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Federal Register

Monday
August 1, 1983

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Federal Aviation Administration

Commodity Futures
Commodity Futures Trading Commission

Communications Equipment
Federal Communications Commission

Endangered and Threatened Wildlife
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Selected Subjects

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Presidential Documents

Title 3—

The President

Executive Order 12435 of July 28, 1983

President's Commission on Organized Crime

By the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish, in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. I), an advisory committee on organized crime, it is hereby ordered as follows:

Section 1. (a) There is established the President's Commission on Organized Crime. The Commission shall be composed of not more than twenty members appointed or designated by the President.

(b) The President shall designate a Chairman from among the members of the Commission.

Sec. 2. (a) The Commission shall make a full and complete national and region-by-region analysis of organized crime; define the nature of traditional organized crime as well as emerging organized crime groups, the sources and amounts of organized crime's income, and the uses to which organized crime puts its income; develop in-depth information on the participants in organized crime networks; and evaluate Federal laws pertinent to the effort to combat organized crime. The Commission shall advise the President and the Attorney General with respect to its findings and actions which can be undertaken to improve law enforcement efforts directed against organized crime, and make recommendations concerning appropriate administrative and legislative improvements and improvements in the administration of justice.

(b) The Commission shall report to the President from time to time as requested and shall submit its final report by March 1, 1986.

Sec. 3. *Administration.* (a) The heads of Executive agencies shall, to the extent permitted by law, provide the Commission such information as it may require for purposes of carrying out its functions.

(b) Members of the Commission shall serve without compensation for their work on the Commission. However, members appointed from among private citizens of the United States or who are Members of Congress or Federal Judges may, subject to the availability of funds, be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(c) The Attorney General shall, to the extent permitted by law, provide the Commission with such administrative services, funds, facilities, staff and other support services as may be necessary for the performance of its functions.

Sec. 4. *General.* (a) Notwithstanding any other Executive Order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to the Commission, shall be performed by the Attorney General, in accordance with guidelines and procedures established by the Administrator of General Services.

(b) The Commission shall, unless otherwise extended, terminate two years from the date of this Order.

Ronald Reagan

THE WHITE HOUSE,
July 28, 1983.

[FR Doc. 83-20884
Filed 7-28-83; 4:26 p.m.]
Billing code 3195-01-M

Editorial Note: For the President's remarks of July 28, 1983, on signing EO 12435, see the *Weekly Compilation of Presidential Documents* (vol. 19, no. 30).

Rules and Regulations

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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.
The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

Dairy Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the procedures published on November 30, 1982, at 47 FR 53831 for collecting the 50 cents per hundredweight deductions which are authorized to be made from the proceeds of the sale of all milk marketed commercially by producers when the Secretary of Agriculture determines that deductions are to be implemented in carrying out the dairy price support program. It also establishes a procedure for refunding the second of the two authorized 50 cent deductions to producers who reduce their milk marketings by a specified percentage. This final rule, with minor modifications, adopts the procedures which were set forth in the notice of proposed rulemaking published on December 17, 1982, at 47 FR 56500.

EFFECTIVE DATE: September 1, 1983.

FOR FURTHER INFORMATION CONTACT: Charles N. Shaw, Dairy/Sweeteners Group, Analysis Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7601.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has been classified as a "major" action since the rule in conjunction with any implementation of the 50-cent deductions would result in an annual effect on the economy of $100 million or more.

The title and number of the federal assistance program to which this final rule applies are: Title—Commodity Loans and Purchases; Number—10.051, as found in the Catalog of Federal Domestic Assistance.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) is not applicable since neither 5 U.S.C. 553 nor any other provision of law requires that a notice of proposed rulemaking be published when taking action with regard to the subject matter of this final rule. While the Secretary has determined that the Commodity Credit Corporation (CCC) will voluntarily comply with the provisions of 5 U.S.C. 553 (b) and (c), the Regulatory Flexibility Act does not apply in cases of voluntary agency compliance with proposed rulemaking procedures. Nevertheless, an initial regulatory flexibility analysis which included any potential effect of these procedural regulations has been prepared and was included in the proposed determination to implement both 50 cent per hundredweight deductions published on January 27, 1983 (48 FR 3764). That analysis was updated and a summary was published on May 31, 1983 (48 FR 24085) with a notice of proposed determination concerning milk price support program for the last two months of the 1982-83 marketing year and the 1983-84 marketing year. A Final Regulatory Flexibility Analysis will be prepared before a final determination is made with respect to the May 31, 1983 proposal.

An environmental evaluation with respect to the deduction and refund program and these procedural regulations has been completed. It has been determined that these actions are not expected to have any significant impact on the quality of the human environment. In addition, it has been determined that these actions will not adversely affect environmental factors such as water and air quality. Accordingly, neither an environmental assessment nor an environmental impact statement is needed.

Statutory Authority for Final Rule

Section 201 of the Agricultural Act of 1949 (1949 Act) was amended by section 101 of the Omnibus Budget Reconciliation Act of 1982 to authorize, during the period October 1, 1982, through September 30, 1985, the Secretary of Agriculture to provide for a deduction of 50-cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers. These deductions are to be remitted to the CCC to offset a portion of the cost of the dairy price support program. This authority does not apply for any fiscal year for which the Secretary projects that the annual net price support purchases will be less than 5 billion pounds milk equivalent. If the Secretary estimates at any time during a fiscal year that the net price support purchases during that year will be less than 5 billion pounds, the authority for making deductions does not apply for the balance of the year.

Section 201 of the 1949 Act was also amended by the Omnibus Budget Reconciliation Act of 1982 to authorize the Secretary to provide during the period April 1, 1983, through September 30, 1985, for an additional deduction of 50 cents per hundredweight from the proceeds of the sale of all milk marketed commercially by producers if (1) a program is established whereby the money collected under this second 50-cent deduction would be refunded to producers who reduce their milk marketings by a specified amount, and (2) the Secretary estimates that net price support purchases of dairy products will be at least 7.5 billion pounds milk equivalent during the fiscal year. If the Secretary estimates at any time during a fiscal year that the net price support purchases during that year will be less than 7.5 billion pounds, the authority for making the additional deduction does not apply for the balance of that year.

Summary of Final Rule

This final rule sets forth the administrative procedures for collecting a deduction of either 50 cents or $1.00 per hundredweight with respect to all milk sold commercially by producers. The collection of both 50-cent increments, which compose the $1.00 per hundredweight deduction, would be made in the same manner.

This final rule also sets forth the administrative procedures for refunding the second 50-cent increment of the $1.00 per hundredweight deduction to those producers who reduce their marketings of milk by a specified amount. The refund program will be administered by the Agricultural Stabilization and Conservation Service (ASCS) through the ASC county committees (county committees)

established in accordance with 16 U.S.C. 590h. The CCC has under consideration a proposed determination for implementation of a $1.00 per hundredweight deduction and a refund program (48 FR 24085, May 31, 1983).

Under the provisions of the 1949 Act, the base period for determining the amount of any reduction which is specified may be either the fiscal year beginning October 1, 1981, or the average of the two fiscal years beginning October 1, 1980. In order to present a more balanced historic picture of milk marketings and to reduce the effects on total marketings with respect to those producers who may have increased their milk marketings in order to obtain the highest base possible, it has been determined that the base period for determining the amount of any specified reduction shall be the average of the producer's marketings for the two marketing years beginning October 1, 1980. Producers must furnish evidence of their monthly marketings of milk during the base period to the county committees in order to establish a producer base.

A producer's marketings will be averaged by calendar months and the monthly averages combined for an annual average so that, if a refund program is to be in effect for less than a year, the required reduction can be based on the comparable months of the producer's base period. Refunds will be made only to those producers who reduce their marketings from the established base by at least the percentage reduction specified by the Secretary. No partial refunds will be made for any reduction in marketings by producers relative to the established base for less than the specified percentage reduction.

A transfer of producer base will be permitted with respect to dairy farm operations only where there has been a change of ownership and operation of the entire farm since the beginning of the base period and where a continuity of the enterprise can be traced by the county committee, such as situations where a farm is inherited or a complete dairy operation is sold. While this allows a transfer of producer bases under limited circumstances, the calculation of a base for a producer who has acquired only a part of a dairy farm operation will not take into consideration the history of the marketings from that part of the dairy operation which the producer has acquired.

The provisions of the 1949 Act specify that the Secretary may not require that producers, as a condition for receiving refunds, reduce their marketings in excess of a reduction equivalent to the ratio that the total amount of surplus milk production, as estimated by the Secretary for the fiscal year, bears to the total milk production estimated for such period.

Any accounting and refund resulting from a reduction by a producer in milk marketings will be made after the end of the marketing year when evidence is submitted to the ASCS county office of the milk which has been marketed by the producer and the deductions which has been made as a result of those marketings during the year. Advance payment of refunds may be made semi-annually and will be limited to a maximum of 60% of the estimated amount of the refund for the first half of the marketing year. During any period when the refund program is in effect producers must submit evidence of milk marketings and the deductions from the sales proceeds for such period to the county committee in order to be eligible to receive payment.

Response to Public Comments

Those comments which were responsive to the subject matter of the proposed rule (47 FR 56500, December 17, 1982) have been considered in the formulation of this final rule. Comments requesting changes in the proposed regulations were received from seven dairy cooperatives, one proprietary business, one farm organization, one State agency, one law firm representing several producer-handlers, two producer-handlers and eighteen producers. Other comments received during the time were directed toward the proposed determination to impose the deduction and are discussed in that final determination.

There were six comments requesting partial refunds if producers reduced their commercial marketings of milk from the established base by an amount which is less than the required amount of the reduction. These respondents stated that requiring a full reduction in order to qualify for a refund is too restrictive and that more producers would be willing to decrease their marketing if they were not required to reduce their production by the full amount. This requested change has not been adopted. Milk production continues to far exceed commercial consumption so that net price support purchases by CCC continue to be about 10 percent total milk production. Under these circumstances, requiring anything less than the maximum reduction in milk marketing by each producer will not produce the reduction in production which we believe is possible under the program.

There were twenty-one comments recommending a shorter and more recent base period while three of those commenting recommended that a longer base period be established. The 1949 Act specifies that the base period shall be either the fiscal year beginning October 1, 1981, or the average of the 2 fiscal years beginning October 1, 1980. The longer base period (i.e., the average of the 1980 and 1981 fiscal years) was selected in order to present the most balanced historic picture of national milk production. The averaging of producer marketings over a two year base period should assure that fair and reasonable bases are established for each producer by offsetting, to a certain extent, the increased marketings of milk by those producers who have anticipated the implementation of the program.

There were five comments recommending that the refund be made on a monthly or quarterly basis rather than at the end of the marketing year and urging at least semi-annual payments. This suggestion has been adopted in part. Upon compliance with requirements of this subpart, an advance payment of refund, not to exceed 60 percent of the projected amount of the refund for the first half of the marketing year, will be made upon receipt of assurances from an eligible producer that he intends to reduce his marketings not less than the amount required for the full year.

There was one comment that the amount to be refunded was not adequate. The 1949 Act specifies that the refund will be limited to the amount collected under the second 50-cent deduction.

There were two comments which stated that necessary marketing records are not available. The requirement that the producer provide evidence of his milk marketings during the base period cannot be eliminated since these records are necessary to determine whether a producer has reduced his marketings from that of the base period in order to qualify for a refund. Records of milk marketings should be available from milk handlers and from other sources.

One comment noted the absence of a specified closing date for applying for a producer refund. In response to this comment, a closing date of December 31 following the end of the applicable marketing year was inserted into the regulations at § 1430.298(b). A three month period should be more than adequate for producers to assemble and submit the data necessary to apply for a refund.

One comment was received on behalf of several producer-handlers recommending that producer-handlers be excluded from the deduction program. This suggestion was not adopted because section 201(d)(4) of the 1949 Act specifically provides that producer-handlers are subject to the deduction program.

Two suggestions addressed problems of producers transferring cows to another farm in which they have an interest in order to qualify for a refund. The regulations have been revised to provide that a producer may be liable if the producer adopts a scheme or device which is designed to evade the purpose of the program. The adoption of such scheme or device includes, but is not limited to, concealing any information having a bearing on the application of the regulations, submitting false information, creating fictitious entities, or engaging in transfers or producer base which do not reflect substantive changes in farming operations for the purpose of becoming eligible for a refund or increasing the size of such refund.

Several of the comments urged a longer term solution that would more directly address the problem of production-consumption imbalance. Those comments are addressed in the determination to implement the deduction and are not properly concerned with these procedural regulations.

One State agency recommended that the deduction program should not be applicable to Class I milk. This suggestion was not adopted because the 1949 Act does not authorize the deduction to be applied selectively with respect to different classes of milk.

There were two comments regarding the transfer of producer bases. All of a producer's marketings during the base period will be included in establishing his base. This includes all marketing of production transferred to a producer during a base period after the time of such transfer. However, only if a producer increases or begins marketing during the base period due to the acquistition of a complete dairy operation as defined in section 1430.296(c), will the producer's base, during the prior portion of the base period, be increased by the production of the former owner provided such marketing is adequately documented. The only producers who will need to establish bases are those who intend to reduce marketing and apply for a refund.

The data required in order to establish a producer base will normally be contained on the stubs which accompany producers' milk checks but may also be available from handlers' records or from other sources.

One comment recommended deleting § 1430.307, "Setoffs." This suggestion was not adopted. Setoff provisions are a standard practice with respect to payments and obligations under government programs and are necessary to protect the fiscal interests of the United States.

Two comments recommended that deductions be remitted to CCC on the last day of the month following the month in which milk was marketed. This requested change has not been adopted. The obligation to use good business and management practices supports the policy that remittances to CCC be made no later than the time final payments are made to producers. This will enable CCC to reduce operational costs of the dairy price support program by reducing its interest costs for borrowed money.

One comment disputed the position taken in the notice of determination published on September 24, 1982 (47 FR 42112), that the Regulatory Flexibility Act (Pub. L. 96–354) is not applicable to the subject matter of this final rule. The Department's position with respect to the applicability of the Regulatory Flexibility Act is set out above.

Other Modifications of Proposed Rule

The final regulations have been modified to provide for the possibility that it will prove necessary to implement or terminate a deduction program at a time other than the beginning or ending of a calendar month. To accommodate such possible situations, the phrase "or portion thereof" has been inserted when reference is made to a measured period of time.

Section 1430.295(d) has been revised to accommodate responsible persons who choose to make remittance by use of negotiable forms of payment other than checks.

Section 1430.302(a) (§ 1430.301(a) of the proposed rule) has been modified to provide for a $25.00 charge for dishonored payment in all cases including the responsible person stopping payment, rather than only in those instances of insufficient funds. This section has also been revised to make clear that this charge is in addition to other authorized charges and penalties which may result from a dishonored payment.

Section 1430.307, "Setoffs" has been modified to conform which other regulations governing CCC and ASCS setoff procedure (7 CFR Part 13).

It is anticipated that reasons other than litigation may necessitate the retention of some records for a period exceeding 3 years. Accordingly, § 1430.299(c) has been modified to delete any specific references to litigation.

A new subsection (d) has been added to § 1430.296 "Procedures for establishing producer bases" which addresses the apportionment of a producer base in situations where a partnership or other form of co-ownership is dissolved and the herd is divided among co-owners.

In an effort to enhance clarity, a number of minor changes have been made which will have no substantive impact upon the application of this regulation.

List of Subjects in 7 CFR Part 1430

Milk, Agriculture, Price support programs, Dairy products.

Final Rule

Accordingly, 7 CFR Part 1430, the subpart entitled "Regulations Governing Certain Deductions on Milk Marketings of Producers" is revised to read as follows:

Subpart—Regulations Governing Certain Deductions on Milk Marketings of Producers

Sec.
1430.291 General statement.
1430.292 Definitions.
1430.293 Period of applicability.
1430.294 Responsibility for administration of regulations.
1430.295 Remittance of producer deductions to CCC.
1430.296 Procedures for establishing producer bases.
1430.297 Determination of required reduction.
1430.298 Refund procedure.
1430.299 Responsibility for records and facilities.
1430.300 Scheme or device.
1430.301 Adjustment of accounts for responsible persons.
1430.302 Charges and penalties.
1430.303 Continuing obligations.
1430.304 Limitation of authority.
1430.305 Estates and trusts; minors.
1430.306 Appeals.
1430.307 Setoffs.
1430.308 Overdisbursement.
1430.309 Death, incompetency, or disappearance.
1430.310 Assignment.
1430.311 Instructions and forms.
1430.312 Paperwork Reduction Act assigned numbers.

Authority: Section 201(d) of the Agricultural Act of 1949, as amended (7 U.S.C. 1446, 96 Stat. 763); Commodity Credit Corporation Charter Act, as amended (15 U.S.C. 714 *et seq.*).

Subpart—Regulations Governing Certain Deductions on Milk Marketings of Producers

§ 1430.291 General statement.

This subpart provides for the implementation of provisions of the dairy price support program as authorized by section 201 of the Agricultural Act of 1949, as amended (referred to hereafter as the "Act").

(a) Section 201(d)(2) of the Act provides that during the period of October 1, 1982, through September 30, 1985, the Secretary may provide for a deduction of 50-cents per hundredweight from the proceeds of sale of all milk marketed commercially by producers, including producers who market milk of their own production directly to consumers. The deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the dairy price support program. The Secretary's authority for requiring such deductions shall not apply for any fiscal year for which the Secretary estimates that the net price support purchases of milk or the products of milk will be less than 5 billion pounds milk equivalent. In addition, if at any time during a fiscal year the Secretary should estimate that such net price support purchases during the fiscal year will be less than 5 billion pounds milk equivalent, the Secretary's authority for requiring such deductions shall not apply for the balance of the fiscal year.

(b) Section 201(d)(3) of the Act provides that during the period of April 1, 1983, through September 30, 1985, the Secretary may provide for an additional deduction of 50 cents per hundredweight from the proceeds of sale of all milk marketed commercially by producers, including producers who market milk of their own production directly to consumers. The deductions are to be remitted to the Commodity Credit Corporation to offset a portion of the cost of the dairy price support program. Such deductions shall be implemented only if the Secretary establishes a program whereby the deductions are refunded to producers who reduce their commercial marketings from such marketings during a base period, and if the Secretary estimates that the net price support purchases of milk or the products of milk will be at least 7.5 billion pounds milk equivalent during the applicable fiscal year. If at any time during a fiscal year the Secretary should estimate that such net price support purchases during the fiscal year will be less than 7.5 billion pounds milk equivalent, the Secretary's authority for requiring such deductions shall not apply for the balance of the fiscal year.

§ 1430.292 Definitions.

For purposes of this subpart:

(a) *"ASCS"* means the Department's Agricultural Stabilization and Conservation Service.

(b) *"Base period"* means the 24-month period beginning October 1, 1980, and ending September 30, 1982.

(c) *"CCC"* means the Commodity Credit Corporation.

(d) *"County committee"* means an Agricultural Stabilization and Conservation county committee established under 16 U.S.C. 590h.

(e) *"Diary Division"* means the Dairy Division of the Department's Agricultural Marketing Service.

(f) *"DASCO"* means Deputy Administrator, State and County Operations, ASCS.

(g) *"Deduction"* means that amount which is deducted in accordance with § 1430.291 from the proceeds of sale of all milk marketed commercially by producers.

(h) *"Department"* means the United States Department of Agriculture.

(i) *"Marketing year"* means the 12-month period beginning October 1 and ending September 30.

(j) *"Participating producer"* means a producer who reduces his milk marketings and claims a refund.

(k) *"Person"* means any individual, partnership, corporation, association, or other business or government unit.

(l) *"Producer"* means any person within the United States who produces milk from cows.

(m) *"Producer base"* means the 2-year average of the amount of milk marketed during the months, or portion thereof, of the base period which are comparable to the months for which a producer is requesting a refund.

(n) *"Refund"* means the money that is returned to a producer who reduces his marketings by the required reduction announced by the Secretary.

(o) *"Required reduction"* means the amount of reduction in the milk marketed commercially by a producer in order for the producer to be eligible to receive a refund of the deduction described in § 1430.291(b).

(p) *"Responsible person"* means:

(1) Any person who pays a producer for milk marketed commercially by the producer, except in a transaction covered by (2) below. This shall include a handler regulated under a Federal milk order to the extent of any payments for milk that are transmitted by the handler to the market administrator for transmittal by the market administrator to individual producers.

(2) Any producer with respect to milk of his own production that he markets commercially in the form of milk or milk products to consumers, either directly or through retail or wholesale outlets.

(q) *"Secretary"* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has been delegated or to whom authority may hereafter be delegated to act in his stead.

(r) *"State Committee"* means an Agricultural Stabilization and Conservation State committee established under 16 U.S.C. 590h.

(s) *"Surplus"* means the milk equivalent of the dairy products which the Secretary estimates will be purchased by the CCC during the applicable marketing year.

(t) *"United States"* means the 50 states of the United States of America, the District of Columbia, Puerto Rico, and the territories of the United States of America.

§ 1430.293 Period of applicability.

The provisions of this subpart shall apply only to the milk that is marketed commercially by producers in the United States during those months, or portions thereof, for which the Secretary has announced that the deductions are required.

§ 1430.294 Responsibility for administration of regulations.

(a) The Dairy Division shall have the responsibility for administering the provisions of this subpart which relate to the collection of the deductions.

(b) DASCO, through the State and county committees, shall have the responsibility for administering the provisions of this subpart which relate to the establishment of bases and refund of the deductions.

§ 1430.295 Remittance of producer deductions to CCC.

Deductions will be remitted to the CCC in accordance with the following procedures:

(a) Each responsible person who pays a producer for milk marketed commercially during the month, or portion thereof, shall remit to the CCC by the last day of the following month, or at the time of making final payment to the producer for such milk, whichever is earlier, an amount equal to the number of hundredweight of milk for which payment to the producer is being made multiplied by:

(1) 50 cents, if only the deductions described in § 1430.291(a) are applicable; or

(2) $1.00, if the deductions described in both paragraphs (a) and (b) of § 1430.291 are applicable.

(b) Each responsible person who markets milk of his own production to consumers (either directly or through retail or wholesale outlets) in the form of milk or milk products during the month shall remit to the CCC by the last day of the following month an amount equal to the number of hundredweight of such person's own production used in such marketings multipled by:

(1) 50 cents, if only the deductions described in § 1430.291(a) are applicable; or

(2) $1.00, if the deductions described in both paragraphs (a) and (b) of § 1430.291 are applicable.

(c) When remitting money to the CCC in accordance with paragraphs (a) and (b) of this section, each responsible person shall file a report prescribed by the Dairy Division showing:

(1) The identity of the responsible person, including such person's business address;

(2) The month, or portion thereof, in which the applicable producer marketings occurred; and

(3) The total pounds of milk to which the remittance applies.

(d) Money remitted to the CCC shall be in the form of a negotiable instrument made payable to "Commodity Credit Corporation."

(e) Remittances and reports required under this section shall be mailed to the location designated by the Dairy Division.

§ 1430.296 Procedures for establishing producer bases.

(a) Each producer who desires a refund shall be responsible for establishing his monthly marketings of milk during the base period with the county committee for the county where the producer's dairy farm is headquartered. From the producer's marketing records, the county committee shall determine 2-year monthly averages and a 2-year 12-month average of the producer's marketings during the base period.

(b) In any marketing year in which the deductions described in § 1430.291(b) are in effect for a period of less than 12 months, only the comparable months, or portion thereof, of the base period shall be used to determine the producer's base.

(c) If a producer has acquired a complete dairy operation (i.e., land, equipment, and dairy cattle) from another producer, the producer base of the acquiring producer may be increased by the producer base of the former owner. Such a transfer of producer base will be reviewed by the county committee in the county where the acquiring producer's dairy farm is located and will be approved by the committee only if there are adequate records to establish the base of the former owner.

(d) In the event that a partnership, or any other arrangement whereby one or more parties possessing interests in the cow herd or the cow herd and other dairy production facilities is dissolved, the producer base shall be divided among the parties in the same proportion as they apportion the cow herd.

§ 1430.297 Determination of required reduction.

The required reduction for any marketing year or portion thereof shall be announced by the Secretary in a notice published in the **Federal Register** prior to the beginning of the period of time during which the deductions described in § 1430.291(b) are in effect. The required reduction shall not be larger than the ratio that the estimated surplus milk production bears to the estimated milk production for the applicable marketing year.

§ 1430.298 Refund procedure.

(a) A refund of the amount deducted from a producer's proceeds in accordance with § 1430.291(b) shall be made only if the producer has reduced his milk marketings relative to his producer base by the required reduction which is determined and announced in accordance with § 1430.297.

(b) A refund may be requested only after the end of the applicable marketing year, or portion thereof, in which the deductions described in § 1430.291(b) are in effect. However, if requested an advance payment of refund shall be made to eligible producers semi-annually during the marketing year when the second 50-cent deduction is in effect on October 1 of the marketing year and continues for over 7 months. The advance payment will be limited to 60 percent of the estimated refund computed on the basis of marketings during the first half of the marketing year and will be made only upon receipt of assurance from the producer that he intends to reduce his marketings by not less than the required amount for the full year. Requests for an advance payment must be submitted to the county committee no later than June 30 of the marketing year. Requests for refunds must be submitted to the county committee by December 31 following the end of the marketing year. All amounts, refunded which are determined by CCC to have not been earned shall be repaid to CCC with interest from the date of payment of the refund to the producer, computed in accordance with 7 CFR Part 1403.

(c) A refund or advance payment of refund shall be made only if a producer provides the county committee with records that adequately show (1) the producer's milk marketings during the applicable marketing year, or portion thereof, in which the deductions described in § 1430.291(b) are in effect and (2) the amount of the deduction actually withheld during the period for which he is applying for a refund or advance payment of refund.

§ 1430.299 Responsibility for records and facilities.

(a) *Records to be maintained.* Each responsible person, as well as each producer who is granted an advance payment of refund or a refund, shall maintain records in a manner that will demonstrate compliance with the provisions of this subpart.

(b) *Availability of records and facilities.* Each responsible person, as well as each producer who is granted an advance payment of refund or a refund, shall make available all records and facilities pertaining to such person's or producer's operations that are necessary to determine compliance with the provisions of this subpart.

(c) *Retention of records.* All records required under this subpart shall be retained by each responsible person, as well as each producer who was granted an advance payment of refund or a refund, for a period of three years beginning at the end of the month to which such records pertain, or for such longer period as the Department may specifically notify a responsible person or producer.

§ 1430.300 Scheme or device.

All or any part of the refunds due a producer under this part may be withheld or required to be refunded to CCC with interest computed in accordance with 7 CFR Part 1403 from the date of payment to the producer if the producer adopts or participates in adopting any scheme or device designed to evade or which has the effect of evading the rules of this part. Such acts shall include, but are not limited to, concealing from the county committee any information having a bearing on the application of the rules of this part, submitting false information to the county committee, creating fictitious entities, or engaging in transfers of producer bases which do not reflect substantive changes in farming operations for the purpose of becoming eligible for a refund or increasing the size of such refund. This liability shall be in addition to any other liability

imposed in accordance with this subpart or any other provision of law.

§ 1430.301 Adjustment of accounts for responsible persons.

Whenever the Department determines through an audit of a responsible person's reports, records, books or accounts or through some other means that additional money is due the CCC or that money is due such person from the CCC, the responsible person shall be notified of the amount due. The responsible person shall then remit any amount due the CCC by the next date for remitting deductions as provided in § 1430.295. Overpayments shall be credited to the account of the responsible person remitting the overpayment and shall be applied against amounts due in succeeding months or refunded if this subpart is not applicable in succeeding months.

§ 1430.302 Charges and penalties.

(a) *Charge for dishonored negotiable instruments.* Each responsible person who issues a negotiable instrument to the CCC that is not honored because of insufficient funds or any other reason shall be assessed a charge of $25.00. This charge shall be in addition to any and all other authorized charges and penalties.

(b) *Late-payment charge.* Any unpaid obligation of a responsible person that is due the CCC in accordance with § 1430.295 shall be increased by a late-payment charge which shall be applied on the first day after the date such obligation was due and on the same day of each succeeding month until such obligation is paid. The total obligation due from such person shall include any unpaid charges computed previously under this part. The charge shall be an amount equal to one-twelfth (rounded to the nearest one-hundredth of one percent) of the annual rate of interest announced by the CCC under 7 CFR 1403.5. The timeliness of a payment to the CCC shall be based on the applicable postmark date or the date actually received by CCC, whichever is earlier.

(c) *Penalties.* Any responsible person who willfully violates any provision of this subpart, including the willful failure or refusal to remit any amounts due the CCC, shall be liable, in addition to payment of the full amount due plus the applicable late-payment charge, for a penalty to be assessed by the Secretary of not more than $1,000 for each such violation and other remedies otherwise provided by law or in equity.

§ 1430.303 Continuing obligations.

Obligations of any responsible person, as well as any producer who was granted a refund, that arise under this subpart shall continue in effect until the final payment or other disposition agreed to by CCC even though the deductions described in § 1430.291 may no longer be required.

§ 1430.304 Limitation of authority.

(a) State and county committees or their designees do not have authority to modify or waive any of the provisions of the regulations in this subpart.

(b) A State committee may take any action authorized or required by the regulations in this subpart to be taken by a county committee when such action has not been taken by the county committee. A State committee may also (1) correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations in this subpart or (2) require a county committee to withhold taking any action which is not in accordance with the regulations in this subpart.

(c) No delegation herein to a State or county committee shall preclude DASCO or his designee from determining any question arising under the regulations in this subpart or from reversing or modifying any determination made by a State or county committee.

§ 1430.305 Estates and trusts; minors.

(a) A receiver of an insolvent debtor's estate and the trustee of a trust estate shall, for the purpose of this subpart, be considered to represent an insolvent producer and the beneficiaries of a trust, respectively, and the production of the receiver or trustee shall be considered to be production of the producer such receiver or trustee represents. Program documents executed by the receiver or trustee will be accepted only if they are legally valid and such person has the authority to execute the applicable documents.

(b) A participating producer who is a minor shall be eligible for a refund pursuant to the regulations in this subpart only if (1) the right of majority has been conferred on him by court proceedings or by statute; (2) a guardian has been appointed to manage his property and the applicable program documents are signed by the guardian; or (3) a bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had he been an adult.

§ 1430.306 Appeals.

The appeal regulations found at 7 CFR Part 780 shall be applicable to appeals by participating producers from determinations made pursuant to the regulations in this subpart.

§ 1430.307 Setoffs.

If a participating producer is indebted to any agency of the United States, any refund which is due such producer under the regulations in this subpart shall be applied to such indebtedness in accordance with the provisions of 7 CFR Part 13, Setoff and Withholdings. The CCC may also setoff any amounts due CCC under this subpart in accordance with the provision of 7 CFR Part 13.

§ 1430.308 Overdisbursement.

If a refund is disbursed to a participating producer which exceeds the amount which is authorized to be disbursed to the participating producer under this subpart, the participating producer shall be personally liable for repayment of the amount of such excess plus interest.

§ 1430.309 Death, incompetency, or disappearance.

In the case of the death, incompetency, or disappearance of any participating producer who is entitled to a refund, such refund may be made to the person or persons who are specified in 7 CFR Part 707. The person requesting such refund shall file Form ASCS-325, "Application for Payment of Amounts Due Persons Who Have Died, Disappeared, or Have Been Declared Incompetent," as provided in that part.

§ 1430.310 Assignment.

Any producer who may be entitled to a refund may assign his rights to such refund in accordance with 7 CFR Part 709.

§ 1430.311 Instructions and forms.

Such forms and instructions as are necessary for establishing bases and obtaining refunds pursuant to the provisions in this subpart may be obtained from the county ASCS office.

§ 1430.312 Paperwork Reduction Act assigned numbers.

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560–0114 and 0581–0132 have been assigned.

Signed at Washington, D.C. on: July 27, 1983.

John R. Block,

Secretary.

[FR Doc. 83-20779 Filed 7-29-83; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 83-NM-63-AD; Amdt. 39-4696]

Boeing Model 757 and 767 Airplanes; Airworthiness Directive

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) which requires a periodic check of the Fuel Quantity Indication System (FQIS) on Boeing Model 757 and 767 aircraft. Compliance with this AD is required to prevent inflight fuel exhaustion due to incorrect fuel quantity indication.

DATE: Effective August 9, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mr. Stewart R. Miller, Propulsion Branch, ANM-140S, Seattle Aircraft Certification Office, Federal Aviation Administration, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2520. Mailing Address: Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration has determined that the Boeing Model 757 and 767 airplanes are subject to a Fuel Quantity Indication System (FQIS) fault which can cause an erroneous high reading for both main tanks simultaneously.

During a recent delivery flight, the crew noted a 4,300 pound variance between FQIS readings and the calculated values shown by the Flight Management Computer (FMC). This error was traced to an FQIS fault. Subsequent investigation by Boeing showed that specific FQIS faults can affect the fuel quantity readings in both main tanks equally. Fault insertion tests resulted in total fuel readings in the Model 757 which were 2,000 pounds high. Similar tests on the Model 767 resulted in total fuel readings which were 3,400 pounds high.

If the subject FQIS fault is present during fueling, the aircraft can be significantly underfueled. This underfueling and the associated erroneous flight deck display and FMC initialization signal, combined with an inflight delay for any reason, have the serious potential to cause inflight fuel exhaustion.

Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires periodic checks of the fuel quantity indication system.

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

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of Amendment

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

Boeing: Applies to Boeing Model 757 and 767 series airplanes certificated in all categories. To prevent loss of engines due to fuel exhaustion resulting from erroneous fuel quantity indications, accomplish the following within five days after the effective date of this AD:

A. For Model 757 aircraft equipped with FQIS processor part number S345T002-310, institute an inspection program in accordance with Boeing Alert Service Bulletin 757-28A7, dated June 17, 1983, or later FAA approved revision.

B. For Model 767 aircraft equipped with FQIS processor part number S345T002-41, institute an inspection program in accordance with Boeing Alert Service Bulletin 767-28A5, dated June 16, 1983, or later FAA approved revision.

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

This amendment becomes effective: August 9, 1983.

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

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

Issued in Seattle, Washington on July 20, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-20527 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 83-NM-13-AD; Amdt. 39-4697]

British Aerospace Corporation BAC 1-11 Series 200 and 400 Airplanes, Airworthiness Directive

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) applicable to British Aerospace BAC 1-11 series 200 and 400 airplanes which requires repetitive visual and eddy current inspections of the fuselage longitudinal skin splices. These inspections are needed to detect loose rivets and cracks extending from the splice rivet holes. Skin cracks, if allowed to grow to critical lengths, could compromise the structural capability of the fuselage.

EFFECTIVE DATE: September 6, 1983.

ADDRESSES: The service bulletin specified in this AD may be obtained upon request to British Aerospace Corporation, Inc., Box 17414, Dulles International Airport, Washington, D.C. 20041 or may be examined at the address shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Foreign Aircraft Certification Branch, ANM-150S, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington, telephone (206) 767-2530. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority of the United Kingdom (CAA) has classified British Aerospace Service Bulletin 53-A-PM5726 as mandatory. During the process of developing a structural audit on the BAC 1-11, it was determined that a directed inspection of the fuselage longitudinal skin joints (lap joints) was necessary to detect cracks and loose rivets. The service bulletin prescribes both visual and eddy current inspections of the skin lap joints and repairs if damage is found.

A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive requiring both visual and eddy current inspections of the skin lap joints and repairs if cracks are found was published in the **Federal Register** on March 14, 1983 (48 FR 10692). The comment period closed on May 9, 1983.

Interested parties have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to all comments received.

Only one comment was received stating no objection to the proposed AD.

It is estimated that 63 U.S. registered airplanes will be affected by this AD, that it will take about 60 man-hours per airplane to accomplish the required actions, and that the average labor cost will be $35 per man-hour. Repair parts are estimated at $17,600 per airplane. Based on these figures, the total cost impact of this AD to the U.S. operators will be $1,241,000. For these reasons, the AD is not considered to be a major rule under the criteria of Executive Order 12291. Few small entities within the meaning of the Regulatory Flexibility Act will be affected by this action.

Therefore, since no new information has been presented that might change the rule the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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

British Aerospace: Applies to all Model BAC 1-11 200 and 400 series airplanes certificated in all categories. Compliance is required as indicated. To prevent structural failure of the fuselage, accomplish the following, unless previously accomplished. Within the next 1250 landings after the effective date of this AD or upon accumulating the number of landings determined by Figure 1 of British Aerospace, Aircraft Group, BAC 1-11 Alert Service Bulletin No. 53-A-PM5726, Revision 2, dated October 5, 1981, whichever occurs later:

1. Perform a visual and eddy current inspection of the fuselage longitudinal skin splices in accordance with the Section 2, Accomplishment Instructions, of the service bulletin. The visual inspections must be repeated at intervals of 1250 landings; the eddy current inspections must be repeated at intervals of 3750 landings.

2. Repair any damage in accordance with the service bulletin.

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

Note.—Acceptable incorporation of the BAC 1-11 Supplemental Structural Inspection Document (SSID) into the approved airplane maintenance program of a BAC 1-11 operator constitutes an approved alternate means of AD compliance.

4. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

This amendment becomes effective September 6, 1983.

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

Note.—For the reasons discussed earlier in the preamble, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities. A final evaluation has been prepared for this regulation and has been placed in the docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

Issued in Seattle, Washington on July 22, 1983.

Wayne J. Barlow,

Acting Director, Northwest Mountain Region.

[FR Doc. 83-20529 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 3

Fees for Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission recently proposed to revise its registration fees for all categories of registrants and to establish fees for principals of registrants as well as fees for those categories of registrants created by the Futures Trading Act of 1982. 48 FR 14933 (April 6, 1983). The Commission is now adopting in final form a registration fee schedule. The fees adopted are lower than the fees proposed and are either the same or slightly higher than the fees currently in effect.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Stacy Dean, Counsel to the Executive Director, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 254-7360.

SUPPLEMENTARY INFORMATION:

I. Registration Fees

On April 6, 1983, the Commission published for comment in the **Federal Register** proposed rules to implement recent amendments to the Commodity Exchange Act ("Act") which establish four new categories of registrants—introducing brokers, associated persons ("APs") of introducing brokers, APs of commodity trading advisors ("CTAs") and APs of commodity pool operators ("CPOs"). 48 FR 14933. The Commission also proposed to amend its existing fee schedule to reflect but not exceed "the actual cost * * * to the Commission" of processing applications for registration and related materials.[1] Specifically, the Commission proposed to increase the fees for registration from $200 to $300 for futures commission merchants ("FCMs"), from $50 to $100 for CTAs and CPOs, from $20 to $50 for APs and floor brokers, and from $6 to $10 for branch offices. The Commission further proposed to establish a $100 fee for introducing brokers and a $50 fee for principals who were required to file a Form 8-R but were not simultaneously applying for registration as an AP or as a floor broker. The Commission further stated that although it believed its proposed fees would reflect the Commission's registration processing costs, it was "nonetheless continuing to develop data and information which will allow it to assess more precisely the actual cost to the Commission of registering each category of registrant and will * * * consider that data and information when it adopts final rules."[2]

[1] *See* Futures Trading Act of 1982, Pub. L. No. 97-444, § 237, 96 Stat. 2326.

[2] 48 FR 14933, 14941 (April 6, 1983).

The Commission is, accordingly, now adopting registration fees which are lower than those proposed last April. The registration fee for FCMs will be $275 (rather than to $300, as proposed). For CTAs and CPOs, the fee will remain $50 (instead of rising to $100). The fee will be $35 for APs and $25 for floor brokers (instead of $50.[3] The fee for branch offices will be $6 (rather than $10). The Commission has further determined that it will not establish a fee for principals (see proposed rules § 3.3(a)(6)), inasmuch as most principals will, in light of their supervisory responsibilities, also be required to register as APs.[4]

Since the proposed fee schedule was published in April, the Commission has determined to delegate to the National Futures Association ("NFA") responsibility for the registration of introducing brokers. Thus, the Commission is not adopting that portion of its proposal which would have established a $100 fee for introducing brokers, nor is it adopting a fee for the APs of introducing brokers.[5] This action should eliminate the concern expressed by some commentators that the Commission would be imposing duplicative fees upon certain registrants. Moreover, as NFA assumes responsibility for additional categories of registrants, the Commission will drop its registration fee for each affected category.

The Commission has, in establishing its revised fee schedule, endeavored to recover costs directly attributed to the registration process (i.e., its actual costs). In this regard the Commission has reviewed the total costs of its registration program. Actual costs of the registration program for the first 8 months of fiscal year 1983 (October 1, 1982 to May 31, 1983) were $1,273,558. These costs fall within the following categories: staff time of the Commission's registration unit (including compensation, benefits, and travel); the background review prepared by the Federal Bureau of Investigation ("FBI") and the Securities and Exchange Commission of each individual applicant and principal to determine whether that individual has been the subject of criminal or regulatory proceedings; printing costs; automated data processing services including staff time; staff time in the Office of General Counsel, Division of Enforcement and the Hearings Section directly associated with the registration program; and overhead costs (office space, utilities, etc.).[6]

The Commission has allocated its total registration costs to the various categories of registrants by analyzing the steps involved in the registration process. Based on this analysis the separate costs attributable to each category were determined. During the first eight months of fiscal year 1983, the total number of applicants in each registration category, including both initial applications and renewals, was as follows:

FCMs—376.

CTAs and CPOs—1,720.

Floor brokers—4,444.

AP—24,391.

Branch offices—3,000 (estimated).

These figures were applied to the Commission's actual registration costs in the first 8 months of FY 1983 to derive the Commission's average cost of registering an applicant in each category. For administrative convenience and to ensure that the Commission does not charge fees in excess of its actual registration costs, the Commission then rounded off its actual average costs to arrive at the following fees which it will charge each applicant:

FCMs—$275.

CTAs and CPOs—$50.

Floor brokers—$25.

APs—$35.

Branch offices—$6.

The Commission notes that if the fees now being adopted had been in effect during the first 8 months of fiscal year 1983, the Commission would have collected $1,172,185, rather than its actual registration costs of $1,273,558. Had the new fees been in effect in fiscal year 1982, they would have yielded revenues of $1,200,057, as compared to Commission estimated actual registration costs of $1,469,394.[7]

The Commission recognizes that its actual costs for registering each category of registrant may change over time. Therefore, the Commission will review its fees periodically to ensure that they reflect the actual costs of its registration function.

The Commission has determined that good cause exists for making the new registration fees effective on August 1, 1983, rather than 30 days after publication of the the new fee schedule. *See* 5 U.S.C. 553(d)(3). The setting of a prospective date for implementation of the new fee schedule could result in a flood of applications accompanied by the old registration fees within the 30-day period, thereby frustrating the Commission's purpose of recovering its actual registration costs. Moreover, a deferred effective date could add significantly to administrative costs, as the Commission would be required to sort out applications filed during the interim period prior to the effective date. In addition, the Commission's already limited resources would be further burdened by the additional costs associated with implementing a system for refunding the fees of applicants who paid too much in anticipation of the new rates and returning the untimely applications of those who submitted too low a fee. Since the final fee being adopted by the Commission is in each case lower than the fee proposed by the Commission on April 6, 1983 (48 FR 14933), the market participants subject to registration should not be prejudiced by the slight acceleration of the effective date of the new fee schedule.

II. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA")[8] requires that agencies, in proposing rules, consider the impact of those rules on small entities.[9] The Commission has already established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules in accordance with the FRA.[10] In this regard, the Commission has concluded that FCMs are not "small entities" for purposes of the FRA.

The Commission has also determined that, to the extent that floor brokers can be considered "small entities," the economic effect of the $5 increase in

[3] Where persons apply to associate with more than one entity but are required to file only one Form 8-R, the fee will be only $35, the cost of one AP registration. *See* § 3.3(a)(3).

[4] *See* Sections 4k(1)(ii), 4k(2)(ii) and 4k(3)(ii) of the Act, 7 U.S.C. 6k(1)(ii), 6k(2)(ii) and 6k(3)(ii); 45 FR 54032 (August 14, 1980).

[5] *See* H.R. Rep. 97-964, 97th Cong., 2d Sess. 57 (1982) (Conference Committee).

[6] The Commission has taken into consideration the views of one commentator, who suggested that certain "one-time" costs, such as program development and documentation, should not be included in the Commission's computation of its expenditures for registration. The Commission, as noted herein, believes that recovery of its actual registration expenditures is appropriate. In any event, the total "one-time" costs for the first 8 months of fiscal year 1983 are less than 4% of the overall registration costs described above.

[7] Thus, while the ratios used to apportion registration costs among the various registration categories are approximations, the Commission is certain that it is not recovering more than its actual registration costs.

[8] 5 U.S.C. 601 *et seq.*

[9] By its terms, the RFA does not apply to "individuals." Compare S. 299, 96th Cong., 1st Sess. (Jan. 31, 1979). Because associated persons must be individuals (*see* Section 4k of the Act and new Commission rule 1.3(aa), 17 CFR 1.3(aa), adopted by the Commission on July 26, 1983), the RFA does not apply to APs.

[10] 47 FR 18618-21 (April 30, 1982).

their registration fees is not significant. The fee for CPOs and CTAs remains unchanged. Therefore, the Acting Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a significant impact on a substantial number of small entities.

III. List of Subjects in 17 CFR Part 3

Registration fees, form of remittance.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act, and in particular, Section 8a, 7 U.S.C. 12a, and in Section 26 of the Futures Trading Act of 1978, 92 Stat. 877, 7 U.S.C. 16a (Supp. V 1981), as amended by Section 237 of the Futures Trading Act of 1982, Pub. L. 97–444, 96 Stat. 2326 (Jan. 11, 1983), the Commission hereby amends Part 3 of Chapter 1 of Title 17 of the Code of Federal Regulations. In taking this action, the Commission has considered the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the regulatory objectives of the Commodity Exchange Act.

PART 3—REGISTRATION

1. Section 3.3 is revised to read as follows:

§ 3.3 Registration fees; form of remittance.

(a) *Amount of fees.* (1) *Futures commission merchants.* Each application for registration, or for renewal thereof, as a futures commission merchant must be accompanied by a fee of $275.

(2) *Commodity trading advisors and commodity pool operators.* Each application for registration, or for renewal thereof, as a commodity trading advisor or commodity pool operator must be accompanied by a fee of $50.

(3) *Associated persons.* Each Form 8–R submitted in connection with the registration of an associated person of a futures commission merchant, commodity trading advisor, or commodity pool operator must be accompanied by a fee of $35.

(4) *Floor brokers.* Each application for registration, or for renewal thereof, as a floor broker must be accompanied by a fee of $25.

(5) *Branch offices.* A fee of $6 must be provided for each branch office of a registrant operating within the United States, as specified in any Form 7–R or any Schedule thereto or in any Form 3–R filed with the Commission to report the addition of a branch office. The fee specified by this paragraph (a)(5) must accompany each Form 7–R filed as an application for initial registration or for renewal of registration and each Form 3–R filed to report the addition of a branch office.

(b) *Form of remittance; fees not refundable.* Registration fees must be remitted by check, bank draft, or money order, payable to the Commodity Futures Trading Commission. All registration fees are nonrefundable.

Issued in Washington, D.C. on July 27, 1983, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 83–20772 Filed 7–29–83; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12 and 127

[T.D. 83–158]

Customs Regulations Amendments Relating to Special Classes of Merchandise

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to regulate the entry of any chemical substance, imported in bulk or as part of a mixture into the customs territory of the United States. The rule also governs the importation of certain articles containing hazardous chemicals that the Environmental Protection Agency ("EPA") specifically regulates. The rule, which was developed after consultation with EPA, implements the Toxic Substances Control Act ("TSCA") by requiring the importer of a chemical shipment to certify at the port of entry that either the shipment is subject to TSCA and complies with all applicable rules and orders thereunder, or is not subject to TSCA.

EFFECTIVE DATE: October 1, 1983.

FOR FURTHER INFORMATION CONTACT: Harrison C. Feese, Entry Examination and Liquidation Branch, Duty Assessment Division, Office of Trade Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229; 202–566–8651, or Jack McCarthy, Director, TSCA Assistance Office (TS–799), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E–511B, 401 M Street, SW., Washington, D.C. 20460; 800–424–9065 (Toll Free), calls within the District of Columbia 554–1404, outside the United States: Operator—202–554–1404.

SUPPLEMENTARY INFORMATION:

Background

The Toxic Substances Control Act ("TSCA"), Pub. L. 94–469, approved October 11, 1976 (15 U.S.C. 2612), was enacted by the Congress to regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes. Section 13, TSCA, directs the Secretary of the Treasury, after consultation with the Administrator, Environmental Protection Agency ("EPA"), to refuse entry into the customs territory of the United States (the "customs territory") of any chemical substance, mixture, or article containing a chemical substance or mixture that:

1. Fails to comply with any rule in effect under TSCA, or

2. Is offered for entry in violation of section 5 or 6, TSCA, a rule or order issued under section 5 or 6, or an order issued in a civil action brought under section 5 or 7, TSCA.

Section 13 further provides that if a chemical substance, mixture, or article is refused entry, the Secretary shall notify the consignee of the entry refusal, not release the shipment, except under bond, and cause its disposal or storage under such rules as the Secretary may prescribe if the shipment has not been exported by the consigee within 90 days from the date of receipt of the notice of entry refusal.

To implement the provisions of section 13, by notice published in the **Federal Register** on December 1, 1980 (45 FR 79730), Customs and EPA proposed amendments to Parts 12 and 127, Customs Regulations (19 CFR Parts 12, 127), to regulate the entry of any chemical substance, imported in bulk or as part of a mixture into the customs territory. The rule also governs the importation of certain articles containing hazardous chemicals that EPA specifically regulates. On the same date, by notice published in the **Federal Register** (45 FR 79726), EPA issued a proposed policy statement concerning its responsibilities under the proposed rule.

Numerous comments were received by EPA and Customs in response to the above proposals. While most commenters agreed with the objectives of the proposed rule, the following concerns were expressed.

Comments on Proposed Rule

Definition of Importer

Comment: The proposal defines importer too broadly. Only the consignee should sign the certification statement required by proposed § 12.121.

Response: The language of section 13 refers to liability of the owner and consignee. These are two of the possible importers who may sign the certification statement. The rule uses the broader Customs definition of importer for several reasons. (1) As a practical matter, since the rule involves entering goods through Customs, allowing the person who normally acts as the importer for Customs transactions (i.e., importer of record) to sign the certification statement is least disruptive, confusing, and burdensome for industry and Customs. (2) The section 13 language encompasses all rules under TSCA, therefore the section 13 definition of importer must be broad enough to cover any TSCA definition of importer. Under other sections of TSCA the importer is defined as a manufacturer, and in some cases this importer-manufacturer may be a person other than the consignee. Thus, section 13 should not limit the importer definition to only the consignee. (3) The importer who signs the certification statement, unlike the importer responsible for other TSCA requirements such as premanufacture notification, need not be the "most" knowledgeable person about the chemical shipment, as long as he is assured that the shipment meets the requirements of TSCA. Thus, any authorized person who meets the information requirements may sign the certification statement, at the convenience of the parties to the importation.

Mechanics of Certification

Comment: The rule should allow the certification statement to be typed, stamped, or preprinted and submitted as an attachment to an appropriate entry document or commercial invoice.

Response: In developing the proposal, EPA and Customs considered whether the certification statement should appear on an existing or on a separate and new entry document. To avoid creating additional paperwork at the port of entry, the proposed rule stated that the certification statement should appear on an existing entry document. The proposal specified that the statement be typed for legibility. We considered that the importer would ordinarily type and sign the statement on an entry document or invoice in the course of business in arranging for the import. However, we agree with the comment and have changed the rule to allow the importer the options of having the certification statement typed or stamped on an existing entry document or invoice, or on a preprinted attachment to an entry document or invoice.

Comment: Facsimile signatures should be allowed, particularly for repeat shipments.

Response: We agree with this comment, and have added a new paragraph (c) to proposed § 12.121.

Comment: The rule should not be effective until 90 days after publication so that goods ordered before the effective date can clear ports of entry and importers can educate themselves and foreign suppliers of the rule's requirements.

Response: The time a shipment leaves a port should have no bearing on the effective date. Importers are presently aware that all shipments of chemical substances must be in conformance with TSCA rules and they are merely being asked to certify that fact after the shipment arrives. However, to allow sufficient time to review the requirements, we are providing additional time before the effective date.

Comment: The rule should address the problem of shipments of chemicals on which TSCA rules are promulgated during shipment.

Response: Importers should be aware of proposed TSCA rules to be able to comply when a rule becomes final. The additional days between promulgation and effective date should allow sufficient time for importers to determine how a rule applies to a particular importation.

Comment: Because the proposed certification does not require information to be submitted to either EPA or Customs, description of the scope of the certification should not say all required information submittals are complete and accurate.

Response: We agree with this comment, and have changed the certification accordingly.

Comment: Proposed § 12.121 should specify reasonable steps an importer must take to be assured that a chemical substance and its import comply with TSCA. The certification statement should include the language that it is "based on inquiries in conformance with 19 CFR 12.121."

Response: Customs and EPA disagree. Proposed § 12.121 is properly limited to activities involving actual entry of chemical shipments which fall within the enforcement jurisdiction of Customs. It is beyond the scope of the proposed regulations to set forth the procedures that an importer must take before entry to ensure an import's technical compliance with TSCA. These procedures are explained in the EPA policy statement to be published soon.

Comment: The rule should clarify that all chemical products entered under Schedule 4, Tariff Schedules of the United States (TSUS), require TSCA certification.

Response: Many—but not all—chemical substances as defined under TSCA would be entered under Schedule 4, TSUS. For example, chemicals or mixtures imported as metal-bearing ores under Schedule 6, TSUS, would require TSCA certification. Not all imports under Schedule 4, TSUS, are chemical substances requiring certification under TSCA. For example, chemicals imported as pesticides under items 408.16–408.38, TSUS, would not require TSCA certification. Importers may contact the EPA Regional Office or the EPA TSCA Assistance Office to determine whether a specific chemical intended for importation is subject to TSCA.

Detention

Comment: The proposal would allow detention at the port of entry for noncompliance arising from TSCA sections 5, 6, or 7, or "as otherwise directed by the Administratof." The rule should state the other circumstances that would cause the Administrator to direct that a shipment be detained.

Response: EPA has determined that detention would invariably result from noncompliance with TSCA section 5, 6, or 7. Thus, the language regarding detention "as otherwise directed by the Administrator," is deleted.

Comment: The rule should specify the "reasonable grounds" on which a shipment would be detained at the port of entry. There should be good cause, not mere suspicion of noncompliance to detain a shipment.

Response: The rule allows for detention at the port of entry when a certification statement is missing, or when there are reasonable grounds to believe that a shipment does not comply with TSCA. "Reasonable grounds" means there is an objective reason to believe that a shipment does not comply. This reason will be specified in the detention notice.

Comment: The reasons for detention and the remedial actions to be taken to have a shipment released, should be included in the detention notice.

Response: The proposal states that the detention notice shall include the reasons for detention. The importer may get assistance from EPA in determining the remedial actions to be taken to bring

the shipment into compliance. This is specified in the EPA policy statement.

Comment: The importer should be promptly notified of detention by telephone, followed by written notice.

Response: It is Customs policy to promptly notify the importer or his agent when it is determined that a shipment may not be released from Customs custody. However, because of local conditions it may not be practical to notify by telephone. Therefore, the method of notification should be left to local Customs officials in accordance with local practice.

Comment: EPA should simultaneously notify Customs and the importer of its decision regarding the compliance status of detained shipments.

Response: EPA agrees with this comment and will do so.

Comment: Some commenters stated that the importer should be notified of detention by Customs within 48 or 72 hours, rather then given "prompt" notice as proposed.

Response: Customs disagrees. The establishment of a specific time limit or deadline within which Customs must notify the importer of detention is arbitrary and would impose an undue administrative burden on the agency.

Comment: Detained shipments should be automatically released if EPA does not act within a specified time period.

Response: EPA will act within the specified time periods, so there is no need for an automatic release. An automatic release would not be appropriate since a purpose of section 13 is to deny entry to shipments that do not comply with TSCA, and a shipment would have been detained only if there were reason to suspect that it did not comply.

Comment: The proposal would allow importers 20 days from the date of detention to submit documentation showing why a shipment should be allowed entry. EPA must allow or deny entry within 30 days from the date of detention.

A commenter pointed out that if the importer takes 20 days to submit information, only 10 days remain for EPA to determine whether the importation should be allowed. Also, there is no advantage for an importer to make his submission in fewer than the allowed 20 days, since the earlier an importer does so, the more time would remain in the 30 days from detention within which EPA must respond. The commenter suggested the rule state that EPA allow or deny entry within 10 days after the importer submits his materials. This change would not alter the length of time for EPA's response, but would allow the importer who files promptly to receive a more prompt response from EPA.

Response: EPA agrees. The final rule provides that EPA will decide to allow or deny entry within 10 days of receipt of the importer's submission, or within 30 days from the date of detention, whichever comes first.

Comment: There were several comments about time limits. One commenter said the rule should allow the importer 90 days after notice of refusal of entry, rather than 90 days after notice of detention, to bring the shipment into compliance or export it. The importer would not begin planning export until at least 30 days after the notice of detention, when the goods would be denied entry.

Another commenter said importers should be allowed 60 days from the date of redelivery demand to bring a shipment into compliance or export it. There should not be a time disadvantage for shipments released on bond. According to the comment, the time disadvantage may be an incentive to abandon goods.

Response: Customs believes that 90 days after notice of detention gives the importer sufficient time to bring the shipment into compliance or export it.

Comment: Three extensions should be allowed when the importer is delayed in complying with TSCA for causes beyond his control, such as delays caused by EPA or Customs.

Response: Customs disagrees. The proposal grants an extension of 30 days, if due to delays caused by Customs or EPA, the importer is unable to bring a shipment into compliance with TSCA, or is unable to export it within the required time. Customs believes that one time extension is sufficient under the circumstances. Any additional extensions would be excessive and frustrate the intent of the Act.

Enforcement

Comment: The proposed rule and policy statement allow both EPA and Customs to take enforcement action. This unnecessarily requires establishing two separate Government enforcement mechanisms for the same violation, increases the importer's potential liability, and causes an importer to deal with two separate agencies in enforcement matters. One comment suggested that one of the agencies should state a policy of deferring to the other, except in cases of deliberate violation.

Response: Depending on the circumstances, EPA or Customs or both may take enforcement action under TSCA. However, Customs enforcement responsibilities will end with its release of the merchandise unless entry is made under a "use" provision of the TSUS. This will not necessarily require two separate enforcement mechanisms for the same violation, since in many cases it would be appropriate for only one agency to act. This does not increase the importer's potential liability both under TSCA and under Customs statutes and regulations.

Comment: It is not clear how Customs will verify the certification statement.

Response: Generally, Customs will not verify a certification statement. However, EPA intends to investigate the accuracy of some certification statements. In addition, if there is reason to believe that a certification is false, EPA or Customs will investigate as with any suspected false statement made in connection with an entry.

Scope

Comment: Congress intended section 13 only for Customs to prevent the importation of hazardous chemicals, not for EPA to use as a tool for the overall enforcement of TSCA.

Response: Section 13 prohibits the importation of any chemical that "fails to comply with any rule in effect under this Act." Thus, section 13 is intended as a tool for enforcement of all TSCA import provisions. While the TSCA directs the Secretary of the Treasury to refuse entry of chemical imports that do not comply with TSCA requirements, as a practical matter, EPA—rather than Customs—will ultimately determine whether an import complies.

Who Should Certify?

Comment: Comments were mixed on whether an agent or broker should certify an import's compliance with TSCA. Some comments said brokers should not be required to sign the certification statement because they do not have sufficient information regarding the shipment.

Other comments said brokers should be able to sign the certification statement on behalf of the actual user of the chemical import. The broker could rely on a bona fide certification from the importer with sufficient knowledge of the shipment.

Response: EPA agrees that a broker can certify based on information obtained from his principal in the ordinary course of business.

Comment: An individual who certifies on behalf of an importing company should not be personally liable for false statements. Penalties should apply only to the corporate entity.

Response: TSCA section 16 describes penalties that "any person" who

violates the Act may incur. Although TSCA does not explicitly define "person," the term as used in the Act clearly includes individuals or agents. However, EPA recognizes that an agent may not be responsible for a violation and that the principal may be held liable.

Comment: The importer should be able to fulfill his obligations by presenting a certification from the foreign manufacturer that the chemical substance complies with TSCA.

Response: EPA disagrees. The foreign manufacturer is not under TSCA's jurisdiction and thus cannot be held liable for noncompliance. The responsibility to certify is the importer's. His responsibility may not be completely discharged with a certification from the foreign manufacturer if it is determined that a shipment does not comply.

Chemicals Subject to Certification

Comment: Comments requested exemptions from certification for several categories of chemical substances: (a) Those unintentionally present in the import shipment, such as byproducts, coproducts, and impurities; (b) small quantities for research and development (as defined by Inventory criteria at 40 CFR 710.2(y)); (c) samples imported for testing; and (d) chemicals subject to significant new use requirements.

Response: The importer must look to a TSCA section 5, 6, or 7 rule or order to determine whether the above exemptions apply. For example, presently section 5 requirements exempt importers from submitting premanufacture notices on byproducts or impurities provided they are not imported for separate commercial purposes. Thus, the importer would be required to determine the compliance status under section 5 only for chemical substances intentionally present in the shipment. The importer's certification would mean that the intentional import complied with section 5, and that any unintentionally present chemicals also complied with section 5 simply because they were exempt from these requirements.

Similarly, small quantities for research and development are now also exempt from section 5 requirements. For such imports, the importer's certification statement might be based on information from the consignee that the shipment is intended only for research and development. In this situation, the importer could truthfully certify that the shipment complies with TSCA, without need to determine if the imported chemicals are on the TSCA Inventory.

Research and development includes quality control testing, and testing for the development of a product. If samples are imported only for testing, the samples would be considered as research and development chemicals.

When EPA promulgates significant new use rules, importers will be responsible for determining whether their imports contain chemicals subject to the rules. If so, the importer must ascertain that the intended use of the chemical complies with TSCA.

Comment: Several commenters stated that the certification statement should include language about chemicals exempted from TSCA. They are concerned that there is potential for confusion at the port of entry because some chemical shipments obviously will not be subject to TSCA. For example, chemicals imported solely for use as pharmaceuticals or pesticides are not chemical substances, or articles under TSCA requiring certification. It is suggested that the certification contain an exemption clause for these articles, or that a separate non-TSCA certification statement be required to help Customs identify TSCA and non-TSCA imports, so as to avoid potentially delaying entries.

Response: We agree. Accordingly, the rule is changed to require importers of non-TSCA regulated chemicals to certify that their shipments are not subject to TSCA. The authority for requiring this negative certification is found in 19 U.S.C. 1484 and 1485.

Meaning and Basis for Certification

Comment: The wording of the certification statement should include compliance only with TSCA sections 5, 6, and 7, instead of "all rules" under TSCA because the certification does not cover TSCA section 4 or 8.

Response: The language of the certification has been changed to read "all applicable rules and orders under TSCA."

Comment: The proposed certification statement is redundant. The importer should not need to certify both that the imported chemicals "comply with all rules under TSCA" and that he is "not offering a chemical substance for entry in violation of TSCA or any order under TSCA."

