be medically beneficial to an infant, reasonable medical judgments in selecting among alternative courses of treatment will be respected.

(4) Section 504 and the provisions of this part are not applicable to parents (who are not recipients of Federal financial assistance). However, each recipient health care provider must in all aspects of its health care programs receiving Federal financial assistance provide health care and related services in a manner consistent with the requirements of section 504 and this part. Such aspects includes decisions on whether to report, as required by State law or otherwise, to the appropriate child protective services agency a suspected instance of medical neglect of a child, or to take other

action to seek review or parental decisions to withhold consent for medically indicated treatment. Whenever parents make a decision to withhold consent for medically beneficial treatment or nourishment, such recipient providers may not, solely on the basis of the infant's present or anticipated future mental or physical impairments, fail to follow applicable procedures on reporting such incidents to the child protective services agency or to seek judicial review.

(5) The following are examples of applying these interpretative guidelines. These examples are stated in the context of decisions made by recipient health care providers. Were these decisions made by parents, the guideline stated in section (a)(4) would apply. These examples assume no facts or complications other than those stated. Because every case must be examined on its individual facts, these are merely illustrative examples to assist in understanding the framework for applying the nondiscrimination requirements of section 504 and this part.

(i) Withholding of medically beneficial surgery to correct an intestinal obstruction in an infant with Down's Syndrome when the withholding is based upon the anticipated future mental retardation of the infant and there are no medical contraindications to the surgery that would otherwise justify withholding the surgery would constitute a discriminatory act, violative of section 504.

(ii) Withholding of treatment for medically correctable physical anomalies in children born with spina bifida when such denial is based on anticipated mental impairment paralysis or incontinence of the infant, rather than on reasonable medical judgments that treatment would be futile, too unlikely of success given complications in the particular case, or otherwise not of medical benefit to the infant, would constitute a discriminatory act, violative of section 504.

(iii) Withholding of medical treatment for an infant born with anencephaly, who will inevitably die within a short period of time, would not constitute a discriminatory act because the treatment would be futile and do no more than temporarily prolong the act of dying.

(iv) Withholding of certain potential treatments from a severely premature and low birth weight infant on the grounds of reasonable medical judgments concerning the improbability of success or risks of potential harm to the infant would not violate section 504.

(b) *Guidelines for HHS investigations relating to health care for handicapped infants.* The following are guidelines of the Department in conducting investigations relating to health care for handicapped infants. They are set forth here to assist recipients and the public in understanding applicable investigative procedures. These guidelines do not establish rules of conduct, create or affect legally enforceable rights of any person, or modify existing rights, authorities or responsibilities pursuant to this

part. These guidelines reflect the Department's recognition of the special circumstances presented in connection with complaints of suspected life-threatening noncompliance with this part involving health care for handicapped infants. These guidelines do not apply to other investigations pursuant to this part, or other civil rights statutes and rules. Deviations from these guidelines may occur when, in the judgment of the responsible Department official, other action is necessary to protect the life or health of a handicapped infant.

(1) Unless impracticable, whenever the Department receives a complaint of suspected life-threatening noncompliance with this part in connection with health care for a handicapped infant in a program or activity receiving Federal financial assistance, HHS will immediately conduct a preliminary inquiry into the matter by initiating telephone contact with the recipient hospital to obtain information relating to the condition and treatment of the infant who is the subject of the complaint. The preliminary inquiry, which may include additional contact with the complainant and a requirement that pertinent records be provided to the Department, will generally be completed within 24 hours (or sooner if indicated) after receipt of the complaint.

(2) Unless impracticable, whenever a recipient hospital has an Infant Care Review Committee, established and operated substantially in accordance with the provisions of 45 CFR 84.55(f), the Department will, as part of its preliminary inquiry, solicit the information available to, and the analysis and recommendations of, the ICRC. Unless, in the judgment of the responsible Department official, other action is necessary to protect the life or health of a handicapped infant, prior to initiating an on-site investigation, the Department will await receipt of this information from the ICRC for 24 hours (or less if indicated) after receipt of the complaint. The Department may require a subsequent written report of the ICRC's findings, accompanied by pertinent records and documentation.

(3) On the basis of the information obtained during preliminary inquiry, including information provided by the hospital (including the hospital's ICRC, if any), information provided by the complainant, and all other information obtained, the Department will determine whether there is a need for an on-site investigation of the complaint. Whenever the Department determines that doubt remains that the recipient hospital or some other recipient is in compliance with this part or additional documentation is desired to substantiate a conclusion, the Department will initiate an on-site investigation or take some other appropriate action. Unless impracticable, prior to initiating an on-site investigation, the Department's medical consultant (referred to in paragraph 6) will contact the hospital's ICRC or appropriate medical personnel of the recipient hospital.

(4) In conducting on-site investigations, when a recipient hospital has an ICRC established and operated substantially in accordance with the provisions of 45 CFR 84.55(f), the investigation will begin with, or include at the earliest practicable time, a meeting with the ICRC or its designees. In all on-site investigations, the Department will make every effort to minimize any potential inconvenience or disruption, accommodate the schedules of health care professionals and avoid making medical records unavailable. The Department will also seek to coordinate its investigation with any related investigations by the state child protective services agency so as to minimize potential disruption.

(5) It is the policy of the Department to make no comment to the public or media regarding the substance of a pending preliminary inquiry or investigation.

(6) The Department will obtain the assistance of a qualified medical consultant to evaluate the medical information (including medical records) obtained in the course of a preliminary inquiry or investigation. The name, title and telephone number of the Department's medical consultant will be made available to the recipient hospital. The Department's medical consultant will, if appropriate, contact medical personnel of the recipient hospital in connection with the preliminary inquiry, investigation or medical consultant's evaluation. To the extent practicable, the medical consultant will be a specialist with respect to the condition of the infant who is the subject of the preliminary inquiry or investigation. The medical consultant may be an employee of the Department or another person who has agreed to serve, with or without compensation, in that capacity.

(7) The Department will advise the recipient hospital of its conclusions as soon as possible following the completion of a preliminary inquiry or investigation. Whenever final administrative findings following an investigation of a complaint of suspected life-threatening noncompliance cannot be made promptly, the Department will seek to notify the recipient and the complainant of the Department's decision on whether the matter will be immediately referred to the Department of Justice pursuant to 45 CFR 80.8

(8) Except as necessary to determine or effect compliance, the Department will (i) in conducting preliminary inquiries and investigations, permit information provided by the recipient hospital to the Department to be furnished without names or other identifying information relating to the infant and the infant's family; and (ii) to the extent permitted by law, safeguard the confidentiality of information obtained.

[FR Doc. 84-799 Filed 1-9-84; 1:00 pm]

BILLING CODE 4150-04-M

Thursday
January 12, 1984

Part IV

**Environmental
Protection Agency**

40 CFR Parts 7 and 12

**Nondiscrimination in Programs Receiving
Federal Assistance From the
Environmental Protection Agency; Final
Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 7 and 12

[FRL 2420-4]

Nondiscrimination in Programs Receiving Federal Assistance From the Environmental Protection Agency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule implements statutes which prohibit discrimination on the grounds of race, color, national origin, sex and handicap. Instead of a separate rule to implement each statute, this consolidated rule includes all requirements of the statutes and clarifies the requirements imposed on EPA assistance (see Appendix for partial listing).

When implemented, this regulation will streamline the administrative requirements currently imposed on recipients of agency funds by multiple nondiscrimination regulations. In addition, it will strengthen agency monitoring efforts by eliminating redundancy and refining compliance procedures.

EFFECTIVE DATE: February 13, 1984.

FOR FURTHER INFORMATION CONTACT: Nathaniel Scurry, Director, Office of Civil Rights (A-105), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 382-4575 (voice) or TDD (202) 382-4565. Copies of the rule will also be available in Braille at EPA Headquarters and each EPA Regional Office.

SUPPLEMENTARY INFORMATION: This rule revises the EPA regulation implementing Title VI of the Civil Rights Act of 1964, as amended, published in the Federal Register on July 5, 1973 (40 CFR Part 7), and incorporates the regulation implementing Section 13 of the Federal Water Pollution Control Act Amendment of 1972 (Pub. L. 92-500), published by EPA on September 13, 1974 (40 CFR Part 12), which prohibits sex discrimination in all EPA assisted programs under the Federal Water Pollution Control Act. This rule consolidates EPA's handicap and sex nondiscrimination requirements into 40 CFR Part 7; 40 CFR Part 12 is being removed.

Title IX of the Education Amendments of 1972 (relating to nondiscrimination on the basis of sex in educational programs) is not addressed in this regulation. Under 40 CFR Part 30, however, recipients of EPA assistance must comply with Title IX, if applicable.

This rule was proposed in the Federal Register on January 8, 1981 (46 FR 2306) and the comment period ended on March 9, 1981. Extensive comments from the EPA Program Offices and the Department of Justice (DOJ) have been incorporated in this final rule. Further, the requirements covering Section 504 of the Rehabilitation Act of 1973 as amended, comport with the coordination guidelines established by the Department of Health, Education, and Welfare and transferred to the Department of Justice by Executive Order 12250 as they are interpreted by the Department of Justice. The proposed rule contained provisions on Age discrimination that are not included in this final rule because they have not been approved by HHS. This rule will be amended to include those provisions when HHS approval is obtained. This final rule deviates to some extent from the proposed rule to accommodate the above. Changes to Subpart C, Discrimination Prohibited on the Basis of Handicap, were made in reliance on guidance and advice given by the Department of Justice pursuant to its responsibilities under Executive Order 12250 in order to reflect what judicial precedent requires. Rationale relative to reformating, as well as the substantive comments received, follow:

Subpart A of this regulation sets forth the purpose of the regulation and general definitions. We have moved former paragraph (a) of § 7.20, Agency responsibilities, to Subpart E, Agency Compliance Procedures, as § 7.105, General policy. Since this paragraph summarized EPA's compliance policy, this was a logical move. Throughout the rule we changed "Assistance Approving Official" to "Award Official" to more accurately describe the function. One commenter considered the definition of "Facility" to be too broad. We have changed the definition to make it less broad, and have described limitations to it under our comments relating to Subpart D, Requirements for Applicants and Recipients.

One commenter recommended that the definition of Hispanic be expanded to include persons of Portuguese origin. We cannot accept this recommendation. The basic racial and ethnic categories for all federal data collection and reporting purposes are established by Directive 15 of the Office of Federal Statistical Policy and Standards, whose function is now in the Office of Information and Regulatory Affairs, Office of Management and Budget, 43 FR 19260. The Department of Justice's Title VI coordination regulation (28 CFR 42.401 to 42.415) also requires that these categories be used.

Subpart B describes the prohibitions against all forms of discrimination covered by this regulation except discrimination against handicapped persons. We made editorial changes for reasons of clarity.

Within Subpart C, Discrimination Prohibited on the Basis of Handicap, we have responded to several comments which described certain provisions of the proposed Subpart as confusing, particularly those dealing with accessibility.

Paragraph (a)(2) of § 7.65 codifies recent case law that defines the scope of a recipient's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement a recipient is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on circuit court applications of the Court's statement in *Davis* that section 504 does not require modification that would result in "undue financial and administrative burdens." 442 U.S. at 412; see, e.g., *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis* (APTA), 655 F.2d 1272 (D.C. Cir. 1981). In *APTA* the United States Court of Appeals for the District of Columbia applied the *Davis* language and invalidated the section 504 regulations of the Department of Transportation. The court in *APTA* noted "that at some point a transit system's refusal to take modest affirmative steps to accommodate handicapped persons might well violate section 504. But DOT's rules do not mandate only modest expenditures. The regulations require extensive modifications of existing systems and impose extremely heavy financial burdens on local transit authorities." 655 F.2d at 1278.

The inclusion of paragraph (a)(2) is an effort to conform the agency's implementation of section 504 to the Supreme Court interpretation of the statute in *Davis* as well as to the decisions of lower courts following the *Davis* opinion. This paragraph acknowledges, in light of recent case law, that in some situations, certain accommodations for a handicapped person may so alter recipients' programs or activities, or entail such extensive costs and administrative burdens, that

the refusal to undertake their accommodations is not discriminatory. The failure to include such a provision reflecting judicial interpretation of section 504 could lead to judicial invalidation of the regulation or reversal of particular enforcement actions taken under the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve a recipient of all obligations to handicapped persons. Although a recipient is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that handicapped persons receive the benefits and services of the federally assisted program or activity.

New paragraph (e) of section 7.65 states that alterations to existing facilities need not be undertaken when they are structurally or financially not feasible.

Paragraph (b) of § 7.70, New construction, stipulates the effective date of applicable accessibility requirements on design of new construction.

New paragraph (d) of § 7.70, New construction, excludes certain types of areas of EPA projects from the accessibility requirement. We anticipate use of this exemption only in those instances where a facility or portion of a facility is not visited by the public or beneficiaries and where, because of the nature of the facility and the requirements of the jobs there, it is not likely that persons with particular handicaps could meet the physical requirements for those jobs, even with reasonable accommodation. In those instances, the areas in question would not have to be accessible to persons with those handicaps. For example, elevator access need not be provided in a sewage treatment plant for certain areas associated with the treatment process because of the potential hazards that exist and because full mobility may be necessary to perform some of the essential functions of the jobs in those areas. Providing accessibility for wheelchair users in these areas would impose an undue hardship on the operation of the recipient's activity. Recipients would be required to provide accessibility for persons with other handicaps, such as hearing impairments, who could perform jobs in treatment areas without creating safety or health hazards. However, separate administrative or laboratory areas in the same facility must be accessible to persons in wheelchairs.

EPA and recipients should not, of course, make blanket assumptions that handicapped persons cannot perform jobs in particular areas, but should consult with handicapped persons and their representative organizations in determining how facilities can be designed to provide employment opportunities. EPA and recipients should consult with the Equal Employment Opportunity Commission (EEOC) for guidance on the scope of this exemption as it relates to employment opportunities. The EEOC has responsibility for coordinating the federal effort to enforce the federal equal employment opportunity law (E.O. 12067, 43 CFR 28967). We have also followed the suggestions of several commenters to establish timeframes for compliance with accessibility requirements.

One commenter thought that the proposed rule did not sufficiently specify requirements to accommodate handicapped people. We have chosen to leave the specifics to the particular situation as it arises. Reasonable accommodation is required. To determine specifically what is necessary for any particular program is left to the judgment of the program management as guided by this regulation.

One of the major difficulties EPA has encountered in attempting to define "reasonable accommodation" is that each form of impairment of handicapped employees or persons seeking employment requires different methods of accommodation to achieve equality of opportunity with the nonimpaired. It would neither be practical to list every form of accommodation that would achieve this end, nor to dictate a uniform degree of accommodation based upon cost. Finally, certain programs, such as construction grants for wastewater treatment works, create employment opportunities which expose employees to high risks of injury. The ability to perform safely is an essential function of any hazardous job, and a recipient may consider dangers to employees as a factor in determining whether an accommodation is reasonable. In all cases where qualified handicapped persons are employed by or seek employment from EPA assisted recipients, recipients will be expected to extend such employment opportunities as may be available to persons within the limits of coverage of Subpart C, unless the recipient can demonstrate that such accommodation would impose an undue hardship on its operation. The standards of the Department of Justice in 28 CFR Part 42.511 which defines "reasonable accommodation," will be

used to determine whether accommodation should be made by the recipient. Several Federal circuit courts have ruled that employment is covered by section 504 only where a primary purpose of the assistance is to provide employment. *Scanlon v. Atascadero State Hospital*, 677 F.2d 1271 (9th Cir. 1982); *United States v. Cabrini Medical Center*, 639 F.2d 908 (2d Cir. 1981); *Carmi v. Metropolitan St. Louis Sewer District*, 620 F.2d 672 (8th Cir. 1980), cert. denied, 449 U.S. 892 (1980); *Trageser v. Libbie Rehabilitation Center, Inc.*, 590 F.2d 87 (4th Cir. 1978), cert. denied, 442 U.S. 947 (1979). However, the Third and Eleventh Circuit Courts of Appeals have recently held that section 504 generally applies to employment. *Le Strange v. Consolidated Rail Corp.*, 687 F.2d 767 (3rd Cir. 1982) cert. granted, 51 U.S.L.W. 3593 (U.S., Feb. 22, 1983), (No. 82-862); *Jones v. Metropolitan Atlanta Rapid Transit Authority*, 681 F.2d 1376 (11th Cir. 1982), pet. for cert. filed, 51 U.S.L.W. 3535 (U.S., Jan. 11, 1983) (No. 82-1159).

Pending further clarification of the law, Subpart C will not be enforced with respect to employment where employment is not a primary purpose of the EPA assistance in States located in the Second, Fourth, Eighth, and Ninth Circuits (New York, Connecticut, Vermont, Maryland, North Carolina, South Carolina, Virginia, West Virginia, Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, Guam, and Hawaii).

Subpart D sets forth the procedures applicants and recipients must follow for EPA to determine whether they are in compliance with this regulation.

Section 7.80 describes the requirements for applicants. Paragraph (a) of this section provides that all applicants must submit an assurance that the assisted program or activity will not involve any discrimination prohibited by this Part. Paragraph (b) of this section clarifies that construction grant applicants must also submit a compliance report, EPA Form 4700-4. These are mandatory requirements for applicants and will, we expect, provide the basis on which EPA will make the majority of preaward compliance determinations. However, the Office of Civil Rights (OCR), if unable to make a determination based only on such submissions, may request additional information from the applicant or others in accordance with paragraph (a)(1) of § 7.80. Pursuant to the DOJ Coordination Regulation, Paragraph (c) has been added to require submission of compliance information from applicants.