Response: The certification statement was constructed to parallel the language in TSCA section 13(a)(1) (A) and (B). The requirements under section 13(1)(a) pertain to the commodity itself, such as the requirements for PCB's under section 6. The requirements under section 13(1)(B) pertain to obligations imposed by or under TSCA on the importer, such as the obligation under section 5(a) to file a premanufacture notice for "new" chemicals. The certification statement uses two separate phrases to acknowledge the distinction between requirements imposed directly on commodities, and duties imposed on importers.

Comments: Several commenters recommended changing the certification statement to reduce the potential liability of importers who may not be in a position to know the facts needed to determine whether a shipment complies with TSCA. They argue that the importer may not have the specialized knowledge to determine if the chemical supplied actually complies. Or, necessary information may be confidential and the foreign supplier unwilling to divulge it. To alleviate this problem, one recommendation was for the certification to be signed on "behalf of" the importer. Another recommendation was to allow the importer to certify "to the best of his knowledge and belief."

Response: The certification statement does not include the phrase "to the best of my knowledge and belief" because this would defeat the purpose of the certification. An importer who did not know and had made no attempt to discover whether a chemical complied with TSCA could truthfully declare that "to the best of his knowledge and belief" the shipment complied.

Special Chemical Import Report Forms

Comment: Commenters gave several reasons to delete the provision in proposed § 12.121, Customs Regulations, for the Special Chemical Import Report Form. (1) The proposed form would exceed Customs authority under section 13. The statute does not allow the Secretary of the Treasury to require importers to report information. (2) The form would be unnecessary and burdensome since EPA has the authority to require substantiation of certification on a case-by-case basis. (3) Obtaining the information on particular chemicals would not be a problem for importers unless it were also a problem for the domestically manufactured chemical. Such a rule would be an non-tariff trade barrier if it did not also apply to domestically manufactured chemicals. (4) EPA authority to issue such a form is doubtful since EPA has determined that the import certification does not apply to TSCA section 4 or 8 rules, but authority for the special import form would be under section 6 or 8. (5) No additional documents should be required at the port of entry.

Response: While EPA does not necessarily agree with these comments,

we have deleted this provision until actual need arises.

Export

Comments: Export notification should not be required for rejected entries that were never officially in the United States, and especially should not be required for chemicals that are returned to their country of origin after being denied entry. If export notice is required for such chemicals under TSCA section 12(b), it should not also be required under section 13.

Response: The language of section 13 argues that export of an entry that is rejected under section 13 is an export under section 12(b). However, after considering these comments, it has been determined that export notification is necessary only for the chemicals that are regulated under TSCA. A section 12(b) export notice will be required for a chemical denied entry only when a TSCA section 5, 6, or 7 rule or order applies to the chemical, and it is not being returned to the country of origin.

Burden

Comment: The certification requirement is burdensome and may discourage the importation of small quantities of chemicals.

Response: Customs disagrees. The certification requirement is not burdensome because the importer is already obligated to know that any chemicals imported must be in compliance with TSCA. The additional cost of certification will not discourage the importation of small quantities of chemicals.

Comment: The economic analysis should consider alternative regulatory approaches that do not include certification. It should also consider the potential costs to the public from delay at the port of entry.

Response: The economic analysis of the proposed section 13 estimated costs to importers required to certify at the port of entry, and compared these costs to alternative approaches that would not require formal certification. No significant cost differences were found to exist. The analysis also discussed the difficulties in estimating administrative costs. Even if it were possible to estimate administrative costs—such as costs of delay—that may result from noncompliance with section 13, EPA would not consider such costs appropriate to include in the economic impact analysis.

International Concerns

Comment: The EPA policy discriminates against foreign suppliers because it does not allow exporters to maintain compositional confidentiality in all cases.

Response: EPA does not agree. The regulation does not require the foreign supplier to reveal chemical identities to anyone. The importer may choose to rely on the foreign supplier's assurance of compliance with TSCA, although this would not completely discharge the importer's responsibility. The policy does not require foreign suppliers to identify chemical imports to other persons at the entry port or elsewhere.

Among several reasons for the approach adopted, one was recognition that the chemical identities of many imports are trade secrets. EPA does not wish to require importers to obtain compositional information from their foreign suppliers when domestic processors would not be required to obtain similar information from domestic suppliers.

Comment: The section 13 requirements create unnecessary technical obstacles to foreign trade.

Response: EPA disagrees. The rule does not create obstacles since importers should already be aware of and complying with TSCA requirements pertaining to imports. The certification itself is simply a method to verify that importers are aware of and meeting their responsibilities and obligations.

Information Availability

Comments: Comments were mixed on how EPA could best distribute information on the section 13 requirements. Some commenters said that EPA lacks statutory authority to issue fact sheets, and that such fact sheets would be confusing and wasteful. Other commenters said that EPA should regularly distribute a checklist of TSCA rules for importers to distribute to their suppliers, since importers are in the best position to educate their foreign suppliers about these to U.S. embassies, U.S. Customs offices abroad, and foreign boards of trade. Fact sheets should especially include information on significant new use rules.

Response: To meet the purposes of section 13, EPA intends to make information about the requirements available by distributing fact sheets on current TSCA requirements, and by answering telephone inquiries through the EPA TSCA Assistance Office. Statutory authority is not necessary to distribute this information.

EPA does not agree that issuing fact sheets would be confusing. It would be easier for importers and suppliers to determine compliance if a current list of all TSCA rules is available to them.

Importers are in the best position to inform their foreign suppliers of TSCA requirements, or they may wish to have their foreign suppliers receive information directly from EPA. Anyone may contact the TSCA Assistance Office to be placed on its mailing list for TSCA section 13 and other TSCA literature, including any significant new use rules. U.S. embassies, U.S. Customs offices abroad, and foreign boards of trade will automatically be placed on the mailing list.

Economic Impact Analysis Statement

Estimated costs for industry compliance with this regulation are contained in a report entitled, "Economic Impact Assessment of the Section 13 Importer Regulations of the Toxic Substances Control Act," dated November, 1979. This report indicates that total cost to industry will be approximately $2.3 million.

The economic impact study is available for review at the Environmental Protection Agency, Office of Pesticides and Toxic Substances, Reading Room, Room 447 East Tower, 401 M Street, SW., Washington, D.C. 20460.

Executive Order 12291

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

Regulatory Flexibility Act

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

Drafting Information

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

List of Subjects in 19 CFR Parts 12 and 127

Customs duties and inspection, Importers, Hazardous materials, Explosives, and Freight.

Regulations Amendments

Parts 12 and 127, Customs Regulations (19 CFR Parts 12, 127), are amended as set forth below.

Alfred R. DeAngelus,

Acting Commissioner of Customs.

Approved: April 13, 1983.

Robert E. Powis,

Acting Assistant Secretary of the Treasury.

PART 12—SPECIAL CLASSES OF MERCHANDISE

Part 12, Customs Regulations (19 CFR Part 12), is amended by adding a center heading and §§ 12.118 through 12.127 to read as follows:

Chemical Substances in Bulk and as Part of Mixtures and Articles

Sec.
12.118 Toxic Substances Control Act.
12.119 Scope.
12.120 Definitions.
12.121 Reporting requirements.
12.122 Detention of certain shipments.
12.123 Procedure after detention.
12.124 Time limitations and extensions.
12.125 Notice of exportation.
12.126 Notice of abandonment.
12.127 Decision to store or dispose.

Authority: Secs. 13, 90 Stat. 2034 (15 U.S.C. 2621), R.S. 251, as amended (19 U.S.C. 66), and secs. 484, 485, 624; 46 Stat. 759 (19 U.S.C. 1484, 1485, 1624).

Chemical Substances in Bulk and as Part of Mixtures and Articles

§ 12.118 Toxic Substances Control Act.

The importation into the customs territory of the United States of a chemical substance in bulk or as part of a mixture, or article *containing a chemical substance or mixture*, is governed by the Toxic Substances Control Act ("TSCA") (15 U.S.C. 2601 *et seq.*), and by regulations issued under the authority of section 13(b), TSCA (15 U.S.C. 2612(b)) by the Secretary of the Treasury in consultation with the Administrator, Environmental Protection Agency ("EPA").

§ 12.119 Scope.

Sections 12.120 through 12.127 apply to the importation into the customs territory of the United States of chemical substances in bulk and as part of mixtures under TSCA.

Sections 12.120 through 12.127 also apply to articles containing a chemical substance or mixture if so required by the Administrator by specific rule under TSCA.

§ 12.120 Definitions.

Except as otherwise provided below, the terms used in §§ 12.121 through 12.127 have the meanings set forth for those terms in TSCA.

(a) "Article".

(1) "Article" means a manufactured item which:

(i) Is formed to a specific shape or design during manufacture,

(ii) Has end use functions dependent in whole or in part upon its shape or design during the end use, and

(iii) Has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 12.120(a)(2) below; except that fluids and particles are not considered articles regardless of shape or design.

(2) The allowable changes of composition, referred to in § 12.120(a)(1), are those which result from a chemical reaction that occurs upon the end use of other chemical substances, mixtures, or articles such as adhesives, paints, miscellaneous cleaners or other household products, fuels and fuel additives, water softening and treatment agents, photographic films, batteries, matches, and safety flares in which the chemical substance manufactured upon end use of the article is not itself manufactured for distribution in commerce or for use as an intermediate.

(b) "Chemical substance in bulk form" means a chemical substance (other than as part of a mixture or article) in containers used for purposes of transportation or containment, provided that the chemical substance is intended to be removed from the container and has an end use or commercial purpose separate from the container.

§ 12.121 Reporting requirements.

(a) *All chemical substances in bulk or mixtures.* The importer of a chemical substance, imported in bulk or as part of a mixture, shall certify to the district director at the port of entry that the chemical shipment is subject to TSCA, and complies with all applicable rules and orders thereunder, or is not subject to TSCA. The importer, or his authorized agent, shall sign one of the following statements:

> I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order thereunder.
>
> I certify that all chemicals in this shipment are not subject to TSCA.

The certification, which shall be filed with the district director at the port of entry before release of the shipment, may appear as a typed or stamped statement:

(1) On an appropriate entry document or commercial invoice, or on a preprinted attachment to such entry or invoice.

(2) On the commercial invoice or an attachment to the invoice, in the event of release under a special permit for an immediate delivery, as provided for in § 142.21 of this chapter, or entry, as provided for in §142.3 of this chapter.

(b) *Chemical substance or mixture as part of articles.* Each importer of a chemical substance or mixture as part of an article shall meet the reporting requirements set forth in paragraph (a) of this section only if required by a rule or order under TSCA.

(c) *Fascimile signatures.* The certification statements in paragraph (a) may be signed by means of an authorized fascimile signature.

§ 12.122 Detention of certain shipments.

(a) The district director at the port of arrival shall detain, at the importer's risk and expense, shipments of chemical substances, mixtures, or articles:

(1) Which have been banned from the customs territory of the United States by a rule or order issued under section 5 or 6 of TSCA (15 U.S.C. 2604 or 2605) or

(2) Which have been ordered seized because of imminent hazards as specified under section 7 of TSCA (15 U.S.C. 2606).

(b) The district director at the port of entry shall detain shipments of chemical substances, mixtures, or articles at the importer's risk and expense, in the following situations:

(1) Whenever the Administrator has reasonable grounds to believe that the shipment is not in compliance with TSCA and notifies the district director to detain the shipment.

(2) Whenever the district director has reasonable grounds to believe that the shipment is not in compliance with TSCA; or

(3) Whenever the importer fails to certify compliance with TSCA as required by § 12.121.

(c) Upon detention of a shipment, the district director shall give prompt notice to the Administrator and the importer. The notice shall include the reasons for detention.

(d) A detained shipment shall not be held in the custody of the district director for more than 48 hours after the date of detention. Thereafter, the shipment shall be promptly turned over to the Administrator for storage or disposition as provided for in §§12.127 and 127.28(i), unless previously released to the importer under bond as provided in § 12.123(b). Notice of intent to abandon the shipment by the importer shall constitute a waiver of all time periods specified in Parts 12 and 127.

§ 12.123 Procedure after detention.

(a) *Submission of written documentation.* If a shipment is detained by a district director under § 12.122, the importer may submit written documentation to the Administrator with a copy to the district director within 20 days from the date of notice of detention, to show cause why the shipment should not be refused entry. If an importer submits that documentation, the Administrator shall allow or deny entry of the shipment within 10 days of receipt of the documentation, and in any case shall allow or deny entry of the shipment within 30 days of the date of notice of detention.

(b) *Release under Bond.* The district director may release to the importer a shipment detained for any of the reasons given in § 12.122 when the district director has reasonable grounds to believe that the shipment may be brought into compliance, or when the district director deems it appropriate under § 141.66 of this chapter. Any such release shall be conditioned upon furnishing a bond on Customs Form 7551, 7553, or 7595 for the return of the shipment to Customs custody. The bond shall be for the full amount required in § 113.14 of this chapter. If a shipment of chemical substance, mixture, or article is released to the importer under bond, the shipment shall be held intact and shall not be used or otherwise disposed of until the Administrator makes a final determination on entry as provided for in paragraph (c) of this section.

(c) *Determination by the Administrator.* After consideration of the available evidence and within 30 days from the notice of detention, the Administrator shall notify the district director and the importer of his decision either to permit or refuse entry of the shipment. If the Administrator finds that the shipment is in compliance with TSCA, the district director shall release the shipment to the importer. If the Administrator finds that the shipment is not in compliance, the district director shall:

(1) Refuse delivery to the importer, giving reasons for such refusal, or

(2) If the shipment has been released on bond, demand its redelivery under the terms of the bond, giving reasons for such demand. If the merchandise is not redelivered within 30 days from the date of the redelivery notice, the district director shall assess liquidated damages in the full amount of the bond.

§ 12.124 Time limitations and extensions.

(a) *Time limitations.* The importer of a shipment of chemical substances, mixtures, or articles which has been detained under § 12.122 shall bring the shipment into compliance with TSCA or export the shipment from the customs territory of the United States within 90 days after notice of detention or 30 days of demand for redelivery, whichever comes first.

(b) *Time extensions.* The district director, upon notification by the Administrator, may grant an extension of not more than 30 days if, due to delays caused by the Environmental Protection Agency or the Customs Service:

(1) The importer is unable, for good cause shown, to bring a shipment into compliance with the Act within the required time period; or

(2) The importer is unable to export the shipment from the customs territory of the United States within the required time period.

§ 12.125 Notice of exportation.

Whenever the Administrator directs the district director to refuse entry under § 12.123 and the importer exports the non-complying shipment within the 30 day period of notice of refusal of entry or within 90 days of demand for redelivery, the importer shall give written notice of the fact of exportation to the Administrator and the district director. The importer shall include the following information in the notice of exportation:

(a) The name and address of the exporter or his agent;

(b) A description of the chemical substances, mixtures, or articles exported;

(c) The destination (country);

(d) The port of arrival at the destination;

(e) The carrier;

(f) The date of exportation; and

(g) The bill of lading or the air way bill number.

§ 12.126 Notice of abandonment.

If the importer intends to abandon the shipment after receiving notice of refusal of entry, the importer shall present a written notice of intent to abandon to the district director and the Administrator. Notification under this section is a waiver of any right to export the merchandise. The importer shall remain liable for any expense incurred in the storage and/or disposal of abandoned merchandise.

§ 12.127 Decision to store or dispose.

(a) A shipment detained under § 12.122 shall be considered to be unclaimed or abandoned and shall be turned over to the Administrator for storage or dispositon as provided for in § 127.28(i) of this chapter if the importer has not brought the shipment into compliance with TSCA and has not exported the shipment within time limitations or extensions specified according to § 12.124. The importer shall remain liable for any expenses in the storage and/or disposal of abandoned merchandise.

(Sec. 13, 90 Stat. 2034 (15 U.S.C. 2612), R.S. 251, as amended (19 U.S.C. 66), and sec. 624, 46 Stat. 759 (19 U.S.C. 1624))

PART 127—GENERAL ORDER, UNCLAIMED, AND ABANDONED MERCHANDISE

Part 127, Customs Regulations (19 CFR Part 127), is amended by adding a new paragraph (i) to § 127.28, to read as follows:

§ 127.28 Special merchandise.

* * * * *

(i) *Chemical substances, mixtures, and articles containing chemical substances or mixtures.* Chemical substances, mixtures, and articles containing a chemical substance or mixture, as these items are defined in section 3, Toxic Substances Control Act ("TSCA") and section 12.120 of this chapter, shall be inspected by a representative of the Environmental Protection Agency to ascertain whether they comply with TSCA and the regulations and orders issued thereunder. If found not to comply with these requirements they shall be exported or otherwise disposed of immediately in accordance with the provisions of § 12.125 through 12.127 of this chapter.

(Sec. 13, 90 Stat. 2034 (15 U.S.C. 2612), R.S. 251, as amended (19 U.S.C. 66), and secs. 484, 485, 624; 46 Stat. 759 (19 U.S.C. 1484, 1485, 1624))

[FR Doc. 83-20835 Filed 7-29-83; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 154

[CGD 83-033]

Operations Manual: Letter of Adequacy

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: On January 31, 1980, the Coast Guard published rules concerning oil pollution prevention by vessels and marine oil transfer facilities. Among other things, the rules required certain marine oil transfer facilities to obtain a Letter of Adequacy for the Operations

Manual. A three year phase-in period for compliance by existing marine oil transfer facilities was allowed. Because of an oversight, the compliance date for the Letter of Adequacy provision of the regulation was not inserted in the proper place when it was published. Since the compliance date has passed, the oversight is being corrected by removing § 154.325(c) which contains the compliance provision.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: LT E. H. DAVISON, II, Port and Environmental Safety Division (G-WPE-3/16), telephone 202-426-9578. Normal working hours are from 7:30 am to 4:00 pm, Monday through Friday, except for holidays.

SUPPLEMENTARY INFORMATION: 33 CFR 154.325 requires that a marine oil transfer facility transferring oil in bulk to or from vessels with a capacity of over 250 barrels (10,500 gallons) capacity of fuel or cargo obtain a Letter of Adequacy for the Operations Manual required in 33 CFR 154.300. Paragraph (c) of § 154.325 provides a phase-in period of up to three years for compliance by marine oil transfer facilities existing at the time the rule was issued. Section 154.325 was published as part of an extensive revision of 33 CFR Parts 154, 155, and 156 on January 31, 1980 in the **Federal Register**, Volume 45, Number 22, pages 7156 through 7179.

Because of an oversight, the words "(date three years after effective date of the final rule)" appeared in the published rules rather than the actual date. Since the effective date, March 3, 1980, does not appear in the codified rules it cannot be determined without referring to the **Federal Register**. The three-year phase-in period ended on March 3, 1983 and all marine oil transfer facilities must now have a Letter of Adequacy. For this reason the text of paragraph (c) is no longer necessary and is deleted.

This rule has been evaluated under Executive Order 12291 and DOT Order 2100.5 and has been determined to be non-major and non-significant. This rule is a correction to the form, rather than the substance, of an existing rule, with no economic impact on the public. Accordingly, it is unnecessary to publish a notice, under 5 U.S.C. 553(b)(3)(B), and this rule may be effective immediately upon publication under 5 U.S.C. 553(d). Since no economic impact is expected, a full economic evaluation has not been conducted. Impact on small entities has been considered under the Regulatory Flexibility Act (30 Stat. 1164), and it is certified that the rule will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal persons involved in drafting this document are LT E. H. DAVISON, II, Project Manager, Office of Marine Environment and Systems, and Mr. Michael N. Mervin, Project Attorney, Office of Chief Counsel.

List of Subjects in 33 CFR Part 154

Oil pollution, Water pollution control.

In consideration of the foregoing, Chapter I of Title 33, Code of Federal Regulations, is amended as follows:

PART 154—OIL POLLUTION PREVENTION REGULATIONS FOR MARINE OIL TRANSFER FACILITIES

§ 154.325 [Amended]

1. In § 154.325, by removing paragraph (c).

* * * * *

(33 U.S.C. 1321(j)(1)(C); E.O. 11735, 3 CFR 1971-1975 Comp., p. 793; 49 CFR 1.46(m))

Dated: July 21, 1983.

B. F. Hollingsworth,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc. 83-20539 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

National Forest Timber Sales; Stumpage Rate Adjustment Procedures for Western Oregon and Western Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of adoption of final policy.

SUMMARY: The Forest Service hereby establishes indices for Stumpage Rate Adjustment for National Forest timber sales in western Oregon and western Washington. The final policy results from analysis of indices now in effect elsewhere in the Western United States, from discussion with forest industry representatives, and analysis of public comment received on the proposed policy published in the **Federal Register** of May 25, 1983 (48 FR 23443).

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Wendall L. Jones, Timber Management Staff, Forest Service, USDA, P.O. Box 2417, Washington, DC 20013, (202) 447-4051.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 1982, the Chief of the Forest Service published a notice of adoption of final policy (47 FR 16178) for new National Forest timber sale procedures. Included in those procedures was the decision to implement Stumpage Rate Adjustment in Forest Service timber sale contracts in western Oregon and western Washington. Implementation was delayed until at least March 31, 1983, to allow the Forest Service time to develop suitable indices. Stumpage Rate Adjustment is in effect in all National Forest System areas of the Western United States except for western Oregon, western Washington, and Alaska. Stumpage Rate Adjustment permits the price paid for National Forest timber to fluctuate, within stated limits, in response to established market indices, thus allowing prices paid for timber to be partially responsive to market conditions. These adjustments tend to encourage continued operations during the down portion of market cycles and thus help to stabilize the industry.

Analysis of Public Comment

In its notice of proposed policy of May 25 (48 FR 23443), the Forest Service proposed to use the newly developed Western Wood Products Association (WWPA) Pacific Northwest Coast Lumber Price Indices for Douglas-fir, western hemlock and true firs, and the WWPA Inland Lumber Price Indices for Pines. Only nine responses were received; however, they represented purchasers who hold approximately 25 percent of the volume under Forest Service timber sale contracts (as of 9/30/82) in the area affected by the proposed policy.

Eight responses were from Forest Service timber sale contractors; one was from a timber industry association. Responses to the proposed policy can be classified into four categories:

1. Those that support the Forest Service preferred alternative;

2. Those that believe that plywood should be represented in the Douglas-fir index;

3. Those that recommended that the Forest Service delay implementation of Stumpage Rate Adjustment in western Oregon and western Washington until a completely new approach can be finalized and tested; and,

4. Those that objected to Stumpage Rate Adjustment and recommended it not be adopted.

All suggestions and comments were reviewed and considered in preparation

of this final policy except the suggestion not to adopt Stumpage Rate Adjustment. This decision had already been made by the Chief of the Forest Service and published in the **Federal Register** on April 15, 1982 (47 FR 16178).

The following summarizes the comments and suggestions received and the agency's response.

Comments: Several suggestions were made to incorporate plywood into the Douglas-fir index. The reasons given were that plywood production makes up a significant portion of the utilization of this species and that although plywood markets generally track the lumber market there are exceptions. While recognizing the significance of plywood in the processing of Douglas-fir, one respondent stated that the keystone to their position was the desire for simplicity and accuracy while minimizing administrative cost for all parties. This respondent saw little benefit from including plywood in the Douglas-fir index and also anticipated a significnt administrative burden if plywood were to be included. It was noted that the Douglas-fir lumber and softwood plywood markets have moved synchronously over the past 15 years and, therefore, that an accurate lumber index will reflect the movement of the plywood market with enough precision that a separate plywood index is not needed for the purposes of indexing stumpage. There was one suggestion to allow a purchaser to choose whichever index he prefers at the time of sale.

Response: It is not possible to develop an index that will accurately reflect each product or the product mixes of every manufacturer. What is expected from an index is that over time it will measure relative market changes of the average product mix manufactured from the species that the index represents. All products manufactured should follow the same general market trends without significant deviation. The Forest Service feels, as does more than one respondent, that the WWPA Pacific Northwest Coast Douglas-fir Index does follow the general market trend of Douglas-fir without significant deviation. The Forest Service has decided not to include plywood in the Douglas-fir index because:

1. Douglas-fir lumber and plywood markets follow the same general trend lines.

2. To combine plywood and lumber into a single index is a complex process. The more complex the system the more difficult and costly it is for each manufacturer to correlate his operation with the index.

3. No suitable plywood index exists nor could a recognized entity be found willing to develop and maintain such an index.

Therefore it would be expensive and impractical to develop and maintain a combination lumber and plywood index.

Comments: Several manufacturers expressed concern about using an index that represents only selling value as a basis for Stumpage Rate Adjustment. These respondents suggested that the Forest Service proposal did not meet its stated objective because it failed to include inflation and operating costs in the Stumpage Rate Adjustment process. They offered an alternative method using an index sale approach to accomplish Stumpage Rate Adjustment. They further suggested implementation be delayed until additional data could be developed and tested.

Response: This suggestion is larger in scope than western Oregon and western Washington in that it would affect the entire Western United States, would require major changes in timber sale contracts, and would change the objective and design of Stumpage Rate Adjustment. Since this suggestion is beyond the scope of this policy, further delay in implementation is not warranted. Implementation of Stumpage Rate Adjustment with the selected indices now does not preclude later consideration of this suggestion.

After consideration of public comments and analysis of alternatives, the Forest Service has adopted the following indices for Stumpage Rate Adjustment for National Forest timber sales in western Oregon and western Washington:

Species	Western Wood Products Association Index (WWPA)
Douglas-fir	PNW Coast Douglas-fir.
Western hemlock and Mountain hemlock.	PNW Coast Hem-Fir.
True firs	PNW Coast Hem-Fir.
Engelmann spruce and Lodgepole pine.	Inland Whitewoods.
Sugar pine	Inland Sugar Pine.
Western white pine	Inland Idaho White Pine.
Ponderosa pine and other pines	Inland Coast—Inland North Ponderosa Pine.

The following species will not be subject to Stumpage Rate Adjustment procedures but will continue to be priced at flat rate: Sitka spruce, all cedars, and all species of Per Acre Material.

If a minor volume of a species not subject to Stumpage Rate Adjustment is combined with a species or species group subject to Stumpage Rate Adjustment, that species will be adjusted using the appropriate index for the species or species group with which it is combined. Likewise, if a minor volume of a species subject to Stumpage Rate Adjustment is combined with a species or species group not subject to Stumpage Rate adjustment the species will not be adjusted.

Specific instructions for implementing Stumpage Rate Adjustment in western Oregon and western Washington have been provided to Forest Supervisors in that area by letter from the Regional Forester, Pacific Northwest Region.

Dated: July 25, 1983.

J. Lamar Beasley,

Acting Chief.

[FR Doc. 83-20727 Filed 7-29-83; 8:45 am]

BILLING CODE 3410-11-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[SW-4 FRL 2408-3]

Hazardous Waste Management Program, Florida; Request for Extension of Application Deadline for Interim Authorization Phase II, Components A, B, and C

AGENCY: Environmental Protection Agency.

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

SUMMARY: On July 12, 1983, the State of Florida requested an extension beyond the July 26, 1983, deadline for application for Phase II, Components A, B, and C, interim authorization under the Resource Conservation and Recovery Act of 1976, as amended. Florida requested an extension for submitting a complete application for Phase II, Components A, B, and C until October 24, 1983. EPA is granting this extension. One effect of this action is to allow Florida to submit its application after July 26, 1983. It also avoids termination on July 26 of the interim authorization which EPA granted previously to the State for the Phase I portion of the hazardous waste program.

EFFECTIVE DATE: July 26, 1983.

FOR FURTHER INFORMATION CONTACT: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, N.E. Atlanta, Georgia 30365, Telephone (404) 881-3016.

SUPPLEMENTARY INFORMATION:

Background

40 CFR 271.122(c)(4) (formerly § 123.122(c)(4); 47 FR 32377. July 26,

1982) requires that States which have received any but not all Phases/Components of interim authorization amend their original submissions by July 26, 1983, to include all Components of Phase II. 40 CFR 271.137(a) (formerly § 123.137(a); 47 FR 32378, July 26, 1982) further provides that on July 26, 1983, interim authorizations terminate except where the State has submitted by that date an application for all Phases/Components of interim authorization.

Where the authorization (approval) of the State program terminates, EPA is to administer and enforce the Federal program in those States. However, the Regional Administrator may, for good cause, extend the July 26, 1983, deadline for submission of the interim authorization application and the deadline for termination of the approval of the State program.

Note.—40 CFR Part 123, including the July 26, 1982 amendments (47 FR 32373), was recodified on April 1, 1983 as 40 CFR Part 271 (48 FR 14248).

Florida received Phase I interim authorization on May 19, 1982. Florida's ability to apply for Phase II interim authorization before July 26, 1983, was delayed because the Florida Legislature did not enact legislation to resolve the permit by default issue, necessary for approval of interim and final authorization, until June 23, 1983. Under Chapter 120, Florida Statutes, the Department was forced to issue a permit by default if the permitting process could not be completed within ninety (90) days. In response to EPA's comments on Florida's Phase II, Components A and B, Application for Interim Authorization, the Florida Legislature amended § 403.722 (9) and (10), Florida Statute to exempt hazardous waste permits from this default provision of § 120.(2), Florida Statutes.

Florida has committed to the following schedule for applying for authorization.

July 18, 1983—Resubmit complete application for Phase II, Components A & B.

August 1, 1983—Submit complete application for Phase II, Component C.

October 1983—Submit draft final authorization application.

July 1984—Submit complete final authorization application.

Decision

Considering the above schedule and Florida's past performance in managing and implementing a hazardous waste management program in a timely fashion, I found there was good cause to grant the State's request for an extension beyond the deadline for applying for Phase II, Components A, B, and C. Therefore, Florida must officially submit a complete application for these components to EPA on or before October 24, 1983. If the State fails to submit a complete application by the above respective dates, approval of the State program will terminate and administration of the hazardous waste management program will revert to EPA.

List of Subjects in 40 CFR Part 271

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

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

Charles R. Jeter,

Regional Administrator.

Dated: July 22, 1983.

[FR Doc. 83-20675 Filed 7-29-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6448

[M 1169]

Montana; Withdrawal of National Forest Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 131.25 acres of national forest land from mineral location and entry and reserves them for protection of the Savenac tree nursery and Big Creek gravel pit. The withdrawal is for a period of 10 years.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Edgar D. Stark, Montana State Office 406-657-6291.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest land is hereby withdrawn from location and entry under the mining laws (30 U.S.C. Ch. 2) for the Savenac tree nursery and Big Creek gravel pit:

Principal Meridian

Lolo National Forest

T. 19 N., R. 30 W.,

Sec. 27, N½SW¼NE¼, NE¼SW¼SW¼NE¼, E½SE¼SW¼SW¼NE¼, SE¼SW¼NE¼, that portion of the SE¼NE¼ lying south and west of Big Creek Road No. 386, N½NE¼SE¼SW¼, that portion of the NE¼SE¼ lying north of Big Creek Road No. 386, NE¼NW¼SE¼, SE¼NW¼ NW¼SE¼, SW¼NW¼SE¼, that portion of the SE¼NW¼SE¼ lying north and west of Big Creek Road No. 386, that portion of the NW¼NE¼SW¼SE¼ lying west of Big Creek Road No. 386, and N½NW¼SW¼SE¼.

The area described contains 131.25 acres in Mineral County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 10 years from the date of this order.

Inquiries concerning the land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 30157, Billings, Montana 59107.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

July 22, 1983.

[FR Doc. 83-20746 Filed 7-29-83; 8:45 am]

BILLING CODE 4310-84-M

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43 CFR Public Land Order 6449

[I-14547]

Idaho; Revocation of Stock Driveway Withdrawal

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes the Secretarial Order of June 19, 1924, which withdrew 14,323.59 acres of land for stock driveway purposes. This action will restore the lands to surface entry. The lands have been and remain open to mining and mineral leasing.

EFFECTIVE DATE: August 27, 1983.

FOR FURTHER INFORMATION CONTACT: Nicholas G. Kleng, Idaho State Office, 208-334-1736.

By virtue of the authority contained in Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. The Secretarial Order of June 19, 1924, which withdrew the following described public lands for use and

designation as Stock Driveway No. 171, is hereby revoked in its entirety:

Boise Meridian, Idaho
T. 6 S., R. 4 W.
Sec. 9, E½E½.
T 3 S., R. 5 W.
Sec. 19, lot 4, SE¼SW¼, SW¼SE¼, SE¼SE¼;
Sec. 20, NE¼SW¼, SW¼SW¼, SE¼SW¼, SE¼;
Sec. 21, SW¼, SE¼;
Sec. 22, NE¼SW¼, NW¼SW¼, SE¼SW¼, W½SE¼;
Sec. 27, NE¼NW¼, SE¼NW¼, NE¼SW¼, SE¼SW¼, S½SE¼;
Sec. 34, NE¼, NE¼NW¼;
Sec. 35, lots 2, 3, 4, SW¼NW¼, N½SW¼.
T. 4 S., R. 5 W.
Sec. 2, lots 1, 2, 3, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼;
Sec. 11, E½NE¼, E½SE¼;
Sec. 12, W½NW¼, N½SW¼, SW¼SW¼, N½SE¼;
Sec. 13, W½W½;
Sec. 14, E½E½;
Sec. 31, SE¼;
Sec. 32, S½;
Sec. 33, SW¼, W½SE¼.
T. 5 S., R. 5 W.
Sec. 1, SW¼NW¼;
Sec. 2, lots 1,2,3,4, S½NE¼, S½NW¼;
Sec. 3, lots 1,2,3,4, S½N½;
Sec. 4, lots 1,2,3, SE¼NE¼;
Sec. 6, lots 1,2,6,7, S½NE¼, E½SW¼, SE¼.
T. 7 S., R. 5 W.
Sec. 31, lots 3,4, E½SW¼, SE¼.
T. 8 S., R. 5 W.
Sec. 5, lots 1,2,3,4, S½N½.
T. 1 S., R. 6 W.
Sec. 1, lots 1,2,3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 12, NE¼, E½NW¼, E½SW¼, SE¼;
Sec. 13, E½, E½SW¼;
Sec. 24, E½, E½W½;
Sec. 25, E½, E½NW¼, SW¼;
Sec. 26, E½SW¼, SE¼;
Sec. 35, E½, E½W½.
T. 2 S., R. 6 W.
Sec. 2, lots 1,2,3, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 11, lots 1,2,3,4, W½E½, E½W½;
Sec. 14, lots 1,2,3,4, W½E½, E½W½;
Sec. 23, lots 1,2, W½NE¼, E½NW¼.
T. 3 S., R. 6 W.
Sec. 23, lots 3,4, E½SW¼, SE¼;
Sec. 24, SW¼, SE¼;
Sec. 34, lots 1,2,3,4;
Sec. 35, W½W½.
T. 4 S., R. 6 W.
Sec. 2, lot 4, SW¼NW¼, W½SW¼;
Sec. 3, lots 1, 2, 3, 4;
Sec. 34, lots 3, 4;
Sec. 35, SW¼, W½SE¼.
T. 5 S., R. 6 W.
Sec. 1, SW¼, SE¼;
Sec. 2, lots 2, 3, SW¼NE¼, SE¼NW¼, E½SW¼, SE¼.
T. 7 S., R. 6 W.
Sec. 34, lots 3, 4;
Sec. 35, SW¼.
T. 8 S., R. 6 W.
Sec. 1, lots 1, 2, 3, 4, SW¼NE¼, S½NW¼;
Sec. 2, lots 1, 2, 3, 4, S½N½;
Sec. 25, lot 1, W½NE¼, SE¼NW¼, SW¼, NW¼SE¼;
Sec. 26, lots 5, 6, 7, 8, S½S½;
Sec. 27, lots 3, 4;
Sec. 34, lots 1, 2;
Sec. 35, W½NW¼.

The areas described aggregate 14,323.59 acres in Owyhee County.

2. At 9:00 a.m. on August 27, 1983, the lands described above will be opened to operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals and classifications, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on August 27, 1983, shall be considered in the order of filing. The lands have been and will remain open to the mining and mineral leasing laws.

Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Garrey E. Carruthers,
Assistant Secretary of the Interior.
July 22, 1983.
[FR Doc. 83-20744 Filed 7-29-83; 8:45 am]
BILLING CODE 4310-84-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6549]

Suspension of Community Eligibility Under the National Flood Insurance Program; Massachusetts, et al.

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the flood plain management requirements of the program. If FEMA receives documentation that the community has adopted the required flood plain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register.**

EFFECTIVE DATES: The third date ("Susp.") listed in the fourth column.

FOR FURTHER INFORMATION CONTACT: Mr. Richard E. Sanderson, Chief, Natural Hazards Division, (202) 287-0270, 500 C Street Southwest, Donohoe Building—Room 505, Washington, DC 20472.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local flood plain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities listed in this notice no longer meet that statutory requirement for compliance with program regulations (44 CFR Part 59 et seq.). Accordingly, the communities are suspended on the effective date in the fourth column, so that as of that date flood insurance is no longer available in the community. However, those communities which, prior to the suspension date, adopt and submit documentation of legally enforceable flood plain management measures required by the program, will continue their eligibility for the sale of insurance. Where adequate documentation is received by FEMA, a notice withdrawing the suspension will be printed in the **Federal Register.**

In addition, the Director of the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Hazard Boundary Map. The date of the flood map, if one has been published, is indicated in the fifth column of the table. No direct Federal financial assistance (except assistance pursuant to the Disaster Relief Act of 1974 not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood prone areas. (Section 202(a) of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Director finds that notice and public procedure under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 6 month, 90 days, and 30 days notification addressed to

the Chief Executive Officer that the community will be suspended unless the required flood plain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Associate Director of State and Local Programs and Support, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local flood plain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to (adopt) (enforce) adequate flood plain management, thus placing itself in non-compliance of the Federal standards required for community participation.

In each entry, a complete chronology of effective dates appears for each listed community.

List of Subjects in 44 CFR Part 64

Flood insurance, Flood plains.

Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and County	Location	Community No.	Effective dates of authorization/cancellation of sale of flood insurance in community	Special flood hazard area identified	Date certain Federal assistance no longer available in special flood hazards area
Region I					
Massachusetts: Berkshire.	Adams, Town of	250016B	Nov. 11, 1974, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Nov. 5, 1976, Oct. 18, 1974	Aug. 1, 1983.
Vermont: Washington	Plainfield, Town of	500275B	Aug. 1, 1975, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Aug. 9, 1974, Aug. 27, 1976	Do.
Do	Plainfield, Village of	500119B	Aug. 1, 1975, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Oct. 15, 1976, June 28, 1975	Do.
Massachusetts: Plymouth.	Middleborough, Town of	250275C	May 28, 1975, emergency, Sept. 16, 1981, regular, Aug. 1, 1983, suspended.	Nov. 1, 1974, Mar. 4, 1977, Sept. 16, 1981.	Do.
Region II					
New York: Suffolk	Head-of-the-Harbor, Village of	361513B	Oct. 3, 1979, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Nov. 15, 1974, July 2, 1976	Do.
Greene	Lexington, Town of	360294B	Sept. 12, 1975, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Aug. 23, 1974, Apr. 23, 1976	Do.
Suffolk	Poquott, Village of	361518B	Mar. 29, 1976, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Nov. 15, 1974, June 25, 1976	Do.
Region V					
Indiana: Grant	Jonesboro, Town of	180076C	July 25, 1975, emergency, Aug. 1, 1975, regular, Aug. 1, 1983, suspended.	Dec. 7, 1973 July 23, 1976, Mar. 9, 1979.	Do.
Illinois: Greene	Eldred, Village of	170251	June 15, 1981, emergency, June 15, 1981, regular, Aug. 1, 1983, suspended.	May 5, 1981	Do.
Calhoun	Kampsville, Village of	170735	Jan. 30, 1974, emergency, Feb. 4, 1981, regular, Aug. 1, 1983, suspended.	Feb. 4, 1981	Do.
Pike	Valley City, Village of	170559	May 14, 1979, emergency, Feb. 18, 1981, regular, Aug. 1, 1983, suspended.	Feb. 18, 1981	
Ohio: Franklin	Gahanna, City of	390171B	May 17, 1973, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	May 17, 1974, Aug. 6, 1976	Do.
Wisconsin: Green	New Glarus, Village of	550164B	May 2, 1975, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	May 24, 1974, June 11, 1976	Do.
Rock	Unincorporated Areas.	550363A	Feb. 8, 1974, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.		Do.
Waukesha	Unincorporated Areas.	550476B	May 25, 1973, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	June 17, 1977	Do.
Michigan: Calhoun	Emmett, Township of	260561A	Dec. 5, 1975, emergency, June 1, 1983, regular, Aug. 1, 1983, suspended.	June 1, 1977	Do.
Region VII					
Iowa: Black Hawk	Elk Run Heights, City of	190019B	June 12, 1974, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Jan. 16, 1974, Apr. 16, 1976	Do.
Kansas: Ellis	Ellis, City of	200095B	Oct. 17, 1974, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Jan. 9, 1974, Nov. 24, 1975	Do.
Region X					
Idaho: Nez Perce	Lapwai, City of	160103B	Feb. 5, 1975, emergency, Aug. 1, 1983, regular, Aug. 1, 1983, suspended.	Aug. 9, 1974, Jan. 9, 1976	Do.

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

Issued: July 26, 1983.

Dave McLoughlin,

Deputy Associate Director, State and Local Programs and Support.

[FR Doc. 83-20724 Filed 7-29-83; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 21, and 74

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

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

Correction

In FR Doc. 83-19905 beginning on page 33873 in the issue of Tuesday, July 26, 1983, make the following correction:

On page 33873, middle column, under **DATES:** "August 24, 1983" should have read "August 25, 1983", and "September 8, 1983" should have read "September 9, 1983".

BILLING CODE 1505-01-M

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47 CFR Parts 2 and 97

[PR Docket No. 82-624; FCC 83-345]

Definition and Measurement of Transmitting Power in the Amateur Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order amends Parts 2 and 97 of the Commission's rules in order to clarify and deregulate the definition and measurement of transmitting power in the Amateur Radio Service. This action is necessary because the definition used to regulate maximum transmitting power currently does not apply adequately to modern equipment and communication modes, and the technique required to measure the transmitter power can be hazardous.

EFFECTIVE DATE: August 29, 1983.

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

FOR FURTHER INFORMATION CONTACT: John J. Borkowski, Private Radio Bureau, Washington, D.C. 20554, (202) 632-4964.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 97

Radio.

Report and Order; Proceeding Terminated

In the matter of definition and measurement of transmitting power in the Amateur Radio Service; PR Docket No. 82-624.

Adopted: July 18, 1983.
Released: July 22, 1983.
By the Commission.

1. On September 1, 1982, the Commission adopted a *Notice of Proposed Rule Making* in the above-captioned matter.[1] That *Notice* was in response to the Commission's concern that "* * * the present rules governing maximum transmitting power in the Amateur Radio Service are archaic and unsuitable." The Commission stated:

They do not adequately apply to modern operating methods and place a variety of unnecessary burdens upon amateur radio operators. These rules are also difficult to enforce and require measurement techniques which can be hazardous to amateur operators and Commission enforcement personnel. Furthermore, the Commission has had to deal with a variety of substantive issues involving transmitting power in the past, and has consistently found the existing rules unsatisfactory for addressing such issues.

The Commission, therefore, proposed to change the rules governing the manner in which transmitting power is defined and measured for amateur radio stations.

2. In its *Notice of Proposed Rule Making,* the Commission specifically proposed to measure the operating power of amateur radio stations in terms of peak envelope power (PEP) output with a maximum of 1500 watts generally authorized. Stations operating in the frequency bands 3700-3750 kHz, 7100-7150 kHz (7050-7075 kHz when not in Region 2), 21,100-21,200 kHz and 28,100-28,200 kHz (the "Novice subbands"), under the proposal, would be limited to 200 watts PEP and the power limitations for the protection of the LORAN-A radiolocation system in the bank 1900-2000 kHz would be converted from DC input power to PEP output. It was also proposed to limit transmitter power in the 420-450 MHz band in the protected military zones to 50 watts PEP. A five-year "grandfather" period was proposed for operations using full carrier, amplitude modulated voice (emission type A3, also referred to as "AM DSB") emissions since, under the proposal, these operations would be limited to approximately half of their currently authorized maximum power. The Commission further proposed to delete the requirements for operators to provide a means for accurately measuring transmitter power and instead allow them to determine individually the best means for ensuring compliance with the power limitations. Finally, in order to clarify its requirements, the Commission proposed to set forth specific new definitions in the Rules for transmitting power and to specify the manner in which power measurements would be made by Commission enforcement personnel.

3. Several hundred comments were filed in response to the *Notice.* By and large, the majority of the comments not addressing the effect of the proposal on AM DSB operations supported the proposal. Typical of these comments are those of Joseph Reisert. He stated:

(T)he Amateur Radio Service is one of the few services using the input power measurement. Measuring input power can be deceptive and counter productive for several reasons. The plate and voltage meters used by amateurs are frequently not very accurate * * * Also, these meters can be a safety hazard since they usually carry high voltages * * * Many new schemes of modulation are now in use which are not adequately measured in terms of input power (e.g. single sideband suppressed carrier, Class "E" amplifiers, etc.). Also many new forms of amplifier circuitry (e.g. grounded grid, solid state, etc.) make the use of input power measurements inaccurate since some of the power is passed on by the amplifier without being adequately measureable in terms of actual DC input power. Since Docket 20282 was finalized, many new types of power output meters have become available to the amateur that are accurate as well as resonable in price.

The American Radio Relay League (ARRL),[2] in its comments, stated: "The

[1] 47 FR 49424 (November 1, 1982).

[2] The American Radio Relay League, Inc. is an association of amateur radio operators with over 100,000 members who are licensed by the Commission.

benefits of measurement in terms of output power are significant. It is especially noteworthy that amateurs interested in VHF and UHF [3] communications would no longer be constrained by amplifier efficiency."

4. Nonetheless, a significant concern was expressed in the comments regarding the manner in which amateur operators would be required to measure their transmitting power. Typical of these were the comments of Robert Sherwood. He stated: "Commercial broadcasters who are licensed for power output may use the indirect method of measurement if they can show that their calibration equipment is not accurate enough or available to them to make the required output measurement. There is no reason the Amateur should be burdened to a greater extent than the commercial broadcaster." Although the Commission was careful to point out in its *Notice* that no power measurement would be required, we will take this opportunity to reiterate our position on this matter. We are not going to require amateur operators to have specific equipment on hand to make any power measurements. We will only require that operators comply with the rules regarding the power actually used.

5. When applied to single sideband and other types of emissions the present system of power measurement (measuring input power) is at best an approximation. Measurement of output power is far more accurate. However, even output power may be measured by different methods yielding varying results. Thus, we need to choose a measurement standard for output power that both the amateurs and the Commission recognize as valid. By this order we are choosing and publicizing such a standard. It is:

The output power will be determined while the station is operating as indicated by:

(1) The reading of a thru-line peak reading radiofrequency (RF) wattmeter, properly matched, or

(2) Calculation of the power using peak RF voltage as indicated by an oscilliscope or other peak reading device.

Should we decide upon other standards in the future, we will release them in public notices.

6. By far, the most significant concern expressed in the comments was the effect that the proposal would have on AM DSB operations. Typically, these operations would be limited to half of the maximum operating power that is currently used. Most of the comments insisted that the proposed five-year grandfather period was inadequate. Typical of these were the comments of the ARRL which stated: "This effort by the Commission to lessen the negative impact that its proposal would have on these amateurs (using AM DSB) is appreciated by the League. Nevertheless, the Commission should go one step further and make this grandfathering provision permanent." The Commission remains sympathetic to the effect the proposed rule change will have on these operations. However, we still cannot justify a permanent and continuous expense in terms of equipment and training that would be necessary for us to be prepared to make a special power measurement for this class of operations. This is particularly true in light of the fact that, in the worst case, the actual power reduction (a reduction of 3 dB) would generally be insignificant in terms of actual communications effectiveness and, furthermore, given the fact that only approximately one percent of the licensed amateur operators use this mode. We, therefore, have decided to limit the grandfather provisions to a period ending June 1, 1990. If it appears there is any justification to do so, we will reconsider the matter at that time.

7. There were few comments regarding special power measurements to be made for pulse emissions. However, those that addressed this area stated that pulse frequency and width should be considered in power measurements for these emissions even though they observed that virtually no use is made of this mode currently. The ARRL was among the commenters suggesting a special power measurement technique but their comments also noted that "* * * pulse emission in the Amateur Service has been rare to date." We have considered this matter and decided that, as with AM DSB emissions, it would not be practical to make a special exception at this time. We may revisit this matter if it appears that this emission mode is becoming more popular in the future or that this limit is hampering serious experimental or communications activities.

8. Finally, several comments suggested that the maximum authorized operating power should be lowered substantially for all modes of operation. We will not address this issue in the context of this proceeding, but it is pertinent to make an observation regarding the tenor of the comments. Most of the comments we received dwelt on the effect that changes in maximum operating power would have on particular operations. We must emphasize that *maximum* operating power is *not* the primary governing rule for amateur transmitting power. Amateur operators are required by statute [4] to use the *minimum* power necessary to carry out the desired communications. As the ARRL stated in its comments: "It is important to emphasize that amateur operation at *any* maximum power level is unlawful unless it is the minimum transmitting power necessary to carry out the desired communications. The League is most supportive of the emphasis on this rule exhibited in the Notice by utilizing it at the outset in the proposed Section 97.67."

9. Accordingly, it is ordered that effective August 29, 1983, Part 97 of the Commission's Rules and Regulations, 47 CFR Part 97, is amended as set forth in the attached Appendix. It is further ordered that this proceeding is terminated. This action is taken pursuant to authority contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended. Further information on this matter may be obtained by contacting: John Borkowski, (202) 632-4964, Private Radio Bureau, Federal Communications Commission, Washington, D.C. 20554.

Federal Communications Commission.

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

William J. Tricarico,

Secretary.

Appendix

Parts 2 and 97 of the Commission's Rules and Regulations, 47 CFR Parts 2 and 97, are amended as follows:

PART 2—[AMENDED]

§ 2.106 [Amended]

1. In § 2.106, under the heading "NG FOOTNOTES," the heading of the table in Footnote NG 15, paragraph (a)(4) is revised from "Maximum DC plate input power in watts" to read "Maximum transmitter peak envelope power output in watts".

2. In § 2.106, under the heading "U.S. FOOTNOTES," Footnote US7, the introductory paragraph is revised to read as follows:

US7 In the band 420–450 MHz and within the following areas, the peak envelope power output of a transmitter used in the Amateur Radio Service shall not exceed 50 watts, unless expressly authorized by the Commission after mutual agreement, on a case-by-case basis, between the Federal Communications Commission Engineer-in-

[3] The VHF (Very High Frequency) and UHF (Ultra High Frequency) bands are those between 30 and 3000 MHz.

[4] *See* 47 U.S.C. § 324.

Charge at the applicable District Office and the Military Area Frequency Coordinator at the applicable military base:

* * * * *

PART 97—[AMENDED]

3. In § 97.3, paragraph (t) is revised to read as follows:

§ 97.3 Definitions.

* * * * *

(t) *Transmitting power.* The radio frequency (RF) power generated by operations of an amateur radio station, including the following:

(1) *Transmitter power.* The peak envelope power (output) present at the antenna terminals (where the antenna feedline, or if no feedline is used, the antenna, would be connected) of the transmitter. The term "transmitter" includes any external radio frequency power amplifier which may be used. Peak envelope power is defined as the average power during one radio frequency cycle at the crest of the modulation envelope, taken under normal operating conditions.

(2) *Effective radiated power.* The product of the transmitter (peak envelope) power, expressed in watts, delivered to an antenna, and the relative gain of the antenna over that of a half-wave dipole antenna.

* * * * *

4. Paragraph (b)(2) and the introductory paragraph of (b)(7) of § 97.61 are revised to read:

§ 97.61 Authorized frequencies and emissions.

* * * * *

(b) * * *

(2) Operation shall be limited to:

Areas	Maximum transmitter peak envelope power output in watts			
	1900 to 1925 kHz, day/night	1925 to 1950 kHz, day/night	1950 to 1975 kHz, day/night	1975 to 2000 kHz, day/night
Maine, Massachusetts, New Hampshire, Rhode Island	150/35	0	0	150/35
Connecticut, Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Vermont	300/75	0	0	300/75
Kentucky, North Carolina, Ohio, South Carolina, Tennessee, Virginia, West Virginia	750/150	0	0	750/150
Florida, Georgia, Illinois, Indiana, Michigan, Wisconsin	750/150	150/35	150/35	750/150
Alabama, Arkansas, Iowa, Minnesota, Mississippi, Missouri	1500/300	300/75	300/75	1500/300
The remainder of the States and Territories	1500/300	1500/300	1500/300	1500/300

* * * * *

(7) In the following areas, the peak envelope power output of a transmitter used in the Amateur Radio Service shall not exceed 50 watts, except when authorized by the appropriate Commission Engineer-in-Charge and the appropriate Military Area Frequency Coordinator:

* * * * *

5. In § 97.67, the section heading and paragraphs (a), (b) and (d) are revised, and paragraph (f) is added, to read as follows:

§ 97.67 Maximum authorized transmitting power.

(a) Notwithstanding other limitations of this section, amateur radio stations shall use the minimum transmitting power necessary to carry out the desired communications.

(b) Each amateur radio transmitter may be operated with a peak envelope power output (transmitter power) not exceeding 1500 watts, except as provided in paragraph (e) of this section. Other limitations of this section and § 97.61 also apply.

* * * * *

(d) The peak envelope power output (transmitter power) of each amateur radio transmitter shall not exceed 200 watts when transmitting in any of the following frequency bands:

(1) 3700–3750 kHz;

(2) 7100–7150 kHz (7050–7075 kHz when the terrestrial location of the station is within Region 1 or 3);

(3) 21100–21200 kHz;

(4) 28100–28200 kHz.

* * * * *

(f) An amateur radio station may transmit A3 emissions on or before June 1, 1990 with a transmitter power exceeding that authorized by paragraph (b) of this section, provided that the power input (both radio frequency and direct current) to the final amplifying stage supplying radio frequency power to the antenna feedline does not exceed 1000 watts, exclusive of power for heating the cathodes of vacuum tubes. Limitations of paragraphs (a), (c) and (d) of this section and limitations of § 97.61 still apply.

6. Paragraph (d)(6)(ii) of § 97.77 is revised as follows:

§ 97.77 Standards for type acceptance of external radio frequency (RF) power amplifiers and external radio frequency power amplifier kits.

* * * * *

(d) * * *

(6) * * *

(ii) No amplifier shall be capable of amplifying the input RF driving signal by more than 15 decibels. (This gain limitation is determined by the ratio of the input RF driving signal to the RF output power of the amplifier where both signals are expressed in peak envelope power or mean power.) If the amplifier has a designed peak envelope power output of less than 1,500 watts, the gain allowance is reduced accordingly. For example, an amplifier with a designed peak envelope output power of 500 watts shall not be capable of amplifying the input RF driving signal by more than 10 decibels.

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[FR Doc. 83-20685 Filed 7-29-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 15

[Gen. Docket No. 80-284; FCC 83-352]

Methods of Measurement of Radio Noise Emissions From Computing Devices

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: On reconsideration, the Commission has made a number of minor changes to the test methodology for determining compliance with the rules for controlling the interference potential of computers. This action was prompted by a petition for reconsideration of the test methodology filed by the Computer and Business Equipment Manufacturers Association. It affects manufacturers and test houses of digital electronic equipment.

EFFECTIVE DATE: September 1, 1983.

FOR FURTHER INFORMATION CONTACT: Julius P. Knapp, Federal Communications Commission, Office of Science and Technology, Washington, D.C. 20554, Phone: 202-653-8247.

List of Subjects in 47 CFR Part 15

Communications equipment, Computer technology, Labelling, Radio, Reporting and recordkeeping requirements.

Memorandum Opinion and Order

In the matter amendment of Part 15 of the rules relating to methods of measurement of radio noise emissions from computing devices; General Docket 80-284.

Adopted: July 21, 1983.

Released: July 26, 1983.

Introduction

1. A *Report and Order* in the above captioned proceeding was adopted by

the Commission on February 25, 1981 (46 FR 23240, April 24, 1981), to specify the method of measuring radio frequency emissions from computing devices subject to limits in Part 15, Subpart J. The test procedure was set out in Appendix A of Part 15. A petition for limited reconsideration was filed by the Computer and Business Equipment Manufacturers Association (CBEMA) on May 26, 1981. This *Memorandum Opinion and Order* makes a number of minor changes in the test procedures for computing devices.

2. The requirements for computing devices in Part 15, Subpart J, are designed to control radio frequency interference from digital electronic equipment such as personal computers and coin operated games. The rules specify limits on emissions radiated into space and emissions carried along the power cord of the product. In developing these standards in FCC Docket 20780, commenters emphasized that determination of compliance with the limits rests heavily on how tests are to be performed and urged the Commission to institute a separate proceeding to adopt detailed measurement procedures.[1] The need for specifying the test methods is particularly important because the vast majority of computing devices are subject only to verification, an equipment authorization procedure performed by the manufacturer, normally without FCC review.[2] Thus the subject proceeding was initiated.

3. The *Report and Order* in the instant docket set forth measurement procedures for computing devices in Appendix A of Part 15, based on extensive study by the computer industry and measurement laboratories. Manufacturers are encouraged to employ these procedures when performing their own tests. Second, the FCC document discusses a number of variations from the standard procedure that may be employed by manufacturers for convenience or to accommodate unique measurement situations, provided of course that it can be demonstrated that equivalent results are achieved. The test procedures were made as flexible as possible to account for the diverse nature of computer products and practical problems one faces in performing emissions tests on such equipment, while still ensuring accurate and repeatable results.

4. CBEMA's petition for limited reconsideration requests a few substantive changes and several amendments for clarification purposes. No responses to the CBEMA petition were received. We believe the action taken herein should relieve most of CBEMA's concerns. In addition to the points raised by CBEMA, we will also discuss several interpretive questions and other matters which have come to our attention in correspondence or in testing equipment at the FCC Laboratory. Before getting to these items, we will first revisit our decision to publish the computing device measurement procedures as an appendix to Part 15.

Method of Publication of FCC Computing Device Measurement Procedures

5. Since the time when the *Report and Order* in this docket was adopted, the Commission has had opportunity in other rulemaking proceedings to consider the method of publication of other FCC equipment authorization measurement procedures. Specifically, in the recent rulemaking proceedings concerning TV interface devices (General Docket 79-244) and remote control and security devices (General Docket 20990), the Commission elected to publish the associated measurement procedures as separate documents.[3] This was obviously a different course than was taken in the instant docket 80-284, where the test procedures were appended to Part 15. However, it had become clear that in the long term it would be preferable to publish the test procedures separately so that they may be purchased only by those who need them. Measurement procedures are generally of interest only to a limited audience, and publication of all such documents as appendices to the FCC Rules is an inefficient means of distributing this information. Accordingly, upon review we have decided to remove the computing device test procedures from Part 15 Appendix A and publish them as a separate FCC Office of Science and Technology measurement procedure.[4] FCC Measurement Procedure MP-4 "FCC Methods of Measurement of Radio Noise Emissions from Computing Devices," will be available in the near future from the FCC duplicating contractor.

CBEMA Petition and Discussion

6. CBEMA requests clarification of the Commission's position on whether the equipment under test (EUT) is to be configured in a manner which tends to produce maximized emissions, or whether efforts are to be made to find the absolute "worst case" emissions configuration. Various paragraphs of the test procedure are said by CBEMA to be inconsistent on this point. CBEMA objects to those portions of the procedure calling for specific steps to be taken to find the absolute "worst case" configuration, such as shifting cables or reorienting equipment.

7. It appears that the confusion has been caused by the slightly different instructions that appear in paragraphs 4.2.5, 4.5.1, and 6.1 and in the text of the *Report and Order*. To alleviate this situation we are consolidating all the information on EUT configuration into a revised paragraph 4.5.1. The revised paragraph 4.5.1 allows the test engineer considerable discretion to select the EUT configuration likely to maximize emissions, but the rationale and steps taken to arrive at the final selection must be documented in the test report.

8. CBEMA objects to the requirement in paragraph 4.5.4 that equipment which may be used with a variety of cable lengths must be tested with both long and short cables, because they claim this effectively doubles the required testing. They go on to state that interface cables are often too bulky or rigid to be bundled as called for in paragraph 4.5.4. We have elected to establish a new paragraph 4.5.4.1 to bring together all pertinent information concerning interface cables. The new paragraph 4.5.4.1 does not specifically call for tests with long or short cables. Instead we are calling attention to the need for the test engineer to select cable lengths likely to produce maximum radiation. Disposition of excess cable length that cannot be bundled will be left to the test engineer.

9. Another point raised by CBEMA is that the stated preference in paragraphs 4.1.1 and 6.2 for testing small computers

[1] 44 FR 59530. Complete references to the various actions in Docket 20780 are given in Appendix A of Bulletin OST 54, *Understanding the FCC Regulations Concerning Computers*, available from the FCC Consumer Assistance Office, Washington, D.C. 20554.

[2] See Part 2, Subpart J (47 CFR Part 2, Subpart J), for details on the equipment authorization procedures.

[3] *Report and Order* in General Docket 79-244 adopted February 9, 1983 establishing requirements for TV interface devices, 48 FR 13029, March 29, 1983; *Report and Order* in General Docket 20990 adopted October 22, 1981, establishing requirements for remote control and security devices, 46 FR 55520, November 10, 1981.

[4] The change in the method of publication is considered to be purely administrative in nature. Accordingly, as provided in Section 553(b)(3) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)), further notice and comment on this change are unnecessary. The significance of the test procedure, as stated in § 15.840, is that it will be used by the Commission when performing its own tests. This rule Section is not being changed, except to amend the language to clarify that manufacturers may employ alternative test techniques as discussed in the FCC document.

and Class B computing devices at a distance of 3 meters should be deleted.[5] The justification given is that the limits for Class B devices, although specified at 3 meters, were in fact formulated on the basis of a ten meter protection distance. We are providing partial relief by deleting the instruction in 4.1.1 to measure equipment that occupies a volume of less than a meter cube at 3 meters. Thus Class A computers may be tested up to 30 meters away. (The radiated emissions limits for Class A computing devices are specified at a distance of 30 meters.) For Class B computers, since the limit is specified at 3 meters and measurements at this distance are convenient, we will continue to encourage measurements at 3 meters. Measurements at further distances reduce sensitivity because the signal levels are lower, and they add the uncertainty of extrapolating results inwards from further distances. We have shifted the statement concerning 3 meter measurements for Class B computing devices from paragraph 6.2 to 4.2.4.1 to improve organization of the information. It should be noted that despite the stated preference for 3 meter measurements, provision is made to allow testing Class B devices at further distances if justification exists.

10. CBEMA requests clarification of the Commission's position with regard to equipment that was tested and verified before the test procedures were adopted in this docket. Although the Commission at paragraph 57 of the *Report and Order* in this docket stated that equipment verified prior to the effective date (July 1, 1981) of the formalized test procedures need not be retested, CBEMA feels this is inadequate. CBEMA requests that the Commission state *in the rules* that *any* measurements made before July 1, 1981, will be considered as satisfying the verification requirements, provided that they are repeatable and consistent with good engineering practice. CBEMA is mainly concerned about measurements of broadband emissions, stating that some manufacturers understood measurements of such emissions might not be required, and others measured broadband emissions but assumed a greater reduction of the measurement instrument readings than ultimately decided upon by the FCC.[6]

11. We believe CBEMA and others are entitled to clarification of this point. We have amended 15.840 to note that we will accept procedures that are repeatable and consistent with sound engineering practice. Naturally the Commission must reserve the right to evaluate the procedures employed for testing a given equipment on a case by case basis. As provided in §§ 15.803 and 15.814(d), in the event that a given equipment is found to cause harmful interference, the Commission will investigate the cause of the problem with the manufacturer, including a review of the verification test data, and take appropriate action to correct the situation.