The information required includes notice of any pending lawsuits alleging discrimination by the applicant in the program or activity that would be the subject of the EPA assistance. It also solicits a description of applications to, or current assistance from, other federal agencies for the same program or activity that EPA would assist and a statement on any compliance reviews conducted for that program or activity during the two years before the EPA application.

Section 7.85 describes the compliance information that EPA recipients must collect, maintain, and, on request, submit to EPA. Several commenters requested clarification of the proposed requirements. One criticized the section for providing too little guidance and requested a "more clear, detailed description" of the information that should be collected. In response to this, we have reordered sections of Subpart D of the final rule to make it more descriptive and inclusive and have expanded some provisions for clarity. Paragraph (a) of this section provides that a recipient must collect and maintain four basic categories of information, namely: information concerning lawsuits pending against the recipient that allege discrimination this Part prohibits; information concerning complaints of alleged discrimination filed with the recipient; data showing the racial/ethnic, national origin, sex, and handicap condition of beneficiaries of the recipient's program; and reports of compliance reviews conducted by other agencies. A recipient may also be required to collect and maintain such other information as the OCR determines to be necessary to assure compliance. Paragraph (d) of this section describes the factors that a recipient must take into account in developing such information. Paragraph (e) of this section requires a recipient to retain compliance information for a certain period and to make such information available to EPA and the public, upon request. While recipients are not required to submit routine compliance reports, they must have the information available to submit if requested by EPA.

Several commenters expressed concern over whether Part 7 applied to all the facilities and operations of an EPA applicant/recipient or only to those facilities and operations directly connected with or employed in furthering the project objectives. Part 7 applies only to those facilities, operations, and activities of a recipient that receive EPA assistance. If a recipient received assistance under an EPA statute, the purpose and scope of

which is to assist the entire operation of the recipient, then the entire range of the recipient's facilities, operations, and activities become subject to the civil rights statutes implemented by this regulation.

Several commenters were confused about our intent when we used the term "subrecipient" in the proposed rule in § 7.75 Compliance reports. It is our intent that the entity actually implementing the EPA assisted program comply with the requirements of this Part and be able to give assurance of such compliance with respect to such program. To clarify our intent we have eliminated the term "subrecipient."

In response to the comment which asked if proposed § 7.75 required a recipient to keep a log of "service" complaints (as well as employment complaints) when such complaints were maintained by another city agency, those requirements (now appearing under § 7.85) would be met if the recipient can provide the required data upon request to EPA or an interested party.

One commenter suggested that EPA's monitoring of compliance would be improved if we required recipients to identify any discriminatory policies or practices and indicate steps they would take to modify those practices. While we do not require such "self-evaluation" to be submitted to EPA, it is expected, as stated in paragraph (c) of § 7.85, that recipients will identify discrimination prohibited by this Part in any of their funded programs or activities.

Proposed § 7.80, now § 7.90, required each recipient to adopt a grievance procedure and designate a person to coordinate its compliance efforts. Two commenters asked for further explanation of "appropriate due process" for that proposed procedure. We concluded that this phrase may have implied too much. We intend that recipients establish a standard procedure for dealing with complaints that provides an opportunity for a timely and fair resolution. We have, therefore, revised paragraph (a) of § 7.90 to require a recipient to adopt a grievance procedure that assures the prompt and fair resolution of complaints.

Proposed § 7.70, now § 7.95, required each recipient to provide public notice of nondiscrimination to designated groups and individuals. Several commenters indicated that the proposed requirement that notice "must be" included in all major correspondence would be burdensome to recipients. One comment indicated that other suggested forms of notice were more appropriate than this apparently mandatory form;

another comment indicated that if all federal agencies had such a requirement "there would be little space left on correspondence for correspondence." We agreed with these comments and have made this form of notice discretionary.

In § 7.85 of the proposed rule, a recipient was required to notify the OCR at the time a lawsuit alleging discrimination was filed. One commenter indicated that such a requirement would be burdensome to a recipient since it would presumably require the recipient to keep EPA apprised of the progress of the lawsuit. The same commenter noted that other federal agencies simply require such information be submitted annually or periodically as part of an application, and recommended that we eliminate this requirement. We modified paragraph (a) of § 7.85 accordingly and now require that a recipient maintain information on pending lawsuits and submit such information upon request.

Section 7.100 prohibits an applicant, recipient or other person from intimidating, threatening, coercing or discriminating against an individual or group in order to interfere with a right or privilege guaranteed by the nondiscrimination provisions of this Part, or because such individual has filed a complaint or participated in enforcement of this regulation. One commenter noted that this section needed "more teeth." Since a complaint of intimidation would be treated according to the complaint procedure in § 7.120, an applicant or recipient found in violation of § 7.100 could be subject to enforcement procedures. We think this is a sufficiently severe sanction.

Another commenter criticized the entire compliance section for "lack of coordination" with the guidelines issued by the Department of Labor and the Attorney General. We think this criticism is unfounded. We have developed our regulation in compliance with the Department of Justice guidelines on Title VI and Section 504, and after numerous discussions with the Department. The Department of Labor is responsible for the administration of Section 503 of the Rehabilitation Act of 1973, as amended, an affirmative action statute that applies to certain federal contractors. It must be noted that revised Part 7 does not apply to those that receive EPA funds through direct federal procurement arrangements.

Subpart E sets forth the procedures that EPA will follow in assuring that applicants and recipients are in compliance with the requirements of the Acts and this Part.

One commenter suggested that it would be more logical to reorder the sections in the proposed Subpart to have preaward compliance, postaward compliance, and complaint investigations precede the sections on sanctions and coordination with other agencies. We have accepted this suggestion and have restructured this Subpart. New § 7.110 describes EPA's preaward review of an applicant's submission(s). Paragraph (a) provides that the OCR will determine compliance based on "any other information EPA receives during this time or has on file about the applicant." One commenter asked what this latter provision included. Many EPA recipients, particularly those constructing wastewater treatment facilities, have received a series of awards and, therefore, EPA has a "file" that may contain information useful to the OCR. In addition, the application itself may include data that would be of interest to the OCR (e.g., other federal assistance an applicant is receiving).

One commenter suggested greater specificity as to when the OCR would conduct an on-site review. An on-site review of the covered program or activity shall take place only when OCR has reason to believe discrimination may be occurring. Of course, OCR may request data and information from applicants at the preaward stage.

Section 7.115 of this final rule (formerly § 7.120) describes EPA's postaward compliance process. One commenter noted that EPA will only conduct compliance reviews where compliance problems have been identified and suggested that EPA should also conduct reviews of recipients where there have been no complaints or investigations. Another commenter also recommended "random reviews" in addition to the proposed approach. It is our view that EPA's compliance resources will have the greatest impact when used to address identified problem areas. Accordingly, postaward on-site reviews of covered programs or activities shall take place only when OCR has reason to believe discrimination may be occurring. We note, however, that revised paragraph (a) of § 7.115 permits EPA to collect data and information as part of a compliance review of any recipient of EPA assistance on a random basis.

Section 7.120 provides the procedure for investigating and resolving complaints of discrimination. One commenter recommended that we establish a specific time limit (rather than merely "promptly") for resolving complaints. We have revised paragraph

(c) of this section to require the OCR to notify all parties within five (5) calendar days of the receipt of a complaint and to notify them within twenty (20) additional calendar days, according to paragraph (d)(1), whether EPA accepted, rejected or referred the complaint to another agency. Further, we have clarified the time limit for resolving complaints by applying the postaward compliance procedure set forth in § 7.115 to them. That section has been amended to include, where appropriate, references to complaint investigation. Under these provisions, a preliminary decision must be made within 180 calendar days from the time a complaint is received by the agency. Paragraph (f) of § 7.120 is reserved for the mediation process that applies only to complaints of age discrimination.

In the proposed regulation, § 7.130 described the procedure for annulling, suspending or terminating EPA assistance upon a finding of noncompliance. One commenter asked whether such procedures apply to denial of assistance as well. They do. We have revised this section to include the procedures for refusing to provide financial assistance. We have also rewritten this section to clarify the decision-making process and the rights of applicants and recipients. It should be noted that before EPA denies, annuls, suspends, or terminates assistance on the basis of noncompliance, the applicant or recipient has the statutory right to an evidentiary hearing.

Regulation Development Process

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the Regulatory Impact Analysis requirements of the Order. We have determined that this regulation is not "major" as it will not have a substantial impact on the economy. This rule was submitted to the Office of Management and Budget for review, as required by Executive Order 12291.