Miscellaneous Matters

12. In a letter dated April 7, 1981, Messrs. Ralph Calcavecchio and Robert F. German, of the International Business Machines Corp. (IBM), explain that their paper, "On Radiated EMI Measurement in the VHF/UHF Frequency Range," referred to in paragraph 34 of the *Report and Order*, was misinterpreted. The *Report and Order* indicated that the subject paper suggests use of a fixed measurement antenna height. To the contrary, the paper does in fact call for antenna height scanning, but instead of scanning from 1 to 4 meters above ground as the Commission proposed, and ultimately adopted, it states that an appropriate scan range is from 0.5 to 1.5 meters.

13. Messrs. Calcavecchio and German make several excellent points in support of their position, but we do not concur that sufficient evidence has been presented to deviate from the traditional 1 to 4 meter scan range. We have reservations about effects on the measurement antenna when it is close to ground e.g., within 0.5 meters of the ground, because the proximity of the antenna to the ground that may lead to erroneous readings. We understand that this question is currently under study by a number a parties. A second concern we have is that the reference antenna—a dipole—could not be used in vertical polarization over such a low scan range due to its physical length. Manufacturers are advised that we view the need to scan over a lower range than 1 to 4 meters as relevant only for measurements in anechoic chambers where ceiling height is a factor. We will entertain requests to use a lower scan height for alternate test sites on a case by case basis.

14. The Commission on April 9, 1981, received a letter from Mr. Al Lavis of the Canadian Department of Communications raising a question about the line conducted emissions measurement procedure. The FCC limits are based on the use of a 50 ohm/50 microhenry (μH) Line Impedance Stabilization Network (LISN). Because of the limited availability of this network, the Commission provided for use of the more traditional 50 ohm/5 μH LISN by setting forth a curve in Fig. 5 which could be used to adjust the results. Mr. Lavis states that the curve is not entirely valid because it assumes that the impedance presented by the EUT to the LISN is negligible, which is not always the case. We do not disagree with Mr. Lavis' observation, but we see no simple way to account for EUT impedance since it will vary from one device to the next. Given that there is a temporary need to provide for use of the 50 ohm/5 μH LISN, we view the FCC correlation factor as a practical, although not exact, solution. We are, however, revising the NOTE under paragraph 5.3 to emphasize that measurements should be made with the 50 ohm/50 μH LISN whenever possible.

15. Spectrum Measurements Corp. and Dash, Straus & Goodhue, Inc., independent measurement laboratories, point out in letters dated December 28, 1982, and February 8, 1983, respectively, that there may be some confusion over the need to connect interface cables when testing certain computers and peripherals. Paragraph 4.5.1 of the FCC measurement procedure states that, when testing a computer or peripheral, interconnecting cabling shall simulate typical application and usage insofar as practical.[7] The question arises as to how this statement applies to computers that can be used either on a stand alone basis or with peripherals. For instance, some computers contain a microprocessor, keyboard, video display and disk memory storage all in one cabinet, which can be functionally used alone. Yet almost all such stand alone computers provide industry standard interface ports to allow the user to add peripherals such as printers, plotters and modems of his own choosing. Apparently, some segments of the

[5] The definitions of Class A and B computing devices are given in Section 15.4 of the FCC Rules. Briefly, Class A pertains to equipment used in industrial or business environments and Class B pertains to equipment intended for use in residential environments. Different technical standards have been established for each category. See §§ 15.810 and 15.830 (47 CFR 15.810 & 15.830).

[6] In paragraph 4.2.2. of the measurement procedure, the Commission in Note 4 allowed measurements of power line conducted broadband emissions to be reduced by 13 dB for comparison to the FCC limits. CBEMA had submitted comments suggesting that a 20 dB reduction be allowed. Nevertheless, CBEMA states that it accepts the Commission's 13 dB factor.

[7] The reason for this is that interface cables are often the primary source of radiation because they behave like an antenna for any radio signals that would otherwise be contained in the computer cabinet.

industry are testing stand alone computers with interface cables connected to the interface ports and certifying compliance with FCC requirements; however, when other manufacturers use that computer as a host to exercise their peripherals, they find that FCC limits cannot be met because the computer couples excessive radio frequency energy via the interface port onto the interconnecting cable. We are also aware of situations where peripherals have been tested without an interface cable, using built-in programs to exercise the device. Here again, the device was stated to comply with FCC requirements yet could not meet the emissions limits when a cable was connected as in normal use.

16. With the considerable discussion devoted to interface cables in the test procedure, we believe we made our intention clear that interface cables must be connected to the available interface ports. Nevertheless, in the new paragraph 4.5.4.1 on interface cables (see paragraph 8, above), we state clearly that interface cables must be connected to at least one of each type port on the host computer or peripheral when tested for FCC compliance. We are also amending the requirements on information to be provided to the user, contained in FCC Rules §§ 15.818 and 15.838, to explicitly require that the user be so advised if shielded cables or other special accessories are necessary to insure FCC compliance. This is implied in the present text of these requirements, which state generally that the user instruction manual must provide sufficient information to insure that the system complies.

17. Another question that has come up periodically, which is also raised by Dash, Straus & Goodhue, Inc., concerns the use of simulators.[8] In paragraph 4.5.4. of the FCC test procedure, the Commission indicated that a simulator could be used to exchange signals with the equipment under test instead of an actual host computer. This provision was made primarily because of the limited availability of complying host computers during start up of the FCC program. However, we have encountered situations where a simulator was used in testing a product intended for exclusive use with a certificated host computer, although the divice would not comply when connected to that computer. Accordingly, we are amending 4.5.4. to emphasize that use of simulators should be avoided if possible. If a peripheral is intended for use with a specific host computer it must be tested with that computer.

18. A number of other minor changes to the measurement procedure are made to add greater flexibility, respond to minor points raised by CBEMA or delete duplicate or overlapping instructions. Chief among them are the following:

a. Paragraph 4.2.5 is amended to indicate that preliminary radiated emissions testing is not mandatory.

b. Paragraph 4.7 is amended to allow use of 80 cm test stand heights as an alternative to 1 m, for comity with certain international measurement standards.

c. Information on the test distance in paragraphs 4.1.1, 4.7 and 6.2 are brought together in a new paragraph 4.2.4.1.

Ordering Clauses

19. Pursuant to the authority contained in sections 4(i), 302 and 303(r) of the Communications Act of 1934, as amended, it is ordered that effective September 1, 1983, Part 15 is amended as set out in Appendix A, attached.

20. It is further ordered that the FCC measurement procedure for computing devices, heretofore contained in Part 15 Appendix A, is amended as set out in the attached Appendix B, with the procedure to henceforth be published as Office of Science and Technology Measurement Procedure MP-4 "FCC Methods of Measurement of Radio Noise Emissions From Computing Devices."

21. It is further ordered that the Petition for Limited Reconsideration filed by the Computer and Business Equipment Manufacturers Association is granted to the extent discussed herein and otherwise is denied.

22. For further information about this ORDER, contact Mr. Julius Knapp, Office of Science and Technology, Federal Communications Commission, Washington, D.C. 20554, telephone 202-653-8247.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

PART 15—[AMENDED]

47 CFR Part 15 is amended as follows:

1. Section 15.818 is amended by adding a new paragraph (c) to read as follows:

§ 15.818 Class A Computing Device: Information to User.

* * * * *

(c) Where special accessories, such as shielded cables, are required in order to meet FCC emissions limits, appropriate instructions on the need to use such equipment must be contained in the user manual.

2. Section 15.838 is amended by adding a new paragraph (d) to read as follows:

§ 15.838 Class B Computing Device: Information to the User.

* * * * *

(d) Where special accessories, such as shielded cables, are required in order to meet FCC emissions limits, appropriate instructions on the need to use such equipment must be contained in the user manual.

3. Section 15.840 is revised to read as follows:

§ 15.840 Computing Device Test Procedures.

(a) The measurement techniques that will be used by the Commission to determine compliance with the technical requirements in this Subpart are set out in FCC Measurement Procedure MP-4 "FCC Measurement of Radio Noise Emissions from Computing Devices". Manufacturers are encouraged to follow the same procedure that will be used by the FCC. MP-4 also discusses a number of variations from and alternatives to the FCC test method that manufacturers or others may employ, provided that they can demonstrate that equivalent results are obtained.

(b) Measurements made prior to July 1, 1981, the effective implementation date for the FCC Measurement Procedures, are acceptable for equipment verification provided they are repeatable and consistent with sound engineering practice. Measurements of broadband emissions that are inconsistent with MP-4 need not be redone. However, should a given equipment be found to cause harmful interference, the Commission will take appropriate action as provided elsewhere in this Subpart.

4. Part 15, Appendix A of the CFR is removed in its entirety.

Note.—Appendix B will not appear in the CFR.

Appendix B

The *FCC Methods of Measurements of Radio Noise Emissions From Computing Devices* which were formerly contained in Part 15 Appendix A, are amended as follows and will be published as FCC Measurement Procedure MP-4.

1. The Index is amended as follows:

[8] The Commission has received and responded to several hundreds of inquiries concerning the rules governing computing devices and test procedures therefor. The correspondence is available for public inspection. Contact the RF Devices Branch, telephone (202) 653-8247.

a. Remove paragraph 6.2.1

b. Add new paragraphs:

4.2.4.1 Antenna-to-Test Unit Distance
4.2.4.2 Antenna Height Variation
4.5.4.1 Interface Cables

c. The titles of the following paragraphs are amended:

4.5.1 Test Conditions and Configuration of EUT
4.7 Test Platform

2. In paragraph 1.0, fourth sentence, delete "and units, sub-units."

3. Paragraph 4.1.1 is amended to read as follows:

4.1.1 Open Field Tests

Measurements of radiated radio noise should be made in an open, flat area characteristic of cleared, level terrain. For details on how to set up a suitable site, see FCC Bulletin OST 55: *Characteristics of Open Field Test Sites*, available from the FCC Consumers Assistance Office, Washington, D.C., 20554. Measurements made by the Commission will be performed on an open field test site.

4. In paragraph 4.2.3, delete the last sentence "Measured data may . . . charts or photographs."

5. Paragraph 4.2.4 is amended to read as follows:

4.2.4 Antennas

A calibrated, tuned half-wave dipole antenna is preferred for measuring the level of radiated emissions. Other linearly polarized antennas are acceptable provided the results obtained with such antennas are correlateable to levels obtained with a tuned dipole. The antenna shall be capable of measuring both horizontal and vertical polarizations. Over the frequency range of 30 to 1000 MHz, the Commission will use tuned half wave dipole antennas for compliance testing.

6. A new paragraph 4.2.4.1 is added to read as follows:

4.2.4.1 Antenna-to-Test Unit Distance

The distance between the EUT and the measurement antenna may be 3 to 30 meters. An EUT subject to a radiated limit at 3 meters shall be measured at a distance of 3 meters, unless impractical because of size of the equipment, location, etc., in which case measurements may be made at a further distance up to 30 meters and the results extrapolated inwards utilizing an inverse distance extrapolation factor (i.e., 20 dB/decade). Equipment subject to a limit at 30 meters may be measured at a distance of from 3 to 30 meters provided that the results are extrapolated to equivalent signal at 30 meters utilizing an inverse distance extrapolation factor (20 dB/decade).

The horizontal distance between the measuring set antenna and the EUT shall be measured from the closest point of the device or system, as determined by the boundary defined by an imaginary straight line periphery describing a simple geometric configuration enclosing the EUT system. All intra-system cables and connecting devices shall be included within this boundary.

7. A new paragraph 4.2.4.2 is added to read as follows:

4.2.4.2 Antenna Height Variation

The measurement antenna must be varied in height above ground to obtain the maximum signal strength. For measurement distances up to and including 10 meters, the antenna height shall be varied from 1 to 4 meters. Beyond 10 meters the height shall be varied from 2 to 6 meters. These height scans apply for both horizontal and vertical polarization, except that for vertical polarization the minimum height should be increased so that the lowest point of the bottom end of the dipole (or other antenna), at any frequency, clears the site ground surface by approximately 25 cm.

At sites other than open field, alternative scanning heights and procedures may be used, provided that it can be shown that equivalent results are obtained.

8. Paragraph 4.2.5 is amended to read as follows:

4.2.5 Preliminary Testing and Monitoring

It is often valuable to perform preliminary radiated measurements at a closer distance than specified for compliance to determine the emission characteristics of the EUT. At close-in distances it is easier to determine the spectrum signature of the EUT and, if applicable, the EUT configuration that produces the maximum level of emissions as discussed in 4.5.1. A site other than open field may be used for this purpose, but the test engineer should be aware that the alternate site may not produce precisely correlateable results. Where a radio noise meter is used for this spectrum search, it is recommended that either a headset or loudspeaker be connected as an aid in detecting ambient signals and finding frequencies of significant emission from the EUT.

Preliminary testing is optional. However, if preliminary tests are not performed, the steps outlined above (spectrum signature, EUT arrangement) must be accounted for when making tests at the distance used on the open field site.

9. Paragraph 4.4 is amended by adding a second paragraph to read as follows:

4.4 Data Reporting Form at

* * * * *

The justification for selecting a particular EUT configuration as tending to produce maximized emissions must be documented in the test report. The test report should also show precisely how the interface cables were finally arranged when the measurements were made.

* * * * *

10. Paragraph 4.5.1 is amended by adding the sentence "See Figure 1." at the end of the first paragraph and by adding a second paragraph to read as follows:

4.5.1 Test Conditions and Configuration of EUT

* * * * *

The configuration that tends to maximize emissions is not usually intuitively obvious and in most instances selection will involve some trial and error testing. For example, interface cables may be shifted or equipment reoriented during initial stages of testing and the effect on results observed. For large systems with numerous cables, trial and error type tests may better yield to experience and knowledge about the characteristics of the EUT. Only those configurations that are within the range of positions likely to occur in normal use need be considered. In any event, there must be a definite justification for selecting a particular configuration.

11. Paragraph 4.5.4 *Interfacing Units and Simulators* is amended as follows:

a. A new paragraph is inserted after the first paragraph to read as follows:

Because of the added degree of uncertainty when a simulator is used, such use should be avoided if possible. If a device is designed to be used with a specific host computer or peripheral subject to mandatory compliance, it must be tested with that computer or peripheral.

b. The last paragraph is deleted.

12. A new paragraph 4.5.4.1 is added to read as follows:

4.5.4.1 Interface Cables

It is imperative that interface cables be connected to the available interface ports on the EUT. This includes, but is not limited to, standard interface bus ports (IEEE 488, RS-232C) provided on computers and peripherals. The effect of varying the positioning of the cables must be investigated to find the configuration that produces maximum emissions. The configuration must be precisely noted in the test report.

Interconnecting cables should be of the type and length specified in the individual equipment requirements. If the length may vary, the test engineer should select the length that in his judgment will most likely produce maximum emissions. In general this decision should be based on some trial and error tests. If the cables will be purchased separately by the consumer, and shielded or special cables are used during FCC tests to achieve compliance, then a note must be included in the instruction manual advising of the need to use shielded cables. See FCC rule §§ 15.818 and 15.838.

Excess lengths of cables should be bundled at the approximate center of the cable with the bundles 30 to 40 cm in length. If it is impractical to do so because of cable bulk or stiffness, or because the testing is being done at a user installation, disposition of the excess cable is left to the test engineer.

Where there are multiple interface ports all of the same type, connecting a cable to just one of that type port is sufficient provided it can be shown that the additional cables would not significantly affect the results. Here again, the test engineer must use judgment as to what is appropriate for a particular EUT.

Products that provide a unique interface port for peripherals that are not yet available, may be tested by attaching a cable, extended on meter vertically above the device and left unterminated.

13. Paragraph 4.7 is amended to read as follows:

4.7 Test Platform

An EUT which is normally operated on a table shall be placed on a non-conducting table having a height of 1 meter above test site ground level. For ease of testing, the table may be placed on a rotatable platform, in

which case the total height of the table plus the platform shall be approximately 1 meter above test site ground level. If the platform is elevated, it should be non-conducting to the maximum extent practicable.

Measurements made on a test table of 80 centimeter height as called for in some international measurement standards will be accepted for verification or certification of compliance. Although the results will probably be only marginally different than with the 1 meter height, the risk for discrepancies lies with the manufacturer. FCC tests will be performed at a height of 1 meter.

In the event that all the units or peripherals of an EUT system will not fit on the table, one or more of these may by placed on non-conductive shelves below the table top, using the minimum spacing below the top for their placement. In selecting units for placement on the shelf, first preference should be given to those mormally not requiring frequent attention.

For an EUT normally placed on the floor, the equipment should, if practicable, be placed on a rotatable platform. If the platform is elevated it should be non-conducting to the maximum extent practicable and have a height of not more than 0.5 meters above ground level. The EUT shall be located in the center of the platform. If the EUT consists of two or more units, these shall be arranged around the center of the platform consistent with actual use.

14. In paragraph 5.1 the first sentence is amended to read as follows:

5.1 Conducted Powerline Test Configurations

The EUT shall be placed 40 centimeters from an earth grounded conducting surface 2 meters square (e.g. the floor of the test chamber) and shall be kept at least 80 centimeters from any other earthed conducting surface. Floor standing equipment may of course be mounted on an earth grounded floor.

* * * * *

15. In paragraph 5.3, the NOTE is amended as follows:

a. The first sentence is amended to read "LISN's designed to comply with the impedance characteristic of Figure 2, have limited availability on the market."

b. Another sentence is added at the end of the paragraph to read "The correction has limited validity due to wide variation in EUT impedances, so measurements should be made with the 50 microhenry LISN if at all possible."

16. In paragraph 5.5, a sentence is added at the end of the paragraph as follows: Investigation shall be made to determine whether the position of interface cables affects the test results and if it does, the cables should be positioned so as to produce maximum emissions results.

17. In paragraph 6.1, in the fourth paragraph all sentences except the last one are deleted.

18. Paragraph 6.2 is amended to read as follows:

6.2 Radiated Radio Noise Tests

Radiated radio noise measurements shall be made at one of the test sites described in 4.1, above. The EUT shall be rotated as per 6.1 and measurement antenna height varied as prescribed in 4.2.4.2 in order to obtain a maximum reading on the measurement instrument. Tests shall be made in both the horizontal and vertical planes of polarization.

The frequency range 30 MHz to 1 GHz shall be investigated. For record keeping purposes only the 6 highest emanations observed during the tests need be recorded and maintained in the permanent record files.

19. Paragraph 6.2.1 is deleted.

20. In paragraph 6.3 the last sentence "Preliminary measurements . . . per paragraph 6.1." is deleted.

21. The curve shown in Fig. 2 "Impedance Stabilization Network" is revised to cover the frequency range 450 kHz to 30 MHz.

[FR Doc. 83-20696 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-18; RM-4210]

FM Broadcast Stations in Marathon, Florida; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns FM Channel 292A to Marathon, Florida, in response to a petition filed by Paul L. Crogan. This action also assigns FM Channel 249A to Marathon, Florida, in response to comments submitted by Mark S. Manafo.

EFFECTIVE DATE: September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Marathon, Florida); MM Docket No. 83-18, RM-4210.

Adopted: June 20, 1983.

Released: July 20, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 48 FR 3793, published January 27, 1983, proposing the assignment of Channel 292A to Marathon, Florida, as that community's second FM broadcast service, in response to a petition filed by Paul L. Crogan ("petitioner"). Petitioner submitted comments in support of the *Notice* and reaffirmed his intention to apply for the channel, if assigned. No oppositions to the proposal were received.

2. Mark S. Manafo filed comments in support of the *Notice* and expressed his interest in applying for Channel 292A, if assigned. Petitioner submitted reply comments.

3. In his reply comments, petitioner introduced an additional channel proposal (249A) for assignment to Marathon, Florida, to accommodate additional interest. Petitioner states that his study indicates that Channel 249A can be added to Marathon in compliance with the Commission's Rules. Petitioner further states that since there will be two applications filed for Channel 292A, if assigned, the addition of two channels instead of one would alleviate the costly expenses involved in comparative hearings, would be expedient and in the public interest.

4. Upon careful consideration of the facts involved in this proceeding, the Commission has determined that it would be in the public interest to assign both Channel 292A and 249A to Marathon, Florida, at this time providing a second and third FM service to the community.

5. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is ordered, that effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with regard to the community listed below:

City	Channel No.
Marathon, Florida	232A, 249A, and 292A.

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

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20688 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-34; RM-4227]

FM Broadcast Stations in Emmett, Idaho; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Class C FM Channel 270 for Channel 269A at Emmett, Idaho, and modifies the license for Station KMFE (FM) to specify operation on Class C Channel 270, at the request of Emmett Valley Broadcasters and Radio Broadcasting, Inc.

EFFECTIVE DATE: September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Emmett, Idaho) MM Docket No. 83-34, RM-4227.

Adopted: June 27, 1983.
Released: July 20, 1983.
By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 48 FR 5972, published February 9, 1983, proposing the substitution of Class C FM Channel 270 for Channel 269A at Emmett, Idaho, in response to a petition filed by Emmett Valley Broadcasters ("petitioner"), the previous licensee of Station KMFE(FM)[1]. The *Notice* also proposed the modification of the license for Channel 269A to specify operation on Class C Channel 270. Emmett Valley Broadcasters and Radio Broadcasting, Inc. filed joint comments in support of the *Notice* and stated that if the substitution of Channel 270 for Channel 269A is made, the licensee will promptly proceed to modify its facilities accordingly. There were no opposing comments received.

2. After consideration of the proposal, we believe that the public interest would be served by the Class C substitution inasmuch as it would provide service to a larger area.[2] We have also authorized, in paragraph 4 herein, a modification of the petitioner's license for Station KMFE(FM) to specify operation on Channel 270 since there was no other expression of interest in the Class C channel. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976).

3. In view of the foregoing and pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is ordered, that effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Emmett, Idaho	270

4. It is further ordered, that pursuant to Section 316(a) of the Communications Act of 1934, as amended, the outstanding license held by Radio Broadcasting, Inc. for Station KMFB(FM), Emmett, Idaho, is modified, effective September 19, 1983, to specify operation on Channel 270 instead of Channel 269A. Station KMFE(FM) may continue to operate on Channel 269A for one year from the date of this action or until it is ready to operate on Channel 270, whichever is earlier, unless the Commission sooner directs, subject to the following:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301) specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with § 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to § 1.1301 of the Commission's Rules.

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

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20689 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

[1] Since the issuance of the *Notice*, the license for Station KMFE(FM) has been assigned to Radio Broadcasting, Inc., the new party in interest.

[2] The *Notice* indicated that this proposal could provide a third wide coverage area FM station for Emmett. However, Channels 226 and 231 were erroneously included as being assigned to Emmett, Idaho.

47 CFR Part 73

[BC Docket No. 82-708; RM-4111]

FM Broadcast Stations in Waipahu, Hawaii; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C Channel 274 to Waipahu, Hawaii, as that community's second FM assignment, in response to a petition filed by KDEO Associates.

EFFECTIVE DATE: September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Waipahu, Hawaii); BC Docket No. 82-708, RM-4111.

Adopted: June 23, 1983.
Released: July 20, 1983.
By the Chief, Policy and Rules Division.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 47 FR 46726, published October 20, 1982, proposing the assignment of Class C Channel 274 to Waipahu, Hawaii, as that community's second assignment, in response to a petition filed by KDEO Associates ("petitioner"). In the *Notice* petitioner was reluctant to commit itself to apply for the Waipahu assignment since it was considering filing for an assignment in Honolulu. However, petitioner has now committed itself to apply for Channel 274 at Waipahu, if assigned. The Channel can be assigned in compliance with the minimum distance separation requirement. No opposing comments were received.

2. This assignment will be made contingent upon avoiding interference to the FCC monitoring station at Waipahu.

3. The Commission has determined that the public interest would be served by assigning Channel 274 to Waipahu,

Hawaii, since it could provide a second local FM broadcast service to that community.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, It is ordered, that effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Waipahu, Hawaii	222,174

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

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20691 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-23; RM-4215]

FM Broadcast Stations in Waterville, Maine; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein substitutes Class B FM Channel 253 for Channel 252A at Waterville, Maine, and modifies the license for Station WTVL-FM, Channel 252A, to specify operation on Class B Channel 253, at the request of Kennebec Broadcasting Company.

EFFECTIVE DATE: September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Waterville, Maine) MM Docket No. 83-23, RM-4215.

Adopted: June 27, 1983.

Released: July 20, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 48 FR 4693, published February 2, 1983, proposing the substitution of Class B FM Channel 253 for 252A at Waterville, Maine, in response to a petition filed by Kennebec Broadcasting Company ("petitioner"), licensee of Station WTVL-FM. The *Notice* also proposed modification of the license for Channel 252A to specify operation on Class B Channel 253. Petitioner submitted comments in support of the *Notice* and expressed its continuing interest in the Class B channel. No opposing comments were received nor were there other expressions of interest in the Class B channel.

2. After consideration of the proposal, we believe that the public interest would be served by the substitution of the channels inasmuch as it would provide service to a larger area. We have also authorized, in paragraph 5 herein, a modification of the petitioner's license for Station WTVL-FM to specify operation on Channel 253 since there were no other expressions of interest in the Class B channel. See *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976). Petitioner should note that since its present transmitter site for Station WTVL-FM is located in Zone II where Class C stations are authorized, it must relocate to Zone I in order to operate as a Class B station or seek a waiver of Section 73.211(c) of the Commission's Rules.

3. Canadian concurrence has been received.

4. In view of the foregoing and pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended with respect to the following community:

City	Channel No.
Waterville, Maine	253

5. It is further ordered, That pursuant to Section 316(b) of the Communications Act of 1934, as amended, the outstanding license held by Kennebec Broadcasting Company for Station WTVL-FM, Waterville, Maine, is modified, effective September 19, 1983, to specify operation on Channel 253 instead of Channel 252A. Station WTVL-FM may continue to operate on Channel 252A for one year from the date of this action or until it is ready to operate on Channel 253, whichever is earlier, unless the Commission sooner directs, subject to the following:

(a) The licensee shall file with the Commission a minor change application for a construction permit (Form 301) specifying the new facilities.

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a major change in transmitter location or to avoid the necessity of filing an environmental impact statement pursuant to Section 1.1301 of the Commission's Rules.

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

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20687 Filed 7-29-83; 8:45 am]

BILLING CODE 6717-01-M

47 CFR Part 73

[MM Docket No. 83-24; RM-4240]

FM Broadcast Stations in Jackson, Wyoming; Changes Made in Table of Assignment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Class C FM Channel 239 to Jackson, Wyoming, in response to a petition filed by Phil Keller. This assignment could provide a second FM assignment to Jackson.

EFFECTIVE DATE: September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast

Stations, (Jackson, Wyoming) MM Docket No. 83-24, RM-4240.

Adopted: June 23, 1983.
Released: July 20, 1983.
By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 48 FR 4698, published February 2, 1983, proposing the assignment of Class C Channel 238 to Jackson, Wyoming, as that community's second FM assignment, in response to a petition filed by Phil Keller ("petitioner").

2. The Department of the Interior notified petitioner that the site restriction imposed in the *Notice* of nine miles north of Jackson would place the proposed transmitter well within the boundaries of Grand Teton National Park, and that any such installation would not be permitted.

3. Snow King Broadcasting Corporation, licensee of KSGT(AM) in Jackson Hole, Wyoming, and Teewinot Broadcasting, Inc., licensee of Station KMTN(FM), Jackson, Wyoming, submitted separate opposing comments, both stating that the site restriction imposed in the *Notice* (nine miles north of Jackson) would place the transmitter in a prohibitive location (namely, within the boundaries of Grand Teton National Park). KMTN further claims that no site nine miles north of Jackson could provide a strong enough signal to adequately cover that community due to the intervening terrain.

4. Petitioner, in response to this matter, proposed as an alternative, that Class C Channel 239 be assigned instead. We have determined that Class C Channel 239 is available and can be assigned to Jackson, Wyoming, in compliance with the Commission's spacing requirements. Petitioner further states that if the channel is assigned, he will file an application for a construction permit, and if authorized, will build a station promptly.

5. After careful consideration of all the comments submitted in this proceeding, the Commission has determined that it would be in the public interest to assign Class C Channel 239, rather than Class C Channel 238, to Jackson, Wyoming. The assignment could provide a second FM broadcast service to that community.

6. Accordingly, pursuant to authority contained in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, that effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the community shown below:

City	Channel No.
Jackson, Wyoming	239, 245

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

8. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20690 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-82; RM-4264]

FM Broadcast Stations in Kearney, Nebraska; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 272A to Kearney, Nebraska, in response to a request from Ear Com Company. The assigned channel could provide a third FM service to Kearney, Nebraska.

EFFECTIVE DATE: September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73. 202(b), Table of Assignments, FM Broadcast Stations, (Kearney, Nebraska); MM Docket No. 83-82, RM-4264.

Adopted: June 29, 1983.
Released: July 21, 1983.
By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 49 FR 7483, published February 22, 1983, proposing the assignment of Channel 272A to Kearney, Nebraska, as that community's third FM assignment, in response to a request from the Ear Com Company ("petitioner"), successor-in-interest to the RAM Company. Petitioner submitted comments in support of the *Notice* and reaffirmed its intention to apply for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. The Commission has determined that the public interest would be served by assigning FM Channel 272A to Kearney, Nebraska, since it could provide a third local FM service to that community.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934 , as amended, and §§ 0.61, 0.204(b) and 0.283
of the Commission's Rules, it is ordered, That effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the community listed below:

City	Channel No.
Kearney, Nebraska	272A

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

5. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20703 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[BC Docket No. 82-756; RM-4198]

FM Broadcast Stations in Maurice, Louisiana; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Action taken herein assigns Channel 292A to Maurice, Louisiana, in response to a petition filed by Maurice Broadcasting. The proposal could provide a first FM service to that community.

EFFECTIVE DATE: September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order, (Proceeding Terminated)

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Maurice, Louisiana); BC Docket No. 82–756, RM–4198.

Adopted: June 23, 1983.
Released: July 21, 1983.
By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 47 FR 51595, published November 16, 1982, proposing the assignment of Channel 292A to Maurice, Louisiana, as that community's first FM channel in response to a petition filed by Maurice Broadcasting ("petitioner"). Petitioner submitted comments in support of the *Notice* and reaffirmed its intention to apply for the channel, if assigned. A site restriction of 4.5 miles southwest of Maurice is necessary to meet the spacing requirements to Station KQXL (Channel 292A) in New Roads, Louisiana.

2. The Commission has determined that the public interest would be served by assigning Channel 292A to Maurice, Louisiana, since it could provide a first local FM service to that community.

3. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the following community:

City	Channel No.
Maurice, Louisiana	292A

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

5. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83–20704 Filed 7–29–83; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[BC Docket No. 82–755; RM–4197]

FM Broadcast Stations in Whitneyville, Pennsylvania; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action assigns Channel 296A to Whitneyville, Pennsylvania, as its first FM assignment, in response to a petition filed by Michael P. McGough.

EFFECTIVE DATE: September 19, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order (Proceeding Terminated)

In the matter of amendment of § 73.202(b), Table of Assignments, (Whitneyville, Pennsylvania); BC Docket No. 82–755 RM–4197.

Adopted: June 23, 1983.
Released: July 21, 1983.
By the Chief, Policy and Rules Division.

1. The Commission has under consideration the *Notice of Proposed Rule Making*, 47 FR 51598, published November 16, 1982, proposing the assignment of Channel 296A to Whitneyville, Pennsylvania, as that community's first FM assignment in response to a petition filed by Michael P. McGough ("petitioner"). Petitioner filed comments in support of the *Notice* and reaffirmed his interest in applying for the channel, if assigned. No opposing comments were received.

2. Canadian clearance has been given.

3. The Commission has determined that the public interest would be served by assigning Channel 296A to Whitneyville, Pennsylvania, since it could provide a first local FM service to that community.

4. Accordingly, pursuant to the authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is ordered, That effective September 19, 1983, the FM Table of Assignments, § 73.202(b) of the Rules, is amended, with respect to the community shown below:

City	Channel No.
Whitneyville, Pennsylvania	296A

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

6. For further information contact: Mark N. Lipp, Mass Media Bureau (202) 634–6530.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83–20705 Filed 7–29–83; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Continued Importation of Kangaroos and Kangaroo Products

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: April 29, 1981, the U.S. Fish and Wildlife Service published a rule in the **Federal Register** (46 FR 23929) that permitted the commercial importation of red, eastern gray, and western gray kangaroos into the United States; these species are listed as Threatened pursuant to the Endangered Species Act of 1973, and their importation into the U.S. for commercial purposes had been prohibited previously. In the preamble to this 1981 rule, the Service stated that importations would be allowed for at least a 2-year period, after which the situation would be reevaluated to determine if commercial imports should continue. On April 8, 1983, the Service published a proposed rule announcing that it was conducting a review of the kangaroo situation, including kangaroo imports, and proposing to allow commercial imports of the Kangaroos to continue. The present rule presents the findings of the kangaroo import review, and permits commercial importation into the U.S. of the red, eastern gray, and western gray kangaroos to continue.

DATE: This rule becomes effective August 31, 1983.

ADDRESSES: Questions concerning this rule should be directed to the Associate Director—Federal Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240. All

documents related to this rule are available for public inspection, by appointment, during normal business hours at the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

SUPPLEMENTARY INFORMATION:

Background

The red *(macropus rufus)*, eastern gray *(M. giganteus)*, and the western *(M. fuliginosus)* kangaroos were listed as Threatened species on December 30, 1974 (39 FR 44990). At that time a ban was placed on the commercial import of these animals (including parts and products) until such time as the Australian Government could certify that the Australian States had developed effective management programs for the kangaroos, and that taking would not be detrimental to their survival (note: kangaroo hides are used to make athletic footwear, and other fine leather products). On April 29, 1981, the Service ruled that the Australian Government had satisfied both of these requirements, and the ban on kangaroo imports for commercial purposes was removed.

In that rule, the Service made the following points: Aerial surveys had demonstrated that kangaroo numbers were high; kangaroos compete with livestock for food and water and will not be tolerated in large numbers by local ranchers; in order to placate ranchers, and to prevent massive illegal killing of kangaroos, the Australian States license professional shooters to reduce numbers in specific areas; skins and meat of animals killed by these professional shooters are sold commercially by the professional shooters; all of the States have good kangaroo management plans, including kill quotas, which assure that the professional shooters do not jeopardize the survival of any species; and each State has an effective tagging and marking system to assure that illegally killed kangaroos can be detected if any enter commercial trade.

In the preamble to the 1981 rule, however, the Service stated that such imports would be allowed for at least a 2-year period, after which the import situation would be reevaluated and a determination made as to whether imports should continue, or whether the ban should be reimposed. On November 10, 1982, the Australian Government presented a petition to the Service which, among other things, requested that the Service permit commercial imports to continue beyond the 2-year period stipulated in the 1981 rule; the Australian Government provided substantial data to support their petition. On April 8, 1983, the Service published a proposed rule in the **Federal Register** (48 FR 15434) which proposed to carry out the action requested in the Australian petition, and presented data to support the move. The data may be summarized as follows:

1. Improved aerial surveys continue to demonstrate that kangaroos do occur in the many millions;
2. The management plans continue to be effective;
3. The large size of the country, and the small human population, assure that sizeable areas of habitat will always remain undisturbed for kangaroos;
4. In agricultural and ranching areas, timber cutting, and digging of watering holes have benefitted kangaroos;
5. Kangaroos are not commercially harvested with the objective of sustaining a yield for the harvesting industry, rather, they are killed to reduce their competition with livestock for available water and food; and
6. The U.S. market has been small (less than 5 percent of total exported), and has had no effect on kangaroo populations or kill quotas.

In the proposed rule, the Service requested data and comments from interested parties before May 9, 1983.

The Service has now evaluated the data presented by Australia, and comments from other sources (received both during the comment period and before) and is hereby issuing a final rule to carry into effect the proposal to continue imports.

Summary of Comments and Recommendations

Although the comment period on the Service's proposal to continue to allow commercial imports of kangaroos extended only between April 8, 1983, and May 9, 1983, many persons and organizations anticipated the proposal and began to submit comments as early as late 1982. Altogether, over 1,000 pieces of correspondence were received during this period of which well over 90 percent were in opposition to allowing continued importation of kangaroo parts and products. During the actual comment period, 195 letters were received, two of which supported imports, and 193 of which were in opposition. All of the letters containing significant comments in opposition (both those received before the comment period and those received during the comment period) presented basically the same points to support their position. A summary of these points and the Service's responses to them, are as follows:

1. There is no need to control kangaroo numbers because there are no hard data or statistical evidence to support any claim of intensive competition between livestock and kangaroos for food and water.

Response: One of the most knowledgeable kangaroo biologists, W. E. Poole, contends that kangaroos *do* compete with livestock. He states (1982): "Red kangaroos are common throughout their range. Good seasons may initiate dramatic increases in the size of kangaroo populations, and they converge on better quality pastures, compete with sheep, and necessitate local reductions in their numbers." According to the Australian National Farmers Federation (1983), ". . . many individual farmers report mobs of kangaroos, often numbering several thousand, decimating crops and breaking fences. During drought in particular, kangaroos compete with livestock for grass and water and a high kangaroo population can mean the death of large numbers of livestock. In early August 1979, a survey conducted by the Queensland Grain Grower's Association in the Western Darling Downs and Maranoa area of Queensland, estimated crop losses directly as a result of kangaroos at 50,000 hectares (124,000 acres) on 750 farms, valued at an estimated $A 10 million." In addition, many Australian farmers and ranchers obviously do *believe* that there is a serious problem and that the Australian States must provide control measures in order to allow them relief. If this relief is not provided by the Australian States, such ranchers and farmers will take their own measures to reduce kangaroo numbers. This poses, in the Service's opinion, a greater threat to the kangaroos than governmentally regulated taking.

2. There has been a substantial loss of habitat for all three species of kangaroos.

Response: It must be remembered that Australia is a huge continent, nearly the size of the U.S, and that it is populated only by about 15,000,000 people, concentrated mainly in the southeastern part of the country. Large areas of the country are relatively untouched by man. In addition, in a substantial portion of the settled regions, where commercial kangaroo culling is allowed, it is impossible to shoot commercially because of rough terrain or dense vegetation. Most important, some

human-caused changes in the environment seem actually to have been beneficial to kangaroos. Kangaroos are herbivores, feeding almost entirely on grasses. Population densities are generally lower in areas of dense forest because of the lack of grasses. As forests are cut over, kangaroos find more suitable habitat and increase in numbers accordingly. In addition, man-made water facilities greatly benefit kangaroos. Twenty thousand new water facilities have been established in recent years in Western Australia alone, making many areas prime habitat for kangaroos (National Farmer's Federation, 1983). Moreover, the major predator of kangaroos, the dingo, has been eliminated from most agricultural regions so that there is no natural check on the growth of kangaroo populations. Given these factors, kangaroo numbers have increased so greatly in some areas that control is necessary to prevent mass illegal killing by irate ranchers.

3. Australia has been experiencing the worst drought in its recorded history, and the Australian States have not reduced their kill quotas to reflect conditions in drought ravaged areas.

Response: The Australian States closely monitor kangaroo populations in areas affected by drought, and have reduced culling levels in some severely drought-affected areas. Several factors, however, need to be emphasized with regard to drought. Although the present drought has been one of the longest in Australian history, large areas of the country have not been affected by it; in addition, in February and March 1983, there were widespread rains throughout the drought affected areas so that the seriousness of the situation in such areas has been reduced. Further heavy rains fell in May. Secondly, kangaroos evolved in Australia and are animals well-adapted to cope with drought. Humans, sheep, and cattle suffer more from drought than do kangaroos. It is true that kangaroo reproduction falls off during prolonged droughts, but this too is an adaptive mechanism, and breeding begins again rapidly when the rains start. Kangaroos studied in Kinchega National Park had not bred from October 1982 through January 1983 because of drought conditions, but began to breed again within six days of the first rainfall in February, 1983 (Australian Information Service). Finally, the large number of permanent man-made water facilities now scattered widely across utilized land in Australia has greatly benefitted kangaroos during periods of drought. There is no evidence that there has been massive kangaroo die-offs, such as has occurred in sheep and cattle, because of the prolonged drought. However, the drought was severe and there has been a decline in the kangaroo population in eastern Australia since 1981. The South Australian population was probably most affected by the drought and has fallen from a peak in 1980, and the New South Wales population has fallen from a peak in 1982. The magnitude of these declines will be quantified in aerial surveys in June–July 1983. Both South Australia and New South Wales have tightly restricted culling. Widespread rains from March through May 1983 have broken the drought in most areas and there is little pressure from land holders for culling permits.

4. There are no really accurate estimates available of kangaroo numbers.

Response: The Autralian States use some of the best censuring techniques available to modern science in deriving population estimates for the kangaroos. Few other species of commercial importance anywhere in the world are as carefully censused and monitored as are the kangaroos. Australian wildlife biologists are well-trained scientists who have the knowledge and commitment to conserve and manage kangaroos. Aerial and other modern survey techniques placed the number of kangaroos in Australia in 1981 at at least 19 million. In New South Wales, kangaroo numbers increased by more than 2 million between 1981 and 1982. A survey in 1980 of an 18,000 square-mile area of western New South Wales showed an average of 88 kangaroos in each square mile—and this area was as arid as Arizona (Australian Information Service).

Between 1981 and 1982, aerial surveys were conducted in each of the States. The total area surveyed now covers 5.8 million km², 75 percent of Australia. Caughley, et al. (in press) present the results of these surveys as follows:

State	Numbers			Total
	M. rufus	*M. fuliginosus*	*M. giganteus*	
Queensland	2,102,000	100,000	[1] 3,002,000	[1] 5,204,000
New South Wales	3,837,000	897,000	[1] 1,971,000	[1] 6,687,000
Victoria	2,000	21,000	[1] 5,000	[1] 28,000
South Australia	1,281,000	338,000	<1,000	1,619,000
Western Australia	1,027,000	436,000	NP	1,463,000
Northern Territory	102,000	NP	NP	102,000
Australian mainland	8,351,000	1,774,000	[1] 4,978,000 +c.4,000,000	[1] 15,103,000 +c.4,000,000

[1] Indicates count is incomplete because part of the species' range was not covered.
NP indicates "not present."

5. The killing of the kangaroos is indiscriminate, with no attempt to cull old or sick individuals, or to select males rather than females with young.

Response: It is impossible to discriminate given the conditions under which the shooting must take place, i.e., at night under lights and with fast moving animals involved. There is no evidence, however, that random shooting has been detrimental to any populations of kangaroos.

6. There is insufficient enforcement of laws, resulting in a high illegal kill.

Response: While it is true that some illegal killing does occur, it is mostly by exasperated landholders who have been unable to secure the services of a professional shooter. There is also some illegal shooting by local and city based youths. It has been asserted by some commenters that the illegal kill may even exceed the legal kill. This assertion, however, cannot be supported by any evidence, and on the face of it, seems incredible. It is unlikely that a small group of amateur hunters and dissatisfied ranchers could shoot as many animals annually as do the legal shooters who are marksmen with special rifles and back-up equipment such as vehicles and spotlights. In addition, it is difficult for kangaroos taken illegally to enter commercial trade so that the only incentive for illegal shooting is to obtain relief from kangaroo population pressures on the part of the ranchers. If the States do not license professional shooters to supply this relief, illegal killing will undoubtedly increase, and probably be uncontrollable. The very presence of professional shooters in the field deters illegal killing since these shooters are quick to report violations of the law which might deprive them of their livelihood. In the unlikely event that illegal killing reached a significant level without the relevant authorities knowing about it, it would almost certainly be drawn to their attention by the professional shooters.

The Service feels that the Australian States have sufficient regulatory and enforcement power to protect the

kangaroos. All States employ enforcement officers specifically to police wildlife laws. In addition, wildlife laws are enforceable by State and Territory police stationed in rural areas.

7. The tagging and licensing systems are open to abuse and do not provide adequate protection.

Response: The Service has analyzed the management plans of all of the Australian States, and finds that they are adequate to provide for the conservation of the kangaroos. The tagging and licensing systems developed as a part of these management plans provide reasonable assurance that illegally taken kangaroos will not enter the commercial market.

8. There is often extreme cruelty involved in killing kangaroos under the State management programs.

Response: The Australian States deny this. Cruelty is not a normal part of the professional kangaroo control programs of any of the States. The professional shooters use high powered rifles, with telescopic sights, and the usual method of killing is a clean shot through the head. Individual acts of cruelty may occur, but these are not condoned, and are legally punishable if discovered. A segment of an Australian-produced documentary film was recently shown on U.S. television that purported to demonstrate acts of cruelty toward kangaroos by professional shooters in the field. The Australian Government has informed the Service that the maker of the film claims to "illustrate" a problem rather than detect and demonstrate it literally. The film is a commercially oriented production made for sale, and is not representative of facts. Legal action has been taken by the Government against several participants in the film and its production.

9. The meat scandal of 1981 shows conclusively that Australia does not have adequate control over commercial sale of kangaroo products.

Response: The Australian Government acted quickly and decisively, in conjunction with the U.S. Department of Agriculture, to correct the abuse once the criminal operation was discovered. An Australian Royal Commission Investigation (Australia's highest investigative procedure) was launched into the affair and, as a result, a number of the meat packers who were involved were delisted from trade with the U.S., and their officials prohibited from any involvement with the U.S., meat trade. The U.S. Department of Agriculture is now satisfied with the Australian meat inspection service, and the U.S. Fish and Wildlife Service is convinced that the Australian Government acted responsibly in investigating this illegal activity.

10. Kill quotas are set dangerously high, and this, combined with the drought, will endanger the kangaroos.

Response: In 1983, the Australian States set the following quotas for kangaroos: New South Wales, 550,000 red, 288,000 gray; Queensland, 450,000 red, 900,000 eastern gray; South Australia, 239,000 red, 58,000 eastern gray; Western Australia, 140,000 red, 50,000 western gray. The quotas for culling are set by State wildlife authorities, and very roughly are about 10 percent of the total estimated population of kangaroos. However, actual culling rates are generally far below the annual set quotas. For instance, the quota for New South Wales in 1982 was 838,000 animals, yet under 700,000 animals were actually taken. In Queensland, the 1982 quota was 1,350,000, but less than 900,000 were taken. The Australian National Parks and Wildlife Service estimates a natural population increase rate on rangelands of 15 percent a year for common kangaroo species despite harvesting. Therefore, the natural increase has far exceeded harvesting rates over the past 10 years.

It is true that in conditions of extreme drought, the natural population growth of kangaroos decreases. However, the Australian States have the authority, and have indicated their willingness, to decrease quotas if kangaroo populations begin to decline. So far, they have not felt it necessary to take such action. The Australian Government points out that in actual practice, the kill of kangaroos would decrease automatically if populations become reduced because it would not be profitable for the professional shooters to pursue their activities. The price that such shooters obtain for each kangaroo killed is so low that economic considerations would force them to curtail operations, probably before the government would need to take steps to reduce kill quotas.

Finally, it should be pointed out that kill quotas are not set as goals to be achieved. They mean simply that the various States will operate within the boundaries set by the quotas.

11. The U.S. provides a large market for kangaroos, which will only encourage greater killing of kangaroos to meet demand.

Response: kangaroos will be killed in Australia no matter what action the U.S. takes in this matter. The kangaroos are killed because they compete with livestock (not for commercial purposes), and ranchers will not tolerate large numbers of them on their property. Commercialization of culled kangaroos meets most of the cost of kangaroo management programs. Kangaroos are not shot for commercial gain, but rather to reduce the competition of kangaroos with agricultural interests. If the U.S. does not allow imports to continue, the Australian Government will either have to find other markets to fill the gap, or will turn control operations over to private ranchers. The States cannot afford to continue professional control measures without the income derived from the sale of kangaroo products. If commercialization of kangaroos ceased and control were turned over to private landholders, the results could be very damaging to kangaroo populations.

Finally, if at any time it should become evident that the U.S. market for kangaroos is proving detrimental to the species, the Service retains the right, pursuant to Section 4(b)(7) of the Act, to immediately reimpose a ban on kangaroo imports provided it has determined that an emergency situation exists which poses a significant risk to the well-being of the kangaroos.

Recapitulation of Reasons for Continuing To Allow Imports

1. All of the Australian States have developed effective conservation programs for the kangaroos that include the authority to halt kangaroo take if necessary for conservation purposes. Also, the Commonwealth (Federal) Government can regulate exports.

2. Each State now uses aerial surveys to estimate and monitor kangaroo numbers; these surveys (covering 75 percent of Australia) demonstrate that kangaroos number at a minimum 19 million.

3. Australia is a country nearly the size of the U.S. and contains large areas that are lightly inhabited by man; in addition, timber cutting, clearing of grazing lands, and the digging of water facilities in settled areas have proved beneficial to kangaroos in many agricultural and ranching areas.

4. The Australian Government has a continuing policy of setting up large tracts of land for national parks and reserves. At present, over 118,000 sq. miles of land provide undisturbed habitat for kangaroos in these parks and reserves.

5. The Australian States do not manage kangaroos as a renewable resource and do not seek a sustained yield harvest of the species. Rather, the take of kangaroos is directly related to relieving population pressures in certain areas in which kangaroos and human interests conflict. By controlling the numbers of kangaroos, the Australian States reduce the probability that

ranchers and farmers will resort to potentially dangerous illegal killing of the animals.

6. The U.S. removal of the ban on kangaroo imports has had no adverse effects on kangaroo populations. Even if the Australian States were managing their kangaroos as a harvestable commercial resource, the U.S. import of kangaroo products has been so small that it would have had minimal effect on the take of kangaroos. There is evidence, on the contrary, that their protection has actually improved.

For the above reasons, the Service will allow the commercial importation of kangaroos and kangaroo products in the U.S. to continue.

National Environmental Policy Act

An environmental assessment has been prepared in conjunction with this final rule. This assessment addresses all of the points relevant to continuation of importation, and is on file in the Service's Office of Endangered Species, 1000 North Glebe Road, Arlington, Virginia; it may be examined, by appointment, during regular business hours (7:45 a.m. to 4:15 p.m.). This assessment leads to a decision that this will not be a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

Statement of Effects and Certification of Effects on Small Entities

A *Determination of Effects of Rule*, under E.O. 12291, was prepared when the imporation of kangaroos was permitted in 1981. The present rule does not change the 1981 rule, but merely allows it to continue in effect.

Since this final rule does not alter the status quo, but merely extends existing permit systems, the Department has concluded that this action 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.*) and is not a "major rule" within the meaning of Executive Order 12291.

Information Collection Requirements

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

Author

The primary author of this rule is John L. Paradiso, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington D.C. 20240 (703/235–1975).

References

The following sources have been consulted in the preparation of this rule.

Anderson, D. R. 1980. Information on management programs for red, eastern gray, and western gray kangaroos in relation to the U.S. Endangered Species Act. Unpubl. Rep. to U.S. Fish and Wildlife Service, April 8, 41 pp. + 96 pages of appendices.

Australian Government. 1982. Petition from Australian Embassy to delist red, eastern gray, and western gray kangaroos from classification as Threatened under U.S. Endangered Species Act. November 10, 35 pp. + Appendices.

Caughley, G., R. G. Sinclair and G. R. Wilson. 1977. Numbers, distribution and harvesting rate of kangaroos on the inland plains of New South Wales. Aust. Wildl. Res. 4(2):99–108.

Caughley, G., R. G. Sinclair and G. C. Grigg. 1979. Trends of kangaroo populations in New South Wales, Australia. J. Wildl. Manag. 43(3):775–777.

Caughley, G. and G. C. Grigg. 1981. Surveys of the distribution and density of kangaroos in the pastoral zone of South Australia, and their bearing on the feasibility of aerial surveys in large and remote areas. Aust. Wild. Res. 8(1):1–11.

Caughley, G., G. C. Grigg, and J. Short (in press). How many kangaroos? 10 pp.

Export statistics (from Australian petition).

Grigg, G. C., P. Harlow, and I. Smith. 1981. The 1981 survey of kangaroos in the pastoral area of South Australia. Unpubl. Report to S. A. Nat. Parks and Wildl. Ser. 36 pp.

Hill, G. J. E. 1981. Distribution of gray kangaroos in south inland Queensland. Aust. Rangel. J. 3(1):58–66.

Hinchey, M. D. (ed.). 1981. Nature Conservation reserves in Australia (1980). Australian National Parks and Wildlife Serv. Occ. Paper No. 5, 51 pp.

Kitchener, D. J., A. Chapman, B. G. Muir, and M. Palmer. 1980. The conservation value for mammals of reserves in the western Australian wheatbelt. Biol. Conserv. 18:179–207.

Poole, W. E. 1978. Management of kangaroo harvesting in Australia. Australian National Parks and Wildlife Serv. Occ. paper No. 2, 28 pp.

Poole, W. E. 1982. Kangaroos and large wallabies. Parks and Wildlife: Kangaroos. New South Wales National Parks and Wildlife Service, pp. 27–34.

Queensland National Parks and Wildlife Service. 1982. Kangaroo monitoring in Queensland. Its history and results from its commencement to the present. Unpbl. Report, 4 pp.

Short, J. C., and G. C. Grigg. 1982. The abundance of kangaroos in sub-optimal habitats: Wheat, intensive pastoral and mallee. Aust. Wildl. Res. 9(2):221–227.

State quota and harvest figures for red, eastern gray and western gray kangaroos: 1976–1982 (from Australian petition).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, importation of kangaroos under 50 CFR 17.40(a)(1)(i)(B) will continue as set forth below.

1. The authority citation for Part 17, reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*)

2. Importation of red, eastern gray, and western gray kangaroos will continue under rules contained in 50 CFR 17.40 (a)(1)(i)(B) which read as follows:

§ 17.40 Special rules—mammals

(a) * * *

(1) * * *

(i) * * *

(B) Eastern Gray, Red, and Western Gray kangaroos—including parts and products of such wildlife—which have been tagged or otherwise identified as removed from the wild in accordance with the management plans of Australian states may be imported into the United States without permits for individual shipments otherwise required by 50 CFR Part 17. Importation into the United States must comply with the requirements of 50 CFR Part 14. Service Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife, filed with the U.S. Customs Service upon import shall satisfy the reporting requirements of 50 CFR Part 14, Subpart C.

* * * * *

Dated: June 22, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83–20628 Filed 7–29–83; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 30721-140]

50 CFR Parts 611, 650, 651, 652, 654, 655, 663, 671, 672, 674, and 675

Foreign and Domestic Fishing Regulations

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

ACTION: Final rule; technical amendments.

SUMMARY: NOAA issues this final rule which amends regulations that do not display currently valid Office of Management and Budget (OMB) control numbers. Agencies are required under the Paperwork Reduction Act to publish in the **Federal Register** OMB control numbers for each collection of information in codified regulations. The intended effect is to avoid confusion about whether a collection of information contained in a regulation has been approved or disapproved by OMB, eliminating the risk that the courts will find that regulatory recordkeeping, disclosure, and reporting requirements not bearing control numbers are unenforceable.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Donna D. Turgeon, 202-634-7432.

Dated: July 27, 1983.

Carmen J. Blondin,

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

For the reasons stated in the Summary, 50 CFR Parts 611, 650, 651, 652, 654, 655, 663, 671, 672, 674, and 675 are amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*, unless otherwise noted.

§ 611.3 [Amended]

2. In § 611.3, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0089)" after paragraph (i)(5).

§ 611.70 [Amended]

3. In § 611.70, remove the parenthetical reference to OMB control number at the beginning of paragraph (j) and place it, exactly as it now reads, after paragraph (j)(8)(ii)(B)(*2*).

§§ 611.4, 611.9, 611.50, 611.61, 611.80, 611.81, 611.90, 611.92, 611.93, and 611.94 [Amended]

4. In addition to the amendments set forth above, 50 CFR Part 611 is amended by placing the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0075)" after the following paragraphs or appendices:

(a) 50 CFR 611.4(e);

(b) 50 CFR 611.9 Appendix VI—Weekly Report of Marine Mammal Incidental Catch;

(c) 50 CFR 611.50(e)(2)(ii)B;

(d) 50 CFR 611.61(e)(3);

(e) 50 CFR 611.80(f)(2)(iii);

(f) 50 CFR 611.81(e)(4);

(g) 50 CFR 611.90(f)(3);

(h) 50 CFR 611.92(g)(2)(ii);

(i) 50 CFR 611.93(d)(3)(ii); and

(j) 50 CFR 611.94(d).

5. The authority citation for 50 CFR Parts 650, 651, 652, 654, 655, 663, 672, 674, and 675 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

PART 650—ATLANTIC SEA SCALLOP FISHERY

§ 650.4 [Amended]

6. In § 650.4, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0097)" after paragraph (l).

PART 651—ATLANTIC GROUNDFISH (COD, HADDOCK, AND YELLOWTAIL FLOUNDER)

§§ 651.4 and 651.22 [Amended]

7. 50 CFR Part 651 is amended by placing the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0097)" after § 651.4(m), and the phrase "(Approved by the Office of Management and Budget under control number 0648-0016)" after § 651.22(f).

PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

§§ 652.4 and 652.5 [Amended]

8. 50 CFR Part 652 is amended by placing the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0097)" after § 652.4(i), and the phrase "(Paragraphs (a)(2) (iii) and (iv) are approved by the Office of Management and Budget under control number 0648-0114 and the remaining paragraphs under control number 0648-0013)" after § 652.5(a)(3), and the phrase "(Approved by the Office of Management and Budget under control number 0648-0016)" after § 652.5(b)(5).

PART 654—STONE CRAB FISHERY

§§ 654.4 and 654.5 [Amended]

9. 50 CFR Part 654 is amended by placing the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0097)" after § 654.4(b)(3), and the phrase "(Approved by the Office of Management and Budget under control number 0648-0016" after § 654.5(a)(6), and the phrase "(Approved by the Office of Management and Budget under control number 0648-0013)" after § 654.5(c).

PART 655—ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

§ 655.4 [Amended]

10. In § 655.4, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0097)" after paragraph (j).

PART 663—PACIFIC COAST GROUNDFISH FISHERY

§ 663.4 [Amended]

11. In § 663.4, remove the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0114)" from the middle of that section and place it, exactly as it now reads, after that same section.

PART 671—TANNER CRAB OFF ALASKA

§ 671.4 [Amended]

12. In § 671.4, place the parenthetical phrase "(Paragraphs (a)-(d) approved by the Office of Management and Budget under control number 0648-0016 and paragraph (e) under control number 0648-0114)" after paragraph (e)(2).

PART 672—GROUNDFISH OF THE GULF OF ALASKA

§§ 672.4 and 672.5 [Amended]

13. 50 CFR Part 672 is amended by placing the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648-0097)" after § 672.4(i), and the phrase "(Approved by the Office of Management and Budget under control number 0648-0016)" after § 672.5(a)(2), and the phrase "(Approved by the Office of Management and Budget under control number 0648-0114)" after § 672.5 (b)(4) and (c)(4).

PART 674—HIGH SEAS SALMON FISHERY OFF ALASKA

§ 674.4 [Amended]

14. In § 674.4, place the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648–0097)" after paragraph (f).

PART 675—GROUNDFISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

§§ 675.4 and 675.5 [Amended]

15. 50 CFR Part 675 is amended by placing the parenthetical phrase "(Approved by the Office of Management and Budget under control number 0648–0097)" after § 675.4(i), and the phrase "(Paragraph (a) approved by the Office of Management and Budget under control number 0648–0016 and paragraph (b) under control number 0648–0014)" after § 675.5(b)(2).

[FR Doc. 83–20749 Filed 7–29–83; 8:45 am]
BILLING CODE 3510–22–M

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50 CFR Part 663

[Docket No. 30722–142]

Pacific Coast Groundfish Fishery

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

ACTION: Rule-related notice; issuance of experimental fishing permits.

SUMMARY: This notice announces issuance of three experimental fishing permits that allow certain U.S. fishermen to use set nets to harvest groundfish in the fishery conservation zone (FCZ 3–200 nautical miles offshore) off the coasts of Washington, Oregon, and California in 1983. These permits allow an experimental fishery which otherwise would be prohibited by Federal regulation. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and implementing regulations.

EFFECTIVE DATE: 0001 Pacific Daylight Time, May 1, 1983, through 2400 Pacific Standard Time, October 31, 1983.

ADDRESSES: H. A. Larkins, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, Washington 98115.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins, 206–527–6150.

SUPPLEMENTARY INFORMATION: The regulations implementing the Pacific Coast Groundfish Fishery Management Plan were published on October 5, 1982 (47 FR 43964). Section 663.26(c) of these regulations prohibits the use of set nets to harvest groundfish north of 38° N. latitude. However, § 663.10 provides that the Northwest Regional Director (Director) of the National Marine Fisheries Service (NMFS) may issue experimental fishing permits (EFPs) to authorize fishing by U.S. vessels which otherwise would be prohibited. If such permits are granted, the Secretary is to publish a notice in the **Federal Register** describing the experimental fishing to be conducted under the EFP.

One EFP to set net for groundfish during 1982 was issued. On December 1, 1982, a notice was published (47 FR 54135) stating that EFP applications to set net for groundfish during 1983 and received prior to December 15, 1983, would be considered at the Pacific Fishery Management Council (Council) meeting in January 1983. The four applications submitted were summarized in the **Federal Register** (48 FR 1211) with requests for public comment.

The comments and statements received were substantially the same as in 1982. The Council recommended denial of the EFPs based on the anticipated efficiency of set nets in catching salmon, the lack of information on other incidentally caught species, the 1957 informal consensus reached between the United States and Canada to ban net fishing for salmon in the ocean, the ability of nets to fish indefinitely if lost or unattended, the history of conflict between mobile and fixed gears when they occur together, and the full use by other gear types of the major target species (sablefish) of the set net fishery. The Council felt that if EFPs were granted, it would require rigorous collection of data. Similar concerns were raised by the International Pacific Halibut Commission and the Canadian Government.

The Director determined that a carefully monitored, limited experimental fishery could provide valuable information on the incidental harvest of other species in a sablefish set net fishery and the incidence of gear loss or conflicts. Consequently, three EFPs were issued under the provisions of 50 CFR Part 663 to allow a limited set net fishery for groundfish in 1983. Each EFP allows set netting in the FCZ off Washington, Oregon, and California, including the area north of 38°00′ N. latitude, from May 1, 1983, through October 31, 1983. Each permit also includes terms and conditions that allow data to be obtained under closely supervised conditions that will provide a quantifiable basis for evaluating whether set netting is an acceptable method of catching groundfish. A NMFS observer will be aboard each vessel whenever possible. The size of this experimental fishery (three vessels) lessens the risk of unacceptable incidental catches, particularly of salmon. Further details and information on specific permits may be obtained from the Regional Director at the address listed above.

Although the EFP conditions were designed to maximize information with the least disruption to normal fishing operations, there is no assurance that the permit holders will in fact choose to operate. If a permit holder withdraws or is terminated from the fishery, another EFP may be issued.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 663

Administrative practice and procedure, Fish, Fisheries, Fishing.