Office of Management and Budget Review

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, the information provisions of this rule found in Sections 7.80 and 7.85 were approved by the Office of Management and Budget (OMB), control number 2000-0006, and are reflected in this rule.

Environmental Impact Statement

This regulation does not affect the environment. An Environmental Impact Statement is not required under the National Environmental Policy Act of 1969.

This regulation does not supersede 40 CFR Part 8 which implements Executive Order 11246.

List of Subjects in 40 CFR Part 7

Civil rights, Sex discrimination, Discrimination against handicapped.

In consideration of the foregoing, 40 CFR is amended by removing Part 12 and revising 40 CFR Part 7 to read as follows:

PART 7—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

Subpart A—General

- Sec.
7.10 Purpose of this part.
7.15 Applicability.
7.20 Responsible agency officers.
7.25 Definitions.

Subpart B—Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex

- 7.30 General prohibition.
7.35 Specific prohibitions.
7.40 [Reserved]

Subpart C—Discrimination Prohibited on the Basis of Handicap

- 7.45 General Prohibition.
7.50 Specific prohibitions against discrimination.
7.55 Separate or different programs.
7.60 Prohibitions and requirements relating to employment.
7.65 Accessibility.
7.70 New construction.
7.75 Transition plan.

Subpart D—Requirements for Applicants and Recipients

- 7.80 Applicants.
7.85 Recipients.
7.90 Grievance procedures.
7.95 Notice of nondiscrimination.
7.100 Intimidation and retaliation prohibited.

Subpart E—Agency Compliance Procedures

- 7.105 General policy.
7.110 Preaward Compliance.
7.115 Postaward compliance.
7.120 Complaint investigations.
7.125 Coordination with other agencies.
7.130 Actions available to EPA to obtain compliance.
7.135 Procedure for regaining eligibility.

Appendix A—EPA Assistance Programs as Listed in the "Catalog of Federal Domestic Assistance"

Authority: The Civil rights Act of 1964, as amended, 42 U.S.C. 20501 *et seq.*; sec. 504, Rehabilitation Act of 1973, as amended, 29 U.S.C. 734; sec. 13, Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500.

Subpart A—General**§ 7.10 Purpose of this part.**

This Part implements: Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; and Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500, (collectively, the Acts).

§ 7.15 Applicability.

This Part applies to all applicants for, and recipients of, EPA assistance in the operation of programs or activities receiving such assistance beginning February 13, 1984. New construction (§ 7.70) for which design was initiated prior to February 13, 1984, shall comply with the accessibility requirements in the Department of Health, Education and Welfare (now the Department of Health and Human Services) nondiscrimination regulation, 45 CFR 84.23, issued June 3, 1977, or with equivalent standards that ensure the facility is readily accessible to and usable by handicapped persons. Such assistance includes but is not limited to that which is listed in the *Catalogue of Federal Domestic Assistance* under the 66.000 series. It supersedes the provisions of former 40 CFR Parts 7 and 12.

§ 7.20 Responsible agency officers.

(a) The EPA Office of Civil Rights (OCR) is responsible for developing and administering EPA's compliance programs under the Acts.

(b) EPA's Project Officers will, to the extent possible, be available to explain to each recipient its obligations under this Part and to provide recipients with technical assistance or guidance upon request.

§ 7.25 Definitions.

As used in this Part:

"Administrator" means the Administrator of EPA. It includes any other agency official authorized to act on his or her behalf, unless explicitly stated otherwise.

"Alcohol abuse" means any misuse of alcohol which demonstrably interferes with a person's health, interpersonal relations or working ability.

"Applicant" means any entity that files an application or unsolicited proposal or otherwise requests EPA assistance (see definition for "EPA assistance").

"Assistant Attorney General" is the head of the Civil Rights Division, U.S. Department of Justice.

"Award Official" means the EPA official with the authority to approve and execute assistance agreements and

to take other assistance related actions authorized by this Part and by other EPA regulations or delegation of authority.

"Drug abuse" means:

(a) The use of any drug or substance listed by the Department of Justice in 21 CFR 1308.11, under authority of the Controlled Substances Act, 21 USC 801, as a controlled substance unavailable for prescription because:

- (1) The drug or substance has a high potential for abuse,
- (2) The drug or other substance has no currently accepted medical use in treatment in the United States, or
- (3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Note.—Examples of drugs under paragraph (a)(1) of this section include certain opiates and opiate derivatives (e.g., heroin) and hallucinogenic substances (e.g., marijuana, mescaline, peyote) and depressants (e.g., methaqualone). Examples of (a)(2) include opium, coca leaves, methadone, amphetamines and barbiturates.

(b) The misuse of any drug or substance listed by the Department of Justice in 21 CFR 1308.12-15 under authority of the Controlled Substances Act as a controlled substance available for prescription.

"EPA" means the United States Environmental Protection Agency.

"EPA" assistance" means any grant or cooperative agreement, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which EPA provides or otherwise makes available assistance in the form of:

- (1) Funds;
- (2) Services of personnel; or
- (3) Real or personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if EPA's share of its fair market value is not returned to EPA.

"Facility" means all, or any part of, or any interests in structures, equipment, roads, walks, parking lots, or other real or personal property.

"Handicapped person:"

(a) "Handicapped person" means any person who (1) has a physical or mental impairment which substantially limits one or more major life activities, (2) has a record of such an impairment, or (3) is regarded as having such an impairment. For purposes of employment, the term "handicapped person" does not include any person who is an alcoholic or drug abuser whose current use of alcohol or

drugs prevents such individual from performing the duties of the job in question or whose employment, by reason of such current drug or alcohol abuse, would constitute a direct threat to property or the safety of others.

(b) As used in this paragraph, the phrase:

(1) "Physical or mental impairment" means (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; and (ii) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(2) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means:

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined above but is treated by a recipient as having such an impairment.

"Office of Civil Rights" or OCR means the Director of the Office of Civil Rights, EPA Headquarters or his/her designated representative.

"Project Officer" means the EPA official designated in the assistance agreement (as defined in "EPA assistance") as EPA's program contact with the recipient; Project Officers are responsible for monitoring the project.

"Qualified handicapped person" means:

(a) With respect to employment: a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question.

(b) With respect to services: a handicapped person who meets the essential eligibility requirements for the receipt of such services.

"Racial classifications:"¹

(a) American Indian or Alaskan native. A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

(b) Asian or Pacific Islander. A person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.

(c) Black and not of Hispanic origin. A person having origins in any of the black racial groups of Africa.

(d) Hispanic. A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.

(e) White, not of Hispanic origin. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

"Recipient" means, for the purposes of this regulation, any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

"Section 13" refers to Section 13 of the Federal Water Pollution Control Act Amendments of 1972.

"United States" includes the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and all other territories and possessions of the United States; the term "State" includes any one of the foregoing.

¹ Additional subcategories based on national origin or primary language spoken may be used where appropriate on either a national or a regional basis. Subparagraphs (a) through (e) are in conformity with Directive 15 of the Office of Federal Statistical Policy and Standards, whose function is now in the Office of Information and Regulatory Affairs, Office of Management and Budget. Should that office, or any successor office, change or otherwise amend the categories listed in Directive 15, the categories in this paragraph shall be interpreted to conform with any such changes or amendments.

Subpart B—Discrimination Prohibited on the Basis of Race, Color, National Origin or Sex

§ 7.30 General prohibition.

No person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving EPA assistance on the basis of race, color, national origin, or on the basis of sex in any program or activity receiving EPA assistance under the Federal Water Pollution Control Act, as amended, including the Environmental Financing Act of 1972.

§ 7.35 Specific prohibitions.

(a) As to any program or activity receiving EPA assistance, a recipient shall not directly or through contractual, licensing, or other arrangements on the basis of race, color, national origin or, if applicable, sex:

- (1) Deny a person any service, aid or other benefit of the program;
- (2) Provide a person any service, aid or other benefit that is different, or is provided differently from that provided to others under the program;
- (3) Restrict a person in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, aid, or benefit provided by the program;
- (4) Subject a person to segregation in any manner or separate treatment in any way related to receiving services or benefits under the program;
- (5) Deny a person or any group of persons the opportunity to participate as members of any planning or advisory body which is an integral part of the program, such as a local sanitation board or sewer authority;

(6) Discriminate in employment on the basis of sex in any program subject to Section 13, or on the basis of race, color, or national origin in any program whose purpose is to create employment; or, by means of employment discrimination, deny intended beneficiaries the benefits of the EPA assistance program, or subject the beneficiaries to prohibited discrimination.

(7) In administering a program or activity receiving Federal financial assistance in which the recipient has previously discriminated on the basis of race, color, sex, or national origin, the recipient shall take affirmative action to provide remedies to those who have been injured by the discrimination.

(b) A recipient shall not use criteria or methods of administering its program which have the effect of subjecting individuals to discrimination because of their race, color, national origin, or sex, or have the effect of defeating or substantially impairing accomplishment

of the objectives of the program with respect to individuals of a particular race, color, national origin, or sex.