Dated: July 27, 1983.

Carmen J. Blondin,

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

[FR Doc. 83–20748 Filed 7–29–83; 8:45 am]
BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 48, No. 148
Monday, August 1, 1983

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

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 822 3165]

Spinal Health Services, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require two Florida chiropractors and the two companies which they operate, among other things, to cease representing without competent and reliable scientific tests or evidence, that their "laser face lift" or "biostimulation face lift" will reduce, smooth out, or remove facial lines, depressions and wrinkles, or otherwise give the recipient a more youthful facial apperance; or that their cosmetic treatment will provide as long-lasting an improvement as that of a surgical face lift. The order would also require that respondents retain documentation substantiating claims for a period of three years, and provide its sales and advertising personnel with a copy of the order as an acknowledgment form.

DATE: Comments must be received on or before Sept. 30, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PS, Matthew Daynard, Washington, D.C. 20580, (202) 523-3427.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Doctors, Medical care, Trade practices.

Before Federal Trade Commission

[File No. 822 3165]

Agreement Containing Consent Order to Cease and Desist

In the matter of Spinal Health Services, Inc., Laser Toning Center, Inc., corporations, Fred J. Gehl, D.C., and Samuel Lux, D.C.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Spinal Health Services, Inc. (SHS) and Laser Toning Center, Inc. (LTC), corporations, and Fred J. Gehl, D.C. and Samuel Lux, D.C., and it now appearing that SHS, LTC, Fred J. Gehl and Samuel Lux are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between SHS and LTC, by their duly authorized officers and their attorney, and Fred J. Gehl, D.C. and Samuel Lux, D.C., and their attorney, and counsel for the Federal Trade Commission that:

1. SHS is a Florida corporation with its principal place of business located at 6800 NW 169th Street, Miami, Florida 33169.

2. LTC, doing business as the Laser Facial Toning Center, is a Florida corporation with its principal place of business located at 1029 Kane Concourse, Bay Harbor Islands, Florida 33154.

3. Fred J. Gehl is a licensed chiropractic physician under Florida laws with his principal place of business located at 7160 SW 62nd Avenue, Miami, Florida 33143. He also conducts or has conducted business at the same address as LTC. He is an officer or director of SHS and LTC, and, individually or in concert with others, has formulated, directed and controlled the acts and practices of SHS and LTC.

4. Samuel Lux is a licensed chiropractic physician under Florida laws with his principal place of business located at 2072 North University Drive, Pembroke Pines, Florida 33024. He is an officer of SHS, and, individually or in concert with others, has formulated, directed and controlled the acts and practices of SHS.

5. SHS, LTC, Fred J. Gehl and Samuel Lux waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify SHS, LTC, Fred J. Gehl and Samuel Lux, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by SHS, LTC, Fred J. Gehl, or Samuel Lux that the law has been violated as alleged in the draft of complaint here attached.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to SHS, LTC, Fred J. Gehl or Samuel Lux, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease

and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to SHS', LTC's, Fred J. Gehl's and Samuel Lux's address stated in this agreement shall constitute service. SHS, LTC, Fred J. Gehl, and Samuel Lux waive any right they may have to any other manner of service. The complaint attached hereto may be used in construing the terms of the order. No agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

9. SHS, LTC, Fred J. Gehl and Samuel Lux have read the proposed complaint and order contemplated hereby. They understand that when the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. SHS, LTC, Fred J. Gehl and Samuel Lux further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

1. It is ordered that respondents Spinal Health Services, Inc. and Laser Toning Center, Inc., corporations, their successors and assigns, and their officers, and respondents Fred J. Gehl, D.C. and Samuel Lux, D.C., individually (and as officers or directors of said corporations), and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, or sale, directly or indirectly, of nonsurgical facial cosmetic treatments involving the use of a laser device to reduce, smooth out, or remove facial lines, depressions and wrinkles, or otherwise give recipients a more youthful facial appearance, shall cease and desist from representing, orally or in writing, directly or by implication, (1) that such cosmetic treatment is effective for facelifts, or reduces, smooths out, or removes facial lines, depressions or wrinkles or otherwise gives recipients a more youthful facial appearance, or (2) that such cosmetic treatment provides long-lasting improvement in recipients' facial appearance or provides improvement that will last about as long as that of a surgical facelift, unless, at the time such claims are first made, respondents possess and rely upon adequate substantiation that provides a reasonable basis for the representations, which substantiation shall consist of a competent and reliable scientific test or other competent and reliable evidence; and

2. It is further ordered that respondents maintain and produce for inspection by Federal Trade Commission staff members upon reasonable notice all documents constituting the reasonable basis required by Paragraph 1. of this order. Such records shall be maintained by respondents for a period of three (3) years from the date on which any such representations were last made.

3. It is further ordered that respondents distribute a copy of this order to present or future employees, agents or representatives having advertising, promotion, sales, or policy responsibilities with respect to the subject matter of this order and that respondents secure from each such person a signed statement acknowledging receipt of the order.

4. It is further ordered that each corporate respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

5. It is further ordered that, for a period of 10 years from the date of service of this order, each individual respondent promptly shall notify the Commission of the discontinuance of his present business or employment and of his affiliation with any new business or employment involving cosmetic treatment. Each notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

6. It is further ordered that each respondent shall, within sixty (60) days after service upon them of this order, file with the Commission a report, in writing, setting forth in detail the manner and form of compliance with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Laser Toning Center, Inc. (LTC) and Spinal Health Services, Inc. (SHS), corporations, and Fred J. Gehl and Samuel Lux, chiropractic physicians.

The proposed consent order and material submitted by LTC, SHS and Drs. Gehl and Lux that is reasonably related to the merits of the order and is not exempt from disclosure under the Freedom of Information Act have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint issued with this proposed consent order charges that respondents engaged in deceptive acts and practices concerning "cold" laser facelift treatments marketed and sold by them, in violation of Section 5 of the Federal Trade Commission Act. The complaint alleges that respondents had no reasonable basis for their claims in advertising, promotional material and office sales presentations that their laser treatments reduce, smooth out, or remove facial lines, depressions and wrinkles, and result in a non-surgical facelift that lasts about as long as a surgical facelift.

The consent order is designed to prevent respondents from making unsubstantiated efficacy claims for their laser treatments. Paragraph 1. of the order prohibits respondents from making any unsubstantiated oral or written claim that their laser treatments are effective for facelifts, or that they reduce, smooth out, or remove facial lines, depressions or wrinkles, or otherwise give recipients a more youthful facial appearance. This provision also applies to respondents' claims that their laser treatments provide long-lasting improvement in recipients' facial appearance or provide improvement that will last about as long as that of a surgical facelift. Paragraph 1. requires that respondents possess and rely on adequate substantiation that provides a reasonable basis for such claims at the time they are made. The provision defines reasonable basis to be "a competent and reliable scientific test or other competent and reliable evidence."

Paragraph 2. of the order requires respondents to maintain records of the substantiation for their claim for a period of three (3) years from the date any such claim was last made. The Commission's staff may inspect respondents' substantiation documents upon reasonable notice.

Paragraph 3. of the order requires respondents to distribute a copy of the order to, and secure a signed statement acknowledging receipt of the order from, present or future employees, agents or representatives who have advertising, promotion, sales or policy responsibilities with respect to the subject matter of the order.

Paragraph 4. of the order requires LTC and SHS to notify the Commission of any change in their corporate structures which might affect compliance obligations.

Paragraph 5. of the order requires Drs. Gehl and Lux to notify the Commission of any changes in their employment involving cosmetic treatment.

Finally, Paragraph 6. of the order requires respondents to file a report, within sixty (60) days after the effective date of this order, with the Commission detailing their compliance with this order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Emily H. Rock,

Secretary.

[FR Doc. 83-20775 Filed 7-29-83; 8:45 am]

BILLING CODE 6750-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1607

Uniform Guidelines on Employee Selection Procedures; Request for Comments

AGENCY: Equal Employment Opportunity Commission (EEOC).

ACTION: Review of Recordkeeping Requirements; Request for comments.

SUMMARY: The Presidential Task Force on Regulatory Relief has designated the recordkeeping provisions of the Uniform Guidelines on Employee Selection Procedures, appearing at 29 CFR Part 1607 (1980); 43 FR 38290 (1978), for review under Section 3(i) of Executive Order 12291. On March 15, 1983, the Commission voted to review those portions of the recordkeeping provisions of the Guidelines which relate to the maintenance of data necessary to determine adverse impact. The EEOC is requesting comments to aid in this review.

DATE: Comments must be received on or before August 31, 1983.

ADDRESS: Written comments may be addressed to: Executive Secretariat (1607-83), Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506. All public comments may be reviewed from 9:30 a.m. to 4:30 p.m., Monday through Friday, at: Library Room 2303, EEOC, 2401 E Street, NW., Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT: Anthony J. DeMarco, Assistant Legal Counsel, Legal Services, Office of Legal Counsel, Equal Employment Opportunity Commission, 2401 E Street, NW., Washington, D.C. 20506, (202) 634-6592.

SUPPLEMENTARY INFORMATION: During the late 1960's and early 1970's, EEOC, the Department of Labor and the Civil Service Commission, under separate legal authorities, each developed and issued guidelines on the proper use of tests and other employee selection procedures. The effort to develop uniform guidelines began in 1972 when the Equal Employment Opportunity Coordinating Council was established to eliminate conflict, competition, duplication and inconsistency among the Federal EEO enforcement agencies. Nevertheless, by the end of 1976, differences between EEOC, the Department of Labor, the Department of Justice and the Civil Service Commission had resulted in two different sets of guidelines on employee selection procedures.

In 1977, efforts were intensified to produce a unified government position and on October 28, 1977, proposed draft guidelines were circulated informally for comment. Comments received from representatives of state and local governments, psychologists, private employers and civil rights groups were taken into account in preparing the proposed Uniform Guidelines on Employee Selection Procedures published for comment on December 30, 1977, at 42 FR 65542.

During the public comment period which ended on March 7, 1978, 267 comments were received from all sectors of the public including representatives of private industry, public employers, labor organizations, civil rights groups, women's organizations, psychologists and personnel specialists. Five main issues of concern emerged from these comments and a public hearing on the proposed guidelines was held on April 10, 1978, to address these specific issues, the proposed recordkeeping obligations of the guidelines and any other areas of concern to the public.

The five issues specifically addressed at the public hearing were the relationship between validation and the use of alternate procedures reducing adverse impact, the relationship between validation and affirmative action, the federal position on validating individual components of a selection process if those components have an adverse impact but the entire process does not, the obligation employers have to seek alternatives which reduce adverse impact at the same time they are attempting to validate the procedure which caused that impact, and the basis on which cut-off scores should be set. The written comments and testimony on the proposed guidelines were carefully considered by the issuing agencies and appropriate revisions to the guidelines were made.

The Uniform Guidelines on Employee Selection Procedures were adopted as final rules by five agencies, namely, the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, the Civil Service Commission [1] and the Department of Treasury on August 25, 1978 at 43 FR 38290, and on September 11, 1978 at 43 FR 40223. The Uniform Guidelines became effective on September 25, 1978.

In early 1981, the Presidential Task Force on Regulatory Relief asked members of the public to identify specific regulations that could be revised or eliminated to reduce the cost and administrative burdens of regulatory compliance. The Presidential Task Force forwarded ten comments from the public on the Uniform Guidelines to the Commission for review. The majority of the comments received by the Presidential Task Force suggested that the recordkeeping provisions of the Uniform Guidelines on

[1] The Civil Service Commission, succeeded in relevant part by the Office of Personnel Management (OPM), co-signed the Uniform Guidelines on the basis of its equal employment opportunity enforcement responsibilities under section 717 of Title VII of the Civil Rights Act of 1964, as amended in 1972, and the Intergovernmental Personnel Act of 1970, as amended. Effective January 1, 1979, the responsibility for equal employment opportunity enforcement in federal government employment under section 717 of Title VII of the Civil Rights Act was transferred to the EEOC pursuant to Executive Order 12106. OPM continues to administer the Intergovernmental Personnel Act, implements merit system principles (5 U.S.C. 2301), and implements the Federal Equal Opportunity Recruitment Program (5 U.S.C. 7201)

Employee Selection Procedures be revised in order to reduce the cost and administrative burdens of compliance with Title VII of the Civil Rights Act of 1964, as amended.

After consideration of these comments, the Presidential Task Force on Regulatory Relief announced on August 12, 1981, that, pursuant to Section 3(i) of Executive Order 12291, the Uniform Guidelines on Employee Selection Procedures would be reviewed as a result of concern expressed by employers over the recordkeeping requirements associated with the Guidelines. Subsequently, Commission staff conducted its own assessment of the need to review the Guidelines. Based on staff assessment, on March 15, 1983, the Commission voted to review those portions of the recordkeeping provisions of the Guidelines which relate to the maintenance of data necessary to determine adverse impact.

The Commission has now commenced its review and is inviting comments on those portions of the recordkeeping provisions of the Uniform Guidelines on Employee Selection Procedures and the Questions and Answers on the Uniform Guidelines which are currently in effect and appear, respectively, at 29 CFR 1607.4A and 1607.15A (1) and (2); and 45 FR 12008, ques. and ans. 82 thru 88.

Some of the issues to be addressed are:

Question 1. Should the Uniform Guidelines define more specifically the information that a user of a selection process must maintain to show whether its selection procedures have an adverse impact on the basis of race, sex, or ethnic origin? If so, what information (such as applications, applicant flow data, pass/fail data) should the Guidelines require?

Question 2. Should the Uniform Guidelines state retention period for the records that a user is required to maintain? If so, state what period and reasons. If not, state reasons.

Question. 3 Under the current Uniform Guidelines, a user is not generally expected to evaluate the individual components for adverse impact if the total selection process does not have an adverse impact. See 29 CFR 1607.4C (1980). The U.S. Supreme Court decision in *Connecticut* v. *Teal,* 50 U.S.L.W. 4716 (1982), however, held that identifiable components of a selection process which have an adverse impact on minorities must be shown to be job related notwithstanding that the "bottom line" percentages evidence no adverse impact. Should the Uniform Guidelines require users to maintain records to disclose the impact of a component of a selection process even where the overall selection process does not have an adverse impact?

Question 4. What steps should be taken by Federal enforcement agencies for failure to maintain required records under the Uniform Guidelines? Should, for example, an adverse inference be imposed?

Question 5. Since the adoption of the Uniform Guidelines, EEOC has acquired authority over ADEA, 29 U.S.C. 621 *et seq.,* and has adopted ADEA regulations that apply the technical principles of the Uniform Guidelines to ADEA. Therefore, should the test users be required to maintain records under the Commission's guidelines based on age as well?

Question 6. For the purpose of maintaining data to determine adverse impact, should the Uniform Guidelines provide a definition of the term "applicant"? If so, how should the term "applicant" be defined? See Q&A #15, EEOC Questions and Answers to Clarify and Provide a Common Interpretation of UGESP, 44 FR 11998 (March 2, 1979).

Question 7. How can the paperwork burden of the Uniform Guidelines be reduced without diminishing the protection of the Guidelines?

These questions are intended only to be exemplary. The Commission invites comments generally on those portions of the recordkeeping provisions of the Guidelines previously cited.

Information collection requirements contained in the Uniform Guidelines, 29 CFR 1607, have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96511) and have been assigned OMB control number 3046-0017.

In compliance with Executive Order 12067, the Commission has consulted with representatives from the other federal departments and agencies on this notice requesting comments on the Uniform Guidelines on Employee Selection Procedures.

List of Subjects in 29 CFR Part 1607

Equal employment opportunity, Reporting and recordkeeping requirements.

Signed at Washington, D.C., this 26th day of July 1983.

For the Commission.

Clarence Thomas,

Chairman, Equal Employment Opportunity Commission.

[FR Doc. 83-20660 Filed 7-29-83; 8:45 am]

BILLING CODE 6570-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD-83-1R]

Special Anchorage Area; Fore River, Portland Harbor, Portland, Maine and Anchorage Regulations in the Zone of MSO Portland, Maine, Editorial Changes

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering amending the anchorage regulations so as to disestablish Anchorage D, as described in 33 CFR 110.132 4(a) and 33 CFR 110.132 3(b) as a general anchorage ground. The same general area would then be reestablished as a special anchorage area under the provisions of 33 CFR 109.10 and re-defined by regulation under subpart A of 33 CFR Part 110. In order to more clearly define the special anchorage area, the points designating the anchorage have been modified.

The Coast Guard is also considering amending its anchorages regulations in MSO Portland's zone to clarify the limits of certain anchorages. Some of the physical limits of the anchorage have been modified over the years. None of these changes will significantly affect the anchorages now established.

DATE: Comments must be received on or before: September 15, 1983.

ADDRESS: Comments should be submitted to and are available for examination and copying during normal business hours at U.S. Coast Guard, Marine Safety Office, Portland, ME, P.O. Box 108, Portland, ME 04112.

FOR FURTHER INFORMATION CONTACT:
0Captain K. P. Penson, USCG, USCG Captain of the Port, Portland, Maine, P.O. Box 108, Portland, Maine 04112, Tel: (207) 780-3251, and
Lt. W. B. O'Leary (Project Attorney), Commander (dl), First Coast Guard District, 150 Causeway Street, Boston, MA 02114, Tel: (617) 223-5736.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each person submitting a comment should include their name and address, identifying this notice (CDG-83-1R) and the specific section of the proposal to which their comment applies, and give reasons for the comment. Persons desiring acknowledgement that their comments have been received should enclose a self

addressed stamped envelope or postcard. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid in the rulemaking process.

Drafting Information: The drafters of this notice and LCDR Anthony Regalbuto, Marine Safety Office, Portland ME, Project Officer; and Lt. William B. O'Leary, Project Attorney, First Coast Guard District Legal Office.

Discussion of Proposed Regulation: The Coast Guard has determined that the area proposed as a special anchorage area has historically been used exclusively for the mooring and anchoring of small pleasure craft. The Portland Harbor Commission and Centerboard Yacht Club have assigned moorings in this area. Establishment of the Special Anchorage Area will negate the requirement for vessels of not more than 65 feet in length to display anchor lights while at anchor within this area.

The designation of this special anchorage area will have no significant impact on the quality of the human environment. This action is consistent to the maximum extent practicable with the Maine Coastal Zone Management Plan. Environmental information can be obtained from Mr. P. V. Kaselis, Environmental Specialist, First Coast Guard District, 150 Causeway Street, Boston, MA 02114.

Additionally, the Coast Guard has determined that there are three anchorages in the MSO Portland, Maine, zone which need editorial changes. These anchorages have been outdated due to the removal of a buoy, destruction of a bridge or other modifications to the points which define the geographical limits of the anchorages.

The description of General Anchorage "A" at Portland Harbor, Maine, should be changed since the Grand Trunk Railway Company Pier No. 3 is now in ruins. Also, the Brooklyn Ledge Buoy 16 has been removed and replaced in a different position by Fort Gorges Island Ledge Buoy 4. The general anchorage limits have been modified slightly to indicate the different position of Buoy 4 from Buoy 16.

The description of General and Quarantine Anchorage "B" at Portland Harbor, Maine, should be changed for the same reason as specified above in General Anchorage "A". The Brooklyn Ledge Buoy 16 has been removed and replaced in a different position by Fort Gorges Island Ledge Buoy 4. The general anchorage limits have been modified slightly to indicate this change.

The Portsmouth Harbor special anchorage north of Newcastle Island should be reworded to more clearly define the anchorage area. The reworded anchorage is physically located in the same geographical position as the existing anchorage.

Economic Assessment and Certification: This proposed regulation is considered to be nonsignificant in accordance with DOT Policies and Procedures for Simplification, Analysis, and Review of Regulations (DOT Order 2100.5). Its economic impact is expected to be minimal since the amendments impose no economic burdens; small vessel owners will not have to carry or display anchor lights while anchored in the special anchorage, and the other amendments are essentially editorial. Based upon this assessment, it is certified in accordance with section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, the regulation has been reviewed in accordance with Executive Order 12291 of February 17, 1981, on Federal Regulations and has been determined not to be a major rule under the terms of that order.

List of Subjects in 33 CFR Part 110

Anchorage grounds.

PART 110—[AMENDED]

Proposed Regulation: In consideration of the foregoing, it is proposed that Part 110 of Title 33 of the Code of Federal Regulations be amended as set forth below:

1. By removing paragraphs (a)(4) and (b)(3) of § 110.132 and by adding § 100.6a to read as follows:

§ 110.6a Fore River, Portland Harbor, Portland, Maine.

The water area beginning at a point on the shoreline near the Coast Guard Base in Position 43°38'43"N and 070°14'49"W; thence 319° to position 43°38'55"N, 070°15'03"W; thence 50° to anchorage buoy D; thence 161° to the mainland; and thence southwesterly along the shore to the point of beginning.

2. By revising § 110.10 to read as follows:

§ 110.10 Portsmouth Harbor, New Hampshire, north of Newcastle Island.

From the northernmost point of Goat Island to latitude 43°04'25"N, longitude 070°43'37"W, thence 089°30' for 1025 yards, thence 120° for 285 yards, then 213° to the shoreline of Newcastle Island, thence along the shoreline of Newcastle Island and across the breakwater to Goat Island and to the point of beginning.

3. By revising paragraphs (a) (1) and (2) of § 110.132 to read as follows:

§ 110.132 Portland Harbor, Maine.

(a) The anchorage grounds—(1) Anchorage A (general). Beginning at latitude 43°39'37"N, longitude 070°14'35"W; thence approximately 090° for 1550 yards to Fort Gorges Island Ledge Buoy 4; thence 350° for 300 yards; thence 025° for 780 yards; thence 303° for 750 yards; thence 254° for 560 yards; thence 186° for 750 yards and thence to the point of beginning.

(2) Anchorage B (general—primarily intended for deep draft vessels). Beginning at Fort Gorges Island Ledge Buoy 4; thence 062° to Little Diamond Island; thence along the southwestern shore to the pier on the southern end of Little Diamond Island; thence 133° for 1200 yards; thence 270° to House Island Light; thence along the western shore of House Island to Fort Scammel Point Light; thence 325° for 1700 yards to the point of beginning.

* * * * *

(33 U.S.C. 2030, 2035, and 2071; 49 CFR 1.46, 33 CFR 1.05-1(q), 33 U.S.C. 471; 49 U.S.C. 1655(g)(1))

Dated: July 6, 1983.

R. A. Bauman,

Rear Admiral, Coast Guard Commander, First Coast Guard District.

[FR Doc. 83-20517 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

40 CFR Ch. II

Natural Resources Damage Assessment

July 25, 1983.

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

This is a second advance notice of proposed rulemaking by the Department of the Interior on the subject of the natural resources damage assessment responsibilities assigned under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA), Section 301(c). Executive Order 12316, August 14, 1981, delegates to this Department the responsibility to prepare regulations for assessing damages for injury to, destruction of, or loss of natural

resources resulting from release of oil or hazardous substances.

The purpose of this second notice is primarily to inform the interested public about the nature of the responses to the first notice. In addition, the notice allows for comment on the Department's proposed activities as we proceed with development of damage assessment regulations. The Department also continues to solicit relevant input and identification of additional information resources.

DATE: Comments on activities are requested by August 31, 1983.

ADDRESS: Written comments are to be submitted to Cecil Hoffmann, Office of Environmental Project Review, Office of the Secretary, U.S. Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Cecil Hoffmann, Office of Environmental Project Review, Office of the Secretary, U.S. Department of the Interior, 18th and C Streets NW., Washington, D.C. 20240, telephone (202) 343-3811 or 343-3891.

SUPPLEMENTARY INFORMATION: The first advance notice was published January 10, 1983 (48 FR 1084). It announced our intent to develop proposed regulations, and sought information to aid in their development.

Comments received to date are in open file and anyone interested may call the "further information" number below.

This notice also serves as thanks to all respondents to date. Many respondents will hear from Department staff with follow-up questions and requests for specific information offered, but all responses, including simple expressions of interest, have their value, and are appreciated. All respondents will be on a mailing list.

All comments continue to be welcome. New or additional information based upon this notice or the questions in the earlier call for information will be useful. Please note that those who responded to the first notice will remain on our mailing list throughout the development of these rules whether or not they comment further.

For papers and more detailed responses, as with the previous notice, the Department will appreciate the earliest possible response, including a description of a respondent's particular interests and area of expertise. As before, we solicit estimated schedules for completion of relevant work in progress which may not be ready now, but which might be made available in the course of developing a particular section of the regulations.

Background

The Department published an advance notice of proposed rulemaking on January 10, 1983, to establish contact with those who have expertise in any facet of regulations which will govern natural resources damage assessment under CERCLA. Information was sought in four categories:

I. Procedures for Developing Regulations—ways to solicit input from interested and affected sources; and ways to review and evaluate material received.

II. Procedures for Carrying Out Damage Assessment—identification of natural resource damage, involvement of multiple trustees, documentation, interagency review, public participation, and decisionmaking.

III. Natural Resources Damage Assessment—technical basis and methodologies, effects of hazardous substances released, measurement of damage to affected resources, rehabilitation and restoration costs, and natural resource value determinations.

IV. Revision and Update—suggestions helpful in implementing initial regulations so they can be readily updated at the two-year intervals required by the Act.

Comments were received from a wide range of sources. Through the notice, we are establishing useful contacts with appropriate organizations and individuals. Names and bibliographic references submitted are leading us to additional information resources.

Several early responses, by phone and letter, requested an extension of time to respond. We did not extend the deadline per se, but suggested that such respondents send a letter stating the nature of their interest, their plans to provide input, and an estimate of the time they needed, thereby giving us a record of their interest and a mailing address for any schedules, drafts, or other information we would generate.

Because States are designated trustees for natural resources and thus potential users of the damage assessment regulations, along with Federal trustees, and because States have a body of experience with damage assessment work done to date, we wanted to be sure to reach them so they would participate as fully as they were able and interested. Therefore, in mid-February, we sent a memorandum to State Clearinghouses and to a list of selected State offices contacted during earlier research in the damage assessment field. We enclosed extra copies of the January 10 notice, and requested distribution to all State offices which might have an interest. We asked that States designate a contact for us and outline their experience and interests in response to the January notice, on or before March 31, 1983.

General Discussion of Comments Received

A total of 86 responses have been received, several of which were additions to initial responses, or more than one response from a single State. Of these, 42 are from State offices, all but 5 of them received after a specially directed request. This notice of information briefly characterizes major comments by their general source, outlines some basic assumptions drawn from input to date arranged in the same categories as the original notice, and suggests proposed actions for proceeding with the development of the regulations.

Several respondents, States and others, cited the Environmental Protection Agency (EPA) and/or the National Oceanic and Atmospheric Administration (NOAA) as prime sources of relevant material. Both the EPA and NOAA of the Department of Commerce provided initial written comments in response to our January call for information. Interior expects to continue and enhance its relationships with these and other Federal agencies which have expertise and jurisdiction under CERCLA to be sure its natural resources damage assessment regulations implement the Act efficiently and that required procedures fit appropriately with required activities of other governmental agencies.

By mutual agreement, the mechanism for Federal input to development of natural resources damage assessment regulations has been the National Response Team (NRT), a long-standing interagency group headed by EPA and the Coast Guard, made up of agencies with responsibilities under the National Contingency Plan to insure timely and coordinated response to release of oil or hazardous materials. This Department will continue consultation with appropriate program contacts in these agencies reached through NRT representatives.

The responses from Interior bureaus and offices are also being handled through continuing consultations with those who have the required expertise to provide the kinds of information requested in the notice, to assist in following up on respondents' information resources suggestions, to review and analyze substantive input and recommended reports, etc. Thus, the ongoing and expected assistance and support of Interior bureaus, as well as other Federal entities, is not fully reflected in individual written responses to the January notice.

State governments designated contacts for future communication and information exchange. While appreciative of the Department's recognition of this expertise and their concerns, State responses frequently noted that substantive input to the development of these regulations was not cost free. State submissions provided a range of useful, focused, and well articulated comments by letters, attached papers, and reports, including copies of laws, regulations, and other official guidances. The Department plans to continue to follow up on State contacts, and we urge States to designate such a contact, for information exchange, if they have not yet done so.

Private industry responses, from associations and individual firms, represented a range of interests including the following: oil and gas production and processing, chemical manufacturing, insurance and underwriting, public utilities, mining, and forest products.

The community of natural resource conservation and environment-oriented professionals was represented by a few but articulate commenters.

With each of the sources above, many responses simply indicated an interest in being kept posted. Others commented at some length, and those comments are incorporated in the assumptions that follow. There follows a highlight treatment of comments received, under the heading I–IV described above, followed by proposed action leading to development of regulations.

I. Procedures for Developing Regulations

Background

Comments generally indicated that the most effective way to solicit input was through workshops, seminars, public meetings, etc., where experts could discuss pertinent points from their areas of expertise and agree on draft language for the regulations where enough is known to do that; where less is known, experts would agree on subjects for further discussion or research or decision-making.

Comments indicated that States had a variety of experience in damage assesment and a range of existing procedures in place. States invited follow-up.

Most commenters expressed interest in reviewing drafts of regulations and, in many cases, in reviewing other substantive material.

Other suggestions included advisory committees or committees of experts, and public hearings.

Commenters almost universally mentioned and appreciated the opportunity for an open process, where they could be kept informed, review drafts, discuss, and suggest changes.

Issues

The primary issue, as many commented, particularly States, is one of resources available. Where more resources can be found, either as dollars or man-hours of carefully selected expertise, time frames for delivery can be shorter, and the final product—regulations—can become effective earlier. Kinds of costs and work to cover include:

—The cost of holding meetings, including travel where appropriate;
—Reimbursement of bureaus and other Federal agencies for people detailed or tasked with assignments, etc.;
—Information management costs to prepare and circulate draft reference materials, working papers, and draft segments of the regulations, etc.;
—Contractors to supply products such as literature search (general or targeted to a specific subject such as groundwater or air), papers to cover specific data points, or design of models, etc.; and
—Contractors to cover "as needed" staff assistance, management of meetings including analysis of input, and relevant information management, etc.

Advisory bodies were suggested in a variety of forms. It appears that commenters were thinking simply of devices for bringing proper expertise to bear on both the procedural and scientific/technological problems posed by natural resource damage assessment, rather than Advisory Committees formally organized within the constaints of the Advisory Committee Act. Comments also generally highlighted flexibility, openness, and the hope that a wide range of sources would be involved for information and review purposes throughout the process of developing natural resource damage assessment regulations. Panels of experts for individual workshops or workshop series, seminars, review panels, etc., are examples of ways suggested to make use of experts in a range of disciplines, when and as they are needed.

Potential sources of the many and varied kinds of expertise required for development of useful and appropriate damage assessment regulations are located throughout the country. Washington offices of Federal agencies and private organizations can supply or suggest access to expertise in a range of disciplines. Using a workshop format as indicated in various action items below, initial meetings can begin soon to scope and define tasks, and frame questions leading to longer range information/analysis needs.

Research and follow-up to access detailed information from Federal agencies will require specific policy level agreement between Interior and each of the Federal agencies with jurisdiction and/or expertise. The National Response Team forum is useful for coordination and initial information exchange. It is not appropriate in and of itself for commitment of resources or making appropriate program area expertise available as necessary throughout the agencies for substantive work on procedural or scientific/technical matters.

Actions

Schedule and conduct follow-up visits to selected States

Hold meetings and draft Memoranda of Understanding as needed to allow for commitment to significant level of input from Interior bureaus and other Federal agencies. (In some measure, these will be commitments in principle, since, for some subjects, the present need is scoping projects or tasks. Example is groundwater.)

Staff and working groups (in-house and interagency) discuss, identify, and define workplans for segments of damage assessment regulations; discuss and confirm initial determinations as to priority areas for action, the kind of action (workshops, draft and review, other), the expertise needed, how best to contact and involve expert sources. A bureau or agency might be represented on a particular working group by different people at various times. For example, at various stages of the development of the regulations, the need for Fish and Wildlife Service (FWS) or NOAA expertise might include biology (covering a variety of habitat types and species), chemistry, economics, and program management following through actions such as are listed under II and III below.

Working groups determine additional information/research needs necessary to frame and outline total prospective body of regulations, then scope and schedule means to fill the needs. (Workplan to include workshops, literature search, surveys, etc., as necessary and appropriate, given resource constraints current at the time.)

Staff continue outreach and the direction, coordination, and follow-up of above activities.

II. Procedures for Carrying Out Damage Assessments

Background

Comments indicated that the States and the field personnel of Federal agencies with jurisdiction and expertise are the best sources of information about effective procedures. Actual forms, check lists, and guidance manuals or other items which would serve as models for operations of the Federal regulations on natural resource damage assessment were generally not included in comments received. However, there is evidence and follow-up calls confirm that material is available which can be useful in developing Federal regulations.

Comments suggested that there should be some sort of coordinated team approach to natural resource damage assessment, to be sure that experts from many sources, both governmental and non-governmental, would be notified and consulted, appropriate to the nature of the release or spill, and the resources affected, if any.

Comments dealing with the later steps of the necessary procedures expressed a range of concerns about both administrative and legal ramifications of preparing claims, including those areas where Interior damage assessment regulations will have to mesh with EPA's claims regulations.

Issues

In time, research and follow-up to access information about State and local Federal procedures will begin to raise questions about overlapping jurisdictions and expertise among natural resource trustees. Early focus will be on steps leading to a determination as to whether or not to go forward with a damage assessment. Decision points, and appropriate levels of decision-makers, can better be determined after follow-up on field experience to date, and refined after a trial period for a first phase of damage assessment regulation which would cover only notification and information gathering/reporting. Issues of this nature, requiring cross-cutting policy decisions, can be expected to be surfaced at intervals throughout development of the regulations, and presented by staff and working group members for resolution by policy officials of participating agencies.

Continued close contacts at policy levels must also be maintained to assure proper attention to National Contingency Plan procedures so that damage assessment activities will flow smoothly from the existing requirements to notify and consult with natural resource trustees, and mesh effectively with EPA claim's procedures now being drafted.

Actions

Staff visits to selected States for structured interviews to follow up on information received. (Consideration in selecting States for visit or other follow-up include mainly the extent and kind of procedures and experience offered. Some balance of geographical coverage will be considered, e.g., upland States as well as coastal.)

Working group to outline and draft first phase of regulations governing notification of trustee officials that there has been a release, and initial collection of information based on procedures which are already being carried out on an ad hoc or case-by-case basis, in various jurisdictions. Basis will be specific material from States and Federal officials with field experience as to on-the-ground damage assessment activities already being done case-by-case, guidance formats now in use, and indications of effectiveness (by case history, with or without analysis).

Staff continue outreach, and the direction, coordination, and follow-up of above activities.

III. Natural Resources Damage Assessment: Substantive Data, Methodologies, etc.

Background

Comments indicated that the greatest body of available data and work in progress relates to oil spills on surface waters. Comments discussed delineation of ecosystems, habitats, or communities, etc., as one of the basic requirements for natural resource damage assessments, and offered suggestions and literature references on marine and estuarine resources. (Congressional intent relevant to protocols suggests use of the FWS Classification of Wetlands and Deepwater Habitats, among others.)

Comments almost universally targeted definition of damage to the natural resource as the first necessity, although with no examples of such definitions.

Comments expressed concern that spills of oil or petroleum products are different from other hazardous materials such as toxic chemicals, and procedures should be separate, or otherwise take into account the differences. Comments provided little indication of information available on fates and effects of individual or classes of hazardous substances, either by case history or in readily usable formats for data gathering or decision-making as to natural resource damage assessment.

Comments indicated that groundwater is a natural resource of concern. Case histories of damage have received wide press coverage recently in conjunction with releases from abandoned waste sites. The nature of potential groundwater damage dictates longer time frames for information gathering, analysis, problem definition and resolution than for surface waters, and clearly significant costs for damage assessment activities such as the drillings of sufficient test wells, for example. Several comments cited uses or *useability* of groundwater rather than simply *availability* as a basis for natural resource damage valuation, a long-range discussion point.

Issues

The amount of detail necessary or desirable before decisions can be made, and the level of confidence in data available now on which regulations must be based, are two theoretical questions the answers to which will affect any analysis of substantive data available on natural resource damage assessment. These questions will be answered on a case-by-case basis, but policy-level discussions will be warranted early in the process of developing, essentially within a year, workable draft regulations, based on whatever data is available now and framed so as to be readily amended as systematically reported experience will allow. Put another way, it is not too early for policy makers to understand that some regulations will have to appear on the street based on less than perfect knowledge of the definitions of the problems, let alone the solutions to them.

(The fates and effects of toxic chemicals is one example of a data base which is missing or incomplete for purposes of natural resource damage assessment at this time. Also, while much has been done on fates and effects of oil in marine and estuarine environments, for example, it does not provide a uniform data base. Data collected on different spills, even in similar environments, are not compatible. Much of the data are based on catastrophic spills and cannot be extrapolated reliably to cover small spills; and comments indicate little consistent information on natural resources recovery by natural processes—surprisingly little follow-up study on sites of past spills).

The Fish and Wildlife Service has tools and products, as well as a variety of scientific and technical expertise, directly applicable to development of damage assessment procedures which

represent the state-of-the-art of natural resource damage assessment in certain fish and wildlife resources—habitat classification systems, habitat evaluation procedures, resource inventories, methods manuals, data base management systems. NOAA (Commerce) also has significant expertise and research capabilities for marine fish and wildlife resources and habitats. As indicated in Issues under I. Procedures for Developing Regulations, in order for these sources to contribute effectively, policy officials must negotiate commitment to a given level of support and roster of tasks and projects which will support development of regulations applicable to the full list of natural resources in CERLCA. Other Federal agencies have information and expertise on a range of subjects.

There is no question but what groundwater is a priority subject for action. There are questions as to how best to proceed on the subject of groundwater as one of the natural resources defined in the Act. The Geological Survey, EPA, and the States all have jurisdictions and expertise, channels of communication, and coordinating mechanisms in place.

As is clear from the issues above, segments of natural resources damage assessment regulations must cover resources about which there are widely varying levels of available/useable data, and also widely varying institutional needs for coordination and production of that data. Thus, selection of subjects for early attention, and the kinds of action indicated for each, will remain potential issues throughout the development of regulations.

Actions

Working groups(s) determine both priority and longer-range information needs and sources, scope and schedules for all segments of proposed natural resource damage assessment regulations, considering best estimates of available dollar and manpower resources, for policy discussion/determinations as to (1) completing each phase of final rulemaking; and (2) planning for information gathering to allow subsequent substantive additions and amendments. (Note that in this context, even the options for producing information, and the priorities among needs, etc. may need to be circulated through a community of experts and policy officials to validate levels of concern, efficacy of proposed solutions, etc.)

Working groups covering each segment of natural resources damage assessment, as outlined and reviewed by working group(s). Priority for selecting subjects to cover will be basic field data collection procedures, natural resources with the most readily accessible data; e.g., surface waters, and hazardous substances whose behavior is best known; e.g., petroleum products. (Note that these are priorities for early drafting, not exclusion from any action.)

Staff continue outreach and direction, coordination, and follow-up of above activities.

IV. Revision and Update

Comments indicated potential value, for both immediate and future reference, of the information base which will accumulate from the responses to the calls for information, the source citations, working papers, records, and reports leading to development of the regulations, and subsequently from procedures designed for systematic updating of regulations. Comments express needs/desires for some sort of clearinghouse for scientific and technical informaton. Comments do not include such details as system design elements of particular use to them, nor any consideration of the costs of data manipulation and access for various uses.

Comments cited the advantage of the Act's two-year reivew provision as allowing for longer-range planning to fill information needs, which could be both more efficient and cost-effective than planning only for the first two-year time frame. Comments suggested phased updatings, by section, as they had suggested phased development and promulgation, of the regulations. In urging that regulations be flexible, comments usuallly added the corollary that they be closely aligned with existing procedures and not result in unnecessary (paper) work.

Issues

Staff and other resource considerations require policy determinations now and periodically throughout the process as to appropriate and feasible workload levels for recordkeeping, timely and useful circulation of information (including response to inquiry), and other aspects of information management. Reporting requirements in draft and final regulations will need to be scrutinized carefully to be sure that data produced is worth the cost to produce it, including full consideration of Federal administrative overhead costs in maintaining an appropriate information base.

Action

All working groups maintain awareness of continuing information management concerns in their work planning. Staff coordinates needs and recommendations. Ad hoc working group available to resolve data management problems or conflicts to ensure best possible revision and update capacity with resources available.

Dated: July 22, 1983.

Wm. D. Bettenberg,

Deputy Assistant Secretary, Policy, Budget and Administration.

[FR Doc. 83-20218 Filed 7-29-83; 8:45 am]

BILLING CODE 4310-10-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 20735; RM-1974; RM-2655]

Noncommercial, Educational FM Broadcast Stations; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: The time for filing comments and reply comments in this proceeding is being extended by approximately 1½ months. This action is necessary due to delays encountered by certain participants in this proceeding in analyzing technical information on means of reducing interference to the reception of Channel 6 TV stations. This extension of time is intended to afford these participants the time necessary to complete their studies.

DATES: Comments are due on September 6, 1983. Reply comments are due on October 25, 1983.

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

FOR FURTHER INFORMATION CONTACT: James E. McNally, Jr., Mass Media Bureau, Technical and International Branch, (202) 632-9660.

Order Extending Time for Filing Comments and Reply Comments

In the matter of changes in the rules relating to noncommercial, educational FM broadcast stations; Docket No. 20735, RM-1974, RM-2655.

Adopted: July 18, 1983.

Released: July 22, 1983.

By the Chief, Policy and Rules Division.

1. On May 23, 1982, the Commission adopted a *Second Further Notice of Proposed Rule Making (Second Further Notice)* in the above-entitled matter which was released on May 26, 1982 and published in the **Federal Register** (47 FR

24144) on June 3, 1982. By subsequent Orders, the time for filing comments and reply comments was extended to July 22, 1983, and September 2, 1983, respectively.

2. On July 12, 1983, the Commission received a "Request For Extension of Time" to file comments in this proceeding by National Public Radio, the National Association of Broadcasters, the Association of Maximum Service Telecasters, Taft Broadcasting Company, McGraw-Hill Broadcasting Company, Capital Cities Communications, Inc. and Storer Broadcasting Company (Petitioners). A 1½ month extension of the comment and reply comment period is requested. Petitioners are continuing to experience delays in conducting analysis of various engineering studies and field tests relating to the educational FM/TV Channel 6 interference issue. These analysis are being conducted by parties having an adversary relationship in this proceeding. As we have mentioned previously, a consensus on appropriate remedial action would facilitate the resolution of this proceeding. Even in the absence of a consensus, the information being developed is likely to prove useful in the resolution of this proceeding. Acccordingly, we believe the extension of time is requested by the petitioners. However, this is the fourth extension of time granted since the issuance of the *Second Further Notice*. No further extensions of time are contemplated.

3. Accordingly, it is ordered that the time for filing comments and reply comments in Docket No. 20735 is extended to September 6, 1983, and October 25, 1983, respectively.

4. This action is taken pursuant to authority contained in sections 4(i) and 303 of the Communications Act of 1934, as amended, and §§ 0.204(b) and 0.283 of the Commission's Rules.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20701 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-465; RM-4258; RM-4316; RM-4546]

FM Broadcast Stations in Nisswa, Browerville, Pequot Lakes, and Breezy Point, Minnesota; Order Extending Time for Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: Action taken herein extends the time for filing reply comments in the proceeding involving FM channel assignments to Nisswa, Browerville and Pequot Lakes, Minnesota. Petitioner, Elden Stielstra, requests the additional time to submit a response to comments filed in this proceeding.

DATE: Reply comments must be filed on or before July 25, 1983.

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

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

Order Extending Time for Filing Comments

In the matter of amendment of §73.202(b), Table of Assignments, FM broadcast stations, (Nisswa, Browerville, Pequot Lakes, and Breezy Point,[1] Minnesota); MM Docket No. 83-465, RM-4258, RM-4316, RM-4546.

Adopted: July 19, 1983.

Released: July 22, 1983.

By the Chief, Policy and Rules Division.

1. On April 26, 1983, the Commission adopted a *Notice of Proposed Rule Making*, 48 FR 26465, published June 8, 1983, proposing: (1) A Class A assignment to Browerville, or (2) a Class C substitute assignment to Nisswa and a Class A assignment to Pequot Lakes or (3) a Class A assignment to each of the three communities in Minnesota. A counterproposal has been received from Lakes Broadcasting Group for a Class C substitute at Breezy Point, Minnesota, and a Class A substitute channel for Nisswa. The reply comment deadline is July 15, 1983.

2. On July 5, 1983, Counsel for Elden Stielstra ("petitioner") filed a request seeking additional time to file reply comments to and including July 25, 1983. Counsel states that the additional time is needed to prepare a response to the comments filed in this proceeding. Counsel also states that the parties to this proceeding impose no objection to the extension of time.

3. Since the filing of reply comments would aid in our analysis of this proceeding, we shall grant the additional time as requested.

4. Accordingly, it is ordered, that the above request for an extension of time filed by Elden Stielstra, is granted and the date for filing reply comments IS EXTENDED to and including July 25, 1983.

5. This action is taken pursuant to authority contained in sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20699 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

[1] This community has been added to the caption.

47 CFR Part 73

[MM Docket No. 83-491; RM-4420]

FM Broadcast Station in Baker, Oregon; Order Extending Time for Filing Comments and Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment/reply comment period.

SUMMARY: Action taken herein extends the time for filing comments and reply comments in a proceeding involving the assignment of Channel 284 to Baker, Oregon. Oregon Trail Broadcasting Company requests the additional time to prepare and submit comments.

DATES: Comments must be filed on or before August 18, 1983, and reply comments on or September 6, 1983.

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

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

Order extending time for filing comments and reply comments

In the matter of Amendment of § 73.202(b), Table of Assignments, FM broadcast stations (Baker, Oregon); MM Docket No. 83-491, RM-4420.

Adopted: July 19, 1983.

Released: July 22, 1983.

By the Chief, Policy and Rules Division.

1. On May 9, 1983, the Commission adopted a *Notice of Proposed Rule Making*, 48 FR 27577, published June 15, 1983, proposing the assignment of Channel 284 to Baker, Oregon. Comments and reply comments are presently due July 18 and August 2, 1983, respectively.

2. On July 11, 1983, Counsel for Oregon Trail Broadcasting Company submitted a request seeking an extension of time for filing comments and reply comments to and including August 18 and September 6, 1983, respectively. Counsel states that Oregon Trails was only recently made aware of the proposal. As a result, he is under time constraints which will prevent the development of substantive comments

on the proposal. Counsel adds that additional time is needed to analyze the proposal and engineering data submitted by the petitioner.

3. Although counsel does not indicate the consent of the petitioner regarding the extension, he does indicate service. The Commission believes that it would be in the public interest to have all material available to it in arriving at a decision in this proceeding. Thus, we shall grant the additional time as requested.

4. Accordingly, it is ordered, that the dates for filing comments and reply comments in Docket 83-491 (RM-4420) are extended to and including August 18 and September 6, 1983, respectively.

5. This action is taken pursuant to authority found in sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules.

Federal Communications Commission.

Roderick K. Porter,

Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20700 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-711; RM-4453]

FM Broadcast Stations in Winfield, Texas; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 249A to Winfield, Texas, as its first FM assignment, in response to a petition filed by HSH Associates.

DATES: Comments must be filed on or before September 6, 1983, and reply comments on or before September 12, 1983.

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

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignment, FM Broadcast Stations, (Winfield, Texas); MM Docket No. 83-711, RM-4453.

Adopted: June 29, 1983.

Released: July 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration a petition for rule making filed May 5, 1983, by HSH Associates ("petitioner"), proposing the assignment of Channel 249A to Winfield, Texas, as the community's first local FM service. Petitioner submitted information in support of the proposal and expressed its interest in filing for the channel, if assigned. The channel can be assigned in compliance with the minimum distance separation requirements.

2. In view of the fact that the proposed assignment could provide a first local FM service to Winfield, Texas, the Commission believes it is appropriate to propose amending the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) with respect to the following community.

City	Channel No.	
	Present	Proposed
Winfield, Texas		249A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before September 6, 1983, and reply comments on or before September 21, 1983, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner(s) of this proceeding: HSH Associates, 6350 LBJ Frwy. #170, Dallas, Texas 75240.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later

than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 83-20710 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-715; RM-4451]

FM Broadcast Stations in Manteo, North Carolina; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: Action taken herein proposes to assign FM Channel 257A to Manteo, North Carolina, in response to a petition filed by Robert G. and Thekla Bruce. The assignment could provide Manteo with its first aural broadcast service.

DATES: Comments must be filed on or before September 6, 1983, and reply comments on or before September 21, 1983.

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

FOR FURTHER INFORMATION CONTACT: Nancy V. Joyner, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Manteo, North Carolina); MM Docket No. 83-715 RM-451.

Adopted: June 20, 1983.

Released: July 21, 1983.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed by Robert G. and Thekla Bruce ("petitioners"), seeking the assignment of Channel 257A to Manteo, North Carolina, to provide that community with its first local aural service. Petitioners indicated that they, or an entity of which they are a part, will apply for the channel, if assigned. The channel can be assigned in conformity with the minimum distance separation requirements of § 73.207 of the Commission's Rules.

2. In view of the fact that the proposed assignment could provide a first local aural service to Manteo, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the Rules, as follows:

City	Channel No.	
	Present	Proposed
Manteo, North Carolina		257A

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before September 6, 1983, and reply comments on or before September 21, 1983, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner or their consultant, as follows: Edward M. Johnson, One Regency Square—Suite 450, Knoxville, TN 37915, Consultant to Robert G. and Thekla Bruce (petitioners).

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Nancy V. Joyner, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if

authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

[FR Doc. 83-20706 Filed 7-29-83; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-714; RM-4455]

FM Broadcast Stations in Decorah and Waukon, Iowa; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 265A to Decorah, Iowa, and reassignment of Channel 280A from Decorah to Waukon, Iowa, in response to a petition filed by Lloyd O. and BonnieJo A. Berg.

DATES: Comments must be filed on or before September 6, 1983, and reply comments on or before September 21, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Decorah and Waukon, Iowa); MM Docket No. 83-714, RM-4455.

Adopted: June 27, 1983.

Released: July 21, 1983.

By the Chief, Policy and Rules Division.

1. A petition for rule making was filed May 10, 1983, by Lloyd O. and BonnieJo A. Berg ("petitioners") proposing the assignment of FM Channel 265A to Decorah, Iowa. Petitioners submitted information in support of the proposed assignment (265A) and expressed their intention to apply for the channel, if assigned.

2. Decorah currently has Channel 280A assigned to it. However, that channel is being used to serve Waukon, Iowa, Station KNEI-FM. We propose to reassign that channel to reflect its use at Waukon.

3. In view of the fact that the proposed assignment could provide a first FM service to Decorah, Iowa, the Commission believes it is appropriate to propose amending the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) with respect to the following communities:

City	Channel No.	
	Present	Proposed
Decorah, Iowa	280A	265A
Waukon, Iowa		280A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 6, 1983, and reply comments on or before September 21, 1983, and are advised to read the Appendix for the proper procedures.

Comments should be served on the petitioners at the following address: Lloyd O and BonnieJo A. Berg, 161 Copper Kettle Lane, East Dubuque, Illinois 61025; and their counsel: Mark E. Fields, P.O. Box 33003, Washington, D.C. 20033.

6. The Commission has determined that the relevent provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend § 73.202(b), 73.504 and 73.606(b) of the Commission's Rules,* 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contracts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever question are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice,* they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-20707 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 83-713; RM-4447]

FM Broadcast Station in Northampton, Massachusetts; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of FM Channel 292A to Northampton, Massachusetts, in response to a petition filed by Carter Broadcasting Corporation. The assignment could provide a second FM service to that community.

DATES: Comments must be filed on or before September 6, 1983, and reply comments on or before September 21, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

Adopted: June 27, 1983.

Released: July 21, 1983.

By the Chief, Policy and Rules Division.

In the matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Northampton, Massachusetts); MM Docket No. 83-713, RM-4447.

1. A petition for rule making was filed April 20, 1983, by Carter Broadcasting Corporation ("petitioner"), proposing the assignment of FM Channel 292A to Northampton, Massachusetts, as its second assignment. Petitioner submitted information in support of the proposal but failed to state that it would apply for the channel, if assigned. It is expected to do so in its comments. The channel can be assigned in compliance with the minimum distance separation requirements.

2. Since the assignment of Channel 292A to Northampton, Massachusetts, is within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence is required.

3. In view of the fact that the proposed assignment could provide a second FM broadcast service to Northampton, Massachusetts, the Commission believes it is appropriate to propose amending the FM Table of Assignments (§ 73.202(b) of the Commission's Rules) with respect to the following community:

City	Channel No.	
	Present	Proposed
Northampton, Massachusetts	257A	257A, 292A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

5. Interested parties may file comments on or before September 6, 1983, and reply comments on or before September 21, 1983, and are advised to read the Appendix for the proper procedures.

Comments should be served on the petitioner's counsel at the following address: Michael N. Bader, Haley, Bader & Potts, 2000 M Street, N.W., Suite 600, Washington, D.C. 20036.

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the*

Commission's Rules, 46 FR 11549, published February 9, 1981.

7. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634-6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceedings, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b) and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All findings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 83-20708 Filed 7-29-83, 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 83-712; RM-4476]

FM Broadcast Stations in Lawton, Oklahoma; Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes the assignment of Channel 232A to Lawton, Oklahoma, as that community's fourth FM assignment, in response to a petition filed by James L. Gardner.

DATES: Comments must be filed on or before September 6, 1983, and reply comments on or before September 12, 1983.

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

FOR FURTHER INFORMATION CONTACT: Mark N. Lipp, Mass Media Bureau, (202) 634-6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Notice of Proposed Rule Making

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Lawton, Oklahoma); MM Docket No. 83-712, RM-4476.

Adopted: June 29, 1983.

Released: July 21, 1983.

By the Chief, Policy and Rules Division.

1. The Commission herein considers a petition for rule making filed May 16, 1983, by James L. Gardner ("Petitioner"), proposing the assignment of Channel 232A as that community's fourth FM assignment. Petitioner submitted information in support of the proposal and expressed his interest in applying for the channel if assigned. A site restriction of 4.2 miles northwest of Lawton is required to avoid short-spacing to Station KDNG-FM in Gainesville, Texas.

2. In view of the fact that the proposed assignment could provide a fourth local FM service to Lawton, Oklahoma, the Commission believes it is appropriate to propose amending the FM Table of Assignments (§73.202(b) of the Commission's Rules) with respect to the following community:

City	Channel No.	
	Present	Proposed
Lawton, Oklahoma	237A, 251, and 268.	232A, 273A, 251, and 268.

3. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein.

Note.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

4. Interested parties may file comments on or before September 6, 1983, and reply comments on or before September 21, 1983, and are advised to read the Appendix for the proper procedures. A copy of such comments should be served on the petitioner(s) of this proceeding at the following address: James L. Gardner, 6777 S.W. Chaucer Dr., Lawton, Oklahoma 73505.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules. See, *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, published February 9, 1981.

6. For further information concerning this proceeding, contact Mark N. Lipp, Mass Media Bureau, (202) 634–6530. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment to which the reply is directed constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

Appendix

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303 (g) and (r), and 307(b) of the Communications Act of 1934, as amended, and §§ 0.61, 0.204(b) and 0.283 of the Commission's Rules, it is proposed to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in inital comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to assign a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420 (a), (b), and (c) of the Commission's Rules.)

5. *Number of Copies.* In accordance with the provisions of § 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

[FR Doc. 83–20709 Filed 7–29–83; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[BC Docket No. 82–357; RM–103]

FM Broadcast Stations in Terrell Hills, Texas; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal of petition.

SUMMARY: This action dismisses the petition of S I T Broadcasting Corporation to delete FM Channel 292A from, and assign Channel 294 to, Terrell Hills, Texas. Petitioner had requested withdrawal of its proposal in the event that its license for Station KESI was not modified to specify operation on Channel 294 or that temporary authority was not granted to operate on Channel 294 pending the outcome of a comparative hearing on applications for operation on channel 294.

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

FOR FURTHER INFORMATION CONTACT: Philp S Cross, Broadcast Bureau, (202) 632–5414.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Report and Order; Proceeding Terminated

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Terrell Hills, Texas); BC Docket No. 82–357, RM–4103.

Adopted: June 17, 1983.

Released: July 18, 1983.

By the Chief, Policy and Rules Division.

1. The Commission has under consideration its *Notice of Proposed Rule Making*, published in the **Federal Register** on July 16, 1982 (FR 31016). The *Notice* proposed to substitute Class C FM Channel 294 for Channel 292A in Terrell Hills, Texas, and to modify the license of S I T Broadcasting Corporation ("petitioner") for FM Station KESI, Terrell Hills, to specify operation on Channel 294 instead of Channel 292A. The *Notice* pointed out that, in conformity with Commission precedent, as expressed in *Cheyenne, Wyoming*, 62 F.C.C. 2d 63 (1976), should another interest in the assignment be shown, the proposed modification could not be made and the channel, if assigned, would be open to competing applications.

2. Petitioner filed comments in support of its proposal. Comments were also filed individually by Leroy P. Muehlstein, David K. Bamberger, and Laura Pryor, each of whom expressed an interest in applying for operation on the channel, if it were so assigned.

3. Petitioner filed reply comments in which it renewed its request for modification of license, stating "[w]e believe that the Commission has authority to, and as a matter of policy should, modify petitioner's license without opening up the substitute channel assignment for comparative hearing." In the absence of a permanent modification of the KESI license, petitioner requests that the Commission exercise its authority under § 316 of the Communications Act to grant temporary authority for KESI to operate on Channel 294 pending the outcome of any comparative hearing and the issurance of a license for regular operation on the channel. If the commission does not grant either the permanent modification or temporary authority, petitioner requests that its petition for rule making be withdrawn and this proceeding terminated.

4. Laura Pryor ("Pryor") filed a response to petitioner's reply comments. Pryor's Motion for Leave to File Response to Reply Comments is based on petitioner's raising new matters in its reply comments. We have granted the motion since we believe new arguments were raised. Pryor asserts that petitioner's license cannot be modified to specify operation on the Class C channel without a comparative hearing and that petitioner cannot be granted Special Temporary Authority ("STA") to operate on the new Class C channel. Pryor indicated a willingness to participate in a joint interim operation on Channel 294 while prosecuting her application for permanent operation on the channel.

5. Petitioner submitted a letter in reply to Pryor's response reiterating its contention that the policy against license modification is not applicable when a new channel assignment is made as a substitute for an existing one, and petitioner contends that Pryor's suggestion of an interim operation "is wholly inappropriate." Pryor filed a subsequent letter in response.

6. By way of background, petitioner points to the following circumstances: Since petitioner acquired Station KESI on January 1, 1982, it has suffered severe financial losses because of "two intractable problems," *i.e.*, an "inherent competitive disadvantage" and "serious chronic interference." Terrell Hills, KESI's community of license, is an enclave entirely surrounded by the city limits of San Antonio, and KESI is the only Class A FM station in the San Antonio urbanized area which is served by nine "high-power" Class C stations. In addition to the "competitive disadvantage," petitioner states that reception of the KESI signal in downtown San Antonio, with its highest concentration of listeners, is impossible because of interference from FM Stations KVAR and KTFM, San Antonio, which, despite efforts, has not been remedied. Petitioner contends that its proposed substitution of Class C Channel 294 for Class A Channel 292 is necessary for KESI to be competitive with other stations in the market.

Modification of petitioner's KESI License

7. In support of its request for permanent modification of the KESI license, petitioner asserts that "[v]iewed realistically, all that is involved here is a request by petitioner for permission to upgrade its facilities, so as to be able to provide better service to Terrell Hills and San Antonio." Petitioner contends that our application of the holding in *Cheyenne, Wyoming* (par. 2, *supra*) causing it to "await the outcome of a possibly lengthy comparative hearing, and risk the ultimate loss of its license" is "a bizarre result" not required by anything in the Communications Act or the Commission's policies.

8. Petitioner states that *Ashbacker Radio Corp.* v. *F.C.C.*, 326 U.S. 327 (1945), requires a comparative hearing on "mutually exclusive" applications for "an available frequency" but does not settle the question of "when" a frequency is "available." Petitioner cites *Mass Communicators, Inc.* v. *F.C.C.*, 266 F. 2d 681 (D.C. Cir.), *cert. denied*, 361 U.S. 828 (1959), as entrusting the question to the Commission's discretion. The Court of Appeals there affirmed the Commission's holding that no *Ashbacker* rights existed in favor of a would-be competing applicant, since, in view of the Commission's extension of the existing permittee's construction permit there was no "available" frequency. Petitioner adds that "[h]ere, similarly, there is no channel 'available' in the *Ashbacker* sense unless the Commission decides, as a matter of policy, to open up petitioner's requested new channel assignment to comparative hearing," which it should not do.

9. Petitioner contends that the *Cheyenne, Wyo.* case, *supra*, is not applicable here. Petitioner reasons that in *Cheyenne, Wyo.* a new channel was assigned "without any effect on a licensee's existing channel assignment." (We retained in *Cheyenne* the Class A channel on which the petitioner for a Class C channel operated.) Petitioner adds that "[i]n the situation presented here, where the new channel is to be a substitute for an existing one, the licensee will either be permitted to operate on the new channel, or lose its right to broadcast" and that, therefore, "[t]he case for license modification in these circumstances is much stronger, as the Commission has recognized." Petitioner points out that "[i]n *Cheyenne, Wyo., supra*, the Commission expressly noted that 'the existing licensee's channel of operation is not deleted'." Petitioner also points out that the Commission further stated, "[p]erhaps if this were a case in which a channel of operation was deleted for technical reasons or otherwise in order to assign another channel, other considerations would be presented." Petitioner concludes that "[i]n this case, in which substitution, not addition, of a channel is involved, 'other considerations' are clearly present" and that "modification is warranted in order to prevent possible loss of license from being the penalty for the licensee's efforts to upgrade service."

10. Petitioner reasons that the *Second Report and Order*, BC Docket No. 80-130, 90 F.C.C. 2d 88 (1982), contains a further indication that the issue presented here is at least regarded as an open issue by the Commission. There, petitioner states, the Commission noted "we . . . need to consider what treatment to afford the application of the Class A licensee to use any newly assigned Class B/C channel." Petitioner concludes that "[w]hile the Broadcast Bureau held to the contrary in a case involving a channel substitution in *Bonita Springs, Fla.*, 45 R.R. 2d 1585 (1979), we believe that the decision is at odds with the Commission's statements

in *Cheyenne* and the Docket 80-130 rule making cited above, and is wrong as a matter of policy in failing to accord significant weight to the equities and public interest supporting continuation of existing service when a channel substitution is involved." Petitioner further asserts that there apparently did not exist in *Bonita Springs* the exigent circumstances that make immediate relief vital here."

11. Petitioner notes that its license for Station KESI expires on August 1, 1983, and "thus there will, in any event, be an opportunity for competing applications to be filed in connection with Petitioner's April 1, 1983, renewal application.

12. Pryor states that in light of the interest expressed by her and others in applying for Channel 294 at Terrell Hills, petitioner's license cannot be modified until the Commission conducts a full comparative hearing to determine which applicant is best qualified to operate on the newly assigned channel. Pryor asserts that petitioner offers no precedent in support of its request for modification without hearing.