(c) A recipient shall not choose a site or location of a facility that has the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any program to which this Part applies on the grounds of race, color, or national origin or sex; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of this subpart.

(d) The specific prohibitions of discrimination enumerated above do not limit the general prohibition of § 7.30.

§ 7.40 [Reserved]

Subpart C—Discrimination Prohibited on the Basis of Handicap

§ 7.45 General prohibition.

No qualified handicapped person shall solely on the basis of handicap be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity receiving EPA assistance.

§ 7.50 Specific prohibitions against discrimination.

(a) A recipient, in providing any aid, benefit or service under any program or activity receiving EPA assistance shall not, on the basis of handicap, directly or through contractual, licensing, or other arrangement:

- (1) Deny a qualified handicapped person any service, aid or other benefit of a federally assisted program;
- (2) Provide different or separate aids, benefits, or services to handicapped persons or to any class of handicapped persons than is provided to others unless the action is necessary to provide qualified handicapped persons with aids, benefits, or services that are as effective as those provided to others;
- (3) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an entity that discriminates on the basis of handicap in providing aids, benefits, or services to beneficiaries of the recipient's program;

(4) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(5) Limit a qualified handicapped person in any other way in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit or service from the program.

(b) A recipient may not, in determining the site or location of a facility, make selections: (1) That have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from EPA assistance or (2) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity receiving EPA assistance with respect to handicapped persons.

(c) A recipient shall not use criteria or methods of administering any program or activity receiving EPA assistance which have the effect of subjecting individuals to discrimination because of their handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of such program or activity with respect to handicapped persons.

(d) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

(e) The exclusion of non-handicapped persons or specified classes of handicapped persons from programs limited by federal statute or Executive Order to handicapped persons or a different class of handicapped persons is not prohibited by this subpart.

§ 7.55 Separate or different programs.

Recipients shall not deny a qualified handicapped person an opportunity equal to that afforded others to participate in or benefit from the aid, benefit, or service in the program receiving EPA assistance. Recipients shall administer programs in the most integrated setting appropriate to the needs of qualified handicapped persons.

§ 7.60 Prohibitions and requirements relating to employment.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this Part applies in a manner which ensures that discrimination on the basis of handicap does not occur, and shall not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; or

(9) Any other term, condition, or privilege of employment.

(d) A recipient shall not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(e) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(f) A recipient shall not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

(g) A recipient shall not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a handicapped person or as to the nature or severity of a handicap except as permitted by the Department of Justice in 28 CFR 42.513.

§ 7.65 Accessibility.

(a) *General.* A recipient shall operate each program or activity receiving EPA assistance so that such program or activity, when viewed in its entirety, is readily accessible to and usable by handicapped persons. This paragraph does not:

(1) Necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(2) Require a recipient to take any action that the recipient can demonstrate would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. If an action would result in such an alteration or such financial and administrative burdens, the recipient shall be required to take any other action that would not result in such an alteration or financial and administrative burdens but would nevertheless ensure that handicapped persons receive the benefits and services of the program or activity receiving EPA assistance.

(b) Methods of making existing programs accessible. A recipient may comply with the accessibility requirements of this section by making structural changes, redesigning equipment, reassigning services to accessible buildings, assigning aides to beneficiaries, or any other means that make its program or activity accessible to handicapped persons. In choosing among alternatives, a recipient must give priority to methods that offer program benefits to handicapped persons in the most integrated setting appropriate.

(c) *Deadlines.* (1) Except where structural changes in facilities are necessary, recipients must adhere to the provisions of this section within 60 days after the effective date of this Part.

(2) Recipients having an existing facility which does require alterations in order to make a program or activity accessible must prepare a transition plan in accordance with § 7.75 within six months from the effective date of this Part. The recipient must complete the changes as soon as possible, but not later than three years from date of award.

(d) *Notice of accessibility.* The recipient must make sure that interested persons, including those with impaired vision or hearing, can find out about the existence and location of the assisted program services, activities, and facilities that are accessible to and usable by handicapped persons.

(e) Structural and financial feasibility. This section does not require structural alterations to existing facilities if making such alterations would not be structurally or financially feasible. An alteration is not structurally feasible when it has little likelihood of being accomplished without removing or altering a load-bearing structural member. Financial feasibility shall take into account the degree to which the alteration work is to be assisted by EPA assistance, the cost limitations of the program under which such assistance is provided, and the relative cost of accomplishing such alterations in manners consistent and inconsistent with accessibility.

§ 7.70 New construction.

(a) *General.* New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(b) Any construction for which design is initiated on or after the effective date of this Part shall comply with the accessibility requirements of this section. Any construction for which design was initiated prior to the effective date of this Part shall comply with accessibility requirements in the Department of Health, Education and Welfare (now the Department of Health and Human Services) nondiscrimination regulation, 45 CFR 84.23, issued June 3, 1977, or with equivalent standards that ensure the facility is readily accessible to and usable by handicapped persons.

(c) Design, construction or alteration of facilities in conformance with the 1980 "American National Standard Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped," published by the American National Standards Institute, Inc., constitutes compliance with this section.²

(d) *Exception.* This section shall not apply to the design, construction or alteration of any portion of a building that, because of its intended use, will not require accessibility to the public beneficiaries or result in the employment or residence therein of physically handicapped persons.

§ 7.75 Transition plan.

If structural changes to facilities are necessary to make the program

accessible to handicapped persons, a recipient must prepare a transition plan.

(a) *Requirements.* The transition plan must set forth the steps needed to complete the structural changes required and must be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. At a minimum, the transition plan must:

(1) Identify the physical obstacles in the recipient's facilities that limit handicapped persons' access to its program or activity.

(2) Describe in detail what the recipient will do to make the facilities accessible,

(3) Specify the schedule for the steps needed to achieve full program accessibility, and include a year-by-year timetable if the process will take more than one year,

(4) Indicate the person responsible for carrying out the plan.

(b) *Availability.* Recipients shall make available a copy of the transition plan to the OCR upon request and to the public for inspection at either the site of the project or at the recipient's main office.

Subpart D—Requirements for Applicants and Recipients

§ 7.80 Applicants.

(a) *Assurances.*—(1) *General.* Applicants for EPA assistance shall submit an assurance with their applications stating that, with respect to their programs or activities that receive EPA assistance, they will comply with the requirements of this Part. Applicants must also submit any other information that the OCR determines is necessary for preaward review. The applicant's acceptance of EPA assistance is an acceptance of the obligation of this assurance and this Part.

(2) *Duration of assurance.*—(i) *Real property.* When EPA awards assistance in the form of real property, or assistance to acquire real property, or structures on the property, the assurance will obligate the recipient, or transferee, during the period the real property or structures are used for the purpose for which EPA assistance is extended, or for another purpose in which similar services or benefits are provided. The transfer instrument shall contain a covenant running with the land which assures nondiscrimination. Where applicable, the covenant shall also retain a right of reverter which will permit EPA to recover the property if the covenant is ever broken.

(ii) *Personal property.* When EPA provides assistance in the form of personal property, the assurance will

obligate the recipient for so long as it continues to own or possess the property.

(iii) *Other forms of assistance.* In all other cases, the assurance will obligate the recipient for as long as EPA assistance is extended.

(b) *Wastewater treatment project.* EPA Form 4700-4 shall also be submitted with applications for assistance under Title II of the Federal Water Pollution Control Act.

(c) *Compliance information.* Each applicant for EPA assistance shall submit regarding the program or activity that would receive EPA assistance:

(1) Notice of any lawsuit pending against the applicant alleging discrimination on the basis of race, color, sex, handicap, or national origin;

(2) A brief description of any applications pending to other federal agencies for assistance, and of federal assistance being provided at the time of the application; and

(3) A statement describing any civil rights compliance reviews regarding the applicant conducted during the two-year period before the application, and information concerning the agency or organization performing the reviews.

(Approved by the Office of Management and Budget under Control Number 2000-0006.)

§ 7.85 Recipients.

(a) *Compliance information.* Each recipient shall collect, maintain, and on request of the OCR, provide the following information to show compliance with this Part:

(1) A brief description of any lawsuits pending against the recipient that allege discrimination which this Part prohibits;

(2) Racial/ethnic, national origin, sex and handicap data, or EPA Form 4700-4 information submitted with its application;

(3) A log of discrimination complaints which identifies the complaint, the date it was filed, the date the recipient's investigation was completed, the disposition, and the date of disposition; and

(4) Reports of any compliance reviews conducted by any other agencies.