13. Pryor argues that Commission policy clearly requires the acceptance of competing applications and a full comparative hearing should the new channel be assigned to Terrell Hills and cites the *Cheyenne, Wyo.* case. Pryor states that "[w]hen qualified parties express an interest in applying for a proposed new channel assignment, the Commission refuses to modify an existing license to specify operation on the new channel," and cites *Fort Walton Beach, Florida,* 38 R.R. 2d 1677, 1686 (1976). Pryor points out that the Commission policy is designed to protect the *Ashbacker* rights of those parties expressing an interest in applying for the newly assigned channel. *Mitchell, S.D.,* 38 R.R. 2d 1688, 1691 (1976).

14. We conclude that the license of Station KESI should not be modified to specify operation on Channel 294 without a comparative hearing to determine which of the applicants is best qualified to operate a station thereon in the public interest.

15. Petitioner concedes that *Ashbacker* requires a comparative hearing on mutually exclusive applications for an "available" frequency, but contends that Channel 294 is not "available" as was the case in *Mass Communicators* (see par. 8, *supra*). We do not see the holding in *Mass Communicators* as of any help to petitioner's case. There, the frequency was not available because a permit had already been issued. We do not agree with petitioner that this case should be treated as one where an existing licensee seeks to upgrade its facility on its existing channel assignment. Petitioner is proposing the assignment of a new channel to Terrell Hills, which would be treated as a major change and subject to competing applications. We know of no cases where a modification has taken place in these circumstances.

16. We reject petitioner's contention that modification of its license without a comparative hearing would not be inconsistent with our established policy in *Cheyenne, Wyo.* Petitioner asserts that the policy against license modification is not applicable when a new channel is made in substitution for an existing one. In support of the statement, petitioner points to the *Bountiful, Utah* case, 48 R.R. 2d 1322 (Broadcast Bureau, 1981). There, petitioner says, a new channel assignment was made in substitution for an existing channel for which competing applications were pending, and the Broadcast Bureau decided that the new assignment would not require that the proceeding be opened up for new competing applications, since substitution rather than the addition of a new channel was involved. The situation in *Bountiful, Utah,* was entirely different from the situation here. There, a Class C channel was already assigned. Applications had been filed and were pending for operation thereon, when the channel for which they had applied, *i.e.*, Class C Channel 258, Rock Springs, Wyoming, was changed to Class C Channel 283 to accommodate the assignment of Channel 258 to Bountiful, Utah. Thus, both were Class C channels and the holding was that the applications would retain their cut-off status and could be amended to specify operation on Channel 283 instead of Channel 258, without the opportunity for others to apply. As there stated, " * * * the change is a simple substitution of channels; no additional channel is becoming available in Rock Springs." We disagree with petitioner's view that the reasoning is directly applicable here, where a Class A channel would be deleted and a new Class C channel would be assigned.

17. Petitioner's claim that "other considerations" are here present to bring its requested modification under the following language of the *Cheyenne* case:

> [p]erhaps if this were a case in which a channel of operation was deleted for technical reasons or otherwise in order to assign another channel, other considerations would be presented.

Petitioner states that "[in] the situation here presented, where the new Channel is to be in substitution for an existing one, the existing licensee will either be permitted to operate on the new channel, or lose its right to broadcast" and that "[t]he case for license modification in these circumstances is much stronger, as the Commission recognized." When a channel is "deleted for technical reasons or otherwise in order to assign another channel" in the context of the *Cheyenne* case, it is because the Commission has found it necessary to delete the channel due to incurable problems such as interference of allocation changes, but not because a petitioner seeks to have a channel deleted in order to seek a higher power channel. See *Statesboro, Georgia,* 40 R.R. 2d 1021 (1971).

18. We note that petitioner points to an interference problem with Station KESI from blocking effect and from cross-modulation of Stations KVAR and KTFM. There is, however, no showing that the problem is incurable or that another Class A channel would not be available to solve the problem.

19. Having concluded that the license of Station KESI should not be modified to specify operation on Channel 294 without a comparative hearing, we turn to petitioner's alternative request that it be given Special Temporary Authority under Section 16(a) of the Communications Act for operation on Channel 294 pending the outcome of a comparative hearing.

Special Temporary Authority

20. In support of its request for such Special Temporary Authority, petitioner points to the public's interest in continuing an existing service. Petitioner states that "in the leading case of *Peoples Broadcasting Co.* v. *United States,* 209 F. 2d 286 (D.C. Cir. 1953), the Commission was upheld in granting interim modification, pending comparative hearing, to an existing television licensee to operate on a newly assigned channel where, as here, the existing channel was being abolished." Petitioner also cites other examples in the line of cases, *i.e., Albany-Schenectady, N.Y.,* 41 F.C.C. 791 (1957); *Springfield, Ill.,* 15 R.R. 1525 (1958) and *Carbondale-Harrisburg, Ill.,* 16 R.R. 1617 (1958).

21. The cases cited by petitioner are distinguishable from the instant case by the fact that in those cases the Commission itself was deleting the existing channels to implement a general policy of deintermixture of UHF and VHF television stations as a public interest benefit. In this case, it is the petitioner who is seeking deletion of its channel in order to improve its

operation. The Commission has no intention of removing the existing operation absent petitioner's consent to take its chances in competing for the proposed Class C channel.

22. Pryor asserts that petitioner "knew what it was purchasing in 1981 and its claims of competitive disadvantage and technical deficiencies simply ring hollow at this time." Pryor states that petitioner assumed the risk, competitive or technical, in fact, did more than assume the risk, and its purchase price reflected that risk. Pryor points to the Asset Purchase Agreement "which obligates S I T [petitioner] to pay the former station's owner an additional quarter million dollars if "within five (5) years from the date of closing, [S I T] is able to change FM broadcast station [KESI's] classification to either a Class B or Class C broadcasting station." Pryor concludes that "eliminating S I T's losses and putting S I T on a firm financial footing is not a public interest benefit warranting the requested extraordinary relief."

23. Pryor states that in "*Community Broadcasting Co.* v. *F.C.C.*, 274 F. 2d 753 (D.C. Cir. 1960), the Court of Appeals reversed a Commission grant of temporary authority to a licensee seeking permanent authority on a newly assigned channel" because the Commission "had not articulated the 'public need' for such authorization where:

(a) the public already has one service, or (b) where the 'temporary' operation may well last 2 or 3 years, or (c) where the investment of the 'temporary' operator is so large as to make his failure to prevail in the comparative hearing oppressive to him. We do not think that Congress has commanded that the public domain of the airwaves be filled at the earliest possible moment in all circumstances without due regard for these important factors."

Pryor concludes that "[i]n light of the multiplicity of existing radio services in the San Antonio-Terrell Hills area and the likelihood of numerous well-qualified applicants for Channel 294 with a resultant lengthy hearing, there is no public interest whatsoever to be gained by a grant of special temporary authority to S I T [petitioner]."

24. We conclude that petitioner has made no persuasive showing of any compelling public interest reasons for temporary authority to operate on Channel 294 pending the outcome of a comparative hearing. Moreover, we see no need for such temporary authority on Channel 294 since Station KESI could continue to operate on its existing Channel 292A pending the outcome of such hearing and thus provide continuity of service to the community.

25. Petitioner has requested permanent modification now of its license or, alternatively, temporary authority to operate on Channel 294 and, in the absence of either, the withdrawal of its petition to assign Channel 294 to Terrell Hills. Inasmuch as neither the modification nor temporary authority is being granted, petitioner's request for withdrawal of its petition will be granted.

26. In view of the foregoing, it is ordered, that the petition by S I T Broadcasting Corporation to delete Channel 292A from, and assign Channel 294 to, Terrell Hills, Texas, is dismissed.

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

28. For further information concerning the above, contact Philip S. Cross, Broadcast Bureau, (202) 632-5414.

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

Federal Communications Commission.

Roderick K. Porter,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 83-20692 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 90

[PR Docket No. 83-755; FCC 83-353]

Deletion of Restrictions on Mobile Relays in the Private Land Mobile Radio Frequency Bands Below 470 MHz

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission has adopted a Notice of Proposed Rulemaking proposing the deletion of various restrictions in the current rules on the use of mobile relay stations on Private Land Mobile Radio frequency bands below 470 MHz. A mobile relay station automatically retransmits communications which originate from mobile stations. This action is taken as part of the Commission's on-going Regulatory Review Program, which seeks to remove those rules which may no longer be necessary.

DATES: Comments are due by Oct. 3, 1983; Reply comments are due by Nov. 3, 1983.

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

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

List of Subjects in 47 CFR Part 90

Private land mobile radio service.

Notice of Proposed Rule Making

In the matter of amendment of § 90.243 of the Commission's Rules to delete various restrictions against the use of mobile relays in the bands below 470 MHz; PR Docket No. 83-755.

Adopted: July 21, 1983.

Released: July 25, 1983.

By the Commission.

1. The Federal Communications Commission, pursuant to its Regulatory Review Program, proposes generally removing the restrictions on mobile relay operation in the bands below 470 MHz.

2. By way of background, a mobile relay station is a station that automatically retransmits communications which originate at mobile stations. The mobile relay station receives the signals transmitted by mobile units and automatically retransmits these signals, significantly expanding the effective range of a land mobile system. Section 90.243 of the Rules permits the use of mobile relays below 450 MHz in the 48 contiguous States in all Private Land Mobile Radio Services except the Land Transportation,[1] Business, Special Industrial, Relay Press, Radiolocation,[2] Manufacturers and Motion Picture Radio Services.[3] Mobile relay operations are permitted in the 450-470 MHz band in all Private Land Mobile Radio Services except the Radiolocation,[4] Motor Carrier, Taxicab and Automobile Emergency Radio Services. In the Private Land Mobile Radio bands above 470 MHz, where frequencies are paired, mobile relay operations are permitted in all radio services. We propose to allow mobile relays in all Private Land Mobile

[1] An exception to the prohibition is provided for the Railroad Radio Service where mobile relay operation is on a secondary basis to other co-channel operations. See § 90.243(b)(3).

[2] Our proposal retains the prohibition against mobile relays in the Radiolocation Service. The Radiolocation Service is a fixed point-to-mobile service with no requirements for mobile-to-mobile communications. Typically, mobile units in the Radiolocation Service only receive transmissions from the Radiolocation station in order to make calculations of direction, distance, speed or position.

[3] Outside the contiguous 48 States mobile relay operations below 450 MHz are also authorized in the Business Radio Service (with low power conditions) and the Special Industrial Radio Service (without low power conditions). The fact that low power operation conditions (see § 90.243(b)(2)) are imposed on Business Radio Service mobile relay operations while they are not imposed on Special Industrial Radio Service mobile relay operations, leads us to propose, as described in Appendix A, the deletion of the low power operation requirement for Business Radio Service mobile relays contained at § 90.243(b)(2). Comments from the public are desired on this point.

[4] *See* fn. 2.

Radio Services, except Radiolocation, below 470 MHz.

3. The Commission frequently receives requests from licensees for waivers of its restriction on mobile relays in the Land Transportation Radio Services below 450 MHz as well as in the 450–470 MHz band. These waivers are often granted on a demonstrated showing of need. In proposing this change, we recognize that the frequencies below 450 MHz are not paired, which arguably makes establishment of mobile relays more difficult. However, this has apparently not impeded licensees in those radio services permitted mobile relays below 450 MHz. We invite comments therefore on whether the lack of a band plan for the frequencies below 450 MHz should affect our decision on this proposal. We also ask for comments on the fact that to utilize mobile relays, land mobile radio systems would require two frequencies instead of one, and the impact on spectrum efficiency. Finally, we ask for comments as to whether frequency coordination may be the best mechanism for accommodating mobile relay systems.

4. The Commission does not believe that the proposal contained in this *Notice of Proposed Rule Making* would have a significant economic impact on a substantial number of small entities. Therefore, the Commission certifies that Sections 603 and 604 of the Regulatory Flexibility Act of 1980 do not apply to this rulemaking proceeding. However, the Commission urges commenters to address the economic impacts, if any, they believe this proposal may have on users, equipment manufacturers and service providers. The Secretary shall cause a copy of this *Notice of Proposed Rule Making,* including the above certification, to be published in the **Federal Register,** and to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 605(b) of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164.

5. For purposes of this non-restricted notice and comment rule making proceeding, members of the public are advised that *ex parte* contacts are permitted from the time the Commission adopts a notice of proposed rule making until the matter is to be considered at a forthcoming meeting or until a final order disposing of the matter is adopted by the Commission, whichever is earlier. In general, an *ex parte* presentation is any written or oral communication (other than formal written comments/pleadings and formal oral arugments) between a person outside the Commission and a Commissioner or a member of the Commission's staff which addresses the merits of the proceeding Any person who submits a written *ex parte* presentation must serve a copy of that presentation on the Commission's Secretary for inclusion in the Public file. Any person who makes an oral *ex parte* presentation addressing matters not fully covered in any previously-filed written comments for the proceeding, must prepare a written summary of that presentation. On the day of that oral presentation, a written summary must be served on the Commission's Secretary for inclusion in the public file, with a copy to the Commission official receiving the oral presentation. Each *ex parte* presentation described above must state on its face that the Secretary has been served, and must also state by docket number the proceeding to which it relates. See generally, § 1.1231 of the Commission's Rules, 47 CFR 1.1231.

6. Authority for issuance of this Notice of Proposed Rule Making is contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Pursuant to the procedures set out in § 1.415 of the Commission's Rules, 47 CFR 1.415, interested persons may file comments on or before October 3, 1983, and reply comments on or before November 3, 1983. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

7. In accordance with the provisions of § 1.419 of the Commission's Rules, 47 CFR 1.419, formal participants shall file an original and five copies of their comments and other materials. Participants wishing each Commissioner to have a personal copy of their comments should file an original and 11 copies. Members of the general public who wish to express their interest by participating informally may do so by submitting one copy. All comments are given the same consideration, regardless of the number of copies submitted. All documents will be available for public inspection during regular business hours in the Commission's Public Reference Room at its headquarters in Washington, D.C.

8. For further information on this proceeding, contact Harold Salters, Private Radio Bureau, Federal Communications Commission, Washington, D.C. (202) 632–7597.

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

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix A

Part 90 of Chapter I of Title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

In § 90.243, paragraph (a) is revised and paragraph (b)(2) is removed and marked [Reserved].

§ 90.243 Mobile relay stations.

(a) Mobile relay stations will be authorized on frequencies below 512 MHz except in the Radiolocation Service.

* * * * *

[FR Doc. 83-20693 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 83-08; Notice 1]

Evaluation Report on Federal Motor Vehicle Safety Standard No. 108 Lamps, Reflective Devices, and Associated Equipment; Request for Public Comment

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation.

ACTION: Request for Comments.

SUMMARY: This notice announces the publication by NHTSA of an Evaluation Report concerning Safety Standard No. 108, *Lamps, Reflective Devices and Associated Equipment.* This staff report evaluates the safety effectiveness and costs of side marker lamps for cars, trucks, vans and buses. The report was developed in response to Executive Order 12291, which provides for government-wide review of existing major Federal regulations. The Agency seeks public review and comment on this evaluation. Comments received will be used to complete the review required by Executive Order 12291.

DATE: Comments must be received no later than: October 31, 1983.

ADDRESSES: Interested persons may obtain a copy of the report free of charge by contacting Mr. Robert Hornickle, Office of Management

Services, National Highway Traffic Safety Administration, Room 4423, 400 Seventh Street, SW., Washington, D.C., 20590 (202-426-0874). All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building, 400 Seventh Street, SW., Washington, D.C., 20590. [Docket hours, 8:00 a.m.-4:00 p.m., Monday through Friday.]

FOR FURTHER INFORMATION CONTACT: Mr. Frank G. Ephraim, Director, Office of Program Evaluation, Plans and Programs. National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, D.C., 20590 (202-426-1574).

SUPPLEMENTARY INFORMATION: Safety Standard No. 108 (49 CFR 571.108) regulates the lamps, reflectors and associated equipment for cars, trucks, trailers, buses, multipurpose passenger vehicles and motorcylces. The most notable change in motor vehicle lighting during the period 1965-75 was the installation of side marker lamps on cars, trucks, trailers, buses and multipurpose passenger vehicles. The purpose of side marker lamps is to enable a driver to see another vehicle that is approaching at an angle at night—and to see it early enough so that the driver can stop in time to prevent an angle collision or, at least, slow down to reduce the severity of the collision.

Pursuant to Executive Order 12291, NHTSA recently conducted an evaluation of side marker lamps to determine the effectiveness of the technology selected by the manufacturers in preventing accidents, casualties and damage and to determine the costs of the technology to consumers. Under the Executive Order, agencies are to review existing regulations to determine whether the regulations are achieving the Order's policy goals, i.e., achieving legislative goals effectively and efficiently and without imposing any unnecessary burdens on those affected. This evaluation, however, is limited to side marker lamps and does not deal with other aspects of Standard 108.

The principal findings and conclusions of the report are the following:

- Side marker lamps annually prevent 106,000 accidents, 93,000 nonfatal injuries and $347 million in property damage.
- The lamps have not been effective in reducing fatalities.
- They add $21 (in 1982 dollars) to the lifetime cost of owning and operating a motor vehicle.

The report was developed from statistical analyses of North Carolina, Texas and Fatal Accident Reporting System data, a review of previous statistical analyses of side marker lamps, a study of travelling speeds in fatal accidents and manufacturing and repair cost analyses for production lamp assemblies.

NHTSA welcomes public review of the evaluation report and invites the public to submit comments.

It is requested but not required that 10 copies of comments be submitted.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

(Secs. 103, 112, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1401, 1407); delegation of authority at 49 CFR 1.50 and 501.8)

Issued on July 25, 1983.

Barry Felrice,

Associate Administrator for Plans and Programs.

[FR Doc. 83-20531 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 83-12; Notice 1]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes changes in rear yellow turn signal photometrics, license plate lamp requirements, test grids for stop, turn, parking and tail lights, and minimum mounting height of headlamps. The primary purpose of the amendment would be to bring the requirements in Federal Motor Vehicle Safety Standard No. 108 closer to those of the Economic Commission for Europe of the United Nations (ECE).

DATES: Comment closing date October 31, 1983. Proposed effective date: August 1, 1983.

ADDRESS: Comments should refer to the docket number and notice number and be submittted to: Docket Section, Room 5109, Nassif Building, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590. (Docket hours are from 8:00 a.m. to 4:00 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: August Burgett, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventy Street, S.W., Washigton, D.C. 20590; (202-426-1351).

SUPPLEMENTARY INFORMATION: The Trade Agreements Act of 1979 (Pub. L. 96-39) imposes certain obligations upon the United States. Under Title IV, Technical Barriers to Trade (Standards) Federal agencies may not engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States. Agencies shall, in developing standards, take into consideration international standards and shall, if appropriate, base the standards on international standards, unless it is not appropriate for safety (19 U.S.C. 2532(2)(B)(i)).

Differences exist between Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment,* and many of the requirements of the European Economic Commission (ECE). Some of these differences could be removed or lessened without any adverse effect on traffic safety. This would relieve both American and European vehicle manufacturers of some extra cost of designing and building vehicles for sale both in this country and Europe. It could also provide an opportunity to increase safety.

The first change to be proposed is a lower minimum value for the photometrics in yellow rear turn signal lamps. The current Federal requirement is for a minimum of 200 candela (cd) and a maximum of 750 cd; by contrast, the minimum in ECE Regulation No. 6 is 40 cd and the maximum is 200 cd. At a recent meeting of the Brussels Working Group of Europe (GTB), it was recommended that the United States lower its minimum to 130 cd and that ECE raise its maximum to 350 cd. Tests conducted by the SAE have shown that a value of 130 cd for a yellow lamp is as effective as a rear red turn signal lamp (lamps of both colors are allowed by Standard No. 108) with an output of 80 cd. Standard No. 108 specifies a minimum of 80 cd for rear red turn signals. Since this value has been adequate for motor vehicle safety, NHTSA believes that the proposed value of 130 cd for yellow rear turn signals will not have an adverse effect on safety.

The differing ECE and U.S. requirements for license plate lamps may be easily harmonized by adopting the latest SAE referenced standard on this item of equipment. Currently, Standard No. 108 specfies the physical and photometric relationship between the lamp or lamps, the plate and its

holder but does not specify the point of measurement establishing the relationship. A similar requirement is contained in ECE Regulation No. 4, except that a specific point of measurement is included. SAE Standard J587f, "license Plate Lamps (Rear Registration Plate Lamps)," which has recently been revised (August 1981), clarifies the point of measurement of the incident light upon the plate in a manner identical to that of the ECE requirement. NHTSA is therefore proposing the incorporation of the revised version of J587 into Standard No. 108.

NHTSA is also proposing a reconciliation of differences in the minimum mounting height of headlamps. Currently Standard No. 108 does not allow headlamps to be lower than 24 inches, measured from the road surface to the center of the lamp. The corresponding requirement in ECE Regulation No. 48 is 500 mm (19.7 inches) measured from the ground to the lower edge of the illuminating surface of the lamp. NHTSA is proposing a harmonizing value of 22 inches, measured from the road surface to the center of the lamp, except that the distance from the ground to the lower edge of the illuminating surface of the lamp shall not be less than 19.7 inches.

There have been several studies of the effect that changes in mounting height have on seeing distances. The results from one of these studies suggest that mounting height has essentially no effect on seeing distance. The study presents the results from a series of experiments conducted by General Motors. The experiments consist of asking observers to count the number of simulated pedestrians that are visible using a variety of headlamp configurations. The configurations differed on basis of the type of headlamp and mounting height.

The results from another study, however, suggest that mounting height has a definite effect on seeing distance. This study reports on a series of experiments performed by General Electric. In those experiments, the observers were riding in an automobile traveling at 40 mph. The observers were instructed to signal when they could see a 16 inch high target resting by the side of the road. The time of the signal and the speed of the automobile were used in estimating the distance to the target when it was first seen by the observer.

To aid the agency in assessing the issue of seeing distance, the agency requests commenters to discuss the safety implications of this issue and the possible reasons for the conflict between the studies.

NHTSA is also proposing certain changes regarding stop, tail, turn signal, and parking lamps in the interests of harmonization. Photometrics today are measured under FMVSS No. 108 at 27 different test points on stop, tail, turn signal, and parking lamps. If all 27 points equal or exceed the required minima, the lamp complies. ECE Regulation No. 7 also measures light output at discrete test points, the principal difference being that there are only 19 test points. There are fewer intermediate test points in the European method. NHTSA believes that the 8 test points in question can be deleted as sharp discontinuous changes in candlepower output across a lens surface do not occur in practice.

Alternatively, the 27 test points are separated under Standard No. 108 into 7 groups or "zones" and minima are established for each zone. If photometrics at a test point fall below the minimum, the lamp will nevertheless comply if the overall reading for the zone equals or exceeds the minimum value required for that zone.

When using the pattern of seven zones that is currently specified in Standard No. 108, with the 19 points that are proposed in this notice, two zones have only a single point and two other zones have only two points. This small number of points in a zone tends to reduce the value of allowing an average over several points in lieu of meeting the minimum at each point. To avoid this difficulty, it is proposed that only five zones be used. These five zones, using 19 points, and corresponding table of values for each zone, expressed as a percentage of the minimum value at H–V, are presented in proposed Figure 1a. This change in the pattern of zones is necessary if the number of points is changed from 27 to 19.

There is also a difference in the method of presentation of the distribution of minimum values over the surface of the lamp which the NHTSA also proposes to harmonize. In Standard No. 108, the distributions are given in four different tables whicle ECE uses a common grid, along with a graphical and numerical representation of the location of the test points. ECE values are expressed as percentages of the minimum H–V value. It is proposed that Sandard No. 108's values be expressed in this fashion also. NHTSA has decided that the least confusing way of adopting the test grid would be to substitute the pertinent portions of the text of the four SAE standards in question for the provisions currently incorporated by reference.

NHTSA has considered this proposal and has determined that it is not major within the meaning of Executive Order 12291 "Federal Regulation" or significant under Department of Transportation regulatory policies and procedures, and that neither a regulatory impact analysis nor a full regulatory evaluation is required. However, a regulatory evaluation has been prepared and has been placed in the docket. The proposal would impose no additional requirements, but would permit manufacturers greater flexibility in design of motor vehicles and lighting equipment. The agency cannot predict the extent to which the manufacturers would utilize that flexibility.

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The proposal should have no effect on the human environment since the weight and quantity of materials used in the manufacture of head lamps would not be changed. No impact on safety is anticipated.

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis has been prepared. Manufacturers of motor vehicles and lighting equipment, those affected by the proposal, are generally not small businesses within the meaning of the Regulatory Flexibility Act. Finally, small organizations and governmental jurisdictions would not be significantly affected since the price of new vehicles and lighting equipment will be minimally impacted.

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must be limited not to exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR Part 512).

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

The engineer and lawyer primarily responsible for this proposal are August Burgett and Taylor Vinson, respectively.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 1.50)

Issued: July 25, 1983.

Diane K. Steed,

Deputy Administrator.

PART 571—[AMENDED]

§ 571.108 [Amended]

In consideration of the foregoing it is proposed that 49 CFR 571.108, *Lamps, Reflective Devices, and Associated* Equipment, be amended as set forth below.

1. A new paragraph S4.1.1.— would be added to read:

S4.1.1.— When measured according to the subparagraphs of this section, each stop, turn signal, tail, and parking lamp shall meet the minimum percentage specified in Figure 1b of the corresponding minimum allowable value specified in Figure 1c. The maximum candlepower output of each stop, turn signal, tail and parking lamp shall not exceed that prescribed in Figure 1c.

(a) Candlepower measurements for tail, stop and turn signal lamps shall be made with the incandescent filament(s) of the signal lamp(s) not less than 10 feet (3 meters) from the photometer screen, and for parking lamps, not less than 4 feet (1.2 meters).

(b) The H-V axis shall be taken as parallel to the longitudinal axis of the vehicle. When compartments or lamps are photometered together, the H-V axis shall intersect the midpoint between the optical centers (filament). Photometric measurements of multiple compartment lamp or multiple lamp arrangements shall be made by either of the following methods:

(1) All compartments or lamps may be photometered together provided that a line from the optical center (filament) of each compartment or lamp to the center of the photometer sensing device does not make an angle of more than 0.6 degree with the photometer (H-V) axis; or

(2) Each compartment or lamp may be photometered separately by aligning its axis with the photometer. The photometric measurement for the entire multiple compartment lamp or multiple lamp arrangement shall then be determined by adding the photometric outputs from each individual lamp or component at corresponding test points.

(c) A multiple compartment lamp or multiple lamps may be used to meet the photometric requirements of turn signal, stop, and tail lamps. If a multiple compartment lamp or multiple lamps are used and the distance between the optical axes (filament centers) does not exceed 22 inches (56.0 centimeters) for two compartment or lamp arrangements and 16 inches (41.0 centimeters) for three compartment or lamp arrangements, then the combination of the compartments or lamps must be used to meet the photometric requirements for the corresponding number of lighted sections. If the distance between optical axes exceeds the above dimensions, each compartment or lamp shall comply with the photometric requirements for one lighted section.

2. Paragraphs S4.1.1.11 and 12 would be removed, and a new paragraph S4.1.1.— added to read:

S4.1.1.— A parking lamp, tail lamp, stop lamp or turn signal lamp is not required to meet the minimum photometric valued at each test point specified in this standard if the sum of the candlepower measured at the test points is not less than that specified for each group listed in Figure 1a.

3. Figure 1 would be removed and new figures 1a, 1b, and 1c would be added as follows:

GROUP TOTAL (CD)

Group	Test points	Percentages of minimums (see fig. 1c)
1	5U-10L, 10U-5L, 10U-5R, 5U-10R.	80
2	5U-20L, 5D-20L, H-10L	55
3	H-5L, 5U-V, H-V, 5D-V, H-5R.	420
4	5U-20R, 5D-20R, H-10R	55
5	5D-10L, 10D-5L, 10D-5R, 5D-10R.	80

FIGURE 1a.—Required percentage of grouped minimum candlepower for devices using one, two, or three separately lighted compartments, or for one, two, or three lamps used in a single design location to perform a single function.

PHOTOMETRIC REQUIREMENTS (CD)

Test points (deg)	Percent of minimums of fig. 1c
20U, 20D: 5L, 5R	20
5U, 5D:	
20L, 20R	10
10L,10R	20
V	70
H:	
10L,10R	35
5L, 5R	90
V	100

FIGURE 1b.—Required percentages of minimum candlepower for lamps using one, two, or three separately lighted compartments, of for one, two, or three lamps used in a single design location to perform a single function for given photometric test points.

NOTES.—1. Percentages are based on laboratories using accurate, rated bulbs during testing. 2. Lamps designed for use with both 6-volt and 12-volt bulbs shall be tested with 12-volt bulbs. Lamps designed to operate on the vehicle through a resistor or equivalent shall be photometered with the listed design voltage of the design source applied across the combination of resistance and filament. 3. The photometric values shall apply when all sections provide the same signal except when the dimensions between optical centers exceed the dimensions given in paragraph S4.1.1.16 for a separate lamp arrangement.

MINIMUM/MAXIMUM ALLOWABLE VALUES (CD)

Lamp	Lighted sections		
	1	2	3
Stop	80/300	95/360	110/420
Tail	2/18	3.5/20	5.1/25
Parking	4.0/-		
Red turn signal	80/300	95/360	110/420
Yellow turn signal rear	130/750	160/900	180/900
Yellow turn signal front	200/-	240/-	275/-
Yellow turn signal front [1]	500/-	600/-	685/-

FIGURE 1c.—Maximum and minimum allowable candlepower values.

[1] Values shall apply when the optical axis (filament center) of the front-turn signal is at a spacing less than 4 inches (10 centimeters) from the lighted edge of the headlamp unit providing the lower beam, or from the lighted edge of any additional lamp installed as original equipment or used in lieu of the lower beam.

4. Tables I, II, III, and IV would be amended to read as follows:

TABLE 1.—REQUIRED MOTOR VEHICLE LIGHTING EQUIPMENT MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS AND BUSES 80 INCHES OR MORE OVERALL WIDTH

Item	Multipurpose passenger vehicles, trucks, and buses	Trailers	Applicable SAE standard, or recommended practice
*	*	*	*
License plate lamp.	1 white	1 white	J587 Aug. 81.
*	*	*	*

TABLE II.—LOCATION OF REQUIRED EQUIPMENT—MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES, OF 80 INCHES OR MORE OVERALL WIDTH

Item	Multipurpose passenger vehicles, trucks, and buses	Trailers	Height above road surface measured from center of item on vehicle at curb weight
Col. 1	Col. 2	Col. 3	Col. 4
Headlamps	On the front, each type at the same height, 1 on each side of the vertical centerline; as far apart as practicable.	Not required	Not less than 22 in (55.9cm), except that the distance from the ground to the lower edge of the illuminating surface of the lamp shall not be less than 19.7 inches (50 cm), nor more than 54 in (137.2cm).
* * * * * * *			

TABLE III—REQUIRED MOTOR VEHICLE LIGHTING EQUIPMENT ALL PASSENGER CARS AND MOTORCYCLES, AND MULTIPURPOSE PASSENGER VEHICLES TRUCKS, TRAILERS, AND BUSES, OF LESS THAN 80 INCHES OVERALL WIDTH

Item	Passenger cars, miltipurpose passenger vehicles, trucks and buses	Trailers	Motorcycles	Applicable SAE standards or recommended practices
* * * * * * *				
License plate lamp	1 white	1 white	1 white	J587 Aug. 81.
* * * * * * *				

TABLE IV.—LOCATION OF REQUIRED EQUIPMENT ALL PASSENGER CARS AND MOTORCYCLES, AND MULTIPURPOSE PASSENGER VEHICLES, TRUCKS, TRAILERS, AND BUSES OF LESS THAN 80 INCHES OVERALL WIDTH

Item	Passenger cars, multipurpose passenger vehicles, trucks, trailers, and buses	Motorcycles	Height above road surface measured from center of item on vehicle at curb weight
Col. 1	Col. 2	Col. 3	Col. 4
Headlamps	On the front, each type at the same height, 1 on each side of the vertical centerline; as far apart as practicable.	On the front, on the vertical centerline, except that if two are used they shall be symmetrically disposed about the vertical centerline.	Not less than 22 in (55.9 cm), except that the distance from the ground to the lower edge of the illuminating surface of the lamp shall not be less than 19.7 inches (50 cm), nor more than 54 in (137.2 cm).
* * * * * * *			

[FR Doc. 83-20532 Filed 7-26-83; 10:17 am]
BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 48, No. 148
Monday, August 1, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Programmatic Memorandum of Agreement Regarding National Forest System Planning

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on Historic Preservation proposes to execute a Programmatic Memorandum of Agreement pursuant to § 800.8 of its regulations (36 CFR Part 800), with the U.S.D.A. Forest Service and National Conference of State Historic Preservation Officers, regarding the treatment of historic properties in National Forest System Planning. The Agreement will embody Forest Service guidelines for identification, consideration, and treatment of such properties, and will allow the Forest Service, Council, and State Historic Preservation Officers to review Forest Plans in lieu of reviewing individual actions carried our pursuant to such plans. The Agreement will supercede a 1977 Memorandum of Understanding which excluded Forest Plans and their equivalents from review.

DATE: Comments due: August 31, 1983.

ADDRESS: Comments should be addressed to Executive Director, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Janet Friedman, Advisory Council on Historic Preservation, 1522 K Street NW., Washington, D.C. 20005. Copies of the draft Agreement are available from Dr. Friedman.

Dated: July 26, 1983.

Robert R. Garvey, Jr.,

Executive Director.

[FR Doc. 83-20663 Filed 7-29-83; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Request for Designation Applicants To Perform Official Services in the Geographic Areas Currently Assigned to Farwell Grain Inspection Company (TX), and Ft. Smith-Van Buren Grain Inspection Service (AR)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as amended (Act), official agency designations shall terminate not later than triennially and may be renewed in accordance with the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties, including the agencies currently designated, interested in being designated as the official agency to conduct official services in the geographic area currently assigned to each of the specified agencies. The official agencies are Farwell Grain Inspection Company and Ft. Smith-Van Buren Grain Inspection Service.

DATE: Applications to be postmarked on or before August 31, 1983.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue SW., Room 1647, South Building, Washington, D.C. 20250. All applications received will be made available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512-1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

Section 7(f)(1) of the Act (7 U.S.C. 71 *et seq.*, at 79(f)(1)) specifies that the Administrator of the Federal Grain Inspection Service (FGIS) is authorized, upon application by any qualified agency or person, to designate such agency or person to perform official services after a determination is made that the applicant is better able than any other applicant to provide such official services in an assigned geographic area.

Farwell Grain Inspection Company (Farwell), 112 9th Street, P.O. Box 488, Farwell, Texas 79325, was designated as an official agency under the Act for the performance of inspection functions on September 25, 1978. Ft. Smith-Van Buren Grain Inspection Service (Ft. Smith), Kibler Road, P.O. Box 498, Van Buren, Arkansas 72956, was designated as an official agency under the Act for the performance of inspection functions on September 30, 1978.

The agencies' designations will terminate on January 31, 1984. This date reflects administrative extensions of official agency designations, as discussed in the July 16, 1979, issue of the **Federal Register** (44 FR 41275). Section 7(g)(1) of the Act states generally that official agencies' designations shall terminate no later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Farwell, in Texas and New Mexico, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation is the following: Bailey, Deaf Smith (west of State Route 214), Lamb (South of U.S. Route 70 and west of FM 303), and Parmer Counties, in Texas. Chaves, Curry, DeBaca, Eddy, Lea, Quay, Roosevelt, and Union Counties, in New Mexico.

An exception to the described geographic area is the following location situated inside Farwell's area which has been and will continue to be serviced by Lubbock Grain Inspection and Weighing: Sudan Elevator, Sudan, Lamb County, Texas.

Farwell also has provided service on an interim basis to a specified geographic area in New Mexico. This geographic area, which is also available

for assignment to an applicant selected for designation, is as follows: Bernalillo, Guadalupe, San Miguel, Santa Fe, and Torrance Counties.

The geographic area presently assigned to Ft. Smith, in Arkansas and Oklahoma, pursuant to Section 7(f)(2) of the Act, and which is the area that may be assigned to the applicant selected for designation ia the following: Benton, Boone, Carroll, Crawford, Franklin, Johnson, Logan, Madison, Montgomery, Newton, Polk, Sebastian, Sevier, Scott, Washington, and Yell Counties, in Arkansas. Adair, Cherokee, Choctaw, Delaware, Haskell, Latimer, Le Flore, McCurtain, McIntosh, Muskogee, Ottawa, Pittsburg, Pushmataha, and Sequoyah Counties, in Olkahoma.

Interested parties, including Farwell and Ft. Smith, are hereby given opportunity to apply for designation as the official agency to perform the official services in each geographic area, as specified above, under the provisions of Section 7(f) of the Act and § 800.196(b) of the regulations issued thereunder. Designations in the specified geographic areas are for the period beginning February 1, 1984, and ending January 31, 1987. Parties wishing to apply for these designations should contact the Regulatory Branch, Compliance Division, at the address listed above for appropriate forms and information. Applications must be postmarked not later than August 31, 1983, to be eligible for consideration.

Applications submitted and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: July 25, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83–20565 Filed 7–29–83; 8:45 am]

BILLING CODE 3410–02–M

Request for Comments on Designation Applicants in the Areas Currently Assigned to Amarillo Grain Exchange, Inc. and Wisconsin Department of Agriculture, Trade and Consumer Protection (WI)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice requests comments from interested parties on the applicants for official agency designation in the areas currently assigned to Amarillo Grain Exchange, Inc. (TX), and Wisconsin Department of Agriculture, Trade and Consumer Protection.

DATE: Comments to be postmarked on or before September 15, 1983.

ADDRESS: Comments must be submitted in writing, in duplicate, to Lewis Lebakken, Jr., Regulations and Directives Management Unit, Resources Management Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Room 0667, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. All comments received will be made available for public inspection at the above address during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 382–1738.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The June 1, 1983, issue of the **Federal Register** (48 FR 24401) contained a notice from the Federal Grain Inspection Service requesting applications for designation to perform official services under the U.S. Grain Standards Act, as amended (7 U.S.C. 71 *et seq.*) (Act), in the areas currently assigned to the official agencies. Applications were to be postmarked by July 1, 1983.

Amarillo Grain Exchange, Inc. (Amarillo), the only applicant, requested designation for the entire geographic area currently assigned to that agency. Amarillo also applied for specific geographic areas located in Oklahoma and Texas it has been providing service to on an interim basis. Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin), the only applicant, requested designation for the entire geographic area currently assigned to that agency. Amarillo and Wisconsin each applied for a designation renewal.

In accordance with § 800.206(b)(2) of the regulations under the Act, this notice provides interested persons the opportunity to present their comments concerning the applicants for designation. All comments must be submitted to the Regulations and Directives Management Unit, Resources Management Division, specified in the address section of this notice, and postmarked not later than September 15, 1983.

Comments and other available information will be considered before a final decision is made in this matter. Notice of the final decision will be published in the **Federal Register**, and the applicants will be informed of the decision in writing.

(Sec. 8, Pub. L. 94–582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: July 25, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83–20563 Filed 7–29–83; 8:45 am]

BILLING CODE 3410–02–M

Designation Renewals of William F. Christen Grain Inspection (IN) and Titus Inspection, Inc. (IN)

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the designation renewals of William F. Christen Grain Inspection and Titus Grain Inspection, Inc., as official agenices responsible for providing inspection services under the U.S. Grain Standards Act, as amended (7 U.S.C 71 *et seq.*) (Act).

EFFECTIVE DATE: September 1, 1983.

ADDRESS: James R. Conrad, Chief, Regulatory Branch, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1647 South Building, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447–8525

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Exceutive Order 12291 and Secretary's Memorandum 1512–1; therefore, the Executive Order and Secretary's Memorandum do not apply to this action.

The March 1, 1983, issue of the **Federal Register** (48 FR 8519), and, as corrected, the April 1, 1983, issue of the **Federal Register** (48 FR 14017), contained a notice from the Federal Grain Inspection Service (FGIS) announcing that Christen's and Titus' designations terminate on August 31, 1983, and requesting applications for designation as the agency to provide official services within each specified geographic area. Applications were to be postmarked by April 15, 1983.

Christen and Titus were the only applicants for each respective designation.

FGIS announced the names of these applicants and requested comments on same in the May 2, 1983, issue of the

Federal Register (48 FR 19762). Comments were to be postmarked by June 16, 1983.

One comment was received recommending Christen's designation renewal. No comments were received regarding Titus' designation renewal.

FGIS has evaluated all available information, regarding the designation criteria in Section 7(f)(1)(A) of the Act and in accordance with Section 7(f)(1)(B), and has determined that Christen and Titus are able to provide official services in the geographic areas for which their designations are being renewed. Each assigned area is the entire geographic area, as previously described in the March 1, Federal Register issue.

Effective September 1, 1983, and terminating August 31, 1986, the responsibility for providing official inspection services in the specified geopgraphic areas are assigned to Christen and Titus, respectively.

A specified service point, for the purpose of this notice, is a city, town, or other location specified by an agency to conduct official inspection and where the agency and one or more of its licensed inspectors are located. In addition to the specified service points within the assigned geographic area, the agencies will provide official services not requiring a licensed inspector to all locations within their geographic area.

Interested persons may contact the Regulatory Branch, specified in the address section of this notice, to obtain a list of the specified service points. Interested persons also may obtain a list of the specified service points by contacting the agencies at the following addresses:

William F. Christen Grain Inspection, P.O. Box 87, Decatur, IN 46733, and Titus Grain Inspection, Inc., 1111 East 800 North, West Lafayette, IN 47906.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2873 (7 U.S.C. 79))

Dated: July 25, 1983.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 83-20564 Filed 7-29-83; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

KAMO Electric Cooperative, Inc., Vinita, Okla., Proposed Loan Guarantee

AGENCY: Rural Electrification Administration (REA), USDA.

ACTION: Proposed Loan Guarantee.

SUMMARY: Under the authority of Pub. L. 93-32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20-22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $218,039,000 to KAMO Electric Cooperative, Inc. (KAMO), of Vinita, Oklahoma. This loan guarantee will be used to finance a 38 percent undivided ownership interest in the Grand River Dam Authority Unit No. 2, a 520 MW coal-fired generating plant.

FOR FURTHER INFORMATION CONTACT: Mr. B. Dean Sanger, Manager, KAMO Electric Cooperative, Inc., P.O. Box 577, Vinita, Oklahoma 74301.

SUPPLEMENTARY INFORMATION: Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed program, including the engineering and economic feasibility studies and the proposed schedule for advances to the borrower of the guaranteed loan from Mr. B. Dean Sanger at the address given above.

In order to be considered, proposals must be submitted on or before August 31, 1983 to Mr. Sanger. The right is reserved to give such consideration and to make such evaluation or other disposition of all proposals received as KAMO and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20-22 are available from the Director, Public Information Office, Rural—Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

This program is listed in the Catalog of Federal Domestic Assistance as 10.850-Rural Electrification Loans and Loan Guarantees.

Dated: July 26, 1983.

Harold V. Hunter,

Administrator.

[FR Doc. 83-20773 Filed 7-29-83; 8:45 am]

BILLING CODE 3410-15-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 219]

Resolution and Order Approving the Application of the Greater Kansas City Foreign-Trade Zone, Inc., for a Special-Purpose Subzone in Claycomo, Missouri, Within the Kansas City Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 15, filed with the Foreign-Trade Zone Board (the Board) on March 18, 1983, requesting special-purpose subzone status at Ford Motor Corporation's auto assembly plant in Claycomo, Clay County, Missouri, within the Kansas City Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves that application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Claycomo, Missouri, Within the Kansas City Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose

subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Greater Kansas City Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 15, has made application (filed March 18, 1983) in due and proper form to the Board requesting special-purpose subzone status at Ford Motor Corporation's automobile assembly plant in Claycomo, Clay County, Missouri, within the Kansas City Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed March 18, 1983, the Board hereby authorizes the establishment of a subzone at Ford's assembly pant in Claycomo, Missouri, designated on the records of the Board as Foreign-Trade Subzone No. 15A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the followint express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilites.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 13th day of July 1983 pursuant to Order of the Board.

Foreign-Trade Zones Board.

Lawrence J. Brady,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest: Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 83-20719 Filed 7-29-83; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 218]

Resolution and Order Approving the Application of the Georgia Foreign Trade Zone, Inc., for a Special-Purpose Subzone in Atlanta and Doraville, Georgia, Within the Atlanta Customs Port of Entry

Proceedings of the Foreign-Trade Zone Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Georgia Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone 26, filed with the Foreign-Trade Zones Board (the Board) on March 18, 1983, requesting special-purpose subzone status for General Motors Corporation's auto assembly plants in Atlanta and Doraville, Georgia, within the Atlanta Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Atlanta and Doraville, Georgia, Within the Atlanta Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Georgia Foreign Trade Zone, Inc., grantee of Foreign-Trade Zone No. 26, has made application (filed March 18, 1983) in due and proper form to the Board requesting special-purpose subzone status for General Motors Corporation's automobile assembly plants in Atlanta and Doraville, Georgia, within the Atlanta Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of the Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed March 18, 1983, the Board hereby authorizes the establishment of a subzone at the Atlanta and Doraville, Georgia auto assembly plants of General Motors, designated on the records of the Board as Foreign-Trade Subzone No. 26A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable thereof.

The grant is further subject to settlement locally by the District Director of Customs and District Army

Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 13th day of July 1983 pursuant to Order of the Board,

Foreign-Trade Zones Board.

Lawrence J. Brady,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 83-20718 Filed -7-29-83; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 213]

Resolution and Order Approving the Application of the Board of Harbor Commissioners of the City of Long Beach for a Special-Purpose Subzone in Long Beach, Within the Los Angles/Long Beach Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Board of Harbor Commissioners of the City of Long Beach, grantee of Foreign-Trade Zone 50, filed with the Foreign-Trade Zones Board (the Board) on September 27, 1982, requesting authority for special-purpose subzone status for the truck cargo body manufacturing plant of Toyota Motor Manufacturing U.S.A. Inc., in Long Beach, California, within the Los Angeles-Long Beach Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application for five years, subject to extension upon application of the zone grantee.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Long Beach, California Within the Los Angeles/Long Beach Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Board of Harbor Commissioners of the City of Long Beach, grantee of Foreign-Trade Zone No. 50, has made application (filed September 27, 1982) in due and proper form to the Board requesting a special-purpose subzone at the truck cargo body manufacturing plant of Toyota Motor Manufacturing, U.S.A., Inc., in Long Beach, California, within the Los Angeles/Long Beach Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, the Board has found that the requirements of that Act and the Board's regulations are satisfied;

Now, therefore, in accordance with the application filed September 27, 1982, the Board hereby authorizes for a period of five years the establishment of a subzone at Toyota's truck cargo body manufacturing plant in Long Beach, designated on the records of the Board as Foreign-Trade Subzone No. 50A at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In Witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, D.C. this 14th day of July 1983 pursuant to Order of the Board.

Foreign-Trade Zones Board.

Lawrence J. Brady,

Assistant Secretary of Commerce for Trade Administration, Chairman, Committee of Alternates.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 83-20717 Filed 7-29-83; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 214]

Resolution and Order Approving the Application of the Port of Houston Authority for a Foreign-Trade Zone in Harris County, Texas, Within the Houston Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Port of Houston Authority (PHA), filed with the Foreign-Trade Zones Board (the Board) on June 3, 1982, requesting a grant of authority for establishing, operating, and maintaining a foreign-trade zone in Harris County, within the Houston Customs port of

entry, the Board adopts the conclusions and recommendation stated in the examiners committee's report, including the site numbering system in Table 1, and noting the special circumstances of this proposal, approves the application subject to the following conditions:

(1) The Category B through D Sites are approved for 5 years subject to Board renewal after a review by Customs and the Board.

(2) Should the Houston Model Seaport Program be terminated, Customs shall have an opportunity to comment on the continuation of the Category B through D Sites.

(3) Manufacturing operations involving steel or steel products are restricted to items produced for export, otherwise formal entries shall be made on any foreign steel items prior to their use in a manufacturing process.

(4) The Board's Executive Secretary shall be notified for approval prior to the commencement of any non-export manufacturing operations covered in the application, as well as any new proposed manufacturing.

(5) The District Director of Customs shall be notified for approval prior to the activation of any zone site.

(6) Because of the nature of the project, PHA, as grantee, should play an active and continuous role as overseer to insure that the zone project is operated in the public interest and conistent with FTZ public utility principles.

(7) Any promotional or user development efforts should focus on the PHA sites, except for export intensive situations that cannot be accommodated at these sites.

Grant to Establish, Operate, and Maintain a Foreign-Trade Zone in Harris County, Texas, Within the Houston Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Port of Houston Authority (the Grantee) has made application (filed June 3, 1982) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a multi-site foreign-trade zone in Harris County, Texas, within the Houston Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) would be satisfied if approval is given subject to the conditions stated in the resolution accompanying this action;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 84, at the locations referred to in the maps and drawings Exhibits IX and X of the application, and as described in Table I of the examiners committee report dated April 1, 1983, subject to the provisions, conditions, and restrictions of the Act and the regulations, and those stated in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone sites in the performance of their official duties.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 15 th day of July 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 83-20753 Filed 7-29-83; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 215]

Resolution and Order Approving the Application of the Puget Sound Foreign-Trade Zones Association for a Foreign-Trade Zone in Everett, Washington, Within the Puget Sound Consolidated Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Puget Sound Foreign-Trade Zones Association, a Washington non-profit corporation affiliated with the Economic Development Council of Puget Sound, filed with the Foreign-Trade Zones Board (the Board) on September 8, 1982, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Everett, Washington, within the Puget Sound Consolidated Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting and such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Everett, Washington, Within the Puget Sound Consolidated Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the

Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Puget Sound Foreign-Trade Zones Association (the Grantee), a non-profit Washington corporation affiliated with the Economic Development Council of Puget Sound, has made application (filed September 8, 1982) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Everett, Washington, within the Puget Sound Consolidated Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating, and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 85 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of July 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 83-20754 Filed 7-29-83; 8:45 am]

BILLING CODE 3510-25-M

[Order No. 216]

Resolution and Order Approving the Application of the Puget Sound Foreign-Trade Zones Association for a Foreign-Trade Zone in Tacoma, Washington, Within the Puget Sound Consolidated Customs Port of Entry

Proceedings of the Foreign-Trade Zones Board, Washington, D.C.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Puget Sound Foreign-Trade Zones Association, a Washington non-profit corporation affiliated with the Economic Development Council of Puget Sound, filed with the Foreign-Trade Zones Board (the Board) on September 8, 1982, requesting a grant of authority for establishing, operating, and maintaining a general-purpose foreign-trade zone in Tacoma, Washington, within the Puget Sound Consolidated Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

As the proposal involves open space on which buildings may be constructed by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation within the zone. The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant To Establish, Operate, and Maintain a Foreign-Trade Zone in Tacoma, Washington, Within the Puget Sound Consolidated Customs Port of Entry

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Puget Sound Foreign-Trade Zones Association (the Grantee), a non-profit Washington corporation affiliated with the Economic Development Council of Puget Sound, has made application (filed September 8, 1982) in due and proper form to the Board, requesting the establishment, operation, and maintenance of a foreign-trade zone in Tacoma, Washington, within the Puget Sound Consolidated Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

Whereas, the Board has found that the requirements of the Act and the Board's regulations (15 CFR Part 400) are satisfied;

Now, therefore, the Board hereby grants to the Grantee the privilege of establishing, operating and maintaining a foreign-trade zone, designated on the records of the Board as Zone No. 86 at the location mentioned above and more particularly described on the maps and drawings accompanying the application in Exhibits IX and X, subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the foreign-trade zone shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zone site in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operations within the zone.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

In witness whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 20th day of July 1983, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Malcolm Baldrige,

Chairman and Executive Officer.

Attest:

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 83-20755 Filed 7-29-83; 8:45 am]

BILLING CODE 3510-25-M

Minority Business Development Agency

Minority Business Development Center (MBDC); Salicitations of Applications

AGENCY: Minority Business Development Agency.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting applications under its Minority Business Development Center (MBDC) program to operate two projects for a 12-month period beginning October 1, 1983, in the following locations:

I.D. Number: 09-10-83025-01

Maximum MBDA Contribution	$212,500
SCS Contribution	21,250
Total Federal Contribution	233,750
Minimum Cost Share Contribution	41,250
Minimum Total Project Cost	275,000

I.D. Number: 09-10-83026-01

Maximum MBDA Contribution	$144,500
SCS Contribution	14,450
Total Federal Contribution	158,950
Minimum Cost Share Contribution	28,050
Minimum Total Project Cost	187,000

Applicants shall be required to contribute at least 15 percent of the total program cost through non-Federal funds. Cost sharing contributions can be in the form of cash contributions, fee for services or in-kind contributions.

DATE: August 9, 1983.

ADDRESS: Minority Business Development Agency, U.S. Department of Commerce, 450 Golden Gate Avenue, Box 36114, San Francisco, California 94102.

FOR FURTHER INFORMATION CONTACT: Ms. Connie Talamantez (415) 556-2952.

SUPPLEMENTARY INFORMATION:

A. Scope and Purpose of this Announcement.

Executive Order 11625 authorizes MBDA to fund projects which will provide technical and management assistance to eligible clients in areas related to the establishment and operation of businesses. The MBDC program is specifically designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assisance; and serve as a conduit through which and from which information and assistance to and about minority businesses are funneled.

B. Eligible Applicants.

Awards shall be open to all individuals, non-profit organizations, for-profit firms, local and state governments, American Indian tribes and educational institutions.

C. Evaluation Process.

All proposals received as a result of this announcement will be evaluated by a MBDA review panel.

D. Evaluation Criteria for Minority Business Development Center Applications.

The evaluation criteria is designed to facilitate an objective evaluation of competitive applications for the Minority Business Development Center program.

MBDA reserves the right to reject any or all applications, including the application receiving the highest evaluation, and will exercise this right when it is determined that it is in the best interest of the Government to do so (e.g., the apparent successful applicant has serious unresolved audit issues from current or previous grants, contracts or cooperative agreements with an agency of the Federal Government).

Evaluation of proposals will employ the following criteria:

I. *Capability and Experience of Firm/Staff*—provide information that demonstrates the organization's capabilities and prior experiences in addressing the needs of minority business individuals and firms. Provide information that demonstrates the staff's capabilities and prior experiences in providing management and technical assistance to minority individuals and firms. Indicate previous experience in MBE community to be served in terms of: inventorying resources and opportunities; the brokering thereof; and providing management and technical assistance.

The following are key factors to be considered in this section:

Firm

—The organization's receptivity in the MBE community to be served, i.e., business contacts in the public and private sector; leadership responsibilities; and experience in assisting MBE business persons and firms. (References from clients assisted are pertinent.)

—Background credentials and references for the owners of the organization and a capability statement of what the organization can do.

—Knowledge of the geographic area to be served in terms of the needs of minority businesses and past ongoing relationships with local, public and private—entities that can possibly enhance the BDC program effort—i.e., Chambers of Commerce, trade associations, venture capital organizations, banks, SBA, HUD, state, city and county government agencies, etc.

Staff

—List personnel to be used. Indicate their salaries, educational level and previous experience. Provide resumes for all professional staff personnel.

—Demonstrate competence among staff to effectuate mergers, acquisitions, spin-offs and joint-ventures.

—Provide organizational chart, job descriptions and qualification standards involving all profesional staff persons to be utilized on the project.

—If any contractors are to be utilized, identify and indicate areas and level

of experience. *Primary consideration will be given to inhouse capability.*

Note.—All contracting proposed should be in accordance with procurement standards in Attachment O of OMB Circulars A-110 or A-102.

II. *Techniques and Methodology*—Specify plans for achieving the goals and objectives of the project. This section should be developed by using the outline of the Work Requirements and the MBDC responsibilities as *guides* and will become part of the award document. Include start-up plan and example of work plan format. Fully explain the procedures for: outreach, screening, assisting and monitoring clients; maintaining the profile inventory of minority businesses; and brokering of new business ownership, market and capital opportunities and prevention of business failures. In summary, address how, when and where work will be done and by whom. Include level of performance.

III. *Resources*—address technical and administrative resources, i.e., computer facilities, voluntary staff time and space; and financial resources in terms of meeting MBDA's 15% cost-sharing requirement and including a fee for services for assistance provided clients. A fee for services in the amount of 10% of the cost of assistance will be charged to all clients receiving management and technical assistance.

Cost-sharing is that portion of project costs not borne by the Federal Government. The composition and amount of cost-sharing are key factors that will be considered in determining the merit of this section. The cost-sharing requirement can be met through the following order or priority: (1) Cash contributions; (2) fee for services; and (3) in-kind contributions.

A. *Cash contribution*—means cash that is contributed or donated by the recipient, and other Non-Federal sources, i.e., public agencies and institutions, private organizations, corporations and individuals.

B. *Fee for services*—is a charge to a client for assistance provided by the MBDC for M&TA and/or SCS.

C. *In-Kind contribution*—represents the value of non-cash contributions provided by the recipient and other Non-Federal sources. The order of priority for in-kind contributions are: high technology systems to be utilized to achieve program objectives; top level staff personnel and real and personal property donated by other public agencies, institutions and private organizations. Property purchased with Federal funds will not be considered as the recipient's in-kind contribution. Under no circumstances can the in-kind contribution exceed 50% of the total Non-Federal contribution.

IV. *Costs*—demonstrate in narrative format that costs being proposed will give the minority business client and the government the most effective program possible in terms of quality, quantity, timeliness and efficiency.

Include the principal costs involved for achieving work plan under Cooperative Agreement by completing Part III—the Budget Information Section of the Request for Application.

Provide cost-sharing plan information in terms of methodology and format for billing the costs of management and technical assistance and specialized consulting services to clients.

Total project cost will be evaluated in terms of:

—Clear explanations of all expenditures proposed, and
—The extent to which the applicant can leverage Federal program funds and operate with *economy* and *efficiency*.

In conclusion, the applicant's schedule for start of the MBDC operation should be included in Part II. Part II will be known as the applicant's plan of operation and will be incorporated into the Cooperative Agreement Award.

A detailed justification of all proposed costs is required for Part III and each item must be fully explained.

The failure to supply information in any given category of the criteria will result in the application being considered non-responsive and dropped from competitive review.

All Information submitted is subject to verification by MBDA.

E. Disposition of Proposals.

Notification of awards will be made by the Grants Officer, U.S. Department of Commerce (DOC) Organizations whose proposals are unsuccessful will be advised by MBDA,. DOC.

F. Proposal Instructions and Forms.

This program is subject to OMB Circular A-95 requirements.

Questions concerning the preceding information, copies of application forms, and applicable regulations can be obtained at the above address.

Nothing in this solicitation shall be construed as committing MBDA to divide available funds among all qualified applicants.

G. A pre-application conference to assist all interested applicants will be held at the following address and time: Minority Business Development Agency, U.S. Department of Commerce, 2500 Wilshire Boulevard, Suite 908, Los Angeles, California 90057, August 3, 1983, at 11:00 a.m.

(11.800 Minority Business Development (Catalog of Federal Domestic Assistance))

Dated: July 22, 1983.

Powell McDaniel,

Acting Regional Director.

[FR Doc. 83-20757 Filed 7-29-83; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

U.S. Weather Routing Service

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

ACTION: Notice.

SUMMARY: Notice is hereby given that the National Weather Service (NWS) is preparing a list of U.S. businesses and industrial meteorologists that provide ship weather routing services to vessels plying routes on the high seas and the Great Lakes. This list will be maintained by the NWS and will be made available upon request. In addition, Port Meteorological Officers will retain the list for the use of ship's masters that inquire about the availability of U.S. weather routing services. A reference to this information will be given in the Worlds Meteorological Organization Publication No. 9, Volume D.

FOR FURTHER INFORMATION CONTACT: Commercial consultants interested in having their business included on the list should write to: Mr. Robert C. Landis, Chief, Marine Services Branch NOAA/NWS-OM12, 8060 13th Street Silver Spring, Maryland 20910.

Dated: July 21, 1983.

Mirco P. Snidero,

Deputy Director, Office of Administrative and Technical Services.

[FR Doc. 83-20747 Filed 7-29-83; 8:45 am]

BILLING CODE 3510-12-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 83-CERT-260, et al.]

Applications for Certification of Eligible Use of Natural Gas To Displace Fuel Oil; Koppers Co., Inc. et al.

The Economic Regulatory Administration (ERA) of the Department of Energy has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). End-users who have the capability to use natural gas in place of fuel oil at any of their

facilities can arrange for direct purchases and transportation of the gas to those facilities under the Federal Energy Regulatory Commission's (FERC) fuel oil displacement program. The ERA certification is required by the FERC as a precondition to interstate transportation of fuel oil displacement gas in accordance with the procedures in 18 CFR Part 284, Subpart F.

Pertinent information regarding these applications is listed below, while more detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

1. 83-CERT-260.

Applicant: Koppers Co., Inc., Pittsburgh, Pa.

Date Filed: July 13, 1983.

Facility Location: Follansbee Plant, Follansbee, W.Va.

Gas Volume: 365,000 Mcf per year.

Oil Displacement: 60,660 barrels of No. 6 fuel oil (2.0 percent sulfur).

Eligible Sellers: Exxon U.S.A., Houston, Tex.; Quaker State Oil Refining Corp., Belpre, Ohio; Felmont Oil Corp., Olean, N.Y.; Althiers Oil, Inc., Corning, Ohio; Controlled Resources Oil & Gas Corp., Duffield, Va.; Industrial Energy Services Co., Pittsburgh, Pa.; Dane Baird Investments, Inc., Belmont, Mass.

Transporters: Columbia Gas Transmission Corp., Charleston, W.Va.; Columbia Gas of West Virginia, Inc., Wheeling, W.Va.

2. 83-CERT-261.

Applicant: National Forge Co., Irvine, Warren County, Pa.

Date Filed: July 13, 1983.

Facility Location: Irvine Plant, Warren County, Pa.

Gas Volume: 500,000 Mcf per year.

Oil Displacement: 79,761 barrels of No. 6 fuel oil (2 percent sulfur).

Facility Location: Erie Plant, Erie, Pa.

Gas Volume: 500,000 Mcf per year.

Oil Displacement: 79,761 barrels of No. 6 fuel oil (2 percent sulfur).

Total: 1,000,000 Mcf per year, 159,523 barrels of No. 6 fuel oil (2 percent sulfur).

Eligible Sellers: LeBoeuf Energy Inc., Waterford, Pa; S T Joint Venture, Westport, Conn.

Transporters: National Fuel Gas Supply Corp., Oil City, Pa.; National Fuel Gas Distribution Corp., Buffalo, N.Y.

3. 83-CERT-262.

Applicant: Cargill, Inc., Oil Plant DSC Div., Chesapeake, Va.

Date Filed: July 14, 1983.

Facility Location: Chesapeake, Va.

Gas Volume: 396,000 Mcf per year.

Oil Displacement: 66,660 barrels of No. 6 fuel oil (2.4 percent sulfur).

Eligible Sellers: D'Appolonia Petroleum, Pittsburgh, Pa.; Cabot Corp., Houston, Tex.; Petrobank Operating Co., Pittsburgh, Pa.; Scott Oil & Gas. Co., Salem, W.Va.; Yankeee Resources, Inc., Columbus, Ohio; Morgan-Pennington, Wooster, Ohio.

Transporters: Columbia Gas Transmission Corp., Charleston, W.Va.; Commonwealth Gas Pipeline Corp., Richmond, Va.; Virginia Natural Gas, Norfolk, Va.

4. 83-CERT-263.

Applicant: United States Gypsum Co., Atlanta, Ga.

Date Filed: July 14, 1983.

Facility Location: Norfolk Plant, Norfolk, Va.

Gas Volume: 628,680 Mcf per year.

Oil Displacement: 105,827 barrels of No. 6 fuel oil (2.4 percent sulfur).

Eligible Sellers: D'Appolonia Petroleum, Pittsburgh, Pa.; Cabot Corp., Houston, Tex.; Petrobank Operating Co., Pittsburgh, Pa.; Yankeee Resources, Inc., Columbus, Ohio.

Transporters: Columbia Gas Transmission Corp., Charleston, W.Va.; Commonwealth Gas Pipeline Corp., Richmond, Va.; Virginia Natural Gas, Norfolk, Va.

5. 83-CERT-264.

Applicant: Trumbull Asphalt, Medina, Ohio.

Date Filed: July 15, 1983.

Facility Location: Medina Plant, Medina, Ohio.

Gas Volume: 58,850 Mcf per year.

Oil Displacement: 9,528 barrels of No. 6 fuel oil (.01 percent sulfur).

Eligible Sellers: Morgan Pennington, Inc., Wooster, Ohio.

Transporters: Columbia Gas Transmission Corp., Charleston, W.Va.; Columbia Gas of Ohio Inc., Columbus, Ohio.

6. 83-CERT-265.

Applicant: Just Born, Inc., Bethlehem, Pa.

Date Filed: July 15, 1983.

Facility Location: Bethlehem Plant, Bethleham, Pa.

Gas Volume: 50,000 Mcf per year.

Oil Displacement: 8,333 barrels of No. 4 fuel oil (.2% sulfur).

Eligible Seller: Altheirs Oil, Corning, Ohio.

Transporters: Columbia Gas Transmission Corp., Charleston, W. Va.; UGI Corp.—Gas Utility Division, Reading, Pa.

7. 83-CERT-266.

Applicant: Siemens-Allis, Inc., Atlanta, Ga.

Date Filed: July 15, 1983.

Facility Location: Norwood Plant, Norwood, Ohio.

Gas Volume: 25,000 Mcf per year.

Oil Displacement: 4,477 barrels of No. 2 fuel oil (.20% sulfur).

Eligible Sellers: Exxon U.S.A., Houston, Tex.; Ohio Gas Marketing Corp., Newark, Ohio.

Transporters: Columbia Gas Transmission Corp., Charleston, W. Va.; Texas Gas Transmission Corp., Owensboro, Ky.; Cincinnati Gas & Electric Co., Cincinnati, Ohio; The Union Light, Heat & Power Co., Covington, Ky.

To provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning any of these applications to submit comments in writing to the Economic Regulatory Administration, Office of Fuels Programs, Fuels Conversion Division, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, Attention: Richard A. Ransom, within ten calendar days of the date of publication of this notice in the **Federal Register**. The docket number of the case should be printed on the outside of the envelope.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of any of the above applications may be requested by any interested person in writing within the ten-day comment period. The request should state the person's interest and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary.

If ERA determines that an oral presentation is necessary in a particular case, further notice will be given to the applicant and any person filing comments in that case and will be published in the **Federal Register**.

Issued in Washington, D.C., on July 22, 1983.

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-20714 Filed 7-29-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-244, et al.]

Certifications of Eligible Use of Natural Gas To Displace Fuel Oil; Koppers Co., Inc.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20582, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	FEDERAL REGISTER notice of application
Koppers Co., Inc., Oil City Plant, Oil City Pa	July 1, 1983	83-CERT-244	48 FR 32058, July 13, 1983.
Industrial Platers of Ohio, Inc., Plants 1 and 2, Columbus, Ohio	July 5, 1983	83-CERT-251	48 FR 32058, July 13, 1983.
Yenkin-Majestic Paint Corp., Columbus Plant, Columbus, Ohio	July 7, 1983	83-CERT-254	48 FR 32058, July 13, 1983.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on July 25, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-20713 Filed 7-29-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket Nos. 83-CERT-074 and 163]

Certifications of Eligible Use of Natural Gas to Displace Fuel Oil; U.S. Gauge, Div. of Ametek, Inc. and Rilsan Industrial Inc.

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of nautral gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days for the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue SW., Washington D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility location	Date filed	Docket No.	FEDERAL REGISTER notice of application
U.S. Gauge, Div. of Ametek, Inc., Sellersville Facility, Sellersville, Pa.	May 9, 1983 as amended June 28, 1983.	83-CERT-074	48 FR 31696, July 11, 1983.
Rilsan Industrial Inc., Birdsboro Facility, Birdsboro, Pa	June 7, 1983 as amended July 7, 1983	83-CERT-163	48 FR 32212, July 14, 1983.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

Issued in Washington, D.C., on July 26, 1983.

Robert L. Davies,

Deputy Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-20715 Filed 7-29-83; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 83-CERT-196, et al.]

ITT Abrasive Products Co., et al.; Certifications of Eligible Use of Natural Gas To Displace Fuel Oil

The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) has received the following applications for certification of an eligible use of natural gas to displace fuel oil pursuant to 10 CFR Part 595 (44 FR 47920, August 16, 1979). Notice of these applications, along with pertinent information contained in the applications, was published in the **Federal Register** and an opportunity for public comment was provided for a period of ten calendar days from the date of publication. No comments were received. More detailed information is contained in each application on file and available for inspection at the ERA Fuels Conversion Division Docket Room, RG-42, Room GA-093, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, from 8:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

Applicant and facility	Date filed	Docket No.	FEDERAL REGISTER notice of application
ITT Abrasive Products Co., Tiffin, Ohio	June 14, 1983	83-CERT-196	48 FR 31900, July 12, 1983.
Chattanooga Glass Co., Keyser, W. Va	June 15, 1983	83-CERT-197	48 FR 31900, July 12, 1983.
R. R. Donnelley & Sons Co., Mattoon, Ill	June 15, 1983	83-CERT-198	48 FR 31900, July 12, 1983.
Georgia Pacific Corp., Taylorville, Ill	June 15, 1983	83-CERT-199	48 FR 31900, July 12, 1983.
Chevron U.S.A., North Bend, Ohio	June 15, 1983	83-CERT-200	48 FR 31900, July 12, 1983.
Airco Carbon, Niagara Falls, N.Y	June 15, 1983	83-CERT-201	48 FR 31900, July 12, 1983.
Empire-Detroit Steel Div., Mansfield, Ohio	June 16, 1983	83-CERT-202	48 FR 31900, July 12, 1983.
Continental Steel Corp., Kokomo, Ind	June 16, 1983	83-CERT-203	48 FR 31900, July 12, 1983.
The Goodyear Tire & Rubber Co., Apple Grove, W. VA	June 16, 1983	83-pCERT-204	48 FR 31900, July 12, 1983.
The Goodyear Tire & Rubber Co., Marysville, Ohio	June 16, 1983	83-CERT-205	48 FR 31900, July 12, 1983.

The ERA has carefully reviewed the above applications for certification in accordance with 10 CFR Part 595 and the policy considerations expressed in the Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas to Displace Fuel Oil (44 FR 47920, August 16, 1979). The ERA has determined that the applications satisfy the criteria enumerated in 10 CFR Part 595 and, therefore, has granted the certifications and transmitted those certifications to the Federal Energy Regulatory Commission.

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

James W. Workman,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 83-20697 Filed 7-29-83; 8:45 am]

BILLING CODE 6450-01-M

Western Area Power Administration

Draft Environmental Impact Statement Revised Availability and Public Hearings; Liberty-Coolidge Proposed 230-KV Transmission Line, Arizona

AGENCY: Western Area Power Administration, DOE.

ACTION: Revised notice of availability and public hearings for draft Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Western Area Power Administration (Western), U.S. Department of Energy (DOE), has issued a draft environmental impact statement (DEIS) for the Liberty-Coolidge 230-kV transmission line in Arizona, DOE/EIS-0100-D, and that public hearings on the DEIS have been rescheduled. The DEIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality regulations, 40 CFR Parts 1500-1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, as amended.

The DEIS addresses Western's proposal to construct and operate a 230-kV transmission line from Liberty to Coolidge, Arizona. The 230-kV transmission line will be a new line from Liberty to the Phoenix area, double circuited with Western's existing Parker-Phoenix 161-kV line, and an upgrade and relocation of the existing Phoenix-Coolidge 115-kV line to 230-kV from Phoenix to Coolidge. The existing line is inadequate by current design standards and in an advanced state of deterioration, with 42 percent of the wood poles in need of replacement. The proposed action, which includes plans for abandonment of the existing transmission line, would: (1) Provide electric service to current users of the existing transmission line and serve to meet their projected load growth of 100 MW; (2) support the Central Arizona Project (CAP) needs for 108 MW of capacity; and (3) provide a vital link in Western's and the State's interconnected transmission network. Alternatives considered include no action, energy conservation, alternative transmission systems and technologies, and the proposed action with routing alternatives. The major impacts from the proposed action would be the potential impacts of construction-related siting activities on cultural resources and the impacts from the transmission line itself on visual resources, other land uses, and agricultural resources and practices. A major benefit from the proposed action is removal of the existing 115-kV transmission line from Snaketown, a major prehistoric archaeological site designated as a National Historic Landmark.

The DEIS was prepared in compliance with DOE regulations. The DOE will serve as the Federal agency responsible for approval of the proposed action while Western serves as the lead agency to fulfill the requirements of NEPA. During the planning stages of the DEIS a Task Force composed of representatives from the Gila River Indian Community, Bureau of Indian Affairs (BIA), Arizona State Historic Preservation Office, U.S. Fish and Wildlife Service, and National Park Service was formed to serve in an overview and review capacity.

Copies of the DEIS have been distributed for review and comment to appropriate Federal, State, regional, and local agencies and organizations, and individuals who are known to be interested in the project. The DEIS has been distributed and is available for public inspection at: (1) Public libraries in Avondale, Buckeye, Chandler, Coolidge, Mesa, and Phoenix; (2) City Manager's Office in Avondale, Buckeye, Chandler, Coolidge, Mesa, Phoenix, and Tolleson; (3) BIA Offices in Phoenix and Sacaton; (4) Pinal and Maricopa County planning offices; (5) Gila River Indian Community in Sacaton; (6) Western offices in Boulder City, Nevada; Phoenix, Arizona; and Golden, Colorado; and (7) the DOE reading room, Forrestal Building, Washington, D.C. Copies of the DEIS will be distributed by Western to the public upon request.

DATE: Interested agencies, organizations, and individuals are encouraged to review the DEIS and comment in writing or orally at the public hearings on its adequacy, completeness, and accuracy. Written comments are due no later than August 29, 1983, which is the end of the 45-day comment period. Comments received after that date may not be received in time to be considered in the subsequent decisionmaking process. Public hearings will be held as part of the DEIS review process and written as well as oral statements will be accepted. Persons will be called on in the order they sign in expressing their desire to speak, and oral statements will be limited to a period of 10 minutes. The public hearings will be held as follows:

August 15, 1983, 7:30 p.m.—10:00 p.m., City Council Chambers, 130 West Central, Coolidge, Arizona

August 16, 1983, 7:30 p.m.—10:00 p.m., Gila River Indian Community, Tribal Council Chambers, Sacaton, Arizona

August 17, 1983, 7:30 p.m.—10:00 p.m., City Council Chambers, 517 East Western Avenue, Avondale, Arizona

ADDRESS: Use the following address for further information, copies of the DEIS, and to send comments: Area Manager, Boulder City Area Office, Western Area Power Administration, P.O. Box 200,

Boulder City, Nevada 89005; (702) 293-8800.

Issued at Washington, D.C., July 27, 1983.

Ronald K. Greenhalgh,

Assistant Administrator for Washington Liaison.

[FR Doc. 83-20782 Filed 7-29-83; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPRM-FRC 2407-6]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 3507(a)(2)(B) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) requires the Agency to publish in the **Federal Register** a notice of proposed information collection requests that have been forwarded to the Office of Management and Budget (OMB) for review. The information collection requests listed are available to the public for review and comment.

FOR FURTHER INFORMATION CONTACT: David Bowers; Office of Standards and Regulations; Information Management Section (PM-223); U.S. Environmental Protection Agency; 401 M Street, SW., Washington, D.C. 20460; telephone (202) 382-2742 or FTS 382-2742.

SUPPLEMENTARY INFORMATION:

Research Programs

• Title: Total Exposure Assessment Methodology (TEAM) Study (EPA ID 0315).

Abstract: Individuals wear a pump and sample cartridge for 24 hours to measure air pollutants. These people also provide breath samples and data on occupational exposure, smoking status, length of residency, etc. EPA uses this information and other data on public exposure to pollutants in air and drinking water to: (1) Identify high-exposure chemicals for further study and (2) relate exposures to effects on health.

Respondents: Individuals in an urban industrialized area.

* * * * *

Agency PRA Clearance Request Completed by OMB

EPA ID 0328, Spill Prevention Control and Countermeasure Plan and Review, was cleared by OMB on May 27 (OMB #2050-0021).

* * * * *

Comments on all parts of this notice should be sent to:

David Bowers, U.S. Environmental Protection Agency, Office of Standards and Regulations (PM-223), 401 M Street, S.W., Washington, D.C. 20460, and

Anita Ducca, Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building (Room 3228), 726 Jackson Place, N.W., Washington, D.C. 20503.

Dated: July 26, 1983.

N. Phillip Ross,

Chief, Statistical Policy Staff.

[FR Doc. 83-20620 Filed 7-29-83; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Telecommunications Industry Advisory Group, Definitions and Rules Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's TIAG) Definitions and Rules Subcommittee scheduled to meet on Thursday and Friday, August 11 and 12, 1983. The meeting will begin on August 11 at 9:30 a.m. in the offices of Ernst & Whinney, 1800 First Interstate Plaza, Tacoma, Washington, and will be open to the public. The agenda is as follows:

I. General Administrative Matters
II. Review of Minutes of Previous Meeting
III. Treatment of tariffed vs. Nontariffed Items
IV. Discussion of Individual Assignments
V. Other Business
VI. Presentation of Oral Statements
VII. Adjournment

With prior approval of Subcommittee Chairman John Utzinger, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Utzinger (203/965-2830) at least five days prior to the meeting date.

William J. Tricarico,

Secretary Federal Communications Commission.

[FR Doc. 83-20683 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group, Expense Accounts Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's (TIAG) Expense Accounts Subcommittee scheduled to meet on August 17 and 18, 1983. The meeting will begin 9:00 a.m. on August 17 and will be open to the public. The meeting locations is: Grande Royale Hotel, La Paz Meeting Room, 9090 Southwest Freeway, Houston, Texas.

The agenda is as follows:

I. General Administrative Matters
II. Discussion of Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjourment

With prior approval of Subcommittee Chairman John Howes, oral statements, while not favored or encouraged, may be allowed at the meeting if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of objectives. Anyone not a member of the Subcommittee and wishing to make an oral presentation should contact Mr. Howes (212/393-4029) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-20682 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group, Plant Accounts Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group's (TIAG) Plant Accounts Subcommittee scheduled to meet on Tuesday and Wednesday, August 9 and 10, 1983. The meeting will begin on August 9 at 9:30 a.m. in the offices of Deloitte Haskins & Sells, 1010 Standard Plaza, Portland, Oregon, and will be open to the public. The agenda is as follows:

I. General Administrative Matters
II. Discussion of Plant Accounts Assignments
III. Other Business
IV. Presentation of Oral Statements
V. Adjournment

With prior approval of Subcommittee Chairman Gyles Norwood, oral statements, while not favored or encouraged, may be allowed at the meeting if time permits and if the

Chairman determines that an oral presentation is conducive to the effective attainment of objectives. Anyone not a member of the subcommittee and wishing to make an oral presentation should contact Mr. Norwood (202/887-3266) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-20681 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Dockets Nos. 83-750 and 83-751; File Nos. 5521-CM-P-80 and 10449-CM-P-80]

Broadcast Data Corp. and Daniel L. Ducatt and James A. Kennedy; Hearing Designation Order

In re applications of Broadcast Data Corp.; (CC Docket No. 83-750, File No. 10449-CM-P-80), and Daniel L. Ducatt and James A. Kennedy (CC Docket No. 83-751, File No. 5521-CM-P-80), for construction permits in the Multipoint Distribution Service for a new station at Waco, Texas.

Adopted July 6, 1983.

Released July 22, 1983.

By the Common Carrier Bureau.

Memorandum Opinion and Order

1. For consideration are the above-referenced applications.[1] These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Waco, Texas. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.[2]

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.[3]

3. Accordingly, it is hereby orderd, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[4]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Broadcast Data Corp., Daniel L. Ducatt and James A. Kennedy and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of Section 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in hearing designated in *A.S.D. Answering Service, Inc., et al*, FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. This Order is effective on its release date, petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. *See also* Rule 1.4(b)(2).

8. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Division, Common Carrier Bureau.

[FR Doc. 83-20678 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 83-747; File No. 10303-CM-P-80, et al.]

Broadcast Data Corp., et al.; Hearing Designation Order

In re applications of Broadcast Data Corp. (CC Docket No. 83-747, File No. 10303-CM-P-80), and Kravetz Media Corp. (CC Docket No. 83-748, File No. 11611-CM-P-80), and Telecommunications Systems Inc. (CC Docket No. 83-749, File No. 50012-CM-P-81), for construction permits in the Multipoint Distribution Service for a new station at Yuma, Arizona.

Adopted July 6, 1983.

Released July 22, 1983.

By the Common Carrier Bureau.

Memorandum Opinion and Order.

1. For consideration are the above-referenced applications.[1] These applications are for construction permits in the Multipoint Distribution Service and they propose operations on Channel 1 at Yuma, Arizona. The applications are therefore mutually exclusive and, under present procedures, require comparative consideration. There are no petitions to deny or other objections under consideration.[2]

2. Upon review of the captioned applications, we find that these applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.[3]

3. Accordingly, it is hereby ordered, that pursuant to Section 209(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291, the above-captioned applications are

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[1] On September 10, 1981, Richard L. Vega (Vega) and Christopher Laning (Laning) executed an Assets Sale and Purchase Agreement with Broadcast Data Corp. (Buyer) to assign the radio authorizations and applications of Northstar Communications to Broadcast Data Corp. Broadcast Data Corp. is a wholly-owned subsidiary of Graphic Scanning Corporation. See International Television Corporation, File No. 50078-CM-AP/AL-(5)-82 (released June 25, 1982).

[2] On March 28, 1983, Northstar Communications was granted an exemption from the Commission's "cut-off" rules pursuant to Section 21.31 of the Rules, 47 CFR 21.31, to preserve the status of its pending mutually exclusive applications.

[3] This finding is subject to paragraph 6, *infra*.

[4] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain*, 77 FCC 2d 20 (1980).

[1] On September 10, 1981, Richard L. Vega (Vega) and Christopher Laning (Laning) executed as Assets Sale and Purchase Agreement with Broadcast Data Corp. (Buyer) to assign the radio authorizations and applications of Northstar Communications to Broadcast Data Corp. Broadcast Data Corp. is a wholly-owned subsidiary of Graphic Scanning Corporation. See International Television Corporation, File No. 50078-CM-AP/AL-(5)-82 (released June 25, 1982).

[2] On March 28, 1983, Northstar Communications was granted an exemption from the Commission's "cut-off" rules pursuant to § 21.31 of the Rules, 47 CFR 21.31, to preserve the status of its pending mutually exclusive applications.

[3] This finding is subject to paragraph 6, *infra*.

designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent Order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [4]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatiblity with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, That Broadcast Data Corp., Kravetz Media Corporation, Telecommunications Systems, Inc. and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, That parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules, 47 CFR 1.221.

6. It is further ordered, That any authorization granted to Broadcast Data Corp., a wholly-owned subsidiary of Graphic Scanning Corporation, as a result of the comparative hearing shall be conditioned on, and without prejudice to, reexamination and reconsideration of that company's qualifications to hold an MDS license following a decision in the hearing designated in *A.S.D. Answering Service, Inc., et al,* FCC 82-391, released August 24, 1982, and shall be specifically conditioned upon the outcome of that proceeding.

7. This Order is effective on its release date. Petitions for reconsideration under § 1.106 or applications for review under § 1.115 of the Rules may be filed within the time limits specified in those sections. *See also* Rule 1.4(b)(2).

8. The Secretary shall cause a copy of this Order to be published in the **Federal Register.**

James R. Keegan,

Chief, Domestic Facilities Divison, Common Carrier Bureau.

[FR Doc. 83-20680 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

[4] Consideration of these factors shall be in light of the Commission's discussion in *Frank K. Spain,* 77 FCC 2d 20 (1980).

New FM Stations; Applications for Consolidated Hearing; Dove Media, Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant	City/State	File No.	MM Docket No.
A. Dove Media, Inc..	Burkburnett, Tex.	BPH-810813AF	83-739
B. Belle Meade Broadcasting, Inc.	.....do.....	BPH-811127AB	83-740
C. Wichita County Communications.	.....do.....	BPH-820118AH	83-741
D. Burkburnett Broadcasters, Inc.	.....do.....	BPH-820129BI	83-742
E. K&M Communications, Inc.	.....do.....	BPH-820129BO	83-743

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	Applicant(s)
1. (See Appendix)	C, D
2. (See Appendix)	D
3. Air Hazard	B
4. Comparative	A, B, C, D, E
5. Ultimate	A, B, C, D, E

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.

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

Appendix—Issue(s)

1. To determine with respect to the following applicant(s) whether, in light of the evidence adduced concerning the deficiency set forth above in paragraph 8,* the applicant(s) is financially qualified: C (Wichita), D (Burkburnett)

2. If a final environmental impact statement is issued with respect to D (Burkburnett) which concludes that the proposed facilities are likely to have an adverse effect on the quality of the environment,

(a) to determine whether the proposal is consistent with the National Environmental Policy Act, as implemented by §§ 1.1301-1319 of the Commission's Rules; and

(b) whether, in light of the evidence adduced pursuant to (a) above, the applicant is qualified to construct and operate as proposed.

*Paragraph 8 reads as follows:

The material submitted by the applicants) below does not demonstrate its financial qualifications. Accordingly, an issue will be specified concerning the following deficiency:

Applicant(s)	Deficiency
C (Wichita)	No detailed operating budget for the first three months provided. Applicant proposes to lease land for the transmitter but has failed to show the cost of this lease.
D (Burkburnett)	Applicant proposes to raise money through the sale of stock to subscribers. However, the individual balance sheets of the subscribers do not separate liabilities into short and long term, nor do they contain payment schedules for the long term liabilities.

[FR Doc. 83-20679 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

[MM Docket No. 83-724, File No. BPCT-830121KG, et al.]

Local Majority Television; Hearing Designation Order

In re applications of Local Majority Television, Scranton, Pennsylvania (MM Docket No. 83-724, File No. BPCT-830121KG); George E. Gunter, Scranton, Pennsylvania (MM Docket No. 83-725, File No. BPCT-830302KE); and Tracy Lionel Haynes and Robert Cheatham, III, d.b.a. Scranton Family Television, Ltd., Scranton, Pennsylvania (MM Docket No. 83-726, File No. BPCT-830310KG); for contruction permit.

Adopted: June 30, 1983.

Released: July 22, 1983.

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 mutally exclusive applications of Local Majority Television, George E. Gunter, and Scranton Family Television, Ltd.[1] for a new commercial television station to operate on Channel 64, Scranton, Pennsylvania.

2. Section 73.682(a)(15) of the Commission's Rules states that the effective radiated power of the aural transmitter shall not be less than 10 percent nor more than 20 percent of the peak radiated power of the visual transmitter. Local Majority Television's and George E. Gunter's aural power is 1% of the visual. The applicants will be required to correct this situation by appropriate amendment.

3. Section V–C, Page 2, Item 10, FCC Form 301, requires an applicant to attach, as an exhibit, map(s) of the area proposed to be served and to show certain specified information. The map (Exhibit 2) submitted by George E. Gunter does not clearly show the City Grade, Grade A and Grade B contours (Item 10(b)); does not clearly indicate the legal boundaries of the principal community proposed to be served (Item 10(c)); and does not clearly indicate the area (sq. mi.) and population within the Grade B contour of the proposed station (Item 10(e)). The applicant will be required to submit all of the required information within 20 days of the release of this Order.

4. Section IV, Page 6, Question 2, FCC Form 301, requires an applicant to state the minimum amount of time, between 6:00 a.m. and midnight, it proposes to devote normally each week to news, public affairs, all other programs, and local programming. George E. Gunter did not indicate the minimum amount of time he proposes to devote normally each week to local programming. George E. Gunter will be required to submit this information to the presiding Administrative Law Judge within 20 days of the release of this Order.

5. Scranton Family Television, Ltd. 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). In the event of a grant of this application, the construction permit shall contain a condition precluding station operation with maximum visual ERP in excess of 1000 kilowatts, absent Canadian consent. *South Bend Tribune*, 8 R.R. 2d 416 (1966).

6. Scranton Family Television, Ltd. proposes to mount its antenna on the existing tower of Station WVIA(TV), Scranton, Pennsylvania, However, the information submitted concerning the tower height above mean sea level is inconsistent within the application. In Section V–G the applicant gives its proposed antenna height above means sea level as 2425 ft; however, in exhibit E–6, the height is given as 2423 ft, which is also the height reflected in the Commission's Antenna Survey Branch's records for the tower. The applicant will be required to recheck its antenna height above ground level and above mean sea level and to submit correct information within 20 days of the release of the Order.

7. 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.

8. Accdordingly, 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 deterime which of the proposals would, on a comparative basis, best 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.

9. It is further ordered, That the petition to deny filed by Hazelton TV Associates and the informal objection filed by the Association of Maximum Service Telecasters, Inc. are dismissed as moot.

10. It is further ordered, That Local Majority Television and George E. Gunter shall each submit, pursuant to § 73.682(a)(15) of the Commission's Rules, to the presiding Administrative Law Judge within 20 days of release of this Order, an appropriate engineering amendment to correct the aural effective radiated power.

11. It is further ordered, That George E. Gunter shall submit an appropriate engineering amendment to Section V–C, Items 10 (b), (c) and (e), to the presiding Administrative Law Judge within 20 days of the release of this Order.

12. It is further ordered, That George E. Gunter shall submit the minimum amount of time, between 6:00 a.m. and midnight, he proposes to devote normally each week to local programming (Section IV, Question 2, FCC Form 301), to the presiding Administrative Law Judge within 20 days of the release of this Order.

13. It is further ordered, That in the event of a grant of the Scranton Family Television, Ltd. application, the construction permit shall contain the following condition:

Operation with effective radiated visual power in excess of 1000 kW is subject to the consent of Canada.

14. It is further ordered, That Scranton Family Television, Inc. shall submit the correct figure for its antenna height above means sea level to the presiding Administrative Law Judge within 20 days of the release of this Order.

15. 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.

16. 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.

[1] On April 29, 1983, Hazleton TV Associates, permittee of Station WERF(TV), Channel 56, Hazleton, Pennsylvania, filed a petition to deny the application of Scranton Family Television, Ltd. on the ground that its proposal was short-spaced by 2.6 miles to WERF's transmitter location. Additionally, on April 29, 1983, the Association on Maximum Service Telecasters, Inc. filed an informal objection the same ground. Scranton Family Télevision, Ltd. filed an amendment on April 29, 1983, changing its antenna site to a location which meets the Commission's minimum mileage separation requirements. Therefore, the petition to deny and the informal objection will be dismissed as moot.

Federal Communications Commission.

Roy J. Stewart,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 83-20677 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

[FCC 83-347]

Declaratory Ruling in the Matter of Auto Page, Inc., the Licensee of Station KNBT-705 in the Business Radio Service

AGENCY: Federal Communications Commission.

ACTION: Declaratory ruling.

SUMMARY: On October 25, 1982, the Lousiana Public Service Commission concluded that Auto page, Inc., the licensee of Station KNBT-705 in the Business Radio Service, was operating "for hire" within the meaning of Louisiana law without a certificate of convenience and necessity from the Public Service Commission. The Public Service Commission ordered Auto Page to cease and desist operations as a common carrier. Auto Page appealed the decision to the United States District Court for the Middle District of Louisiana. On May 20, 1983, the District Court referred the matter to the FCC for a determination of the status of Auto Page. In this Declaratory Ruling, the Commission affirms the status of Auto Page as a licensee in the private land mobile radio service. The Commission concludes, therefore, that Auto Page is not subject to "entry" or "rate" regulation by the State of Louisiana. The Commission is taking this action in order to comply with the District Court's request for a determination of the status of Auto Page.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Day, Private Radio Bureau (202) 634-2443.

Declaratory Ruling

In the matter of Auto Page, Inc., licensee of station KNBT 705 in the Business Radio Service.

Adopted: July 19, 1983.
Released: July 19, 1983.
By the Commission.

Background

1. On October 25, 1982, the Louisiana Public Service Commission (LPSC) concluded that Auto Page, Inc., the licensee of Station KNBT-705 in the Business Radio Service, was operating "for hire" within the meaning of the Louisiana Revised Statutes, without a certificate of convenience and necessity from the LPSC. The LPSC therefore ordered that Auto Page "cease and desist operations as a radio common carrier." On December 22, 1982, Auto page requested the United States District Court for the Middle District of Louisiana to enjoin the LPSC from enforcing the cease and desist order. On May 11, 1983, the Commission filed a Memorandum as Amicus Curiae suggesting that the District Court refer the matter to the FCC for exercise of its primary jurisdiction. On May 20, 1983, the District Court referred the matter to the Commission.[1]

Introduction

2. The essential facts of this case are not in dispute. Auto Page is one of about 200 Business Radio Service licensees utilizing the same base station transmitter in Shreveport, Louisiana, to provide paging for their own respective business activities. Each user is separately eligible for and licensed by the Commission in the Business Radio Service (see 47 CFR 90.185) and each can use the facility only for communications relating to its business activities (see 47 CFR 90.405).[2]

3. The configuration of the system is as follows: Each licensee utilizes Independent Telephone Answering Service (ITAS) as a control point operator for the authorized land station. A page is initiated by telephoning ITAS on one of two switched telephone lines inbound to ITAS's office. These lines have been leased by Auto Page from South Central Bell Telephone Company and cost Auto Page a total of $52 per month. The paging message is given orally to an ITAS employee. Subsequently, the ITAS employee sends the paging message, utilizing a private leased line which connects ITAS's office with the transmitter. That line is leased by Bellar Communications, Inc.[3] from South Central Bell at a cost of $14 per month. The transmitter is provided at no charge to Auto Page and the other business licensees by Bellar Communications. Each of the licensees of the shared transmitter pays Auto Page a total of $30 per month for lease and maintenance of each pager. In addition, $3.50 per month of the $30 is a fee for the services of ITAS which, according to the agreements between the parties, is remitted by Auto Page to ITAS on behalf of the licensees.

4. Section 45: 1501C of the Louisiana Revised Statutes (L.R.S.) provides that:

> The term "radio common carrier" when used in this Chapter includes every corporation, company, association, partnership and persons and lessees, trustees, or receivers appointed by any court whatsoever owning, operating or managing a radio common carrier or public "for hire" radio service engaged in the business of providing a service of radio communications between mobile and base stations, between mobile and land stations, including land line telephones, between mobile stations or between land stations, but not engaged in the business of providing a public land line message telephone service or a public message telegraph service.

L.R.S. 45: 1503A provides:

> No radio common carrier shall begin, or continue, the construction or operation of any mobile radio system, or any extension thereof, or acquire ownership or control thereof either directly or indirectly without first obtaining from the public utilities commission a certificate that the present or future public convenience and necessity requires or will require such construction, operation or acquisition * * *.

In reliance on these Louisiana statutory provisions, LPSC initiated a proceeding to determine whether Auto Page was performing any "for-hire" services.[4] LPSC concluded that Auto Page was operating as a radio common carrier and ordered it to cease and desist from such operation.

Discussion

5. At issue before us is the status of the Auto Page service offering under federal and state regulatory schemes. Historically, determinations of this nature had proven controversial at the federal and state levels,[5] and for that

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[1] We have received and considered comments from nine parties. In a joint filing, Radiofone, Inc., Gulf Central International, Inc., Telephone and Radio Answering Service, Inc., and Southern Message Service, Inc. assert that Auto Page provides an interconnected service and therefore is operating as a common carrier. Telocator Network of America and the Louisiana Public Service Commission contend that Auto Page is engaged in the resale of common carrier telephone lines and should be treated as a common carrier. Comments filed by the National Association of Business and Educational Radio, Inc., Data Com, Inc. and Auto Page, Inc. state that Station KNBT-705 is a validly licensed private land mobile station operating in conformity with the requirements of Part 90 of the Commission's Rules and Regulations, and therefore is exempt from state regulation.

[2] Multiple licensing of private land mobile stations plays a vital role in making available a rapid, efficient, nation-wide radio communication service with adequate facilities at reasonable charges. 47 U.S.C. 151. The Commission has concluded that multiple licensing is in the public interest. See *Report and Order* in Docket 18921, adopted March 18, 1982, 89 FCC 2d 766 (1982); *Memorandum Opinion and Order on Reconsideration* (FCC 83-175), adopted April 27, 1983, 48 FR 26617 (June 9, 1983).

[3] The principal of Bellar is the father of the principal of Auto Page.

[4] *See*, e.g., Page 10 of July 21, 1982 transcript in LPSC Docket No. U-15435—Southern Message Service, Inc. vs. Auto Page, Inc.

[5] *See, e.g., Report and Order* in Docket 18262, 46 FCC 2d 752 (1974) (authorizing provision of service on a private, non-carrier basis), *recon. denied*, 55 FCC 2d 771 (1975), *aff'd sub nom., NARUC v. FCC*, 525 F. 2d 630 (D.C. Cir.), *cert. denied*, 425 U.S. 992 (1976).

reason Congress amended the Communications Act in 1982 to establish uniform national policy and to remove uncertainty in this area.[6]

6. Specifically, in the Communications Amendments Act of 1982, Pub. L. 97-259, 96 Stat. 1087, adding new Sections 3(gg) and 331(c) to the Communications Act, Congress acknowledged the contemporaneous evolution of somewhat similar private and common carrier land mobile radio services, and provided for national treatment of the private land mobile radio services.

7. New Section 3(gg) of the Act states:

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

8. New Section 331(c) states:

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

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

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

9. In describing these new statutory provisions, the legislative history notes that the distinction between private and common carrier land mobile services has been the subject of considerable litigation between private land mobile radio operators and radio common carriers, and that these new amendments to the Communications Act are intended to resolve this litigation by establishing new statutory classifications. In sum, the new statutory plan is that service offerings are to be classified either as common carrier or private under the new statutory classifications of Sections 3(gg) and 331(c), and if they are in the latter category, no state or local government shall have authority to exercise rate or entry regulation over the offering.[7]

10. In the circumstances of this case, we conclude that the result is clear. The Auto Page radio service is a one-way service to mobile and portable stations and is private within the meaning of Sections 3(gg) and 331(c)(1). The new statutory test of whether Auto Page's offering is properly classified as a private land mobile radio is based on the manner in which the radio station is interconnected with a telephone exchange or interexchange service or facility. Here, the land station licensed for use by Auto Page and approximately 200 other private land mobile licensees is not interconnected with telephone facilities. The answering service operators manually receive incoming telephone calls and manually send the appropriate information to the radio facilities; thus, the incoming exchange lines are not interconnected with the radio facilities.[8] While there is a private line between the answering service and the radio facilities, which is employed for transmitter control purposes, use of this private line does not constitute "interconnection" within the meaning and intent of Section 331(c). The statutory classification scheme addresses interconnection with the radio facilities of telephone services available for the use of the public, and not dedicated facilities such as transmitter control private links which cannot be accessed by the public by dialing.[9] In this case, there is no interconnection with or resale of exchange or interexchange telephone service or facilities. The service offered by Auto Page therefore complies with the statutory test and our rules, and we must reject the arguments of the LPSC, Telocator Network of America, Radiofone, Inc., Gulf Central International, Inc., Telephone and Radio Answering Service, Inc., and Southern Message Service, Inc. that Auto Page is providing radio common carrier service.

11. Therefore, the service offering of Auto Page is properly classified as private land mobile radio service, and under the express terms of Section 331(c)(3), the State of Louisiana is without authority to impose "entry" or "rate" regulation. Accordingly, the declaration of the Louisiana Public Service Commission that Auto Page must discontinue this offering because it has not received a certificate of convenience and necessity—a fundamental form of "entry" regulation—is without effect, and we so declare. Auto Page, Inc. is duly licensed by this Commission to provide private land mobile radio service; its offering is within the statutory definition of private land mobile radio service; and, accordingly, Auto Page, Inc. may continue to provide such service notwithstanding any declaration to the contrary at the state level.

12. As we stated in analogous circumstances involving state conflicts with federal statutory requirements, "We would be remiss in the discharge of our broad statutory responsibilities to remain passive in the face of the policy and regulatory confusion which permeates the entire field of interconnection * * *", *Telerent Leasing Corp.*, 45 FCC 3 2d 204, 214 (1974), *aff'd sub nom., North Carolina Util. Comm'n* v. *FCC*, 537 F. 2d 787 (4th Cir.), *cert. denied*, 429 U.S. 1027 (1976). There, as here, it was important to resolve uncertainty by declaring a uniform national policy.

Conclusion

13. Accordingly, it is hereby declared, That Auto Page, Inc. is duly licensed under the Communications Act of 1934 as amended to offer private land mobile radio service; that the offering which has been described herein is properly classified as private land mobile radio service within the scope of Section 331(c)(3) of the Communications Act of 1934 as amended in the Communications Amendments Act of 1982; and that any "entry" or "rate" regulation of such

[6] *See Conference Report* No. 97-765, 97th Cong., 2nd Sess., August 18, 1982, at pp. 54-56.

[7] The legislative history makes it clear that "no person participating in the private land mobile services, whether as a licensee, equipment supplier or otherwise, shall be classified as a common carrier with respect to its participation in these services." Similarly, "State and local regulation is entirely preempted with respect to the activities of any person operating within the private land mobile services." *Conference Report, supra.*

[8] "Interconnection" has long referred to the electrical connection of channels and not the manual transferrence of information received on one channel to a second channel. Even the pre-Carterphone tariffs which were subsequently found unlawful reached only apparatus "attached to or connected with" carriers' facilities and not the manual transferrence of information. *See Carterphone*, 13 FCC 2d 420, 427 (1968).

[9] The basic distinction set out in the legislation is a functional one: whether a particular entity is engaged functionally in the provision of telephone service or facilities. *See Conference Report, supra.* 55. *See further, Memorandum Opinion and Order,* 48 FR 29512 (June 27, 1983) (defining "interconnection").

offering by a state or local government is without effect pursuant to Section 331(c)(3) of the amended Act.

14. It is further ordered, pursuant to sections 1, 3(gg), 4(i), 4(j), 303(r) and 331(c) of the Communications Act of 1934 as amended, That the Secretary shall cause a copy of this declaration to be published in the **Federal Register**, to provide guidance to the public and to state and local regulatory athorities.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 83-20698 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

Telecommunications Industry Advisory Group, Separations and Costing Subcommittee; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Telecommunications Industry Advisory Group (TIAG) Separations and Costing Subcommittee scheduled for Monday, August 15 and Tuesday, August 16, 1983. The meeting will begin at 10:00 a.m. in the offices of AT&T, Conference Room A and B (10th floor), located at 1120 20th Street, NW., Washington, D.C. and will be open to the public. The agenda is as follows:

I. Review of Minutes of Previous Meeting
II. General Administrative Matters
III. Presentation and Discussion of Assignments
IV. Other Business
V. Presentation of Oral Statements
VI. Adjournment

With prior approval of Subcommittee Chairman Eric Leighton, oral statements, while not favored or encouraged, may be allowed if time permits and if the Chairman determines that an oral presentation is conducive to the effective attainment of Subcommittee objectives. Anyone not a member of a Subcommittee and wishing to make an oral presentation should contact Mr. Leighton (518/462-2030) at least five days prior to the meeting date.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 83-20716 Filed 7-29-83; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement Filed; Korea Marine Transport Co. Ltd. and Matson Agencies, Ltd.

The Federal Maritime Commission hereby gives notice that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of the agreement and the supporting statement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on the agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protest are found in § 522.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 10483.

Title: Korea Marine Transport Company, Limited and Matson Agencies, Ltd. Agency Agreement.

Parties: Korea Transport Company, Limited (KMTC) and Matson Agencies, Ltd.

Synopsis: Under Agreement No. 10483 KMTC appoints Matson Agencies, Ltd. to be KMTC's agent in California, Oregon, Washington, Alaska, Hawaii, Nevada, Utah, Arizona, Colorado, New Mexico, Montana, Wyoming and Idaho for the period September 29, 1983 through March 31, 1984. Matson Agencies, Ltd. will perform agency functions which include vessel husbanding, cargo solicitation, freight operations, claims collection and remittance of freight and other activities agreed upon by the parties and permitted by the Agreement.

Filing Party: Mr. Peter P. Wilson, Matson Navigation Company, 333 Market Street, P.O. Box 7452, San Francisco, California 94120.

By Order of the Federal Maritime Commission.

Dated: July 27, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-20766 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2548]

Freight Fowarder Licenses; Eugene E. Ellison, Jr., d.b.a. Ellison & Co.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Eugene E. Ellison, Jr., d.b.a. Ellison & Company was cancelled effective July 20, 1983.

By letter dated June 27, 1983, addressed to Eugene E. Ellison, Jr., d.b.a. Ellison & Company, which was returned by the U.S. Post Office marked unclaimed, the Federal Maritime Commission attempted to advise the licensee that Independent Ocean Freight Forwarder License No. 2548 would be automatically revoked unless a valid surety bond was filed with the Commission.

Eugene E. Ellison, Jr., d.b.a. Ellison & Company has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2548 be and is hereby revoked effective July 20, 1983.

It Is Ordered, that Independent Ocean Freight Forwarder License No. 2548 issued to Eugene E. Ellison, Jr., d.b.a. Ellison & Company be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Eugene E. Ellison, Jr., d.b.a. Ellison & Company.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 83-20761 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2288]

Freight Forwarder Licenses; Galbraith International, Inc.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule

510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Galbraith International, Inc., 805 Port America Place, P.O. Box 61247, Dallas, TX 75267 was cancelled effective July 16, 1983.

By letter dated June 20, 1983, Galbraith International, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 2288 would be automatically revoked unless a valid surety bond was filed with the Commission.

Galbraith International, Inc. has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(f) dated November 12, 1981;

Notice is hereby given, that Independent Ocean Freight Forwarder License No. 2288 be and is hereby revoked effective July 16, 1983.

It is ordered, that Independent Ocean Freight Forwarder License No. 2288 issued to Galbraith International, Inc. be returned to the Commission for cancellation.

It is further ordered, that a copy of this Order be published in the **Federal Register** and served upon Galbraith International, Inc.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 83-20762 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1351-R]

Freight Forwarder Licenses; Hudsons International of Maryland, Inc.; Order of Revocation in Part

On May 16, 1983, Hudsons International of Maryland, Inc., Suite 1614 World Trade Center, Baltimore, MD 21202, voluntarily surrendered its right to operate under Independent Ocean Freight Forwarder License No. 1351-R.

Notwithstanding this, Hudsons International, Inc. will continue to hold FMC License No. 1351-R in its name only.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders; Commission Order No. 1 (Revised), § 10.01(f) November 12, 1981;

Notice is hereby given, that Hudson's International of Maryland, Inc.'s authority to use Independent Ocean Freight Forwarder License No. 1351-R issued to Hudson's International, Inc. and Hudsons International of Maryland, Inc. be and is hereby revoked effective May 16, 1983.

It is ordered, That a copy of this order be published in the **Federal Register** and served upon Hudson's International of Maryland, Inc.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 83-20765 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 2003]

Freight Forwarder Licenses; Marine and Industrial Distributors, Inc.; Order of Revocation

On July 11, 1983, Marine & Industrial Distributors, Inc., 301 South Dawson Street, Seattle, WA 98108 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2003.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, That Independent Ocean Freight Forwarder License No. 2003 issued to Marine & Industrial Distributors, Inc. be revoked effective July 11, 1983.

It is further ordered, That a copy of this Order be published in the **Federal Register** and served upon Marine & Industrial Distributors, Inc.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 83-20759 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1503]

Freight Forwarder Licenses; Peninsular Steamship Co.; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain for force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Peninsular Steamship Company, 5020 Cypress Street, Suite 222, Tampa, Fl 33607 was cancelled effective July 24, 1983.

By letter dated June 27, 1983 addressed to Peninsular Steamship Company, which was returned by the U.S. Post Office marked "Not in Directory," the Federal Maritime Commission attempted to advise the licensee that Independent Ocean Freight Forwarder License No. 1503 would be automatically revoked unless a valid surety bond was filed with the Commission.

Peninsular Steamship Company has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), §10.01(f) dated November 12, 1981;

Notice is hereby given, That Independent Ocean Freight Forwarder License No. 1503 be and is hereby revoked effective July 24, 1983.

It is ordered, That Independent Ocean Freight Fowarder License No. 1503 issued to Peninsular Steamship Company be returned to the Commission for cancellation.

It is further ordered, That a copy of this Order be published in the **Federal Register** and served upon Peninsular Steamship Company.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing

[FR Doc. 83-20758 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 1331]

Freight Forwarder Licenses; Supreme Air Freight Corp., d.b.a. Supreme Ocean Freight; Order of Revocation

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.15(d) of Federal Maritime Commission General Order 4 further provides that a license shall be automatically revoked for failure of a licensee to maintain a valid bond on file.

The bond issued in favor of Supreme Air Freight Corporation dba Supreme Ocean Freight, 1401 N.W. 78th Avenue, Miami, FL 33126 was cancelled effective July 20, 1983.

By letter dated June 28, 1983, Supreme Air Freight Corporation dba Supreme Ocean Freight was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1331 would be automatically

revoked unless a valid surety bond was filed with the Commission.

Supreme Air Freight Corporation dba Supreme Ocean Freight has failed to furnish a valid bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(f) dated November 12, 1981;

Notice is hereby given, That Independent Ocean Freight Forwarder License No. 1331 be and is hereby revoked effective July 20, 1983.

It is order, That Independent Ocean Freight Forwarder License No. 1331 issued to Supreme Air Freight Corporation dba Supreme Ocean Freight be returned to the Commission for cancellation.

It is further ordered, That a copy of this Order be published in the **Federal Register** and served upon Supreme Air Freight Corporation, d.b.a. Supreme Ocean Freight.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 83-20763 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Feight Forwarder License No. 2151]

Freight Forwarder Licenses; Swiss-American Forwarders Corp.; Order of Revocation

On July 19, 1983, Swiss-American Forwarders Corporation, 2792 N.W. 24th Street, Miami, FL 33142 requested the Commission to revoke its Independent Ocean Freight Forwarder License No. 2151.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 1 (Revised), § 10.01(e) dated November 12, 1981;

It is ordered, That Independent Ocean Freight Forwarder License No. 2151 issued to Swiss-American Forwarders Corporation, be revoked effective July 19, 1983, without prejudice to reapplication for a license in the future.

It is further ordered, That a copy of this Order be published in the **Federal Register** and served upon Swiss-American Forwarders Corporation.

Robert M. Skall,

Deputy Director, Bureau of Certification and Licensing.

[FR Doc. 83-20764 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

Independent Ocean Freight Forwarder License; Applicants; G.A. Bechel, et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as independent ocean freight forwarders pursuant to section 44(a) of the Shipping Act, 1916 (75 Stat. 522 and 46 U.S.C. 841(c)).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to communicate with the Director, Bureau of Certification and Licensing, Federal Maritime Commission, Washington, D.C. 20573.

G. A. Bechel, 2203 Stoney Brook Drive, Houston, TX 77063

Cascade Shipping Company, 500 Jackson Tower, 806 S.W. Broadway, Portland, OR 97205

Officers: William Petit Ellis, President/Director; Thomas Russell Jarvie Urry, Vice President/Director; Edmund Grundy Ellis, III, Director; John Kenyon Ellis, Director

Anthony Hayden d.b.a. World Consultations Co., 33 Rector Street, New York, N.Y. 10006

By the Federal Maritime Commission.

Dated: July 27, 1983.

Francis C. Hurney,

Secretary.

[FR Doc. 83-20760 Filed 7-29-83; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Acquisition of Bank Shares by Bank Holding Companies; Michigan National Corp. 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. *Michigan National Corporation,* Bloomfield Hills, Michigan; to acquire 100 percent of the voting shares or assets of MNC Bank, Rapid City, South Dakota. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago. Comments on this application must be received not later than August 26, 1983.

2. *Trustee of Dartmouth College,* Hanover, New Hampshire; to acquire 26.95 percent of the voting shares or assets of Dartmouth National Corporation, Hanover, New Hampshire. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston. Comments on this application must be received not later than August 26, 1983.

Board of Governors of the Federal Reserve System, July 26, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20671 Filed 7-29-83; 8:45 am]

BILLING CODE 6210-01-M

Commerce Bancshares, Inc.; Acquisition of Banks and Nonbank Company Through Merger with Bank Holding Company

Commerce Bancshares, Inc., Kansas City, Missouri, has applied for the Board's approval under 3(a)(5) of the Bank Holding Company Act (12 U.S.C. 1842(a)(5)) to merge with County Tower Corp., Clayton, Missouri. The factors that are considered in acting on the application are set forth in 3(c) of the Act (12 U.S.C. 1842(c)).

Commerce Bancshares, Inc., also, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire, through its merger with County Tower Corp., its nonbank subsidiary, Midwest Investment Advisory Services, Inc.,

Applicant states that the proposed subsidiary would engage in the activities of providing investment advisory services, including managing portfolios for pension and profit-sharing plans, financial institutions, individuals, endowments and others. These activities would be performed from offices of Applicant's subsidiary in St. Louis, Missouri, and the geographic area to be served is the United States. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies,

subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

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 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than August 24, 1983.

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.

Board of Governors of the Federal Reserve System, July 25, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20670 Filed 7-29-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; Southeast Bancorp, Inc. 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 action on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Southeast Bancorp, Inc.*, Corbin, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank & Trust Company of Corbin, Corbin, Kentucky. Comments on this application must be received not later than August 24, 1983.

B. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *The Baraboo Bancorporation, Inc.*, Baraboo, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of The Baraboo National Bank, Baraboo, Wisconsin. Comments on this application must be received not later than August 26, 1983.

2. *FNB Hartford Bancorp., Inc.*, Hartford, Wisconsin; to become a bank holding company by acquiring 80 percent of more of the voting shares of The First National Bank of Hartford, Hartford, Wisconsin. Comments on this application must be received not later than August 26, 1983.

3. *Harbor County Banking Corporation*, Three Oaks, Michigan; to become a bank holding company by acquiring at least 90 percent of the voting shares of The Bank of Three Oaks, Three Oaks, Michigan. Comments on this application must be received not later than August 26, 1983.

C. **Federal Reserve Bank of St. Louis** (Delmer P. Weisz, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Ashley Bancstock Company*, Crossett, Arkansas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Crossett, Crossett, Arkansas. Comments on this application must be received not later than August 26, 1983.

D. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Freeborn Bancorporation, Inc.*, Freeborn, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Freeborn, Freeborn, Minnesota. Comments on this application must be received not later than August 26, 1983.

E. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Mid Central BanCorp, Inc.*, Warsaw, Missouri; to become a bank holding company by acquiring 80 percent of the voting shares of Osage Valley Bank, Warsaw, Missouri. Comments on this application must be received not later than August 26, 1983.

2. *Morgan Capital Corporation*, Ft. Morgan, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Morgan State Bank, Ft. Morgan, Colorado. Comments on this application must be received not later than August 26, 1983.

3. *P.J.K., Inc.*, Forest City, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of The First State Bank of Forest City, Forest City, Missouri. Comments on this application must be received not later than August 26, 1983.

F. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222

1. *Helotes Bancshares, Inc.*, Helotes, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Helotes State Bank, Helotes, Texas. Comments on this application must be received not later than August 26, 1983.

2. *Lewisville Bancshares, Inc.*, Lewisville, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of North Texas Bank, Lewisville, Texas. Comments on this application must be received not later than August 26, 1983.

Board of Governors of the Federal Reserve System, July 26, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-20672 Filed 7-29-83; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Refugee Resettlement Program; Formula for Allocation to States of FY 1983 Refugee Social Service Funds

AGENCY: Office of Refugee Resettlement (ORR), SSA, HHS.

ACTION: Final notice.

SUMMARY: This notice establishes the formula for allocation to States of FY 1983 social service funds under the Refugee Resettlement Program (RRP). The formula yields the allowable allocation of FY 1983 refugee social service funds for each State participating in the RRP.

EFFECTIVE DATE: August 1, 1983.

FOR FURTHER INFORMATION CONTACT: David Howell, (202) 472-6510.

SUPPLEMENTARY INFORMATION: Two comments were received in response to the notice of proposed formula for allocation to States of FY 1983 refugee social service funds which was published in the **Federal Register** on June 3, 1983 (48 FR 24996). Both comments strongly supported the allocation formula as programmatically sound and equitable.

The Director of the Office of Refugee Resettlement has therefore made a final determination to apply the allocation formula which was set forth in section II of the notice of June 3 at 48 FR 24997 and to allocate to States under the formula the amounts of funds specified in Table 1 at 48 FR 24997-24998.

Paperwork Reduction Act

This notice does not create any reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance No. 13.814 Refugee Assistance State Administered Programs)

Dated: July 26, 1983.

John A. Svahn,

Commissioner of Social Security.

[FR Doc. 83-20665 Filed 7-29-83; 8:45 am]

BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Bureau Form Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Ch. 25). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and the Office of Management and Budget reviewing official, at 202-395-7340.

Title: 43 CFR Part 2530—Indian Allotment Application
Bureau Form Number: 2530-1
Frequency: On occasion
Description of Respondents: Indian allotment applicant
Annual Responses: 200
Annual Burden Hours: 50
Bureau clearance officer (alternate): Linda Gibbs, 202-653-8853.

James M. Parker,

Acting Director.

June 28, 1983.

[FR Doc. 83-20666 Filed 7-29-83; 8:45 am]

BILLING CODE 4310-84-M

[Oregon 36288]

Oregon; Realty Action; Non-Competitive Sale of Public Lands in Coos County

The following described 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), at no less than the appraised fair market value $1,200.00.

Willamette Meridian

Township 26 South, Range 12 West, Willamette Meridian, Coos County, Oregon, Section 5, Lot 9.

The land described aggregates 1.1 acre in Coos County.

This land is being offered at direct sale to Mr. and Mrs. Frank Vetter, at the appraised fair market value.

This parcel in an islolated tract of Coos Bay Wagon Road land bounded on the east by Catching Slough and on the west by property presently owned by Mr. and Mrs. Frank Vetter with no legal access except by way of the slough.

The sale of this tract would dispose of an unmanageable parcel of land that could be better utilized by the adjacent landowner. This sale is consistent with the Bureau of Land Management's planning system and the public interest would be served by offering this parcel for direct sale to the adjacent landowner. The land will not be offered for sale until 60 days after the date of this notice.

For a period of 45 days of this notice interested parties may submit comments to the District Manager, Coos Bay District, 333 South Fourth Street, Coos Bay, Oregon, 97420. Any adverse comments received as a result of this Notice of Realty Action, or notification to the Congressional Committee and Delegation pursuant to Pub. L. 97-394 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 a final determination of the Department of Interior. Interested parties should continue to check with District Office to keep themselves advised of any changes.

Dated: July 26, 1983.

Lou Wilcox,

Acting District Manager.

[FR Doc. 83-20940 Filed 7-29-83; 10:54 am]

BILLING CODE 4310-84-M

Minerals Management Service

Alaska Outer Continental Shelf; Dates and Locations of Public Hearings Regarding the Environmental Impact Statement for Proposed Oil and Gas Lease Offering in the Navarin Basin Region of the Bering Sea

In accordance with 30 CFR 256.26(b), public hearings will be held in order to receive comments and suggestions relating to the draft environmental impact statement (EIS) prepared for a proposed March 1984 Outer Conintental Shelf (OCS) oil and gas lease offering in the Navarin Basin off the western coast of Alaska. The hearings will be held on the following dates at the locations and times indicated.

August 8, 1983
Old Federal Building, 605 West 4th Avenue, Anchorage, Alaska (1:30 p.m.)
August 10, 1983
Emmonak (12 Noon)
St. Paul Island (7:00 p.m.)
August 9, 1983
Toksook Bay (12 Noon)
Hooper Bay (6:00 p.m.)
Unalaska (7:00 p.m.)
August 11, 1983
St. George Island (7:00)
Nome Teleconference Center, State Building (7:00 p.m.), Telephone Tie-in To: Gambell (Teleconference Center), Savoonga (Teleconference Center)

The hearings will provide the Secretary of the Interior with information from government agencies and the public which will help in the evaluation of the potential effects of the proposed lease sale.

The draft EIS concerning the proposed OCS lease offering in the Navarin Basin was made available to the public on June 17, 1983. Copies of this statement can be obtained from the Office of the Alaska OCS Region, Leasing and Environment Office, Minerals Management Service, P.O. Box 1159, Anchorage, Alaska 99510, telephone (907) 276-2955. Copies of the draft EIS are also available for review in public libraries throughout Alaska.

Interested individuals, representatives of organizations, and public officials wishing to testify at the hearings are asked to contact Nancy Hendrix, Office of the Alaska OCS Region, at the address and telephone number above by 4:00 p.m. (Alaska Daylight Time), Friday, August 5, 1983. Time limitations make it necessary to limit the length of oral presentations to ten (10) minutes. An oral statement may be supplemented by a more complete written statement which may be submitted to a hearing official at the time of oral presentations or by mail until August 19, 1983. This will allow those unable to testify at a public hearing an opportunity to make their views known and for those presenting oral testimony to submit supplemental information and comments. Written comments should be addressed to the Regional Manager, Office of the Alaska OCS Region, P.O. Box 1159, Anchorage, Alaska 99510.

The Minerals Management Service recognizes the distances involved and the travel difficulties faced by those in the more remote areas who may be affected by this proposal and may wish to participate in the public hearing process. Accordingly, telephone tie-ins to some of the public hearings have been arranged for the villages indicated in the hearing schedule above. All comments, whether provided at the formal public hearings, through telephone tie-ins, or in writing, are given equal weight in preparation of the final EIS.

Dated: July 27, 1983.

Thomas M. Gernhofer,

Acting Director, Minerals Management Service.

Approved:

Bruce Blanchard,

Director, Environmental Project Review.

[FR Doc. 83-20751 filed 7-29-83; 8:45 am]

BILLING CODE 4310-MR-M

1983 Sale Offerings to Eligible U.S. Refiners of Royalty Oil Available From Federal Offshore and Onshore Leases

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Determination of Unavailability of Oil to Small Refiners and Declaration of Intent to Proceed with Sale of Royalty Oil by the Secretary of the Interior.

SUMMARY: The Minerals Management Service (MMS) of the Department of the Interior (DOI) gave notice on July 26, 1983, at 48 FR 33996 that it will conduct sales of both offshore and onshore royalty oil. The sales, to be conducted in three parts early next year, will include 115,000 barrels of offshore crude oil and 35,000 barrels of onshore crude oil. The notice of sale was prompted by the Secretary's determination that small refiners did not have access to adequate supplies of crude oil at equitable prices and sufficient supplies of crude oil were not available in the open market to refineries not having their own source of supply for crude oil.

DATES: Refer to 48 FR 33996 for the scheduled sale dates and application deadline dates.

ADDRESS: Application forms for the contract purchase of Royalty-In-Kind (RIK) oil may be obtained from Minerals Management Service, Payor Accounting Branch, P.O. Box 5760 T.A., Denver, CO 80217. Completed applications should be returned to the same MMS office; the telephone number is (303) 231-3133.

FOR FURTHER INFORMATION CONTACT: RIK Sale Coordinator Dennis Whitcomb at (303) 231-3432.

SUPPLEMENTARY INFORMATION: The regulations governing the disposal of royalty crude oil, found at 30 CFR Parts 262 and 225, direct the Secretary of the Interior to make a determination concerning such royalty oil. The Secretary's determination follows:

Determination of Unavailability of Oil To Small Refiners and Declaration of Intent to Proceed With Sale of Royalty Oil

Pursuant to the Outer Continental Shelf Lands Act, as amended, 43 U.S.C. 1353, I have determined, after consultation with the Secretary of Energy, that small refiners do not have access to adequate supplies of crude oil at equitable prices. Additionally, pursuant to the Mineral Leasing Act, 30 U.S.C. 192, I have determined that sufficient supplies of crude oil are not available in the open market to refineries not having their own source of supply for crude oil. Therefore, the Department of the Interior will offer royalty oil to these two classes of refiners.

This determination of unavailability is based on the following facts:

1. Small refiners as a class continue to have severe difficulties obtaining long-term commitments from major and independent producers for the proper mix of crude stock to operate their refineries. This has been substantiated by an outpouring of interest in the program and an indication of dire negative effect upon small refiners as a class if the program were to cease.

2. While the spot availability of surplus crude has increased since the last royalty oil offering in 1980, that surplus does not meet the continuing needs of small refiners as a class for a constant supply of crude stocks of specific types necessary to economically and profitably operate refineries with a pre-planned slate of refined oil products. The availability of crude oil both offshore and onshore continues to be a problem with small refiners as a class.

Dated: July 22, 1983.

James Watt,

Secretary of the Interior.

Dated: July 26, 1983.

Robert Boldt,

Associate Director for Royalty Management, Minerals Management Service.

[FR Doc. 83-20721 Filed 7-29-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Gulf Islands National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Gulf Islands National Seashore Advisory Commission will be held at 1:00 p.m. on August 24, 1983, at the Howard Johnson Gulf Side Motor Lodge, 12 Via De Luna Drive, Pensacola Beach, Florida.

The purpose of the Gulf Islands National Seashore Advisory Commission is to consult and advise with the Secretary of the Interior or his designee on matters of planning and development of Gulf Islands National Seashore.

The members of the Advisory Commission are as follows:

Mrs. Courtney Blossman, Chairman (Mississippi)
Ms. Gordon D. Allen (Mississippi)
Mr. Margaret Allen (Mississippi)
Mr. Sherman Barnes (Florida)
Mr. J. Earle Bowden (Florida)
Mr. George Byars (Mississippi)
Mr. Lloyd J. Caillavet (Mississippi)
Mr. Edwin Cake, Jr. (Mississippi)
Mr. Bill Davis (Mississippi)
Mr. Paul Delcambre (Mississippi)
Mr. Donald Edwards (Mississippi)
Ms. Betty Gerrity (Florida)
Mr. Lee Hodges (Mississippi)
Mr. R. K. Hollister (Mississippi)
Mrs. M. G. Kennedy (Florida)
Mr. Charles Liberis (Florida)
Ms. Sara Megehee (Mississippi)
Mr. Michael Mitchell (Florida)
Mr. Grady Don Pope (Florida)
Mr. Stuart Reynolds (Florida)
Ms. Diana Rittenhouse (Florida)
Mr. Richard Schmidt (Mississippi)
Mr. Vince Whibbs (Florida)
Ms. Erica Woolley (Florida)

The matter to be discussed at this meeting will be the proposed Visitor Center and Headquarters in Naval Live Oaks.