(b) *Additional compliance information.* If necessary, the OCR may require recipients to submit data and information specific to certain programs to determine compliance where there is reason to believe that discrimination may exist in a program or activity receiving EPA assistance or to investigate a complaint alleging discrimination in a program or activity receiving EPA assistance. Requests shall be limited to data and information which is relevant to determining

²The American National Standards Institute, Inc., is located at 1430 Broadway, New York, N.Y. 10018. A copy of the document may be purchased from this Institute for \$5.00 plus \$2.00 shipping cost.

compliance and shall be accompanied by a written statement summarizing the complaint or setting forth the basis for the belief that discrimination may exist.

(c) *Self-evaluation.* Each recipient must conduct a self-evaluation of its administrative policies and practices, to consider whether such policies and practices may involve handicap discrimination prohibited by this Part. When conducting the self-evaluation, the recipient shall consult with interested and involved persons including handicapped persons or organizations representing handicapped persons. The evaluation shall be completed within 18 months after the effective date of this Part.

(d) *Preparing compliance information.* In preparing compliance information, a recipient must:

(1) [Reserved]

(2) Use the racial classifications set forth in § 7.25 in determining categories of race, color or national origin.

(e) *Maintaining compliance information.* Recipients must keep records for (a) and (b) of this section for three (3) years after completing the project. When any complaint or other action for alleged failure to comply with this Part is brought before the three-year period ends, the recipient shall keep records until the complaint is resolved.

(f) *Accessibility to compliance information.* A recipient shall:

(1) Give the OCR access during normal business hours to its books, records, accounts and other sources of information, including its facilities, as may be pertinent to ascertain compliance with this Part;

(2) Make compliance information available to the public upon request; and

(3) Assist in obtaining other required information that is in the possession of other agencies, institutions, or persons not under the recipient's control. If such party refuses to release that information, the recipient shall inform the OCR and explain its efforts to obtain the information.

(g) *Coordination of compliance effort.* If the recipient employs fifteen (15) or more employees, it shall designate at least one person to coordinate its efforts to comply with its obligations under this Part.

(Approved by the Office of Management and Budget under Control Number 2000-0006.)

§ 7.90 Grievance procedures.

(a) *Requirements.* Each recipient shall adopt grievance procedures that assure the prompt and fair resolution of complaints which allege violation of this Part.

(b) *Exception.* Recipients with fewer than fifteen (15) full-time employees

need not comply with this section unless the OCR finds a violation of this Part or determines that creating a grievance procedure will not significantly impair the recipient's ability to provide benefits or services.

§ 7.95 Notice of nondiscrimination.

(a) *Requirements.* A recipient shall provide initial and continuing notice that it does not discriminate on the basis of race, color, national origin, or handicap in a program or activity receiving EPA assistance or, in programs covered by Section 13, on the basis of sex. Methods of notice must accommodate those with impaired vision or hearing. At a minimum, this notice must be posted in a prominent place in the recipient's offices or facilities. Methods of notice may also include publishing in newspapers and magazines, and placing notices in recipient's internal publications or on recipient's printed letterhead. Where appropriate, such notice must be in a language or languages other than English. The notice must identify the responsible employee designated in accordance with § 7.85.

(b) *Deadline.* Recipients of assistance must provide initial notice by thirty (30) calendar days after award and continuing notice for the duration of EPA assistance.

§ 7.100 Intimidation and retaliation prohibited.

No applicant, recipient, nor other person shall intimidate, threaten, coerce, or discriminate against any individual or group, either:

(a) For the purpose of interfering with any right or privilege guaranteed by the Acts or this Part, or

(b) Because the individual has filed a complaint or has testified, assisted or participated in any way in an investigation, proceeding or hearing under this Part, or has opposed any practice made unlawful by this regulation.

Subpart E—Agency Compliance Procedures

§ 7.105 General policy.

EPA's Administrator, Director of the Office of Civil Rights, Project Officers and other responsible officials shall seek the cooperation of applicants and recipients in securing compliance with this Part, and are available to provide help.

§ 7.110 Preaward compliance.

(a) *Review of compliance information.* Within EPA's application processing period, the OCR will determine whether the applicant is in compliance with this

Part and inform the Award Official. This determination will be based on the submissions required by § 7.80 and any other information EPA receives during this time (including complaints) or has on file about the applicant. When the OCR cannot make a determination on the basis of this information, additional information will be requested from the applicant, local government officials, or interested persons or organizations, including handicapped persons or organizations representing such persons. The OCR may also conduct an on-site review only when it has reason to believe discrimination may be occurring in a program or activity which is the subject of the application.

(b) *Voluntary compliance.* If the review indicates noncompliance, an applicant may agree in writing to take the steps the OCR recommends to come into compliance with this Part. The OCR must approve the written agreement before any award is made.

(c) *Refusal to comply.* If the applicant refuses to enter into such an agreement, the OCR shall follow the procedure established by paragraph (b) of § 7.130.

§ 7.115 Postaward compliance.

(a) *Periodic review.* The OCR may periodically conduct compliance reviews of any recipient's programs or activities receiving EPA assistance, including the request of data and information, and may conduct on-site reviews when it has reason to believe that discrimination may be occurring in such programs or activities.

(b) *Notice of review.* After selecting a recipient for review or initiating a complaint investigation in accordance with § 7.120, the OCR will inform the recipient of:

(1) The nature of and schedule for review, or investigation; and

(2) Its opportunity, before the determination in paragraph (d) of this section is made, to make a written submission responding to, rebutting, or denying the allegations raised in the review or complaint.

(c) *Postreview notice.* (1) Within 180 calendar days from the start of the compliance review or complaint investigation, the OCR will notify the recipient in writing by certified mail, return receipt requested, of:

(i) Preliminary findings;

(ii) Recommendations, if any, for achieving voluntary compliance; and

(iii) Recipient's right to engage in voluntary compliance negotiations where appropriate.

(2) The OCR will notify the Award Official and the Assistant Attorney

General for Civil Rights of the preliminary findings of noncompliance.

(d) *Formal determination of noncompliance.* After receiving the notice of the preliminary finding of noncompliance in paragraph (c) of this section, the recipient may:

- (1) Agree to the OCR's recommendations, or
- (2) Submit a written response sufficient to demonstrate that the preliminary findings are incorrect, or that compliance may be achieved through steps other than those recommended by OCR.

If the recipient does not take one of these actions within fifty (50) calendar days after receiving this preliminary notice, the OCR shall, within fourteen (14) calendar days, send a formal written determination of noncompliance to the recipient and copies to the Award Official and Assistant Attorney General.

(e) *Voluntary compliance time limits.* The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance in which to come into voluntary compliance. If the recipient fails to meet this deadline, the OCR must start proceedings under paragraph (b) of § 7.130.

(f) *Form of voluntary compliance agreements.* All agreements to come into voluntary compliance must:

- (1) Be in writing;
 - (2) Set forth the specific steps the recipient has agreed to take, and
 - (3) Be signed by the Director, OCR or his/her designee and an official with authority to legally bind the recipient.
- § 7.120 **Complaint investigations.**

The OCR shall promptly investigate all complaints filed under this section unless the complainant and the party complained against agree to a delay pending settlement negotiations.

(a) *Who may file a complaint.* A person who believes that he or she or a specific class of persons has been discriminated against in violation of this Part may file a complaint. The complaint may be filed by an authorized representative. A complaint alleging employment discrimination must identify at least one individual aggrieved by such discrimination. Complaints solely alleging employment discrimination against an individual on the basis of race, color, national origin, sex or religion shall be processed under the procedures for complaints of employment discrimination filed against recipients of federal assistance (see 28 CFR Part 42, Subpart H and 29 CFR Part 1691). Complainants are encouraged but not required to make use of any grievance procedure established under

§ 7.90 before filing a complaint. Filing a complaint through a grievance procedure does not extend the 180 day calendar requirement of paragraph (b)(2) of this section.

(b) Where, when and how to file complaint. The complainant may file a complaint at any EPA office. The complaint may be referred to the region in which the alleged discriminatory acts occurred.

(1) The complaint must be in writing and it must describe the alleged discriminatory acts which violate this part.

(2) The complaint must be filed within 180 calendar days of the alleged discriminatory acts, unless the OCR waives the time limit for good cause. The filing of a grievance with the recipient does not satisfy the requirement that complaints must be filed within 180 days of the alleged discriminatory acts.

(c) *Notification.* The OCR will notify the complainant and the recipient of the agency's receipt of the complaint within five (5) calendar days.

(d) *Complaint processing procedures.* After acknowledging receipt of a complaint, the OCR will immediately initiate complaint processing procedures.

(1) *Preliminary investigation (i)* Within twenty (20) calendar days of acknowledgment of the complaint, the OCR will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the OCR will notify the complainant and the Award Official. The OCR will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the OCR a response to the notice of complaint within thirty (30) calendar days of receiving it.

(2) *Informal resolution.* (i) OCR shall attempt to resolve complaints informally whenever possible. When a complaint cannot be resolved informally, OCR shall follow the procedures established by paragraphs (c) through (e) of § 7.115.