The meeting will be open to the public; however, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matter to be discussed.

Persons wishing further information concerning the meeting or who wish to submit written statements, may contact Franklin D. Pridemore, Superintendent, Gulf Islands National Seashore, P.O. Box 100, Gulf Breeze, Florida 32561, telephone (904) 932-6316. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Dated: July 21, 1983.

Neal G. Guse, Jr.,

Acting Regional Director, Southeast Region.

[FR Doc. 83-20768 Filed 7-29-83; 8:45 am]

BILLING CODE 4310-70-M

Office of the Secretary

Availability of Final Environmental Statement for Undeveloped Coastal Barriers

AGENCY: Office of Secretary, Interior.

ACTION: Notice of availability of final environmental statement for undeveloped coastal barriers.

SUMMARY: This notice is published to announce the availability of a Final Environmental Statement (FES) entitled Undeveloped Coastal Barriers. The Department of the Interior undertook this environmental analysis to assess actions taken by the Secretary pursuant to the Omnibus Budget Reconciliation Act of 1981 (OBRA). This law was superseded by the enactment of the Coastal Barrier Resources Act of 1982 (CBRA) and thus this Final Environmental Statement as an administrative record which contains information of potential usefulness in future assessments of Federal actions on coastal barriers.

DATES: The 30 day no-action period following the Environmental Protection Agency's notice of availability of the final EIS will close on September 6, 1983.

ADDRESS: Comments should be addressed to Ms. Deborah Lanzone, Coastal Barriers Study Coordinator, Division of Park Planning and Special Studies, National Park Service-763, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Albert G. Greene, Special Science Projects Division, National Park Service, Department of the Interior, Washington, D.C. 20240; (202) 343-8114. A limited number of copies are available free-of-charge; multiple order requests will not be honored.

SUPPLEMENTARY INFORMATION: As enacted on August 13, 1981, Section 341 of the Omnibus Budget Reconciliation Act established a twofold responsibility for the Secretary with regard to undeveloped coastal barriers. Under this provision, the Secretary was directed to: (1) Conduct a study for the purpose of designating undeveloped coastal barriers and report to Congress the conclusions of such a study and (2) designate undeveloped coastal barriers.

Under OBRA, the sale of new Federal flood insurance coverage for any new construction or substantial improvement of structures located on the designated undeveloped coastal barriers was prohibited after October 1, 1983.

Consistent with these responsibilities, on December 21, 1981, the Department published a "Notice of Intent to Prepare a Draft Environmental Impact Statement" (DEIS) (46 FR 61929), that expressed the Department's intention to make the proposed actions available for public review. The DEIS was subsequently released on May 21, 1982 (47 FR 22231-22232), in accordance with the National Environmental Policy Act of 1969 (83. Stat. 852; 42 U.S.C. 4321 et. seq).

All public comments received were carefully considered in scoping the alternative actions and evaluating their potential environmental impacts. This public review process not only asided the Department in the refinement of the proposed alternatives, but also served to recommend the proposed designation of additional areas of undeveloped coastal barriers. Not all alternatives under consideration, however, were authorized by the Reconciliation Act. Some would have required legislative changes, but only in this manner could the Department fully analyse the range of alternatives available. These alternatives included interpretations of the coastal barrier definition that were both broader and more limited than the guidelines provided by the Act. A "no action" option as well as the "proposed action", emphasize in the Secretary's Report to Congress (August 13, 1982), were also analysed.

The Final Environmental Statement not only includes the assessment of these alternatives, but also includes a detailed assessment of a "high level protection alternative," which would prohibit a broad range of Federal expenditures and forms of assistance for development in areas designated as undeveloped coastal barriers. This alternative is relevant to the Coastal Barrier Resources Act of 1982 (CBRA) that was subsequently enacted on October 18, 1982. CBRA established the 186-unit Coastal Barrier Resources System and prohibited most forms of Federal expenditures or financial assistance for development within the system.

This Final Environmental Statement, therefore, has been prepared as an administrative record which contains information of potential usefulness in future assessments of Federal actions on coastal barriers.

J. Craig Potter,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-20767 Filed 7-29-83; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-15296 [1]]

Canadian Pacific Limited and Canadian Pacific Express & Transport, Ltd.—Control Exemption—River transport, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 11343 (e), the Interstate Commerce Commission exempts from the requirement of prior approval under 49 U.S.C. 11343 et seq. the proposed acquisition of control by Canadian Pacific Express & Transport, Ltd., and Canadian Pacific Limited of River Transport, Inc.

DATE: This exemption will be effective on August 1, 1983.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write T.S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289-4357 (D. C. Metropolitan area) or toll free (800) 424-5403

Decided July 20, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Chairman Taylor concurred in part, and dissented in part with a separate expression.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20741 Filed 7-29-83; 8:45 am]

BILLING CODE 7035-01-M

[1] This proceeding was originally assigned Finance Docket No. 30115.

Motor Carriers, approved exemptions.

AGENCY: Interstate Commerce Commission.

ACTION: Notices of Approved Exemptions

SUMMARY: The motor carriers shown below have been granted exemptions pursuant to 49 U.S.C. 11343 (e), and the Commission's regulations in Ex Parte No. 400 (Sub-No. 1), *Procedures for Handling exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 1343,* 367 1.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATES: The exemptions will be effective on August 31, 1983. Petitions for reconsideration must be filed by August 22, 1983. Petitions for stay must be filed by August 11, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood, (202) 275-7977.

SUPPLEMENTARY INFORMATION: For further Information, see the decision(s) served in the proceeding(s) listed below. To purchase a copy of the full decision contact: TS Infosystems, Inc., Room 2227, 12th and Constitution Ave., NW, Washington, DC 20423; or call (202) 289-4357 in the DC metropolitan area; or (800) 424-5403 Toll-free outside the DC area.

By the Commission, Division 1, Commissioners Andre, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

[No. MC-15225]

Wetterau, Incorporated—Continuance in Control Exemption—Foxtran, Inc., and Trans Continental Leasing, Ltd.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423,

and

(2) Petitioner's representative: Mr. George Williams, Wetterau, Incorporated, 8920 Pershall Road, Hazelwood, MO 63042.

Pleading should refer to No. MC-F-15225.

Decided: July 20, 1983.

Under 49 U.S.C. 11343 (e), the Interstate Commerce Commission exempts from the requirement of prior review and approval under 49 U.S.C. 11343 the continuance in control by Wetterau, Incorporated of Trans Continental Leasing, Ltd. (No. MC-145925) and Foxtran, Inc. (No. MC-151854).

[No. MC-F-15235]

The Mason and Dixon Tank Lines, Inc.—Purchase Exemption—McNair Transport, Inc.

ADDRESS: Send pleadings to :

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,

and

(2) Petitioner's representative, Steven C. Rose, the Mason and Dixon Tank Lines, Inc., P.O. Box 969 Kingsport, TN 37662.

Pleadings should refer to No. MC-F-15235.

Decided July 20, 1983.

Under 49 U.S.C. 11343 (e), the Interstate Commerce Commission exempts from the requirements of prior review and approval Under 49 U.S.C. 11343 (e), the purchase by the Mason and Dixon Tank Lines Inc. (MC-61403) of a portion of the operating rights of McNair Transport, Inc. (MC-102567), specifically, McNair's Sub-No. 257 authorizing the transportation of commodities in bulk between points in the United States (except Alaska and Hawaii)

By the Commission, Division 2, Commissioners Gradison, Taylor, and Sterrett. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

[No. MC-F-1524]

Phelco, Inc.—Purchase Exemption—Central Motor Express, Inc.

ADDRESSES: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423,

and

(2) Petitioner's representative, Mr. Louis J. Amato, P.O. Box E, Bowling Green, KY 42101.

Decided: July 21, 1983.

Under 49 U.S.C. 11343 (e), the Interstate Commerce Commission exempts from the requirement of prior review and approval Under 49 U.S.C. 11343 (a)(2), the purchase by Phelco, Inc., of a portion of the operating rights of Central Motor express, Inc. (Central), in No. MC-38320 (Sub-No. 26)X (formerly Sub-No. 13) and all of the operating rights of Central in No. MC-38320 (Sub-No. 27) F.

[No. MC-F-15244]

Gorski Bulk Transport, Inc.—Purchase Exemption—Spector Red Ball, Inc., (Debtor-in-Possession)

ADDRESSES: Send pleadings to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423,

and

(3) Petitioner's representative, William H. Shawn, Suite 501, 1730 M Street, N.W., Washington, DC 20036.

Pleadings should refer to No. MC-F-15244.

Decided: July 25, 1983.

Under 49 U.S.C. 11343 (e), the Interstate Commerce Commission exempts from the requirement of prior review and approval Under 49 U.S.C. 11343 the purchase by Gorski Bulk Transport, Inc. of a portion of the operating authority of Spector Red Ball, Inc., specifically No. MC-2229 (Sub-No. 248F) authorizing the transportation of general commodities (with exceptions) between points in the United States (except Alaska and Hawaii) and all of the authority of Spector Freight System of Canada, Ltd. (No. MC-144338F) authorizing the transportation of general commodities (with exceptions), between ports of entry on the international boundary line between the United States and Canada and Detroit, MI, subject to certain restrictions.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20740 Filed 7-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Finance Applications; Decision-Notice

As indicated by the findings below, the Commission has approved the following applications filed under 49 U.S.C. 10924, 10926, 10931 and 10932.

We find:

Each transaction is exempt from section 11343 of the Interstate Commerce Act, and complies with the appropriate transfer rules.

This decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

Petitions seeking reconsideration must be filed within 20 days from the date of this publication. Replies must be filed within 20 days after the final date for filing petitions for reconsideration; any interested person may file and serve a reply upon the parties to the proceeding. Petitions which do not comply with the relevant transfer rules at 49 CFR 1181.4 may be rejected.

If petitions for reconsideration are not timely filed, and applicants satisfy the conditions, if any, which have been

imposed, the application is granted and they will receive an effective notice. The notice will recite the compliance requirements which must be met before the transferee may commence operations.

Applicants must comply with any conditions set forth in the following decision-notices within 20 days after publication, or within any approved extension period. Otherwise, the decision-notice shall have no further effect.

It is ordered:

The following applications are approved, subject to the conditions stated in the publication, and further subject to the administrative requirements stated in the effective notice to be issued hereafter.

By the Commission.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 1, (202) 275-7992.

MC-FC-81581. By decision entered July 22, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181. The Review Board, Members Williams, Dowell and Carleton approved the transfer to Active Distribution Services, Inc., of Los Angeles, CA, of Certificate No. MC-163421, issued June 22, 1983, to Phil Nail Trucking, of Glendora, CA, authorizing the transportation, over irregular routes of general commodities (except classes A and B explosives, household goods and commodities in bulk), between points in AZ, CA and NV. Representative: Fred H. Mackensen, 2029 Century Park East, Suite 4150, Los Angeles 90067.

MC 81611. By decision entered July 21, 1983 issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Carleton, Krock and Dowell approved the transfer to E. JAMES ADAMS, d.b.a. ART'S MOBILE HOME TRANSPORT, of Fruita, CO, of all of the operating rights contained in Certificate No. MC-116450 Sub 1, issued to ARTHUR A. RICE, d.b.a. ART'S MOBILE HOMES, of Grand Junction, CO, authorizing the transportation of used house trailers, between Grand Junction, CO, on the one hand, and, on the other, points in AR, UT, NM and WY. Applicant's representative: Harold D. Torgan, 3300 East First Ave., Suite 290, Denver, CO 80206, (303)-377-3737.

For the following, please direct status calls to Team 2 (202) 275-7030.

Volume No. OP2-333

MC-FC-81561. By decision of July 22, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Parker, Krock, and Dowell, approved the transfer to MICHAEL JOSEPH MANNING d.b.a. MANNING TRANSFER, Coon Rapids, MN, of authority issued to BARRY FREIGHTWAYS, INC., Minneapolis, MN, in Certificates MC-156003 and Subs-2 and 3, authorizing the transportation of (1) new school, office, and store fixtures and furniture, between Princeton, MN, on the one hand, and, on the other, points in the U.S., and (2) grain elevator equipment, between points in the U.S., such commodities as are dealt in by department stores, between points in CO, IA, MN, ND, SD, TX, Sedgwick County, KS, Milwaukee County, WI, Waukesha County, WI, Little Rock, AR, Moline, IL, Wichita, KS, St. Louis, MO—E. St. Louis, IL, Omaha, NE, Oklahoma City, OK; Tulsa, OK, and Memphis, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI), and building materials, metal products, machinery, chemicals and related products, electrical instruments and fixtures, glass products, plastic and rubber products, paper products, printed matter, petroleum, natural gas and their products, auto parts, and motor vehicles, between points in the U.S. (except AK and HI). Transferee holds authority in MC-135439. Representative: Michael Manning, 1601 127th Ave. NW, Coon Rapids, MN 55433.

MC-FC-81584, By the decision of July 22, 1983, issued under U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Parker, Krock, and Williams, approved the transfer to Saratoga Meat Products Co., of Northfield, IL, of authority issued to Roberts & Oake, Inc., of Kansas City, MO, in MC-146703 Subs 12, 15, 16, 17, 18, 19, 20, 21, 24, 26X (underlying authority in MC-146703 Subs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, and 14), 27, 31X (underlying authority in MC-146703 Sub 11), and 32, authorizing transportation of various specified commodities and general commodities (except classes A and B explosives), from, to, and between points in the U.S. Applicant's representative: Arnold L. Burke, 180 N. LaSalle St., Room 3520, Chicago, IL 60601.

For the following, please direct status calls to Team 3 (202) 275-5223.

Volume No. OP3-FC-354

MC-FC-81156. By decision of July 22, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Carleton, Joyce, and Krock, approved the transfer to AA MOVING AND STORAGE COMPANY, INC., Athens, GA 30604, of Certificate Nos. MC-129095 Sub 2, issued January 21, 1970, and MC-129095 Sub 3, issued October 5, 1981, to A-1 VETERANS TRANSFER COMPANY, A CORPORATION, Athens, GA 30604, authorizing the irregular-route transportation of (1) *used household goods,* between points in 27 GA Counties, and (b) 7 SC Counties, (with King-Pak restrictions), and (2) *household goods as defined by the Commission,* between Athens, GA, and points within 50 miles of Athens, on the one hand, and, on the other, points in AL, FL, GA, KY, NC, SC, TN and VA. Applicant's Representative: Sandra S. Kelley, P.O. Box 5839, Athens, GA 30604, (404) 548-3372.

MC-FC-81544. By decision of July 25, 1983, issued under 49 U.S.C. 10926 and the transfer rules at 49 CFR Part 1181, the Review Board, Members Joyce, Krock and Williams, approved the transfer to GAJDA TRUCKING COMPANY, A Corporation, Volant, PA, of Certificate No. MC-149384F, issued March 16, 1981, and (Sub-No. 1), issued June 17, 1982, and Permit No. MC-142224, issued April 11, 1978, and (Sub-No. 2), issued October 3, 1978, to CHARLES GAJDA AND CHESTER GAJDA, d.b.a. GAJDA TRUCKING COMPANY, Volant, PA, authorizing the transportation of (1) *coal,* in bulk, in dump vehicles, from the facilities of Amerikohl Management Corp., in Beaver, Butler, Lawrence, Mercer, and Venango Counties, PA, to points in OH and NY, (2) *ores and minerals, metal products,* and *waste or scrap materials* not identified by industry producing, between Weirton, WV, and points in PA, those in NY on and west of NY Hwy 14, and those in Ashtabula, Trumbull, and Mahoning Counties, OH, on the one hand, and, on the other, points in CA, CO, CT, FL, IL, IN, KY, MD, MI, NJ, NY, NC, OH, PA, TX, WV, and WI, (3) *flourspar briquettes,* from Duquesne, PA, to points in NY, OH, and WV, under a continuing contract, or contracts, with Cametco, Inc., of Wilkins Township, PA, and (4) *mill scale,* in bulk, in dump vehicles, from points in PA on and west of U.S. Hwy 219, to Niagara Falls, NY, under a continuing contract(s) with P. Pettler Company, of Beaver Falls, PA.

Representative: Sally A. Davoren, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222.

[FR Doc. 83-20737 Filed 7-29-83; 8:45 am]

BILLING CODE 7035-01-M

[OP3-355]

Motor Carriers; Finance Applications; Decision Notice

The following applications seek approval to consolidate, purchase, merge, lease operating rights and properties, or acquire control of motor carriers pursuant to 49 U.S.C. 11343 or 11344. Also, applications directly related to these motor finance applications (such as conversions, gateway eliminations, and securities issuances) may be involved.

The applications are governed by 49 CFR 1182.1 of the Commission's Rules of Practice. See Ex Parte 55 (Sub-No. 44), *Rules Governing Applications Filed By Motor Carriers Under 49 U.S.C. §§ 11344 and 11349,* 363 I.C.C. 740 (1981). These rules provide among other things, that opposition to the granting of an application must be filed with the Commission in the form of verified statements within 45 days after the date of notice of filing of the application is published in the **Federal Register.** Failure seasonably to oppose will be construed as a waiver of opposition and participation in the proceeding. If the protest includes a request for oral hearing, the request shall meet the requirements of Rule 242 of the special rules and shall include the certification required.

Persons wishing to oppose an application must follow the rules under 49 CFR 1182.2. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00, in accordance with 49 CFR 1182.2(d).

Amendments to the request for authority will not be accepted after the date of this publication. However, the Commission may modify the operating authority involved in the application to conform to the Commission's policy of simplifying grants of operating authority.

We find: With the exception of those applications involving impediments (e.g., jurisdictional problems, unresolved fitness questions, questions involving possible unlawful control, or improper divisions of operating rights) that each applicant has demonstrated, in accordance with the applicable provisions of 49 U.S.C. 11301, 11302, 11343, 11344, and 11349, and with the Commission's rules and regulations, that the proposed transaction should be authorized as stated below. Except where specifically noted this decision is neither a major Federal action significantly affecting the quality of the human environment nor does it appear to qualify as a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests as to the finance application *or* to any application directly related thereto filed within 45 days of publication (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (unless the application involves impediments) upon compliance with certain requirements which will be set forth in a notification of effectiveness of this decision-notice. To the extent that the authority sought below may duplicate an applicant's existing authority, the duplication shall not be construed as conferring more than a single operating right.

Applicant(s) must comply with all conditions set forth in the grant or grants of authority within the time period specified in the notice of effectiveness of this decision-notice, or the application of a non-complying applicant shall stand denied.

Decided: July 13, 1983.

By the Commission, Review Board Members, Joyce, Fortier and Krock.

Agatha L. Mergenovich,

Secretary.

Please direct status inquiries to Team 3 (202) 275-5223.

MC-F-15343, filed June 30, 1983. J. Bergen Parkhill (3304 Stoneybrook Dr., Champaign, IL 61821), Olen G. Parkhill (3 Forest View, Mahomet, IL 61853), Richard J. Parkhill (1114 W. Charles St., Champaign, IL 61821), Robert T. Parkhill (3805 Club House Dr., Champaign, IL 61821), and Thomas S. Parkhill (9 Greencroft, Champaign, IL 61821)—control—ILLINI-SWALLOW LINES, INC. (118 S. Walnut St., P.O. Box 775, Champaign, IL 61820), AMERICAN TRAVELINE COACH COMPANY (4991 Factory Dr., Fairfield, OH);—continuance in control—PARKHILLS' TOURS, INC. (PTI) (612 S. Neils St., Champaign, IL 61820). Representative: Robert J. Brooks, 1828 L Street NW., Suite 1111, Washington, DC 20036. J. Bergen, Olen G., Richard J., Robert T., and S. Parkhill seek authority to control Illini and Traveline and to continue in control of PTI, upon institution of operations by PTI in interstate or foreign commerce, as a motor common carrier. Illini is a motor common carrier under certificates issued in MC-41905 and sub-numbers which authorizes the transportation of passengers (a) over regular routes, between Indianapolis, IN and Davenport, IA, and between Peoria and Rock Island, IL; and (b) in charter and special operations, over irregular routes, between points in the U.S. By a certificate issued under MC-134845 and sub-numbers thereunder, Traveline was granted authority to operate as a common carrier generally transporting passengers (a) in charter and special operations over irregular routes, between points in the U.S. and (b) over regular routes, between several named points in Ohio, Indiana, and Kentucky. By a decision served May 31, 1983, PTI was granted authority to transport passengers, in charter and special operations, between points in the U.S. These entities previously were controlled separately; however, recent events have resulted in a situation requiring the instant application.

[FR Doc. 83-20739 Filed 7-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions; Decision-Notice

Motor Common and Contract Carriers of Property (except fitness-only); Motor Common Carriers of Passengers (public interest); Freight Forwarders; Water Carriers; Household Goods Brokers. The following applications for motor common or contract carriers of property, water carriage, freight forwarders, and household goods brokers are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common carriage of passengers, filed on or after November 19, 1982, are governed by Subpart D of 49 CFR Part 1160, published in the **Federal Register** on November 24, 1982 at 47 FR 53271. For compliance procedures, see 49 CFR 1160.86. Carriers operating pursuant to an intrastate certificate also must comply with 49 U.S.C. 10922(c)(2)(E). Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E. In addition to fitness grounds, these applications may be opposed on the grounds that the transportation to be authorized is not consistent with the public interest.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations.

We make an additional preliminary finding with respect to each of the following types of applications as indicated: common carrier of property—that the service proposed will serve a useful public purpose, responsive to a public demand or need; water common carrier—that the transporation to be provided under the certificate is or will be required by the public convenience and necessity; water contract carrier, motor contract carrier of property, freight forwarder, and household goods broker—that the transportation will be consistent with the public interest and the transportation policy of section 10101 of chapter 101 of Title 49 of the United States Code.

These presumptions shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication, (or, if the application later becomes unopposed) appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract." Applications filed under 49 U.S.C. 10922(c)(2)(B) to operate in intrastate commerce over regular routes as a motor common carrier of passengers are duly noted.

Please direct status inquiries about the following to Team Three (3) at (202) 275-5223.

Volume No. OP3-343

Decided: July 20, 1983.

By the Commission, Review Board Members Joyce, Krock, and Williams.

MC 2934 (Sub-163), filed July 11, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant); (317) 875-1142. Transporting *household goods* and *electronic equipment*, between points in the U.S. (except AK and HI), under continuing contract(s) with Tymshare, Inc., of Cupertino, CA.

MC 2934 (Sub-166), filed July 15, 1983. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC., 9998 North Michigan Rd., Carmel, IN 46032. Representative: W. G. Lowry (same address as applicant); (317) 875-1142. Transporting *household goods* and *furniture and fixtures*, between points in the U.S. (except AK and HI), under continuing contract(s) with Norfolk Southern Corporation, of Roanoke, VA.

MC 31675 (Sub-35), filed July 7, 1983. Applicant: CENTRAL DIVISION, INC., P.O. Box 1032, Marathon, FL 33050. Representative: Leonard A. Jaskiewicz, 1730 M St., NW., Washington, D.C. 20036; (202) 296-2900. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI).

MC 53965 (Sub-210), filed July 5, 1983. Applicant: GRAVES TRUCK LINE, INC., 8717 W. 110th St., Suite 700, Overland Park, KS 66210. Representative: Bruce A. Bullock, One Woodward Ave., 26th FL., Detroit, MI 48226; (313) 496-3534. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Foremost-McKesson, Inc. and its subsidiaries of San Francisco, CA.

MC 83745 (Sub-13), filed June 27, 1983. Applicant: UNIVERSAL TRUCKING, INC., 6020 Hohman Ave., Hammond, IN 46320. Representative: Joel H. Steiner, 135 So. LaSalle St., Suite 2106, Chicago, IL 60603; (312) 236-9375. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Raytrans, Inc., of Hammond, IN.

MC 115944 (Sub-14), filed July 1, 1983. Applicant: COLORADO PACIFIC TRUCKING, INC., d.b.a. COLPAC, INC., 5080 McIntyre St., Golden, CO 80401. Representative: Donald E. Marshall (same address as applicant); (303) 277-0788. Transporting *food and related products*, between points in the U.S. (except AK and HI).

MC 121555 (Sub-6), filed July 5, 1983. Applicant: PARCEL DISPATCH, INC., 1525 No. Riverside Drive, Indianapolis, IN 46202. Representative: Michael D. McCormick, 1301 Merchants Plaza, Indianapolis, IN 46204; (317) 638-1301. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in IL, IN, KY, MI, MO, OH, and WI.

MC 123914 (Sub-6), filed July 8, 1983. Applicant: W. C. KLINE, INC., 3200 So. Tenth Ave., Altoona, PA 16603. Representative: Kevin W. Walsh, 1500 Bank Tower, 307 Fourth Ave., Pittsburgh, PA 15222; (412) 471-3300. Transporting *general commodities* (except classes A and B explosives and household goods), between points in the U.S. (except AK and HI), under continuing contract(s) with Unico Uni-Marts, Inc., of State College, PA.

MC 164585 (Sub-1), filed July 7, 1983. Applicant: TROUT POST & POLE CO., INC., P.O. Box 2136, Deep River, MN 56636. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402; (612) 340-0808. Transporting (1) *lumber and wood products*, and *forest products*, and (2) *equipment and machinery*, between points in the U.S. (except AK and HI).

MC 169184, filed July 12, 1983. Applicant: FREEDOM FLEET, INC., 524 Cambridge, DeSoto, TX 75115. Representative: William Sheridan, P.O. Drawer 5049, Irving, TX 75062; (214) 255-

6279. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in AR, LA, OK, and TX, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Please direct status inquiries about the following to Team 4 at (202) 275-7669.

Volume No. OP4-476

Decided: July 13, 1983.

By the Commission, Review Board, Members: Carleton, Krock and Dowell.

MC 121016 (Sub-5), filed July 5, 1983, previously noticed in the **Federal Register** issued on July 20, 1983, and republished this issue. Applicant: ENGLANDER COACH LINES, INC., 148 American Legion Drive, North Adams, MA 01247. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th St., NW., Washington, D.C. 20004, (202) 737-1030. Transporting *passengers,* between Bennington, VT and Williamstown, MA, over U.S. Hwy 7.

Note.—(1) The purpose of this republication is to show the application as being that of a non-fitness proceeding, (2) applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B), and (3) applicant states it intends to tack the authority herein with its presently authorized operations.

Volume No. OP4-477

Decided: July 19, 1983.

By the Commission, Review Board, Members: Joyce, Carleton and Parker.

MC 168896, filed July 12, 1983. Applicant: PORT EXPRESS, INC., 1100 N.E. 7th Ave., Dania, FL 33004. Representative: Bruce E. Mitchell, 5th Floor, Leox Towers South, 3390 Peachtree Rd., NE., Atlanta, GA 30326, (404) 262-9488. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in FL and GA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

Volume No. OP4-478

Decided: July 23, 1983.

By the Commission, Review Board, Members: Dowell, Parker, and Joyce.

MC 126377 (Sub-1), filed July 15, 1983. Applicant: MODERN PIANO MOVING CO., 2304 Bremen Ave., St. Louis, MO 63107. Representative: James C. Swearengen, P.O. Box 456, Jefferson City, MO 65102, (314) 635-7166. Transporting *household goods,* between points in MO, on the one hand, and, on the other, points in AR, IA, IL, KS, KY, MO, NE, OK, and TN.

MC 136277 (Sub-9), filed July 18, 1983. Applicant: PRIORITY FREIGHT SYSTEMS, INC., P.O. Box 7098, Akron, OH 44306. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215; (614) 228-1541. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in ND, SD, MT, WY, UT, NM, AZ, NV, CA, ID, OR, and WA, on the one hand, and, on the other, points in the U.S (except AK and HI).

MC 140276 (Sub-11), filed July 18, 1983. Applicant: LARRY SCHEFUS TRUCKING, INC., Rt. 1, Box 202, Redwood Falls, MN 56283. Representative: William J. Gambucci, 525 Lumber Exchange Bldg., Minneapolis, MN 55402; (612) 340-0808. Transporting *general commodities* (except classes A and B explosives, household goods and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Lampert Lumber Company, of St. Paul, MN, and Weekes Forest Products, Inc., of Minneapolis, MN.

MC 146206 (Sub-4), filed July 15, 1983. Applicant: RBR CORPORATION, d.b.a. ALPINE LIMOUSINE & TOUR CO., 2489 Lake Tahoe Blvd., So. Lake Tahoe, CA 95731. Representative: Ronal I. Shapss, 450 7th Ave., New York, NY 10123, (212) 239-4610. (A) Over regular routes, transporting *passengers,* (1) between So. Lake Tahoe, CA and Reno, NV, from So. Lake Tahoe Airport over access roads to U.S Hwy 50, then over U.S Hwy 50, to junction U.S Hwy 395, then over U.S Hwy 395 to Reno, serving all intermediate points, and Reno International Airport as an off-route point, (2) between So. Lake Tahoe, CA and Tahoe City, CA, from So. Lake Tahoe Airport over access roads to U.S Hwy 50, then over U.S Hwy 50 to junction NV Hwy 28, then over NV Hwy 28 to CA Hwy 28, then over CA Hwy 28 to Tahoe City, serving all intermediate points, (3) between So. Lake Tahoe, CA and Sparks, NV, from So. Lake Tahoe Airport over access roads to U.S Hwy 50, then over U.S Hwy 50 to junction NV Hwy 28, then over NV Hwy 28 to junction NV Hwy 27, then over NV Hwy 27 to junction U.S Hwy 395, then over US Hwy 395 to junction Interstate Hwy 80, then over Interstate Hwy 80 to Sparks, serving all intermediate points. (B) Transporting *passengers,* in charter and special operation, between points in the U.S. (except HI).

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Note.—Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register** issue. Part A will be published in Vol. 478. Part B will be published in Vol. 479.

MC 165397, filed July 15, 1983. Applicant: PRAIRIE PASS SYSTEM, INC., 702 Stough, Hinsdale, IL 60521. Representative: Richard F. Porm (same address as applicant) (312) 325-6164. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI), under continuing contract(s) with Michaels Cooperage Co., Inc., of Chicago, IL.

MC 168407, filed July 18, 1983. Applicant: HANNON LUMBER TRANSFER INC., 4536 Portage Rd., Niagara Falls, Ontario, CD L2E 6A8. Representative: William J. Hirsch, 64 Niagara St., Buffalo, NY 14202; (716) 853-0200. Transporting *lumber and wood products,* between points of entry on the International Boundary line between the US and Canada, on the one hand, and, on the other, points in CT, DE, FL, GA, IL, IN, KY, MD, MA, MI, NJ, NY, NC, OH, PA, SC, TN, VT, VA, WV, and DC.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-379

Decided: July 22, 1983.

By the Commission, Review Board Members Parker, Krock, and Williams.

MC 77129 (Sub-17), filed July 13, 1983. Applicant: PUFFER TRANSPORT, INC., RFD 1, Vernon, VT 05354. Representative: David M. Marshall, 95 State St., Sixth Fl., Springfield, MA 01103; (413) 732-1136. Transporting *such commodities* as are dealt in by distributors of food and related products, between points in the U.S., under continuing contract(s) with DeWitt Grocery Company, d.b.a. DeWitt Beverage, of Brattleboro, VT.

MC 116859 (Sub-32), filed July 11, 1983. Applicant: CLARK TRANSFER, INC., 403 Dulty Lane, Burlington, NJ 08016. Representative: David A. Sutherland, 1150 Connecticut Ave., N.W., Ste. 400, Washington, DC 20036; 202-452-6800. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S., under continuing contract(s) with Caribbean Worldwide, Inc., of Burlington, NJ.

MC 118159 (Sub-383), filed July 12, 1983. Applicant: DISTRIBUTION SERVICE SYSTEMS, INC., 2961 Interstate St., Unit 2, Charleston, NC 28208. Representative: Thomas E. Vandenberg, P.O. Box 2545, Green Bay, WI 54306; 414-498-7689. Transporting *such commodities* as are dealt in, or used by, manufacturers and distributors of printed matter, pulp, paper and related products, between points in the U.S. (except AK and HI), under continuing contract(s) with manufacturers and distributors of the described commodities.

MC 123649 (Sub-13), filed July 11, 1983. Applicant: MAGILL TRUCK LINES, INC., 211 West 53rd St., North, Wichita, KS 67204. Representative: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202, 316-265-2634. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in KS, OK, and MO, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 134538 (Sub-5), filed July 11, 1983. Applicant: CLARK CARTAGE CO., INC., Route 3, Montpelier, OH 43543. Representative: Michael M. Briley, P.O. Box 2088, Toledo, OH 43603; 419-255-8220. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in IN, MI, and OH, on the one hand, and, on the other, points in the U.S.

MC 141688 (Sub-7), filed July 1, 1983. Applicant: HANK'S TRUCKING, INC., 400 Parsons St., West Columbia, SC 29169. Representative: James S. Meggs, P.O. Box 811, Irmo, SC 29063; (803) 781-6175. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in GA, SC, NC, and VA, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 141758 (Sub-25), filed July 11, 1983. Applicant: LYDALL EXPRESS, INC., 615 Parker St., Manchester, CT 06040. Representative: Robert J. Dunbar (same address as applicant) 203-646-1233. Transporting *metal products* between points in the U.S. (except AK and HI), under continuing contract(s) with Triangle Industries, Inc. of New Brunswick.

MC 145199 (Sub-4), filed July 11, 1983. Applicant: SHARON BROWN, INC., R.R. 10, Greensburg, IN 47240. Representative: Robert W. Loser II, 512 Chamber of Commerce Bldg., 320 N. Meridian St., Indianapolis, IN 46204; 317-635-2339. Transporting (1) *food and related products, and* (2) *such commodities* as are dealt in or used by grocery and food business houses, between points in the U.S. (except AK and HI), under continuing contract(s) with persons who are engaged in operating grocery and food business houses.

MC 154149 (Sub-1), filed July 11, 1983. Applicant: CREECH TRANSPORT, INC., P.O. Box 844, Leakesville, MS 39451. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205; 601-948-8820. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. under continuing contract(s) with Scott Paper Company of Philadelphia, PA.

MC 169178, filed July 12, 1983. Applicant: MEAD-RIL TRANSPORTATION, INC., 1225 Highway 92 North, Fayetteville, GA 30214. Representative: Bruce E. Mitchell, 3390 Peachtree Rd., N.E., Suite 520, Atlanta, GA 30326; 404-262-7855. Transporting *general commodities* (except classes A and B explosives, household goods, and commodities in bulk), between points in the U.S. (except AK and HI).

[FR Doc. 83-20736 Filed 7-29-83; 8:45 am]
BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decision; Decision-Notice

Motor Common and Contract Carriers of Property (fitness-only); Motor Common Carriers of Passengers (fitness-only); Motor Contract Carriers of Passengers; Property Brokers (other than household goods). The following applications for motor common or contract carriage of property and for a broker of property (other than household goods) are governed by Subpart A of Part 1160 of the Commission's General Rules of Practice. See 49 CFR Part 1160, Subpart A, published in the **Federal Register** on November 1, 1982, at 47 FR 49583, which redesignated the regulations at 49 CFR 1100.251, published in the **Federal Register** on December 31, 1980. For compliance procedures, see 49 CFR 1160.19. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart B.

The following applications for motor common or contract carriage of passengers filed on or after November 19, 1982, are governed by Subpart D of the Commission's Rules of Practice. See 49 CFR Part 1160, Subpart D, published in the **Federal Register** on November 24, 1982, at 49 FR 53271. For compliance procedures, see 49 CFR 1160.86. Persons wishing to oppose an application must follow the rules under 49 CFR Part 1160, Subpart E.

These applications may be protested *only* on the grounds that applicant is not fit, willing, and able to provide the transportation service or to comply with the appropriate statutes and Commission regulations.

Applicant's representative is required to mail a copy of an application, including all supporting evidence, within three days of a request and upon payment to applicant's representative of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated that it is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. This presumption shall not be deemed to exist where the application is opposed. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient opposition in the form of verified statements filed on or before 45 days from date of publication (or, if the application later becomes unopposed), appropriate authorizing documents will be issued to applicants with regulated operations (except those with duly noted problems) and will remain in full effect only as long as the applicant maintains appropriate compliance. The unopposed applications involving new entrants will be subject to the issuance of an effective notice setting forth the compliance requirements which must be satisfied before the authority will be issued. Once this compliance is met, the authority will be issued.

Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be

construed as conferring only a single operating right.

Agatha L. Mergenovich,

Secretary.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce, over irregular routes unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract."

Please direct status inquiries about the following to Team 4 at (202) 275-7669.

Volume No. OP4-479

Decided: July 23, 1983.

By the Commission, Review Board, Members: Dowell, Parker, and Joyce.

MC 146206 (Sub-4), filed July 15, 1983. Applicant: RBR CORPORATION d.b.a. ALPINE LIMOUSINE & TOUR CO., 2489 Lake Tahoe Blvd., So. Lake Tahoe, CA 95731. Representative: Ronald I. Shapps, 450 7th Ave., New York, NY 10123; (212) 239-4610. (A) Over regular routes, transporting *passengers*, (1) between So. Lake Tahoe, CA and Reno, NV, from So. Lake Tahoe Airport over access roads to U.S. Hwy 50, then over U.S. Hwy 50 to junction U.S. Hwy 395, then over U.S. Hwy 395 to Reno, serving all intermediate points, and Reno International Airport as an off-route point, (2) between So. Lake Tahoe, CA and Tahoe City, CA, from So. Lake Tahoe Airport over access roads to U.S. Hwy 50, then over U.S. Hwy 50 to junction NV Hwy 28, then over NV Hwy 28 to CA Hwy 28, then over CA Hwy 28 to Tahoe City, serving all intermediate points, (3) between So. Lake Tahoe, CA and Sparks, NV, from So. Lake Tahoe Airport over access roads to U.S. Hwy 50, then over U.S. Hwy 50 to junction NV Hwy 28, then over NV Hwy 28 to junction NV Hwy 27, then over NV Hwy 27 to junction U.S. Hwy 395, then over U.S. Hwy 395 to junction Interstate Hwy 80, then over Interstate Hwy 80 to Sparks, serving all intermediate points. (B) Transporting *passengers*, in charter and special operations, between points in the U.S. (except HI).

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in intrastate commerce under 49 U.S.C. 10922(c)(2)(B) over the same route.

Note.—Applicant seeks to provide privately-funded charter and special transportation.

Note.—Because this application includes issues subject to a finding of public interest as well as fitness only, it will be published in two volumes of this **Federal Register** issue. Part A will be published in VOL 478. Part B will be published in VOL 479.

MC 169247, filed July 15, 1983. Applicant: CENTURY DISTRIBUTING CO., INC., 1753 E. Olympic Blvd., Los Angeles, CA 90021. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609; (213) 945-2745. As a broker of *general commodities* (except household goods), between points in the U.S.

MC 169256, filed July 15, 1983. Applicant: ROY W. GRAY d.b.a. R & J CARTAGE BROKERS, P.O. Box 344, Bloomington, CA 92316. Representative: Roy W. Gray (same address as applicant), (714) 824-2453. As a broker of *general commodities* (except household goods), between points in the U.S.

Volume No. OP4-480

Decided: July 19, 1983.

By the Commission, Review Board, Members: Joyce, Carleton, and Parker.

MC 134166 (Sub-3), filed July 11, 1983. Applicant: DUNN'S BUS SERVICE, INC., R.D. 6, Box 140, Beemerville, NJ 17461. Representative: Ronald I. Shapps, 450 7th Ave., New York, NY 10123; (212) 239-4610. Over regular routes, transporting *passengers*, between junction U.S. Hwy 6 and Orange County Road 88 at Port Jervis, NY and Atlantic, NY: from junction U.S. Hwy 6 and Orange County Road 88, over U.S. Hwy 6 to junction NJ Hwy 23, then over NJ Hwy 23 to junction Sussex County Road 639, then over Sussex County Road 639 to junction Sussex County Road 565, then over Sussex County Road 565 to junction U.S. Hwy 206, then over U.S. Hwy 206 to junction Sussex County Road 616, then over Sussex County Road 616 to junction Sussex County Road 517, then over Sussex County Road 517 to junction NJ Hwy 181, then over NJ Hwy 181 to junction NJ Hwy 15, then over NJ Hwy 15 to junction Interstate Hwy 80, then over Interstate Hwy 80 to junction Interstate Hwy 287, then over Interstate Hwy 287 to junction access Roads to the Garden State Parkway, then over the Garden State Parkway to junction Atlantic City Expressway, then over the Atlantic City Expressway to Atlantic City, and return the same route, serving all intermediate points.

Note.—Applicant seeks to provide regular-route service in interstate or foreign commerce and in interstate commerce under 49 U.S.C. 10922.(c)(2)(B) over the same route.

For the following, please direct status calls to Team 5 at 202-275-7289.

Volume No. OP5-378

Decided: July 22, 1983.

By the Commission, Review Board Members Parker, Krock, and Williams.

MC 162148 (Sub-2), filed July 12, 1983. Applicant: YOUR MAN TOURS, INC., 8831 Aviation Blvd., Inglewood, CA 90301. Representative: Joseph J. Weisenfeld, 104 Crandon Blvd., Key Biscayne, Fl 33149; 305-361-8000. Transporting *passengers* in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

MC 169198, filed July 11, 1983. Applicant: AUSTIN EXPRESS, INC., 3326 E. Ave. Q, Palmdale, CA 93550. Representative: Donald R. Hedrick, P.O. Box 4334, Santa Ana, CA 92702; 714-667-8107. Transportating *passengers* in charter and special operations, between points in the U.S. (except AK and HI).

Note.—Applicant seeks to provide privately-funded charter and special transportation.

[FR Doc. 83-20735 Filed 7-29-83; 8:45 am]

BILLING CODE 7035-01-M

[Volume No. OP5-MC-F-377]

Motor Carriers; Proposed Exemptions

AGENCY: Interstate Commerce Commission.

ACTION: Notices of proposed exemptions.

SUMMARY: The motor carriers shown below seek exemptions pursuant to 49 U.S.C. 11343(e), and the Commission's regulations in Ex Parte No. 400 (Sub-1), *Procedures for Handling Exemptions Filed by Motor Carriers of Property Under 49 U.S.C. 11343*, 367 I.C.C. 113 (1982), 47 FR 53303 (November 24, 1982).

DATE: Comments must be received by August 31, 1983.

FOR FURTHER INFORMATION CONTACT: Warren C. Wood (202) 275-7977.

SUPPLEMENTARY INFORMATION: Please refer to the petition for exemption, which may be obtained free of charge by contacting petitioner's representative. In the alternative, the petition for exemption may be inspected at the offices of the Interstate Commerce Commission during usual business hours.

Decided: July 25, 1983.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

Agatha L. Mergenovich,

Secretary.

[No. MC-F-15284]

Davey Wilkett, Connie Weatherford, and Gwen Overlease—Continuance in Control Exemption—MM & K Truck Lines, James Wilkett d.b.a. Wilkett Trucking Company, and W.O.W. Truck Lines, Inc.

Davey Wilkett, Connie Weatherford, and Gwen Overlease seek an exemption from the requirement under section 11343 of prior regulatory approval for their continuance in control of MM & K Truck Lines (MM & K), James Wilkett d.b.a. Wilkett Trucking Company (Wilkett Trucking), and W.O.W. Truck Lines, Inc. (W.O.W.). The transaction arises as a result of the grant of MM & K's initial application for operating authority (No. MC-167308) and the pending application of W.O.W. for operating authority (No. MC-167659). Davey Wilkett owns MM & K, a sole proprietorship; manages Wilkett Trucking (No. MC-121794), a sole proprietorship owned by his father, James Wilkett; and owns one-third of the stock of W.O.W., a newly formed corporation. Gwen Overlease and Connie Weatherford both are involved in the management of Wilkett Trucking, which is owned by their father, and own one-third and one-sixth, respectively, of the stock of W.O.W. They have no interest in MM & K.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423, and

(2) Petitioners' representatives, June Edmondson and John J. McMackin, Jr., Williams and Jensen, P.C., 1101 Connecticut Ave., N.W. Suite 500, Washington, D.C. 20036.

Comments should refer to No. MC-F-15284.

[No. MC-F-15317]

120300 Canada Inc.—Purchase Exemption—Direct Transportation System Limited

120300 Canada, Inc., seeks an exemption from the requirement under petition 11343 of prior regulatory approval for it to purchase that portion of the operating rights of Direct Transportation System Limited set forth in Certificate No. MC-37918 (Sub-19), which authorizes the transportation of general commodities (except classes A and B explosives) between points in the United States.

Send pleadings to:

(1) Motor Section, Room 2139, Interstate Commerce Commission, Washington, D.C. 20423, and

(2) Richard H. Streeter, Esq., Wheeler & Wheeler, 1729 H Street, N.W., Washington, D.C. 20006.

Comments should refer to No. MC-F-15317.

[No. MC-F-15346]

Carl Cook, Jr.—Continuance in Control Exemption—Overland Transportation System, Inc. and Frontier Transport Corp.

Carl Cook, Jr. seeks an exemption from the requirement under 49 U.S.C. 11343 of prior regulatory approval for his continuance in control of Overland Transportation System, Inc. (No. MC-151119), a regulated motor carrier, and Frontier Transport Corp., an entity seeking an initial grant of motor carrier authority from this Commission.

Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423, and

(2) Petitioner's representative, Andrew K. Light, Scopelitis & Garvin, 1301 Merchants Plaza, East Tower, Indianapolis, IN 46204.

Comments should refer to No. MC-F-15346.

[FR Doc. 83-20734 Filed 7-29-83; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-111 Sub-4]

Rail Carriers; Detroit, Toledo and Ironton Railroad Co.—Abandonment in Ross, Fayette and Highland Counties, Ohio; Findings

The Commission has issued a certificate authorizing the Detroit, Toledo and Ironton Railroad Company to abandon its 11.7-mile rail line between Thrifton (milepost 249.2) and Washington Court House (milepost 237.5) in Ross, Fayette and Highland Counties, OH. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20738 Filed 7-29-83; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30205]

Rail Carriers; Southern Pacific Transportation Co. Abandonment Exemption for Los Angeles County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts from the requirements of prior approval under 49 U.S.C. 10903 *et seq.*, the abandonment by the Southern Pacific Transportation Company of a 4.62 mile portion of its West Los Angeles Branch in Los Angeles County, CA, subject to standard employee protection conditions.

DATES: This exemption shall be effective August 31, 1983. Petitions to stay the effectiveness of the decision must be filed by August 11, 1983. Petitions for reconsideration must be filed by August 22, 1983.

ADDRESSES: Send pleadings referring to Finance Docket No. 30205 to:

(1) Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, and

(2) Petitioner's representative, Thormund A. Miller, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to T. S. InfoSystems, Inc., Room 2227, Interstate Commerce Commission, Washington, D.C. 20423, or call 289-4357 (D.C. Metropolitan area) or toll free (800) 424-5403.

Decided: July 21, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison. Vice Chairman Sterrett and Commissioner Andre would not impose a

deadline on consummation of the exempted transaction.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-20742 Filed 7-29-83; 8:45 am]

BILLING CODE 7035-01-M

Motor Carriers; Permanent Authority Decisions

Correction

In FR Doc. 83-16154 beginning on page 27615 in the issue of Thursday, June 16, 1983, make the following correction:

On page 27616, middle column, MC 144370 (Sub-13), Don Nass Trucking, Inc., the last two lines should have read as follows: "manufacturers and distributors of food and related products, and (2) *containers*, between points in the U.S. (except AK and HI), under continuing contract(s) with manufacturers and distributors of containers.

BILLING CODE: 1505-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 83-67]

Intent To Grant An Option Agreement on an Exclusive Patent License; Lokersystems, Inc.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an option agreement on an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to negotiate an Option Agreement with Lokersystems, Inc. of Silver Spring, Maryland, on a limited, exclusive, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,039,754 for "Speech Analyzer," filed April 9, 1975, by the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed option agreement will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA may negotiate the final terms and conditions and grant the option agreement unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by September 30, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: July 25, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-20667 Filed 7-29-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 83-69]

Intent To Grant An Exclusive Patent License; Solargen

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Solargen of Grass Valley, California, a limited, exclusive, field of use, royalty-bearing, revocable license to practice the invention described in U.S. Patent No. 4,388,542 for a "Solar Driven Liquid Metal MHD Power Generator" which issued June 14, 1983, to the Administrator of the National Aeronautics and Space Administration on behalf of the United States of America. The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by September 30, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: July 25, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-20669 Filed 7-29-83; 8:45 am]

BILLING CODE 7510-01-M

[Notice 83-68]

Intent To Grant an Exclusive Patent License; Shree Electro Module Private Ltd.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of intent to grant an exclusive patent license.

SUMMARY: NASA hereby gives notice of intent to grant to Shree Electro Module Private Limited, of Bombay, India, a limited, exclusive, royalty-bearing, foreign license to manufacture in India the inventions described in Indian Application Nos. 90/CAL/81; 950/CAL/82 and 413/CAL/82. These applications are entitled "Three Phase Power Factor Controller," "Motor Power Factor Controller With A Reduced Voltage Starter," and "Pulsed Thyristor Trigger Control Circuit." The proposed exclusive license will be for a limited number of years and will contain appropriate terms and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the exclusive license unless, within 60 days of the date of this Notice, the Director of Patent Licensing receives written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Assistant General Counsel for Patent Matters whether to grant the exclusive license.

DATE: Comments to this notice must be received by September 30, 1983.

ADDRESS: National Aeronautics and Space Administration, Code GP-4, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Mannix, Director of Patent Licensing, (202) 755-3954.

Dated: July 25, 1983.

S. Neil Hosenball,

General Counsel.

[FR Doc. 83-20668 Filed 7-29-83; 8:45 am]

BILLING CODE 7510-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Hearings on the Harmonized Commodity Description and Coding System

Summary: This publication gives notice that the Trade Policy Staff Committee will conduct public hearings on a proposed international agreement that would obligate the United States to adhere to an international nomenclature for the classification of goods in international trade. Adoption of the international nomenclature would involve conversion of the Tariff Schedules of the United States (TSUS) into the nomenclature structure of the Harmonized Commodity Description and Coding System (Harmonized System) and use of the system for import and export trade statistics and transport documentation.

1. Public Hearings

In conformity with section 133 of the Trade Act of 1974 (19 U.S.C. 2153), the Chairman of the Trade Policy Staff Committee invites public comments on a proposed international agreement that would result in United States adoption of an international nomenclature for the classification of goods for customs purposes, for the collection of international trade statistics, and for transport documentation. Such comments will be considered by the Executive Branch in formulating a legislative proposal for United States adoption of the international nomenclature for the classification of goods in international trade known as the Harmonized System and the conversion of the Tariff Schedules of the United States into the nomenclature structure of the Harmonized System that would result from such adoption.

For this purpose, the Committee is inviting specific comments on the new converted Tariff Schedule of the United States. This document, Conversion of the Tariff Schedules of the United States Annotated Into the Nomenclature Structure of the Harmonized System: Report on Investigation No. 332-131, Under Section 332 of the Tariff Act of 1930 (USITC Publication 1400), may be obtained from the Office of the Secretary, U.S. International Trade Commission (701 E Street, NW., Washington, D.C. 20436; telephone 202/523-5178). The document will be available, after August 15, 1983, for public inspection at any District Office of the Department of Commerce and at offices of the District Directors and Regional Commissioners of the U.S. Customs Service.

Interested parties are invited to submit testimony at one of the hearing locations or written comments on this issue.

2. Requests to Participate in the Public Hearings

Hearings will be held in the cities and on the dates noted below, if sufficient interest is demonstrated:

City and Date

Chicago, November 1
Los Angeles, November 3-4
Houston, November 7
Atlanta, November 9
New York, November 15-16
Washington, November 17-18

Parties wishing to testify orally at the hearings must provide written notification of their intention by September 30, 1983 to Carolyn Frank, TPSC Secretary (Office of the U.S. Trade Representative, Room 500, 600 17th Street, NW., Washington, D.C. 20506), giving:

(1) Their names, addresses, and telephone numbers;

(2) The city in which they will attend the hearing; and

(3) A brief summary of their presentation.

Those parties presenting oral testimony must submit a complete written brief by October 14, 1983.

Remarks at the hearing should be limited to no more than 15 minutes to allow for possible questions from the Chairman and the interagency panel. Participants should provide twenty typed copies of their oral presentation at the time of the hearings.

Persons not wishing to participate at the hearings or who wish to contest the information provided by other interested parties may submit a written statement in twenty copies by November 30, 1983 to the Office of the U.S. Trade Representative at the address noted above.

Parties are referred to section 2003 of Title 15 of the Code of Federal Regulations for the Committee's rules concerning oral testimony, the submission of written briefs, the treatment of business confidential information, and other procedures related to TPSC public hearings.

3. Background

The Harmonized System is a new international product nomenclature developed under the auspices of the Customs Cooperation Council for the purpose of classifying goods in international trade. The Harmonized System is intended to serve as a universally accepted product nomenclature that can be used for the classification of goods for customs purposes, the collection of data on imports and exports, the determination of classification for assessment of freight charges and collection of transport statistics for each mode of carrier, and the collection of statistics on the volume of domestic production and/or shipments. The use of a single product code for ship, plane, truck, and rail traffic, for customs tariffs, and for the collection of statistical data on imports and exports will affect traffic managers, freight forwarders, administrative officers, customs brokers, and others concerned with the planning of commercial shipments, the preparation and processing of related trade documentation, and the enforcement of customs and related laws.

The Harmonized System contains approximately 5,000 headings and subheadings describing articles in trade. These provisions are organized in 96 chapters arranged in 20 sections which, along with the interpretative rules and the legal notes to the chapters and sections, form the legal text of the Harmonized System. (The Harmonized System as formulated by the Customs Cooperation Council consists of 96 chapters numbered 1 through 97. Chapter 77 is not used; the space has been reserved for future expansion. Two other possible chapters, 98 and 99, have been reserved for individual nations' uses and will not be part of the international system.)

The Harmonized System will be implemented by an international convention that contains the rights and obligations of Contracting Parties, and the rules and regulations governing the administration of the system and its maintenance as an up-to-date nomenclature. Signatories to the convention will be obligated to use the six digit core product nomenclature as the basis for the national customs tariff and statistical nomenclatures. Countries adopting the Harmonized System may add provisions for national tariff or statistical purposes below the level of the six digit Harmonized System categories and in Chapters 98 and 99.

In accordance with section 608(c) of the Trade Act of 1974, the United States has participated in the technical work of the Harmonized System Committee under the Customs Cooperation Council to assure the recognition of the needs of the United States business community in the development of a Harmonized Code reflecting sound principles of commodity identification and specifications and

modern producing methods and trading practices. Negotiations on the international nomenclature and the convention were completed in June 1983.

On August 24, 1981, the President of the United States requested the U.S. International Trade Commission to undertake an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) to serve as the basis for the preparation of a conversion of the Tariff Schedules of the United States into the nomenclature structure of the Harmonized System. In preparing the converted tariff, the President directed the Commission to avoid changes to the post-Multilateral Trade Negotiations (MTN) tariff rates (those rates scheduled to go into effect on January 1, 1987) to the extent practicable and to simplify the tariff where possible without rate changes significant for U.S. industry, workers, or trade. Accordingly, on September 16, 1981, the Commission initiated investigation No. 332-131 in order to prepare a converted tariff schedule in accordance with the guidelines included with the President's request.

In preparing the converted tariff schedule, the Commission released, for public comment, drafts of each Harmonized System chapter including suggested rates of duty and cross-reference tables showing the relationship of current tariff and statistical subdivisions to those of the converted tariff schedule. Three public hearings were held in connection with the investigation.

4. Comments

Comments are specifically invited on matters pertaining to individual tariff line items. In preparing such comments, parties should bear in mind the President's guidelines for the tariff schedule conversion, in particular whether the conversion—

(a) Avoids, to the extent practicable and consonant with sound nomenclature principles, changes in rates of duty on individual products;

(b) Simplifies the U.S. tariff structure to the extent possible without rate changes significant for U.S. industry, workers, or trade; and

(c) Alleviates administrative burdens on the Customs Service.

Comments should specify the item number of the commodity (or commodities) in the Tariff Schedules of the United States and in the proposed converted tariff schedule. Comments relating to statistical annotations will be forwarded for consideration to the committee established under section 484(e) of the Tariff Act of 1930 (19 U.S.C. 1484(e)) as amended.

Comments relating to the structure of the international nomenclature and requests for tariff rate increases or decreases for reasons unrelated to the conversion of the Tariff Schedules of the United States to the structured nomenclature of the Harmonized System are not the subject of these hearings. Comments relating to designations of tariff items as eligible articles for the purposes of the Generalized System of Preferences are not being solicited at this time.

5. Supplemental Notice

A supplemental notice will be issued in October concerning a confirmation of the hearings and the details of the time and place in the cities noted above.

6. Additional Information

Any questions with regard to the proposed international agreement should be directed to Sandra J. Kristoff, Director, Tariff Affairs, Office of the U.S. Trade Representative, Room 503, 600 17th Street, NW., Washington, D.C. 20506; telephone (202) 395-3063.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc.83-20720 Filed 7-29-83; 8:45 am]

BILLING CODE 3190-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Fish Propagation Panel; Meeting

AGENCY: Fish Propagation Panel 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 Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Approval of minutes
- Council staff update
- Report on the Willamette Basin Plan
- Status report on Section 704(h) and 704(k)
- Other
- Public Comment

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Fish Propagation Panel.

DATE: August 25, 1983. 9:30 a.m.

ADDRESS: The meeting will be held in the Council's Public Meeting Room at 700 S. W. Taylor Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Curt Marshall, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 83-20730 Filed 7-29-83; 8:45 am]

BILLING CODE 000-00-M

Fish Propagation Panel; Meeting

AGENCY: Fish Propagation Panel 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 Committee Act, 5 U.S.C. Appendix I, 1-4. Activities will include:

- Approval of minutes
- Review and discussion of final "Memo on Prioritization"
- Council staff update
- Status report on reprogramming
- Status report on survey of artificial production
- Other
- Public comment

STATUS: Open.

SUMMARY: The Northwest Power Planning Council hereby announces a forthcoming meeting of its Fish Propagation Panel.

DATE: August 4, 1983. 9:00 a.m.

ADDRESS: The meeting will be held in the Press Room at SeaTac International Airport, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Curt Marshall, (503) 222-5161.

Edward Sheets,

Executive Director.

[FR Doc. 83-20731 Filed 7-29-83; 8:45 am]

BILLING CODE 0000-00-M

Draft Annual Report

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice.

SUMMARY: On July 1, 1983 the Council announced the availability of its Draft Annual Report pursuant to section 4(h)(12)(A) of the Northwest Power Act (Pub. L. 96-501, 94 Stat. 2697, 16 U.S.C. 839) and invited comments. The announcement was mailed to the Council's general mailing list, and copies of the Draft Annual Report were mailed to all BPA customers, fish and wildlife agencies in the region, and appropriate Indian tribes.

DATES: Copies of the Draft Annual Report are now available. Comments

must be submitted on or before August 15, 1983.

ADDRESS: Copies may be requested by calling Ms. Beata Teberg toll free from Montana, Idaho and Washington at 1-800-222-3355 or within Oregon at 1-800-452-2324 or 222-5161. Outside of the Northwest call (503) 222-5161. Comments should be submitted in writing to Ms. Torian Donohoe, 700 S.W. Taylor Street, Suite 200, Portland, Oregon 97205.

Dated: July 22, 1983.

Edward Sheets,

Executive Director.

[FR Doc. 83-20732 Filed 7-29-83; 8:45 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 20004; SR-Phlx-83-7]

Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change

The Philadelphia Stock Exchange, Inc. (Phlx), 1900 Market Street, Philadelphia, PA 19103, submitted on May 31, 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 Phlx Rules 501, 503 and 504, concerning allocation of securities and evaluation of specialists, in order to conform these rules to Phlx' revised equity and options specialists evaluation questionnaires. The Phlx proposed rule change also contains these revised questionnaires and an Options Floor Broker Business Survey, which is used to determine the eligibility of floor brokers to participate in the evaluation process. The revision to the questionnaire consists chiefly of dividing it into two questionnaires, one pertaining to an individual specialist's performance and one pertaining to a specialist unit's performance.

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. 19875, June 15, 1983) and by publication in the **Federal Register** (48 FR 28588, June 22, 1983). No comments were received with respect to the proposed rule change.

The Commission finds that the revision to the questionnaire is designed to enable the Phlx to better monitor the performance of its specialists and specialist units. The Commission further finds that the amendments to Rules 501, 503 and 504 are consistent with the purposes of those rules as originally approved by the Commission.[1] The Commission finds, therefore, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 and the rules and the regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-20774 Filed 7-29-83; 8:45 am]

BILLING CODE 8010-01-M

[1] The Commission approved these rules as part of a two-year pilot program on August 17, 1982. Securities Exchange Act Release No. 18975, August 17, 1982; 47 FR 37019, August 24, 1982.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular on Emergency Exists Openable From Outside for Small Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Draft advisory circular (AC) availability and request for comments.

SUMMARY: This AC provides information and guidance concerning external markings and identification of emergency exists which are openable from the outside of the airplane. The FAA recommends that all manufacturers, operators, and owners of small airplanes with emergency exists openable from the outside add external markings to these exists.

DATE: Commenters must identify File AC 23.807-XX; Subject: Emergency Exits Openable From Outside for Small Airplanes, and comments must be received on or before September 15, 1983.

ADDRESS: Send all comments on the draft AC to: Federal Aviation Administration, ATTN: Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph W. Burress, Aerospace Engineer, Regulations and Policy Office (ACE-110), Aircraft Certification Division, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Commercial Telephone (816) 374-6941 or FTS 758-6941.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this draft AC by writing to: Federal Aviation Administration, Aircraft Certification Division, Regulations and Policy Office (ACE-110), 601 East 12th Street, Kansas City, Missouri 64106.

Comments invited: Interested parties are invited to submit comments on the draft AC. The draft AC and comments received may be inspected at the offices of the Regulations and Policy Office (ACE-110), Room 1656, Federal Office Building, 601 East 12th Street, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. on weekdays, except Federal holidays.

Issued in Kansas City, Missouri, July 15, 1983.

Murray E. Smith,

Director, Central Region.

[FR Doc. 83-20523 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-13-M

Central Region Field Element Change

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of field element change.

SUMMARY: Notice is hereby given that on August 21, 1983, the jurisdiction of the Kansas City, Missouri, Air Carrier District Office (ACDO) will be revised to cover both general aviation and air carrier activities for the western half of the State of Missouri and the office redesignated as the Kansas City Flight Standards District Office (FSDO).

Concurrently, on this date the Wichita, Kansas, Flight Standards District Office will assume geographic responsibility for the entire State of Kansas with the present Kansas City, Kansas, office functioning as a satellite to the Wichita FSDO.

This information will be reflected in the FAA Organization Statement the next time it is reissued.

EFFECTIVE DATE: August 21, 1983.

FOR FURTHER INFORMATION CONTACT: James O. Robinson, Manager, Flight Standards Division (ACE-200), Central Region, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; Telephone (816) 374-5003.