(ii) [Reserved].

(e) *Confidentiality.* EPA agrees to keep the complainant's identity confidential except to the extent necessary to carry out the purposes of this Part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder.

Ordinarily in complaints of employment discrimination, the name of the

complainant will be given to the recipient with the notice of complaint.

(f) [Reserved].

(g) *Dismissal of complaint.* If OCR's investigation reveals no violation of this Part, the Director, OCR, will dismiss the complaint and notify the complainant and recipient.

§ 7.125 **Coordination with other agencies.**

If, in the conduct of a compliance review or an investigation, it becomes evident that another agency has jurisdiction over the subject matter, OCR will cooperate with that agency during the continuation of the review of investigation. EPA will:

(a) Coordinate its efforts with the other agency, and

(b) Ensure that one of the agencies is designated the lead agency for this purpose. When an agency other than EPA serves as the lead agency, any action taken, requirement imposed, or determination made by the lead agency, other than a final determination to terminate funds, shall have the same effect as though such action had been taken by EPA.

§ 7.130 **Actions available to EPA to obtain compliance.**

(a) *General.* If compliance with this Part cannot be assured by informal means, EPA may terminate or refuse to award or to continue assistance. EPA may also use any other means authorized by law to get compliance, including a referral of the matter to the Department of Justice.

(b) *Procedure to deny, annul, suspend or terminate EPA assistance.*

(1) *OCR finding.* If OCR determines that an applicant or recipient is not in compliance with this Part, and if compliance cannot be achieved voluntarily, OCR shall make a finding of noncompliance. The OCR will notify the applicant or recipient (by registered mail, return receipt requested) of the finding, the action proposed to be taken, and the opportunity for an evidentiary hearing.

(2) *Hearing.* (i) Within 30 days of receipt of the above notice, the applicant or recipient shall file a written answer, under oath or affirmation, and may request a hearing.

(ii) The answer and request for a hearing shall be sent by registered mail, return receipt requested, to the Chief Administrative Law Judge (ALJ) (A-110), United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Upon receipt of a request for a hearing, the ALJ will send the applicant or recipient a copy of the ALJ's procedures. If the recipient

does not request a hearing, it shall be deemed to have waived its right to a hearing, and the OCR finding shall be deemed to be the ALJ's determination.

(3) *Final decision and disposition.* (i) The applicant or recipient may, within 30 days of receipt of the ALJ's determination, file with the Administrator its exceptions to that determination. When such exceptions are filed, the Administrator may, within 45 days after the ALJ's determination, serve to the applicant or recipient, a notice that he/she will review the determination. In the absence of either exceptions or notice of review, the ALJ's determination shall constitute the Administrator's final decision.

(ii) If the Administrator reviews the ALJ's determination, all parties shall be given reasonable opportunity to file written statements. A copy of the Administrator's decision will be sent to the applicant or recipient.

(iii) If the Administrator's decision is to deny an application, or annul, suspend or terminate EPA assistance, that decision becomes effective thirty (30) days from the date on which the Administrator submits a full written report of the circumstances and grounds for such action to the Committees of the House and Senate having legislative jurisdiction over the program or activity involved. The decision of the Administrator shall not be subject to further administrative appeal under EPA's General Regulation for Assistance Programs (40 CFR Part 30, Subpart L).

(4) *Scope of decision.* The denial, annulment, termination or suspension shall be limited to the particular applicant or recipient who was found to have discriminated, and shall be limited in its effect to the particular program or the part of it in which the discrimination was found.

§ 7.135 Procedure for regaining eligibility.

(a) *Requirements.* An applicant or recipient whose assistance has been denied, annulled, terminated, or suspended under this Part regains eligibility as soon as it:

- (1) Provides reasonable assurance that it is complying and will comply with this Part in the future, and
- (2) Satisfies the terms and conditions for regaining eligibility that are specified in the denial, annulment, termination or suspension order.

(b) *Procedure.* The applicant or recipient must submit a written request to restore eligibility to the OCR declaring that it has met the requirements set forth in paragraph (a) of this section. Upon determining that these requirements have been met, the OCR must notify the Award Official,

and the applicant or recipient that eligibility has been restored.

(c) Rights on denial of restoration of eligibility. If the OCR denies a request to restore eligibility, the applicant or recipient may file a written request for a hearing before the EPA Chief Administrative Law Judge in accordance with paragraph (c) § 7.130, listing the reasons it believes the OCR was in error.

Appendix A—EPA Assistance Programs as Listed in the "Catalog of Federal Domestic Assistance"

1. Assistance provided by the Office of Air, Noise and Radiation under the Clean Air Act of 1977, as amended; Pub. L. 95-95, 42 U.S.C. 7401 *et seq.* (ANR 66.001)
2. Assistance provided by the Office of Air, Noise and Radiation under the Clean Air Act of 1977, as amended; Pub. L. 95-95, 42 U.S.C. 7401 *et seq.* (ANR 66.003)
3. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; Sections 101(e), 109(b), 201-05, 207, 208(d), 210-12, 215-19, 304(d)(3), 313, 501, 502, 511 and 516(b); Pub. L. 97-117; Pub. L. 95-217; Pub. L. 96-483; 33 U.S.C. 1251 *et seq.* (OW 66.413)
4. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; § 106; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.* (OW 66.419)
5. Assistance provided by the Office of Water under the Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.* (OW 66.426)
6. Assistance provided by the Office of Water under the Public Health Service Act, as amended by the Safe Drinking Water Act, Pub. L. 93-523; as amended by Pub. L. 93-190; Pub. L. 96-63; and Pub. L. 93-502. (OW 66.432)
7. Assistance provided by the Office of Water under the Safe Drinking Water Act, Pub. L. 93-523, as amended by Pub. L. 96-63, Pub. L. 95-190, and Pub. L. 96-502. (OW 66.433)
8. Assistance provided by the Office of Water under the Clean Water Act of 1977, Section 205(g), as amended by Pub. L. 95-217 and the Federal Water Pollution Control Act, as amended; Pub. L. 97-117; 33 U.S.C. 1251 *et seq.* (OW 66.438)
9. Assistance provided by the Office of Water under the Resource Conservation & Recovery Act of 1976; as amended by the Solid Waste Disposal Act; Pub. L. 94-580; § 3011, 42 U.S.C. 6931, 6947, 6948-49. (OW 66.802)
10. Assistance provided by the Office of Research and Development under the Clean Air Act of 1977, as amended; Pub. L. 95-95; 42 U.S.C. *et seq.*; Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.*, § 8001 of the Solid Waste Disposal Act, as amended by the Resource Conservation & Recovery Act of 1976; Pub. L. 94-580; 42 U.S.C. 6901, Public Health Service Act as amended by the Safe Drinking Water Act as amended by Pub. L. 95-190; Federal Insecticide, Fungicide & Rodenticide Act; Pub. L. 95-516; 7 U.S.C. 136 *et seq.*, as amended by Pub. L.'s 94-140 and 95-396; Toxic Substances Control Act; 15 U.S.C. 2609; Pub. L. 94-469. (ORD 66.500)
11. Assistance provided by the Office of Research and Development under the Clean Air Act of 1977, as amended; Pub. L. 95-93; 42 U.S.C. 7401 *et seq.* (ORD 66.501)
12. Assistance provided by the Office of Research and Development under the Federal Insecticide, Fungicide & Rodenticide Act, Pub. L. 95-516, 7 U.S.C. 136 *et seq.*, as amended by Pub. L.'s 94-140 and 95-396. (ORD 66.502)
13. Assistance provided by the Office of Research and Development under the Solid Waste Disposal Act, as amended by the Resource Conservation & Recovery Act of 1976; 42 U.S.C. 6901, Pub. L. 94-580, § 8001. (ORD 66.504)
14. Assistance provided by the Office of Research and Development under the Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.* (ORD 66.505)
15. Assistance provided by the Office of Research and Development under the Public Health Service Act as amended by the Safe Drinking Water Act, as amended by Pub. L. 95-190 (ORD 66.506)
16. Assistance provided by the Office of Research and Development under the Toxic Substances Control Act; Pub. L. 94-469; 15 U.S.C. 2609; § 10. (ORD 66.507)
17. Assistance provided by the Office of Administration, including but not limited to: Clean Air Act of 1977, as amended; Pub. L. 95-95; 42 U.S.C. 7401 *et seq.*, Clean Water Act of 1977, as amended; Pub. L. 95-217; 33 U.S.C. 1251 *et seq.*; Solid Waste Disposal Act, as amended by the Resource Conservation & Recovery Act of 1976; 42 U.S.C. 6901; Pub. L. 94-580; Federal Insecticide, Fungicide & Rodenticide Act; Pub. L. 92-516; 7 U.S.C. 136 *et seq.* as amended by Pub. L.'s 94-140 and 95-396; Public Health Service Act, as amended by the Safe Drinking Water Act, as amended by Pub. L. 95-190. (OA 66.600)
18. Assistance provided by the Office of Administration under the Clean Water Act of 1977, as amended; Pub. L. 95-217; Section 213; 33 U.S.C. 1251 *et seq.* (OA 66.603)
19. Assistance provided by the Office of Enforcement Counsel under the Federal Insecticide & Rodenticide Act, as amended; Pub. L. 92-516; 7 U.S.C. 136 *et seq.*, as amended by Pub. L. 94-140, Section 23(a) and Pub. L. 95-396. (OA 66.700)
20. Assistance provided by the Office of Solid Waste and Emergency Response under the Comprehensive Environmental Responses, Compensation and Liability Act of 1980; Pub. L. 96-510, § 3012, 42 U.S.C. 9601, *et seq.* (OSW—number not to be assigned since Office of Management and Budget does not catalog one-year programs.)
21. Assistance provided by the Office of Water under the Clean Water Act as amended; Pub. L. 97-117, 33 U.S.C. 1313. (OW—66.454)

Dated: October 27, 1983.

William D. Ruckelshaus,
Administrator, Environmental Protection Agency.

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Vol. 49, No. 8

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PUBLICATIONS AND SERVICES

Daily Federal Register	
General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
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Code of Federal Regulations	
General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419
Laws	
Indexes	523-5282
Law numbers and dates	523-5282
	523-5266
Presidential Documents	
Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230
United States Government Manual	523-5230
Other Services	
Library	523-4966
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JANUARY

1-340.....	3
341-556.....	4
557-860.....	5
861-1044.....	6
1045-1170.....	9
1171-1320.....	10
1321-1466.....	11
1467-1666.....	12

CFR PARTS AFFECTED DURING JANUARY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR		9 CFR	
Proposed Rules:		81.....	353
326.....	1450	97.....	1175
		307.....	1469
3 CFR		350.....	1469
Executive Orders:		301.....	1469
12369 (Continued by		354.....	1469
EO 12455).....	345	355.....	1469
12382 (Continued by		362.....	1469
EO 12454).....	343	381.....	1469
12387 (Superseded by			
EO 12456).....	347	10 CFR	
12428 (Amended by		463.....	5
EO 12457).....	865	Proposed Rules:	
12454.....	343	2.....	414
12455.....	345	20.....	1205
12456.....	347	72.....	414
12457.....	865	1040.....	1450
Proclamations:		1535.....	1450
5133 (Amended by			
Proc. 5142).....	341	12 CFR	
5142.....	341	Ch. VII.....	559
5143.....	557	5.....	52
5144.....	861	212.....	1334
5145.....	863	225.....	794
		349.....	1176
5 CFR		544.....	53
333.....	1321	552.....	53
432.....	1321	572a.....	1334
752.....	1321	720.....	559
831.....	1321	722.....	559
880.....	1045	735.....	559
1001.....	1332	750.....	559
Proposed Rules:		780.....	559
532.....	602	791.....	559
1411.....	1450	792.....	559
1701.....	1450	793.....	559
		Proposed Rules:	
7 CFR		5.....	893
2.....	1047	410.....	1450
6.....	361	563b.....	415
52.....	1333		
201.....	1171	14 CFR	
354.....	1173	11.....	53
413.....	867	21.....	53
421.....	871	39.....	369, 370, 1049
432.....	876	43.....	53
701.....	1174	45.....	53
905.....	1467	71.....	371, 1050, 1051, 1176
907.....	848, 1048, 1469	91.....	53
910.....	876	95.....	1470
915.....	1048	97.....	1052
932.....	1	Proposed Rules:	
993.....	1469	33.....	415-417
1430.....	2, 361	71.....	419, 895, 1211
Proposed Rules:			
51.....	603	15 CFR	
770.....	409	904.....	1036, 1037, 1464
989.....	413	924.....	1037
991.....	1379, 1380	929.....	1037
1540.....	414	935.....	1037

936.....1037
 937.....1037
 938.....1037
Proposed Rules:
 17.....420
 303.....605
 1033.....1450
16 CFR
 453.....559, 564
17 CFR
 21.....1335
 211.....53
 270.....1476, 1477
 271.....55
Proposed Rules:
 230.....614
 239.....614
 240.....421
 270.....614
 274.....614
18 CFR
 35.....1177
 154.....565
 271.....56, 565, 566
 274.....566
 282.....568
 301.....1177
 1312.....1016
Proposed Rules:
 2.....70
 3.....643
 11.....1067
 13.....1067
 154.....70
 157.....1525
 201.....70
 270.....70
 271.....70, 644, 1525
 282.....1525
 284.....1525
19 CFR
 10.....852, 1480, 1482
 177.....1484
Proposed Rules:
 101.....1380, 1530
 151.....1531
 201.....1450
20 CFR
 341.....569
 416.....1177, 1340
21 CFR
 5.....571
 73.....372
 74.....61
 81.....61
 82.....61
 452.....373
 520.....572
 510.....62
 546.....1340
 558.....62, 374
 876.....573, 1053
 890.....1053
 895.....1177
 1316.....1178
22 CFR
Proposed Rules:
 219.....1450

607.....1450
 1103.....1450
 1304.....1450
23 CFR
 650.....1178, 1485
Proposed Rules:
 625.....1213
 645.....1219
 655.....1213
24 CFR
 51.....877
 200.....375-377
25 CFR
Proposed Rules:
 16.....1381
 20.....1381
 23.....1381
26 CFR
 1.....1182
 35a.....62
Proposed Rules:
 1.....645, 646, 1075, 1225-1244, 1384
 25.....896
28 CFR
 524.....190, 192
Proposed Rules:
 2.....1532
 511.....195
 548.....194
 551.....195
29 CFR
 1601.....1054
 1910.....881
 2610.....63
 2619.....1054
 2621.....1055
 2622.....63
Proposed Rules:
 1910.....844, 996
 1917.....996
30 CFR
 917.....65
 926.....66
 936.....1488
 938.....379
 948.....1489
Proposed Rules:
 901.....1532
32 CFR
 229.....1016
 257.....1490
 885.....881
33 CFR
 1.....574
 117.....575, 577
 153.....574, 576
 161.....577
 165.....583
Proposed Rules:
 110.....649
 117.....1535
 140.....1083
 142.....1083
 230.....1387

35 CFR
 111.....1184
36 CFR
 254.....1184
 296.....1016
Proposed Rules:
 406.....1450
37 CFR
 1.....348
38 CFR
Proposed Rules:
 21.....1400
39 CFR
 10.....583, 1340
Proposed Rules:
 233.....897
40 CFR
 7.....1656
 12.....1656
 52.....67, 583, 1187, 1341, 1342, 1491
 66.....1188
 67.....1188
 86.....68
 162.....380
 180.....388-390, 882
 271.....585
 439.....1190
 469.....1056
Proposed Rules:
 52.....78, 79
 87.....421
 162.....423
 180.....426
 261.....427
 712.....1536
 721.....82, 99
 799.....108, 430-456, 899
41 CFR
 Ch. 1.....1343
 101-11.....1344
 101-47.....1347
 105-61.....1348
Proposed Rules:
 105-61.....1403
42 CFR
 405.....234, 408
 409.....234
 489.....234
43 CFR
 Subtitle A.....1190
 7.....1016
44 CFR
 67.....1492, 1496
45 CFR
 84.....1622
Proposed Rules:
 1175.....1450
 1181.....1450
 1609.....1087
 1620.....1088
 1626.....1090
 1706.....1450

46 CFR
Proposed Rules:
 7.....908
 508.....1537
47 CFR
 Ch. I.....882, 1190
 15.....1512
 43.....896
 51.....896
 52.....896
 64.....1352
 68.....1352
 73.....391-396, 1252-1254, 1367
 87.....1519
 90.....1056, 1520
 97.....1374
Proposed Rules:
 Ch. I.....1090, 1538
 31.....1245
 64.....1248
 73.....465-467, 908, 1091, 1252-1254
 74.....908
 97.....1097
49 CFR
 1.....1521
 71.....887
 210.....1521
 571.....1522
 1033.....586
 1152.....396
Proposed Rules:
 807.....1450
50 CFR
 17.....1057
 22.....887
 23.....590, 1058
 215.....1037
 216.....1037
 220.....1037
 222.....1037
 285.....1037
 351.....1522
 611.....396, 595, 1037
 620.....1036
 621.....1037
 649.....1037
 650.....1037
 651.....1037
 652.....1037
 655.....402, 1037
 663.....597, 1060
 671.....1375
 672.....1037, 1061
 674.....1037
 675.....396, 1037, 1063
 680.....1037
 681.....407, 1037
Proposed Rules:
 17.....1166
 550.....1450
 662.....1255

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing December 19, 1983.