(Sec. 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a)))

Issued in Kansas City, Missouri, on July 21, 1983.

John E. Shaw,

Acting Director, Central Region.

[FR Doc. 83-20530 Filed 7-29-83; 8:45 am]

BILLING CODE 4510-13-M

FAA Support of the 1984 Olympics; Public Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The Federal Aviation Administration will hold a public briefing on the FAA's support of the 1984 Olympics. The briefing will cover anticipated special requirements for air traffic services, airspace, flight information, and security. Attendees representing domestic and foreign air carriers are invited to submit estimates of the additional air traffic movements in the Los Angeles, California, area expected to be generated by the Olympics.

DATE: August 12, 1983, 1:30 p.m. to 3:00 p.m.

ADDRESS: Rooms 5A, 5B, and 5C, 800 Independence Avenue, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Falsetti, Airspace and Air Traffic Rules Branch, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C., 20591 telephone (202) 426-3128.

Background

The Olympics

The XXIII Olympiad will be held July 28 to August 12, 1984, primarily in the Los Angeles, California, area. The Olympics committee has announced that eight million tickets for the 23 separate competitions and demonstration sports will be on sale. It is also estimated that an additional 50,000 visitors a day will visit the Olympic area.

Air Transportation Demand

In view of the anticipated volume of ticket sales and the national and international spectator interest in the 1984 Olympics, air transportation demand is expected to be substantial. To assure provision of adequate air traffic control services and the maintenance of a safe and efficient air traiff control system during this period, the FAA is reviewing the air traffic control services currently available in the Los Angeles, California, area, and the additional services that may be needed during the Olympics period. In order to better assess the demands on the national Airspace System during this period, air carriers and commercial operators are invited to submit estimates of the extra air traffic movements they may need to schedule to meet the air transportation demand.

(Secs. 307, 313(a) 601, 603, 902, 1110, and 1202, Federal Aviation Act of 1958, as amended (49 U.S.C. 1348, 1354(a), 1421, 1422, 1443, 1472, 1510, and 1522); 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983)

Issued in Washington, D.C., on July 25, 1983.

B. Keith Potts,

Acting Director, Air Traffic Service.

[FR Doc. 83-20723 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-83-18]

Petitions for Exemption; Summary of Petitions Received, Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: August 22, 1983.

The comment period on the petitions of World Airways, Inc. and Transamerica Airlines (48 FR 31763; July 11, 1983) has been extended to August 1, 1983.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-204), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on July 26, 1983.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought
23699	MBB Helicopter Corp	14 CFR 45.27(a)	To permit petitioner to display U.S. registration numbers at an angle 30 to 40 degrees off vertical on a BK 117 A-1 helicopter.
23654	Corporate Flight, Inc	14 CFR 135.89(b)(3)	To permit petitioner to operate a Learjet 35A aircraft up to and including 41,000 feet mean sea level without requiring at least one pilot seated at the controls to wear and use an oxygen mask.
23664	Parks Industries, Ltd., Inc	14 CFR 21.195	To permit petitioner, who is a manufacturer, to apply for an experimental airworthiness certificate for an aircraft to be used for market surveys and sales demonstrations.
23691	Clinchfield Coal Co	14 CFR 91.23(b)(2)	To permit petitioner to operate IFR equipped helicopters without designating an alternate airport when the IFR destination weather is reported or forecast as ceiling of 400 feet and visibility of 1 mile greater than the weather planning minimum for the approach at the destination airport.
23609	State of Florida	14 CFR 91.109(a)	To permit petitioner to conduct aerial photography flight operations at altitudes contrary to those prescribed for certain directions of flight.
21963	Flight Training Devices	14 CFR 63.39(b)(2)	To extend and amend Exemption 3395, which expires 10/31/83, to permit students trained by Flight Training Devices to take that portion of the practical test prescribed in this section in an FAA-approved simulator, subject to certain limitations.
NM-8	The de Havilland Aircraft of Canada, Ltd	14 CFR 25.571(e)(2)	To allow petitioner's DHC-8 aircraft to be certificated without meeting the propeller blade impact requirements of this section

PETITIONS FOR EXEMPTION—Continued

Docket No.	Petitioner	Regulations affected	Description of relief sought
21802	Sowell Aviation Co., Inc	14 CFR 141.65	To extend Exemption 3466, which expires 8/31/83, to permit petitioner to recommend graduates of its approved certification courses for flight instructor certificates and ratings and airline transport pilot certificates without taking the FAA's written tests.
23668 [1]	Embry-Riddle Aeronautical University	14 CFR 147.21, 147.38a, & 183.1	To permit petitioner to: (1) Develop and administer its own written, oral, and practical examinations; subject to FAA-approval; (2) specify required hours of instruction; (3) issue temporary A & P licenses to students upon successful completion of the program; and (4) be designated as a maintenance examiner with responsibility for administering oral and practical examinations in accordance with designated maintenance examiner standards and criteria and with responsibility for administering FAA-approved written examinations.

[1] The comment period on the petition of Embry-Riddle Aeronautical University (48 FR 30818; July 5, 1983) is reopened until August 25, 1983.

DISPOSITIONS OF PETITIONS FOR EXEMPTION

Docket No.	Petitioner	Regulations affected	Description of relief sought disposition
23331	American International Airways, Inc	14 CFR 91.307	To amend Exemption No. 3619b to add 1 DC-9 for a total of 4 aircraft. The present exemption allows operation in the United States, under a service to small communities exemption, of 3 civil, subsonic "Stage 1 airplane" powered by two-engines, identified by registration and serial number, that have not been shown to comply with the applicable operating noise limits as follows: Until not later than January 1, 1985: 3 DC-9. Granted July 13, 1983.
21397	Flight Safety International	14 CFR 135.303	Extension of Exemption 3315 to permit petitioner's instructor pilots seeking FAA-approval for check pilot status to take the flight test in an FAA-approved simulator in lieu of the aircraft, subject to certain conditions. Granted July 21, 1983.
17709	Sohio Alaska Petroleum, (SOHIO) & Alaska Airlines, Inc. (ASA).	14 CFR 21.181, 43.3(f), 43.7(e), & 121.379	To permit Sohio to operate certain Boeing B-727-90C airplanes, pursuant to the lease agreement between Sohio and ASA, using an FAA-approved minimum equipment list and to permit ASA to maintain the airplanes in accordance with ASA's FAA-approved continuous airworthiness maintenance and inspection program. Granted July 13, 1983.

[FR Doc. 83-20722 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP82-19: Notice 3]

Dunlap Tire and Rubber Corp.; Correction

This notice corrects two errors appearing in the notice denying the petition by Dunlop Tire and Rubber Corp. that noncompliances with 49 CFR 571.119 Motor Vehicle Safety Standard No. 119 *New Pneumatic Tires for Vehicles Other Than Passenger Cars*, be deemed inconsequential as they relate to motor vehicle safety. The notice was published on June 27, 19834 (48 FR 29649).

The notice stated that all 14,869 tires involved were size 31 x 11.50R15LT. In fact, only 7,888 tires were of this size; the remaining 6,981 were 31 x 10.50R15LT in size.

The notice also stated that no comments were received from the public. In fact, a comment was received recommending denial.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: July 25, 1983.

Kennerly H. Diggs,

Acting Associate Administrator for Rulemaking.

[FR Doc. 83-20557 Filed 7-29-83; 8:45 am]

BILLING CODE 4910-59-M

VETERANS ADMINISTRATION

Environmental Impact; Finding of No Significant Impact; VA Medical Center (VAMC), Wood, WI

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the relocation of the VA Milwaukee Regional Office to the grounds of the VA Medical Center (VAMC) at Wood, WI.

The Regional Office is presently located at 342 North Water Street in downtown Milwaukee. The new office space will encompass approximately 60,000 gross square feet and have 180 parking spaces near the building. Alternatives for relocating the Regional Office are: Renovation of Building 2, which would be an adaptive reuse of an historic building; new construction on the southeast corner of the VAMC property; or new construction on the southwest corner of the VAMC property.

Development of the project will have temporary minor impacts on the human and natural environment as it affects air quality, water quality, and noise levels during construction. Permanent minor impacts involve area vehicle emissions and increased surface runoff which will be mitigated by enforced carpooling and careful site design. There is the potential for historic impacts which will be controlled by requirements of the Historic Preservation Act of 1966.

Temporary construction impacts will be mitigated by standard VA Environmental Protection Specifications and conformance with Federal, State, and local regulations.

The significance of the identified impacts have been evaluated relative to considerations of both context and intensity, as defined by the Council on Environmental Quality (40 CFR 1508.27).

This Environmental Assessment has been prepared in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9. A "Finding of No Significant Impact" has been reached

based on the information presented in this assessment.

The assessment is being placed for public examination at the VA, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. William F. Sullivan, Director, Office of Environmental Affairs, (088C), Room 423, Veterans Administration, 811 Vermont Ave., N.W., Washington, D.C. 20420; (202-389-3316). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: July 25, 1983.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

[FR Doc. 83-20752 Filed 7-29-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 148
Monday, August 1, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

CIVIL AERONAUTICS BOARD

[M-385 Amdt. 1, July 26, 1983]

Addition and Closure of Item for the July 27, 1983 Meeting

TIME AND DATE: 9:30 a.m., July 27, 1983.

PLACE: Room 1027 (open), room 1012 (closed), 1825 Connecticut Avenue NW., Washington, D.C 20428.

SUBJECT:

27. Discussion of Brazil. (BIA)

STATUS: Closed.

PERSON TO CONTACT FOR MORE INFORMATION: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

[S-1103-83 Filed 7-28-83; 3:58 pm]

BILLING CODE 6320-01-M

2

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

TIME AND DATE: 10 a.m., Monday, September 12, 1983.

PLACE: Board room, 712 Jackson Place NW., Washington, D.C. 20006.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Call meeting to order. Check quorum.
2. Adoption of proposed agenda.
3. Approval of minutes of April 5, 1983 meeting.
4. Report of Chairman.
5. Report of the President.
6. Report of Executive Secretary.
7. Report of General Counsel.
8. New business.
9. Set date for next meeting in April, 1984.

CONTACT PERSON FOR MORE INFORMATION: Malcolm C. McCormack, Executive Secretary, telephone (202) 395-4831.

Malcolm C. McCormack,
Executive Secretary.

[S-1102-83 Filed 7-28-83; 10:52 am]

BILLING CODE 95 0001-M

federal register

Monday
August 1, 1983

Part II

Department of Commerce

Patent and Trademark Office

Patent Interference Proceedings; Advance Notice of Proposed Rulemaking

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 30719-139]

Patent Interference Proceedings

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Administration on July 18, 1983, has forwarded to the Congress a legislative proposal to combine the Board of Appeals and the Board of Patent Interferences into a single Board of Appeals and Interferences. This advance notice of proposed rulemaking sets forth proposed changes that the Patent and Trademark Office (PTO) is considering in the rules governing interferences should the legislation be enacted. Interested persons are invited to comment on the proposed rules being considered. A formal proposal could be made as early as September 15, 1983. A hearing on any formal proposal could be held as early as October, 1983.

DATE: Comments must be received on or before August 22, 1983.

ADDRESS: Address written comments to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231 marked to the attention of Fred E. McKelvey (703) 557-2237.

FOR FURTHER INFORMATION CONTACT: Fred E. McKelvey, by telephone at (703) 557-2237, or by mail marked to his attention and addressed to Box 8, Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office (PTO) conducts interference proceedings to determine who as between two or more applicants for patent or one or more applicants and a patentee is the first inventor of a patentable invention.

The PTO seeks to improve interference procedure so that the rights of patentees in interferences may be settled at an early date and the overall process of examining patent applications which become involved in interferences may be simplified. The PTO therefore solicits suggestions which will lead to just, speedy, and inexpensive procedures for resolving interferences.

In order to provide interested persons with a basis for their comments, the proposed rules being considered are set forth in §§ 1.601 through 1.688. These proposed rules are designed to replace entirely the present interference rules. A table correlating the present rules to the proposed rules being considered appear below.

The proposed rules being considered presuppose that legislation will be enacted to combine the Board of Appeals and the Board of Patent Interferences into a Board of Appeals and Interferences (Board). The members of the Board of Appeals and the members of the Board of Patent Interferences would become the members of the Board and would be known as examiners-in-chief.

The Board would have jurisdiction to determine: (1) Priority of invention, (2) patentability of any claim corresponding to a count both as to applicants and patentees, (3) any issue of interference in fact as to any count, and (4) any other issue necessary to resolve the interference. The proposed rules being considered would permit an interference to be declared on the basis of a single count defining one patentable invention when a patent is involved as well as when only applications are involved. The Board would also have jurisdiction to determine whether counts are patentably distinct.

When an interference is declared, an examiner-in-chief would be assigned to handle the interlocutory stages of the interference. A primary examiner would determine when one or more applications or one or more applications and a patent claim the same patentable invention. When the examiner makes such determination, the examiner would forward any involved applications or patents to the Board. The primary examiner would designate, at the time the involved applications or patents are sent to the Board, the claims of any application and patent which correspond to each count. The examiner-in-chief could subsequently designate additional claims to correspond to a count. The examiner-in-chief assigned to handle the interference would issue a notice to the parties declaring the interference.

The object of the interference would be to resolve all controversies as to all interfering subject matter defined by one or more counts. A final decision in the interference would determine who, if anyone, is entitled to claims which correspond to a count. Any decision adverse to an applicant by the Board would be a final refusal of the PTO of the claims involved. Any decision adverse to a patentee would constitute cancellation from the patent of the claims involved.

Any decision by the Board on any issue would be binding on the primary examiner and would govern further proceedings in the PTO.

The appointment of a single examiner-in-chief to handle the interlocutory phases of an interference would permit better management of, and control over, interference proceedings. The proposed rules being considered would provide that times be set and the examiner-in-chief exercise control over proceedings in the interference such that pendency of the interference before the Board from declaration to final decision does not normally exceed 24 months. The examiner-in-chief would be in a much better position to be familiar with the history of the interference and would be more accessible to counsel for the parties than current Board of Patent Interferences personnel. For example, an examiner-in-chief, where appropriate, would be able to conduct telephone conference calls to obtain agreement of the parties on the setting of schedules. The examiner-in-chief could, in appropriate cases, enter an order based on the conference call. The proposed rules being considered would also permit the examiner-in-chief to hold conferences and hearings in the PTO in order to expedite or settle interlocutory issues in interference. The examiner-in-chief would be available by phone to rule on the admissibility of evidence in the event parties encounter problems during the taking of depositions. The examiner-in-chief would also be available, where appropriate, to rule on requests for production of documents which take place during cross-examination. Oral orders given by phone could be followed by written orders.

At the time an interference is declared, the examiner-in-chief would set a time for filing motions. The motions would include:

(1) A motion for judgment on the ground that a claim corresponding to the count is not patentable to an opponent under 35 U.S.C. 102, 103, 112, or any other provision of law.

(2) A motion for judgment on the ground that there is no interference-in-fact between the claims of the opponents in the interference.

(3) A motion to add or to substitute new counts.

(4) A motion to substitute another application for the application involved in the interference or to add an application for reissue to the interference.

(5) A motion to declare another interference.

(6) A motion to be accorded the benefit of an earlier application or to attack the benefit of an earlier application which has been accorded to an opponent.

(7) A motion to amend an application or patent by adding or deleting inventors.

(8) A motion to delete from consideration in the interference a claim of an application or patent which has been designated by the primary examiner or the examiner-in-chief to correspond a count.

(9) A motion to add to the interference a claim of an application or patent which was not designated by the primary examiner or the examiner-in-chief to correspond to a count.

Other motions would be permitted as necessary, such as a motion to amend the count and/or a claim corresponding to the count in response to a motion for judgment.

Oppositions to motions would be permitted if filed within a time set by the examiner-in-chief. Replies would be permitted for some motions. Papers which are not authorized by the rules or requested by the examiner-in-chief could be returned unfiled.

A preliminary statement would be filed prior to or concurrently with the motions outlined above.

Motions would be decided by an examiner-in-chief, who could consult with the primary examiner on questions of patentability. The examiner-in-chief would be authorized to grant a motion, deny a motion, defer consideration on the merits of a motion to final hearing, or take such other action with respect to a motion which may be appropriate, i.e., dismiss an entirely inappropriate motion.

If a decision on a motion, or a failure to allege in the preliminary statement a date prior to the effective filing date of the senior party, resulted in entry of an order which would result in a judgment if no other action were taken, the party against whom judgment might be entered could request a hearing before the examiner-in-chief and two additional examiners-in-chief. The decision would govern further proceedings. If adverse, the decision would constitute a final agency action. If favorable, the interference would again proceed before the examiner-in-chief.

After motions have been decided or otherwise disposed of, and assuming judgment was not entered, the examiner-in-chief would open any preliminary statement and set a period for the parties to file motions for discovery. The scope of the discovery would be the same as under current practice.

When a time period is set for filing discovery motions, or after discovery has closed, the examiner-in-chief would set a period for taking testimony.

Any party wishing to take the testimony of a witness would be required to notice a disposition of the witness. An opposing party could elect to have the testimony of the witness presented by affidavit in which event the party would file an affidavit by the witness. The opposing party could then cross examine on oral deposition. Any redirect would take place at the deposition. The party calling the witness would be responsible for securing a court reporter and filing the record associated with cross-examination of its witness.

In the event a party would need testimony from a third-party who will not appear unless a subpoena is issued, including a hostile witness, direct and cross-examination testimony would be taken on oral deposition. The proposed rules being considered provide that prior authorization of an examiner-in-chief would be required before a party could seek testimony by issuance of a subpoena under 35 U.S.C. 24. The proposed rule being considered thus adopts the policy of *Sheehan* v. *Doyle*, 513 F.2d 895, 898, 185 USPQ 489, 491–492 (1st Cir. 1975), *cert. denied*, 423 U.S. 874 (1975), and *Sheehan* v. *Doyle*, 529 F.2d 38, 40, 188 USPQ 545, 546 (1st Cir. 1976), *cert. denied*, 429 U.S. 870 (1976), *rehearing denied*, 429 U.S. 987 (1976), while rejecting the policy announced in *Brown* v. *Braddick*, 595 F.2d 961, 967, 203 USPQ 95, 101–102 (5th Cir. 1979). Testimony obtained in other proceedings, e.g., another interference or an infringement action, would continue to be used if otherwise admissible.

The Federal Rules of Evidence would be made applicable to interferences, except for those portions which relate to criminal actions, juries, and other matters not relevent to interferences. Those portions include:

(1) Rule 103(c).

(2) Rule 104 (c), (d), and (e).

(3) The language in Rule 105 which reads "and instruct the jury accordingly."

(4) Rule 201(g).

(5) The language in Rule 403 which reads "or misleading the jury."

(6) Rule 404(a) (1) and (2).

(7) The word "change" in Rule 405(b).

(8) The language "or criminal" and proviso (ii) in Rule 410.

(9) Rule 412.

(10) Rule 606.

(11) The language "whether by an accused" and "other" in the last sentence of Rule 607.

(12) The provisions of the first sentence of Rule 611(c) relating to leading questions on direct examination shall not apply to statements made in an affidavit authorized to be filed under this subpart.

(13) The language "Except as otherwise provided in criminal proceedings by section 3500 of title 18, United States Code" and "except that in criminal cases when the prosecution elects not to comply, the order shall be one striking the testimony or, if the court in its discretion determines that the interests of justice so require, declaring a mistrial" in Rule 612.

(14) Rule 614.

(15) Rule 706.

(16) The language "excluding, however, in criminal cases matter observed by police officers and other law enforcement personnel" and "and against the Government in criminal cases" in Rule 803(8).

(17) The language "but not including, when offered by the Governament in a criminal prosecution for purposes other than impeachment, judgments against persons other than the second" in Rule 803(22).

(18) The language "prosecution for homicide or in a" in Rule 804(b)(2).

(19) The language "A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstance clearly indicate the trustworthiness of the statement" in Rule 804(b)(3).

(20) Rule 1101 (a), (b), (d)(2), (d)(3), and (e).

The examiner-in-chief would set a period for filing the record and briefs. Oral hearing would be held before a panel consisting of the examiner-in-chief and two other examiners-in-chief. The panel would render a final decision in the interference. Requests for reconsideration would continue to be permitted.

A final decision of the Board would be reviewable in the U.S. Court of Appeals for the Federal Circuit or an appropriate U.S. district court. Any reviewing court could review all aspects of the decision including patentability, priority, and all relevent interlocutory orders, such as denials of discovery.

The procedures discussed above and being considered for proposal in §§ 1.601 through 1.688 would introduce new concepts in interference practice.

Under §§ 1.601(h), 1.603(a), and 1.606(a), each count in an interference would define a separate patentable invention. All the claims in an application or patent which define the separate patentable invention would be designated to correspond to the count. A final adverse decision in the interference would constitute a final

refusal by the PTO of any claim in an application which corresponds to a lost count. A final adverse decision to a patentee would constitute cancellation from the patent of all patent claims designated as corresponding to the lost count.

Under § 1.607(b), when an applicant seeks an interference with a patent, e.g., by copying claims from the patent, examination of the application including any appeal will be handled with special dispatch within the PTO.

Under § 1.612, with 14 days after an inteference is declared, each party would be required to serve a copy of the party's application or patent file on each opponent.

Under § 1.610, each interference would be assigned to a member of the Board (an examiner-in-chief) who would enter interlocutory orders in the interference. The examiner-in-chief would set times and control proceedings such that pendency of the interference would not normally exeed 24 months. An examiner-in-chief could conduct conferences with the parties, either in the PTO or by phone.

Under § 1.616, an examiner-in-chief or the Board could impose appropriate sanctions against a party failing to comply with the rules or an order entered in the interference.

Under current practice papers filed in the PTO which are not authorized by the rules are not considered, but are nevertheless in the interference file. Under § 1.618(a), unauthorized papers presented to the PTO could be returned unfiled. Currently many papers submitted in interference contain exhibits which are nothing more than a copy of a paper previously filed in the interference. Under § 1.618(b), it would not longer be permissible to attach to a paper as an exhibit a paper previously filed in the interference. These two suggestions would have the effect of cutting down the size of interference files and would save the parties needless duplication of papers.

The allegations required to be made in preliminary statements are set out in §§ 1.623, 1.624, and 1.625. Section 1.623 sets out the requirements when the invention was mede in the United States or a party claims the benefit of 35 U.S.C. 104. Section 1.624 sets out the requirements when the invention was made in a foreign country and a party intends to prove introduction of the invention into the United States. Section 1.625 sets out the requirements when derivation is alleged.

Under current practice (37 CFR 1.231), various motions are decided by a primary examiner. Under § 1.635 (a) through (i), similar motions could be filed, but would be decided by an examiner-in-chief as provided by § 1.640(b).

Under current practice, preliminary statements are opened at a relatively early stage of an interference before motions are decided by the primary examiner. Under § 1.631, preliminary statements would be opened concurrently with a decision by an examiner-in-chief of motions under § 1.635 (a) through (i).

Under the proposed rules being considered, general motions (e.g., motion for extension of time, motion for additional discovery, motion to correct a preliminary statement, etc.) would be permitted under § 1.635(k). The proposed rules being considered would require a party to contact all opponents prior to filing the motion to attempt to resolve by agreement an issue to be raised in the motion. See § 1.637(k).

Under § 1.639, if testimony would be necessary to support or oppose a motion under § 1.635 (a) through (i), a party would have to describe the nature of the testimony and an examiner-in-chief could grant appropriate interlocutory relief and authorize testimony to be taken. An ultimate decision on the motion would be deferred to final hearing.

Under § 1.640, all motions would be decided by an examiner-in-chief. A party could seek reconsideration of any decision before a panel of the Board which would normally include the examiner-in-chief who decided the motion. If a decision by an examiner-in-chief would be dispositive of the interference, the examiner-in-chief would issue an order to show cause why judgment should not be entered against a party. If the party fails to overcome the order to show cause, judgment could be entered by the Board.

Under § 1.644, petitions would be permitted to the Commissioner from decisions made in an interference. Under paragraph (a)(1), a petition would be permitted from a decision in an interference when the examiner-in-chief or a panel of the Board is of the opinion that the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion and an immediate decision on petition might materially advance the ultimate termination of the interference. The concept is similar to that involving interlocutory appeals under 28 U.S.C. 1292(b). Under paragraph (a)(2), a petition would be permitted to invoke the supervisory authority of the Commissioner. As provided in paragraph (b), the petition could be filed only after entry of a judgment. Paragraph (a)(3) preserves the right of a party to request waiver of a provision of the rules under 37 CFR 1.183. The suggested petition practice would have the effect of minimizing delays currently caused by petitions filed in interference cases. A fee of $120.00 would be required with each petition.

Under § 1.645, a party could request and obtain an extension of time to take action in an interference. Under current practice, requests for extension of time cause considerable delay in resolving interferences. Under § 1.645, a request for an extension of time would have to actually reach an examiner-in-chief prior to the time an action needs to be taken. The press of other business arising after an order setting a time in the interference would not normally be grounds for granting an extension. By way of example, if an order sets a time for taking action in an interference and thereafter counsel for a party receives notice of some other hearing (e.g., a hearing before another administrative tribunal or a court) or a notice of a deposition in another proceeding (e.g., an infringement action), the later setting of the hearing or scheduling of the deposition would not normally be grounds for an extension of time in the interference.

Under § 1.647, any document in a foreign language upon which a party intends to rely would have to be accompanied by a translation.

Under § 1.655, the Board would be authorized to hear and determine any issue which could arise in an interference. Presently the Board can consider only priority and issues which have been determined to be "ancillary" to priority. Determining what is "ancillary" has proven difficult and has unduly complicated interferences.

Under § 1.656(h), if a party intends to maintain an objection previously made to the admissibility of any of an opponent's evidence, the party would be required to file a motion with its brief at final hearing.

Under current practice (37 CFR 1.257), estoppel does not apply against a senior party if an interference is dissolved or is decided on a ground which is "ancillary" to priority. Under § 1.658(c), a judgment in an interference would settle all issues which were raised and decided in the interference or which could have been properly raised and decided in the interference or an additional interference. A party who could have properly moved to raise an issue in an interference, but did not move, would be estopped to take ex parte or inter partes action in the PTO after the interference which is

inconsistent with the party's failure to have properly moved in the interference.

Under § 1.659, the Board could recommend that the primary examiner reject claims in an application which are not involved in the interference. Likewise, should the Board have knowledge of any ground for reexamining a patent involved in an interference as to a patent claim not involved in the interference, the Board could recommend to the Commissioner that the patent be reexamined.

Under § 1.662, if a party requests that judgment be entered against the party, or files a written disclaimer, concession of priority, or abandonment, judgment will be entered against the party. If a patentee files an application to reissue a patent involved in an interference for the purpose of avoiding the interference, judgment would be entered against the patentee. If a judgment is entered under this section and as a result the interference no longer exists, the interference would be dissolved as to the party against whom no judgment was entered and further prosecution of any application involved in the interference would be ex parte before the primary examiner.

Under § 1.671(b), with certain exceptions, the Federal Rules of Evidence would be made applicable to interferences. Under § 1.671(d), copies of documents on file in the PTO and to which all parties have access would not need to be certified to be admissible. Under § 1.671(g), a party must obtain permission from an examiner-in-chief prior to taking testimony or seeking documents or things under 35 U.S.C. 24. Under § 1.638(a), an opposition to a motion seeking permission to proceed under 35 U.S.C. 24 could not be filed unless authorized by an examiner-in-chief. Practice under § 1.671 would assist federal courts and would prevent a party from putting a third party to the expense of answering a subpoena without at least a prior preliminary review of the relevance of the evidence sought to be obtained from the third party.

Under § 1.672, a new method of taking testimony in interferences is suggested. A party wishing to take testimony would notice the depositions of all witnesses and serve any documents and a list of any things on which the party intended to rely in taking the testimony. Service of documents and a list of things to be relied upon is now required by 37 CFR 1.287(a)(1). An opponent could elect whether to attend the deposition or compel the party to present the testimony of the witness by affidavit. Any affidavit could be in the form of an ex parte deposition. When an opponent elects to have testimony presented by affidavit and after any affidavit is filed, the opponent would have an opportunity to cross examine the witness by deposition. When a party wishes to take the testimony of a witness whose testimony will be compelled under 35 U.S.C. 24, testimony would be on oral deposition only.

Under § 1.673, a party noticing a deposition, would be required to serve any document and a list of things to relied upon in taking testimony of the witness noticed. Under § 1.673(f), counsel would be required to orally contact opposing counsel before noticing a deposition. It would be expected that such a practice would minimize scheduling problems. If the parties can not agree on a date, the parties could contact the examiner-in-chief who in turn could by order set the date on which a deposition could be taken.

Discovery would be authorized under the proposed rules being considered. The test for discovery—interest of justice—would be identical to that under present practice.

A proposed time schedule for a two-party interference follows.

Event in interference	Time from last event in the inerference	Total time in interference
Interference declared (1.611)		
Service of copies of files (1.612)	½ month	½ month
Filing of preliminary statements (1.621) and motions (1.635(a) through (i)).	2½ months	3 months
Filing oppositions to motions (1.683(a))	⅔ month	3⅔ month
Filing replies to oppositions (1.638(b))	⅔ month	4⅓ month
Decision on motions (1.640), open preliminary statements (1.631), set times for filing motions for discovery (1.687(c) and testimony (1.651(a)).	1 month	5⅓ month
Filing of motions for discovery (1.635(k), 1.651(a), 1.687(c)).	1 month	6⅓ month
Filing of opposition to motion for discovery (1.683(a))	⅔ month	7 months
Decision on motion for discovery	⅔ month	7⅔ months
Time for compliance with any discovery ordered	⅔ month	8⅓ months
Junior party testimony (case-in-chief; 1.672(b)):		
Junior party notice of deposition	⅔ month	9 months
Senior party election to have junior party proceed on affidavit.	⅓ month	9-⅓ months
Testimony	1 month	10⅓ months
Senior party cross examination if needed	1 month	11⅓ months
Senior party testimony (case-in-chief and case-in-rebuttal, 1.672(b)):		
Senior party notice of deposition	⅓ month	11-⅔ months.
Junior party election to have senior party proceed by affidavit	⅓ month	12 months
Testimony	1 month	13 months
Junior party cross examination if needed	1 month	14 months
Junior party testimony (case-in-rebuttal):		
Junior party notice of deposition	⅓ month	14-⅓ months.
Senior party election to have junior party proceed by affidavit.	⅓ month	14⅔ months.
Testimony	⅔ month	15⅓ months.
Senior party cross examination if needed	⅔ month	16 months.
Filing of record (1.653(c))	1 month	17 months.
Brief for junior pary (1.656)	1 month	18 months.
Brief for senior party (1.656)	1 month	19 months.
Reply brief for junior party (1.656)	⅔ month	19⅔ months.
Final hearing (1.654)	1 month	20⅔ months.
Decision (1.658)	2 months	22⅔ months.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Authority delegations, conflict of interests, Courts, Inventions and patents, Lawyers.

The proposed rules under consideration would add Subpart E to read as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

* * * * *

Subpart E—Interferences

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Subpart E—Interferences

§ 1.601 Scope of rules, definitions.

This subpart governs the procedure in interferences in the Patent and Trademark Office. This subpart shall be construed to secure the just, speedy, and inexpensive determination of every interference. Unless otherwise clear from the context, the following definitions apply to this subpart:

(a) An "interference" is a proceeding instituted in the Patent and Trademark Office before the Board of Appeals and Interferences to determine any question of patentability and priority of invention between two or more parties claiming the same patentable invention. An interference may be declared between two or more pending applications naming different inventors when, in the opinion of a primary examiner, the applications contain claims for the same patentable invention. An interference may be declared between one or more pending applications and an unexpired patent naming different inventors when, in the opinion of a primary examiner, any application and an unexpired patent contain claims for the same patentable invention.

(b) A "party" is: (1) An applicant or patentee involved in the interference or (2) a legal representative or an assignee of an applicant or patentee involved in an interference. Where acts of a party are normally performed by an attorney or agent, "party" may be construed to mean the attorney or agent.

(c) A "senior party" is the party with the earliest filing date or effective filing date as to all counts. A "junior party" is any other party.

(d) In the case of an application, "filing date" means the filing date assigned to the application. In the case of a patent, "filing date" means the filing date assigned to the application which issued as the patent.

(e) The "effective filing date" of an application or a patent is the filing date of an earlier application accorded to the application or patent under 35 U.S.C. 119 or 120.

(f) An "interference-in-fact" exists when all the claims of a party which correspond to a count and all the claims of an opponent which correspond to the count define the same patentable invention. A claim of a patent or application which is identical to a count is said to "correspond exactly" to the count. A claim of a patent or application which is not identical to a count, but which defines the same patentable invention as the count, is said to "correspond substantially" to the count.

(g) A "count" defines the interfering subject matter between: (1) Two or more applications or (2) one or more applications and a patent. When there is more than one count, each count shall define a separate patentable invention.

(h) "Board" means the Board of Appeals and Interferences.

(i) "Affidavit" means affidavit, declaration under § 1.68, or statutory declaration under 28 U.S.C. 1746.

(j) "Sworn" means sworn or affirmed.

(k) "Case-in-chief" means that portion of a party's case where the party has the burden of going forward with the evidence.

(l) "Case-in-rebuttal" means that portion of a party's case where the party presents evidence in rebuttal to the case-in-chief of another party.

(m) "Additional discovery" is discovery to which a party may be entitled under § 1.687 in addition to discovery to which the party is entitled as a matter of right under §1.673 (a) and (b).

§ 1.602 Interest in applications and patents involved in an interference.

(a) Unless good cause is shown, an interference shall not be declared or continued between: (1) Applications owned by a single party or (2) applications and an unexpired patent owned by a single party.

(b) The parties, within 15 days after an interference is declared, shall notify the Board of any and all right, title, and interest in any application or patent involved or relied upon in the interference unless the right, title, and interest is set forth in the notice declaring the interference.

(c) If a change of any right, title, and interest in any application or patent involved or relied upon in the interference occurs after notice is given declaring the interference and before the time expires for seeking judicial review of a final decision of the Board, the parties shall notify the Board of the change within 15 days of the change.

§ 1.603 Interference between applications; subject matter of the interference.

Before an interference is declared between two or more applications, the primary examiner must be of the opinion that there is interfering subject matter claimed in the applications which is patentable to each applicant subject to a judgment in the interference. The interfering subject matter shall be defined by one or more counts. Each count shall define a separate patentable invention. Each application must contain, or be amended to contain, at least one claim which corresponds to each count. All claims in the applications which define the separate patentable invention of a count shall be designated to correspond to the count.

§ 1.604 Request for interference between applications by an applicant.

(a) An applicant may seek to have an interference declared with an application of another by: (1) Suggesting a proposed count and presenting a claim corresponding to the proposed count, (2) indentifying the other application and, if known, a claim in the other application which corresponds to the proposed count, and (3) explaining why an interference should be declared.

(b) Unless a claim is presented in response to a suggestion by the primary examiner, at the time an applicant presents a claim which corresponds exactly or substantially to a claim of another application, the applicant must identify the other application and the number of the other application claim, if known. The primary examiner shall notify the Commissioner of any instance where an applicant fails to identify the other application.

§ 1.605 Suggestion of claim to applicant by examiner.

(a) The primary examiner may suggest that an applicant present a claim in an application for the purpose of an interference with another application or a patent. The applicant to whom the claim is suggested shall amend the application by presenting the suggested claim within a time specified by the primary examiner, not less than 30 days. Failure or refusal of an applicant to timely present a claim which is the same or substantially the same as the suggested claim shall be taken without further action as a disclaimer by the appplicant of the invention defined by the suggested claim.

(b) The suggestion of a claim by the primary examiner for the purpose of an interference will not stay the period for response to any outstanding Office action. When a suggested claim is timely presented, ex parte proceedings in the application will be stayed pending a determination of whether an interference will be declared.

§ 1.606 Interference between an application and a patent; subject matter of the interference.

Before an interference is declared between an application and an unexpired patent, the primary examiner must determine that there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in the interference. The interfering subject matter will be defined by one or more counts. Each count shall define a separate patentable invention. Any application must contain, or be amended to contain, at least one claim which corresponds to each count. All claims in the application and patent which define the separate patentable invention of a count shall be designated to correspond to the count.

§ 1.607 Request by applicant for interference with patent.

(a) An applicant may seek to have an interference declared between an application and an unexpired patent by: (1) Presenting a proposed count and a claim corresponding to the proposed count, (2) identifying the patent and indicating which claim in the application and which claim or claims of the patent correspond to the proposed count, (3) applying the terms of the patent claim or claims to the disclosure of the application, and (4) when a claim of the application or patent corresponds substantially to a proposed count, explaining why an interference should be declared.

(b) When an applicant seeks an interference with a patent, examination of the application, including any appeal to the Board, shall be conducted with special dispatch within the Patent and Trademark Office. The primary examiner shall determine whether there is interfering subject matter claimed in the application and the patent which is patentable to the applicant subject to a judgment in an interference. If the primary examiner determines that there is any interfering subject matter, an interference will be declared. If the primary examiner determines that there is no interfering subject matter, the primary examiner shall state the reasons why an interference is not being declared and otherwise act on the application.

(c) Unless a claim is presented in response to a suggestion by the primary examiner, at the time an applicant presents a claim which corresponds exactly or substantially to a claim of a patent, the applicant must identify the patent and the number of the patent claim. The primary examiner shall notify the Commissioner of any instance where an applicant fails to identify the patent.

(d) A notice that an applicant is seeking to provoke an interference with a patent will be placed in the file of the patent and a copy of the notice will be mailed to the patentee. The identity of the applicant will not be disclosed unless an interference is declared. If a final decision is made not to declare an interference, a notice to that effect will be placed in the patent file and will be sent to the patentee.

§ 1.608 Interference between an application and a patent; affidavit by applicant.

(a) When the effective filing date of an application is three months or less after the effective filing date of a patent, the applicant, before an interference will be declared, shall file an affidavit alleging that there is a basis upon which applicant is entitled to a judgment relative to the patentee. An examiner-in-chief may require an applicant to state the basis with particularity.

(B) When the effective filing date of an application is more than three months after the effective filing date of a patent, the applicant, before an interference will be declared, shall file: (1) Evidence which may consist of patents or printed publications, other documents, and one or more affidavits which demonstrate that applicant is prima facie entitled to a judgment relative to the patentee and (2) an explanation stating with particularity the basis upon which the applicant is prima facie entitled to the judgment. The significance of any printed publication or other document which is self-authenticating within the meaning of Rule 902 of the Federal Rules of Evidence or § 1.671(d) and any patent shall be discussed in an affidavit or the explanation. Any printed publication or other document which is not self-authenticating shall be authenticated and discussed with particularity in an affidavit. Upon a showing of sufficient cause, an affidavit may be based on information and belief. If a primary examiner finds an application to be otherwise in condition for declaration of an interference, the primary examiner will consider the evidence and explanation only to the extent of determining whether a basis upon which the applicant would be entitled to a judgment relative to the patentee is alleged and, if a basis is alleged, an interference may be declared.

§ 1.609 Preparation of interference papers by examiner.

When the primary examiner determines that an interference should be declared, the primary examiner shall forward to the Board:

(a) All relevant application and patent files and

(b) A statement identifying:

(1) The count or counts;

(2) The claims of any application or patent which correspond to the count stating whether the claims correspond exactly or substantially to the count;

(3) The claims in any application which are deemed by the primary examiner to be patentable over any count; and

(4) Whether an applicant or patentee is entitled to the benefit of the filing date of an earlier application and sufficient information to identify the earlier application.

§ 1.610 Assignment of interference to examiner-in-chief, time period for completing interference.

(a) Each interference will be declared by an examiner-in-chief who may enter all interlocutory orders in the interference, except that only a panel consisting of at least three members of the Board shall: (1) Hear oral argument at final hearing, (2) enter a decision under §§ 1.617, 1.640(c) or (e), 1.652, or 1.653 or (3) enter any other order which terminates the interference.

(b) As necessary, another examiner-in-chief may act in place of the one who declared the interference. Unless otherwise provided in this section, at the discretion of the examiner-in-chief assigned to the interference, a panel consisting of two or more members of the Board may enter interlocutory orders.

(c) Unless otherwise provided in this subpart, times for taking action by a party in the interference will be set on a case-by-case basis by the examiner-in-chief assigned to the interference. Times for taking action shall be set and the examiner-in-chief shall exercie control over the interference such that the pendency of the interference before the Board does not normally exceed two years.

(d An examiner-in-chief may hold a conference with the parties to consider: (1) Simplification of any issues, (2) the necessity or desirability of amendments to counts, (3) the possibility of obtaining admissions of fact and genuineness of documents which will avoid unnecessary proof, (4) any limitations on the number of expert witnesses, and (5) any other matter as may aid in the disposition of the interference. After a conference, the examiner-in-chief may enter any order which may be appropriate.

§ 1.611 Declaration of interference.

(a) Notice of declaration of an interference will be sent to each party. A copy of the notice may also be sent to any patentee and to any assignee of a patent of record in the Patent and Trademark Office.

(b When a notice is returned to the Patent and Trademark Office undelivered, or in any other circumstance where appropriate, an examiner-in-chief may order publication of an appropriate notice in the Official Gazette.

(c) The notice shall specify:

(1) The name and residence of each party involved in the interference;

(2) The name and address of record of any attorney or agent of record in any application or patent involved in the interference;

(3) The name of any assignee of record in the Patent and Trademark Office;

(4) The identity of any application or patent involved in the interference;

(5) Where a party is accorded the benefit of the filing date of an earlier application, the identity of the earlier application;

(6) The count or counts;

(7) The claim or claims of any application or any patent which correspond to each count; and

(8) The order of the parties.

(d) The notice may also specify the time for: (1) Filing a preliminary statement as provided in § 1.621(a); (2) serving notice that a preliminary statement has been filed as provided in § 1.621(b); and (3) filing motions authorized by § 635 (a) through (i), oppositions to the motions, and replies to the oppositions.

§ 1.612 Service of files of patents and applications.

(a) Unless an examiner-in-chief orders otherwise, within 14 days from the date an interference is declared, each applicant named as a party in the interference shall serve on any opponent a complete copy of the file of the application involved in the interference and, where the applicant has been accorded the benefit of the filing date of an earlier application, a complete copy of the file of the earlier application. Documents filed in the application or earlier application under § 1.131 shall be served as specified in § 1.640(b)(1). Documents filed under § 1.608(b) shall be served as specified in § 1.617(b). A party shall not be entitled to access to a document filed in the Patent and Trademark Office by an opponent under § 1.131 or § 1.608(b) until service of the document is required by this subpart or is ordered by an examiner-in-chief.

(b) Unless an examiner-in-chief orders otherwise, within 14 days from the date an interference is declared, a patentee named as a party in the interference shall serve on any opponent a complete copy of the file of any patent involved in the interference and, where the patentee has been accorded the benefit of the filing date of an earlier application, a complete copy of the file of the earlier application.

(c) When a party makes service under this section, the party shall file and serve a notice certifying that service required by this section has taken place.

§ 1.613 Same attorney representing different parties in an interference.

(a) The same attorney or agent may not represent two or more parties in an interference except under the conditions specified in DR 5–105(C) or DR 5–106 of the Code of Professional Responsibility of the American Bar Association.

(b) An examiner-in-chief may make necessary inquiry to determine whether the conditions of DR 5–105(C) or DR 5–106 have been satisfied. If an examiner-in-chief is of the opinion that an attorney or agent should be disqualified from representing a party in an interference, the examiner-in-chief shall refer the matter to the Commissioner. The Commissioner will make a final decision as to whether any attorney or agent should be disqualified.

§ 1.614 Jurisdiction over interference.

(a) The Board shall assume jurisdiction over an interference when the interference is declared under § 1.611.

(b) When the interference is declared the interference is a contested case within the meaning of 35 U.S.C. 24.

(c) The primary examiner shall have jurisdiction over any pending application until the interference is declared. An examiner-in-chief, where appropriate, may for a limited purpose restore jurisdiction to the primary examiner over any application involved in the interference.

§ 1.615 Suspension of ex parte prosecution.

(a) When an interference is declared, ex parte prosecution of an application involved in the interference is suspended. Amendments and other papers related to the application which are received during pendency of the interference will not be entered or considered without the consent of an examiner-in-chief.

(b) Ex parte prosecution as to specified matters may be continued concurrently with the interference with the consent of the examiner-in-chief.

§ 1.616 Sanctions for failure to comply with rules or order.

An examiner-in-chief or the Board may impose an appropriate sanction against a party who fails to comply with the regulations of this part or any order entered by an examiner-in-chief or the Board. An appropriate sanction may include among others entry of an order:

(a) Holding certains facts to have been established in the interference;

(b) Precluding a party from filing motions under § 1.635 or a preliminary statement under § 1.621;

(c) Precluding a party from presenting or contesting a particular issue;

(d) Precluding a party from requesting, obtaining, or opposing discovery; or

(e) Granting judgment in the interference.

§ 1.617 Summary judgment against applicant.

(a) An examiner-in-chief shall review any evidence filed by an applicant under § 1.608(b) to determine if the applicant is prima facie entitled to a judgment relative to the patentee. If the examiner-in-chief determines that the evidence shows the applicant is prima facie entitled to a judgment relative to the patentee, the interference shall proceed before the examiner-in-chief. If in the opinion of the examiner-in-chief the evidence fails to show that the applicant is prima facie entitled to a judgment relative to the patentee, the examiner-in-chief shall, concurrently with the notice declaring the interference, enter an order stating the reasons for the opinion and directing the applicant, within a time set in the order, to show cause why summary judgment should not be entered against the applicant.

(b) The applicant may file a response to the order and state any reasons why summary judgment should not be entered. A response may include a request by the applicant for a hearing before the Board. Additional evidence shall not be presented by the applicant or considered by the Board unless the applicant shows good cause why any additional evidence was not initially presented with the evidence filed under § 1.608(b). At the time an applicant files a reponse, the applicant shall serve on the patentee a copy of any evidence filed under § 1.608(b) and this paragraph.

(c) If a response is not timely filed by the applicant, the Board shall enter a final decision granting summary judgment against the applicant.

(d) If a response is timely filed by the applicant, the patentee may file a statement within a time set by the examiner-in-chief. The statement shall set forth the views of the patentee as to why summary judgment should be granted against the applicant. Evidence shall not be filed by the patentee. A patentee may not request an oral hearing.

(e) Unless authorized by the examiner-in-chief, no reply shall be filed by the applicant to the statement by the patentee.

(f) When more than two parties are involved in an interference, only an applicant who filed evidence under § 1.608(b) and the patentee shall participate in summary judgment proceedings under this section.

(g) If a response by the applicant is timely filed and the time for a patentee to file a statement has expired, the Board shall decide whether the evidence submitted under § 1.608(b) and any additional evidence properly submitted under paragraph (b) of this section shows that the applicant is prima facie entitled to a judgment relative to the patentee. If the Board decides that the applicant is not prima facie entitled to a judgment relative to the patentee, the Board shall enter a final decision granting summary judgment against the applicant. If the Board decides otherwise, an interlocutory decision shall be entered authorizing the interference to proceed before the examiner-in-chief.

(h) If an applicant requests a hearing, the Board may hold a hearing prior to entry of a decision under paragraph (g) of this section. The examiner-in-chief shall set a date and time for the hearing. Unless otherwise ordered by the examiner-in-chief or the Board, the applicant and patentee will each be entitled to no more than 30 minutes of oral argument at the hearing.

§ 1.618 Return of unauthorized papers.

(a) The Patent and Trademark Office may return to a party any paper presented by the party when the filing of the paper is not authorized by, or is not in compliance with the requirements of, this subpart. Any paper returned will not thereafter be considered by the Patent and Trademark Office in the interference.

(b) When presenting a paper in an interference, a party shall not submit with the paper a copy of a paper previously filed in the interference.

§ 1.621 Preliminary statement, time for filing, notice of filing.

(a) Within the time set for filing motions under § 1.635(a) through (i), each party may file a preliminary statement. The preliminary statement may be signed by an applicant, a patentee, or an attorney or agent of record.

(b) When a party files a preliminary statement the party shall also simultaneously file and serve on all opponents in the interference a notice stating that a preliminary statement has been filed. A copy of the preliminary statement need not be served until ordered by an examiner-in-chief.

(c) Any party who does not file a preliminary statement shall be restricted to the party's effective filing date.

§ 1.622 Preliminary statement, who made invention, where invention made.

(a) A party's preliminary statement must identify the name of the inventor who made the invention defined by each count. When the inventor identified in the preliminary statement is not identical to the inventor named in the party's application or patent, the party shall file a motion under § 1.635(j) to correct inventorship.

(b) The preliminary statement shall whether the invention was made in the United States or abroad. If made abroad, the preliminary statement shall state whether the party is entitled to the benefit of the second sentence of 35 U.S.C. 104.

§ 1.623 Preliminary statement; invention made in United States.

(a) When the invention was made in the United States or a party is entitled to the benefit of the second sentence of 35 U.S.C. 104, the preliminary statement must state the following facts as to the invention defined by each count:

(1) The date on which a drawing of the invention was first made.

(2) The date on which a written description of the invention was first made.

(3) The date on which the invention was first disclosed to the other person.

(4) The date on which the invention was first conceived.

(5) The date on which the invention was first actually reduced to practiced.

(6) The date after the party's conception of the invention when the party began active exercise of reasonable diligence toward reducing the invention to practice.

(b) When a party alleges under paragraph (a)(1) of this section that a drawing was made, a copy of the drawing shall be filed with and

identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was made, a copy of the written description shall be filed with and identified in the preliminary statement. A satisfactory explanation shall be given when a drawing or written description is not filed with the preliminary statement.

§ 1.624 Preliminary statement; invention made abroad.

(a) When the invention was made abroad and a party intends to rely on introduction of the invention into the United States, the preliminary statement must state the following facts as to the invention defined by each count;

(1) The date on which a drawing of the invention was first introduced into the United States.

(2) The date on which a written description of the invention was first introduced into the United States.

(3) The date on which the invention was first disclosed to the other person in the United States.

(4) The date on which a conception of the invention was first introduced into the United States.

(5) The date on which the invention was first reduced to practice in the United States.

(6) The date after introduction of a conception into the United States when the party began active exercise of reasonable diligence toward reducing the invention to practice.

(b) When a party alleges under paragraph (a)(1) of this section that a drawing was introduced into the United States, a copy of the drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(2) of this section that a written description of the invention was introduced into the United States, a copy of the written description shall be filed with and identified in the preliminary statement. A satisfactory explanation shall be given when a drawing or written description is not filed with the preliminary statement.

§ 1.625 Preliminary statement; derivation.

(a) When the invention was made in the United States or abroad and a party intends to prove derivation by an opponent from the party, the preliminary statement must state the following as to the invention defined by each count:

(1) The name of the opponent.

(2) The date on which a drawing of the invention was first made

(3) The date on which a written description of the invention was first made.

(4) The date on which the invention was first disclosed to another person.

(5) The date on which the invention was first conceived.

(6) The date on which the invention was first communicated to the opponent.

(b) When a party alleges under paragraph (a)(2) of this section that a drawing was made, a copy of the drawing shall be filed with and identified in the preliminary statement. When a party alleges under paragraph (a)(3) of this section that a written description of the invention was made, a copy of the written description shall be filed with and identified in the preliminary statement. A satisfactory explanation shall be given when a drawing or written description is not filed with the preliminary statement.

§ 1.626 Preliminary statement; earlier application.

When a party does not intend to present evidence to prove a conception or an actual reduction to practice and the party intends to rely solely on the filing date of an earlier application filed in the United States or abroad to prove a constructive reduction to practice, the preliminary statement may so state and identify the earlier application with particularity.

§ 1.627 Preliminary statement, sealing before filing, opening of statement.

(a) The preliminary statement and copies of any drawing or written description shall be filed in a sealed envelope bearing only the name of the party filing the statement and the style (e.g., Jones v. Smith) and number of the interference. The sealed envelope should contain only the preliminary statement and copies of any drawing or written description. If the preliminary statement is filed through the mail, the sealed envelope should be enclosed in an outer envelope addressed to the commissioner of Patents and Trademarks in accordance with § 1.1(d).

(b) A preliminary statement may be opened only at the direction of an examiner-in-chief.

§ 1.628 Preliminary statement, correction of error.

A material error arising through inadvertence or mistake in connection with a preliminary statement, or drawings or a written description submitted therewith or omitted therefrom, may be corrected by a motion for leave to make a correction. The motion shall be supported by an affidavit and shall show that the correction is essential to the ends of justice. The motion shall be filed as soon as practical after discovery of the error.

§ 1.629 Effect of preliminary statement.

(a) A preliminary statement should be carefully prepared. A party shall be strictly held to any date alleged in the preliminary statement. Doubts as to: (1) Definiteness or sufficiency of any allegation in a preliminary statement or (2) compliance with formal requirements will be resolved against the party filing the statement by restricting the party to its effective filing date or to the latest date of a period alleged in the preliminary statement as may be appropriate. A party may not correct a preliminary statement except by motion under § 1.628.

(b) Evidence which shows that an act alleged in the preliminary statement occurred prior to the date alleged in the statement shall establish only that the act occurred no earlier than the date alleged in the statement.

(c) If a party does not file a preliminary statement, the party shall not be permitted to prove that the party made the invention prior to the party's filing date or that any opponent derived the invention from the party.

(d) If a party files a preliminary statement which contains an allegation of a date of first drawing or first written description and the party does not file a copy of the first drawing or written description with, or identify the drawing or written description in, the preliminary statement as required by § 1.623(b), § 1.624(b), or § 1.625(b), the party will be restricted to the party's effective filing date as the that allegation. The content of any drawing or written description submitted with a preliminary statement will not be evaluated or considered by the Board.

(e) A preliminary statement shall not be used as evidence on behalf of the party filing the statement.

§ 1.630 Reliance on earlier application.

A party shall not be entitled to rely on the filing date of an earlier application filed in the United States or abroad unless: (a) The earlier application is identified under § 1.611(c)(5) in the notice declaring the interference or (b) the party files a motion under § 1.635(f) seeking the benefit of the filing date of the earlier application.

§ 1.631 Access to preliminary statement, service of preliminary statement.

(a) Unless otherwise ordered by an examiner-in-chief, concurrently with entry of a decision by the examiner-in-chief on motions filed under § 1.635(a) through (i), any preliminary statement filed under § 1.621(a) shall be opened to inspection by the senior party and any junior party who filed a preliminary

statement. Within a time set by the examiner-in-chief, a party shall serve copies of its preliminary statement on every opponent who served a notice under § 1.621(b).

(b) A junior party who does not file a preliminary statement shall not have access to the preliminary statement of any other party.

(c) If an interference is terminated before the preliminary statements have been opened, the preliminary statements will remain sealed and will be returned to the respective parties who submitted the statements.

§ 1.635 Motions authorized.

A party may file the following motions:

(a) A motion for judgment on the ground that a party's claim corresponding to a count is not patentable. In determining a motion filed under this paragraph when a patent is involved in the interference, the prior art of record in the patent file may be considered for the purpose of construing a count. A motion under this paragraph shall not be based on:

(1) Priority of invention by the moving party as against any opponent.

(2) Derivation by an opponent from the moving party.

(b) A motion for judgment on the ground that there is no interference-in-fact. A motion under this paragraph is proper only if: (1) The interference involves a design application or patent or a plant application or patent or (2) all the claims of a party which correspond to a count differ from all the claims of an opponent which correspond to the count.

(c) A motion to redefine the interfering subject matter by: (1) Adding or substituting a count, (2) amending an application claim corresponding to a count, (3) designating an application or patent claim to correspond to a count, or (4) deleting an application or patent claim as corresponding to a count. See § 1.637(c).

(d) A motion to substitute a different application owned by a party for an application involved in the interference. See § 1.637(d).

(e) A motion to declare an additional interference: (1) Between an additional application not involved in the interference and owned by a party and an opponent's application or patent involved in the interference, or (2) when an interference involves three or more parties, between less than all applications and any patent involved in the interference. See § 1.637(e).

(f) A motion to be accorded the benefit of the filing date of an earlier application filed in the United States or abroad. See § 1.637(f).

(g) A motion to attack the benefit accorded an opponent in the notice declaring the interference of the filing date of an earlier application filed in the United States or abroad. See § 1.637(g).

(h) When a patent is involved in an interference and the patentee has on file or files an application for reissue under § 1.171, a motion to add the application for reissue to the interference. See § 1.637(h).

(i) When a motion is filed under paragraph (a) or (b) of this section, an opponent, in addition to opposing the motion, may file a motion to redefine the interfering subject matter under paragraph (c) of this section or a motion to substitute a different application under paragraph (d) of this section.

(j) A motion to: (1) Amend an application to correct inventorship as provided by § 1.48, or (2) correct inventorship of a patent as provided in § 1.324.

(k) A motion for entry of an order relating to any matter except as specified in paragraphs (a) through (j) of this section.

§ 1.636 Motion, time for filing.

(a) A motion under § 1.635 (a) through (h) shall be filed within a time period set by an examiner-in-chief.

(b) A motion under § 1.635(i) shall be filed within 20 days of the service of the motion under § 1.635 (a) or (b) unless otherwise ordered by an examiner-in-chief.

(c) A motion under § 1.635(j) shall be filed as soon as practical after an error is discovered in the inventorship of an application or patent unless otherwise ordered by an examiner-in-chief.

(d) A motion under § 1.635(k) shall be filed as specified in this subpart or when appropriate unless otherwise ordered by an examiner-in-chief.

§ 1.637 Content of motions.

(a) Every motion shall include: (1) A statement of the precise relief requested, (2) a statement of the material facts in support of the motion, and (3) an argument why the relief requested should be granted. The motion shall indicate whether the relief requested is contingent upon a decision on another motion.

(b) Every motion shall be accompainied by a proposed order.

(c) A motion under § 1.635(c) shall explain why the interfering subject matter should be redefined.

(1) A motion seeking to add or substitute a count shall:

(i) Propose each count to be added or substituted.

(ii) When the moving party is an applicant, show the patentability to the applicant of all claims in, or proposed to be added to, the party's application which correspond to each proposed count and apply the terms of the claims to the disclosure of the party's application; when necessary a moving party applicant shall file with the motion an amendment adding any proposed claim to the application.

(iii) Identify all claims in an opponent's application which should be designated to correspond to each proposed count; if an opponent's application does not contain such a claim, the moving party shall propose a claim to be added to the opponent's application. The moving party shall show the patentability of any proposed claims to the opponent and apply the terms of the claims to the disclosure of the opponent's application.

(iv) Designate the claims of any patent involved in the interference which define the same patentable invention as each proposed count.

(v) Show that each proposed count defines a separate patentable invention from every other count in the interference.

(vi) Where appropriate, request the benefit of the filing date of any earlier application filed in the United States or abroad.

(2) A motion seeking to amend an application claim corresponding to a count shall:

(i) Propose an amended claim.

(ii) Apply the terms of each proposed claim to the disclosure of the application.

(iii) Show the patentability to the applicant of each proposed amended claim and apply the terms of the proposed amended claim to the disclosure of the application; when necessary a moving party applicant shall file with the motion an amendment adding the proposed claim to the application.

(iv) Where appropriate, request the benefit of the filing date of any earlier application filed in the United States or abroad.

(3) A motion seeking to designate an application or patent claim to correspond to a count shall:

(i) Identify the claim and the count.

(ii) Show the claim defines the same patentable invention as the count.

(iii) Where appropriate, request the benefit of the filing date of any earlier application filed in the United States or abroad.

(4) A motion seeking to delete an application or patent claim as corresponding to a count shall:

(i) Identify the claim and the count.

(ii) Show the claim does not define the same patentable invention as any other claim designated in the notice declaring the interferences as corresponding to the count.

(d) A motion under § 1.635(d) to substitute a different application shall:

(1) Identify the different application.

(2) Certify that a complete copy of the file of the different application, except for documents filed under § 1.131 or § 1.608(b), has been served on all opponents.

(3) Show the patentability to the applicant of all claims in, or proposed to be added to, the different application which correspond to each count and apply the terms of the claims to the disclosure of the different application; when necessary the applicant shall file with the motion an amendment adding a claim to the different application.

(4) Where appropriate, request the benefit of the filing date of an earlier application filed in the United States or abroad.

(e) A motion to declare an additional interference under § 1.635(e) shall explain why an additional interference is necessary.

(1) When the motion seeks an additional interference under § 1.653(e)(1), the motion shall:

(i) Identify the additional application.

(ii) Certify that a complete copy of the file of the additional application, except for documents filed under § 1.131 or § 1.608(b), has been served on all opponents.

(iii) Propose a count for the additional interference.

(iv) Show the patentability to the applicant of all claims in, or proposed to be added to, the additional application which correspond to each proposed count for the additional interference and apply the terms of the claims to the disclosure of the additional application; when necessary the applicant shall file with the motion an amendment adding a claim to the additional application.

(v) When the opponent is an applicant, show the patentability to the opponent of any claims in, or proposed to be added to, the opponent's application which correspond to the proposed count and apply the terms of the claims to the disclosure of the opponent's application.

(vi) When the opponent is a patentee, designate the claims of the patent which define the same patentable invention defined by the proposed count.

(vii) Show that each proposed count for the additional interference defines a separate patentable invention from all counts of the interference in which the motion is filed.

(viii) Where appropriate, request the benefit of the filing date of an earlier application filed in the United States or abroad.

(2) When the motion seeks an additional interference under § 1.635(e)(2), the motion shall:

(i) Identify any application or patent to be involved in the additional interference.

(ii) Propose a count for the additional interference.

(iii) When the moving party is an applicant, show the patentability to the applicant of all claims in, or proposed to be added to, the party's application which correspond to each proposed count and apply the terms of the claims to the disclosure of the party's application; when necessary a moving party applicant shall file with the motion an amendment adding any proposed claim to the application.

(iv) Identify all claims in any opponent's application which should be designated to correspond to each proposed count; if an opponent's application does not contain such a claim, the moving party shall propose a claim to be added to the opponent's application. The moving party shall show the patentability of any proposed claims to the opponent and apply the terms of the claims to the disclosure of the opponent's application.

(v) Designate the claims of any patent involved in the interference which define the same patentable invention as each proposed count.

(vi) Show that each proposed count for the additional interference defines a separate patentable invention from all counts in the interference in which the motion is filed.

(vii) Where appropriate, request the benefit of the filing date of an earlier application filed in the United States or abroad.

(f) A motion for benefit under § 1.635(f) shall:

(1) Identify the earlier application.

(2) When the earlier application is an application filed in the United States, certify that a complete copy of the file of the earlier application, except for documents filed under § 1.131 of § 1.608(b), has been served on all opponents. When the earlier application is an application filed abroad, certify that a copy of the application filed abroad has been served on all opponents.

(3) Show that the earlier application discloses an embodiment for each count.

(g) A motion to attack benefit under § 1.635(g) shall explain, as to each count, why an opponent should not be accorded the benefit of the filing date of the earlier application.

(h) A motion to add an application for reissue under § 1.635(h) shall:

(1) Identify the application for reissue.

(2) Certify that a complete copy of the file of the application for reissue has been served on all opponents.

(3) Show the patentability of all claims in, or proposed to be added to, the application for reissue which correspond to each count and apply the terms of the claims to the disclosure of the application for reissue; when necessary a moving applicant for reissue shall file with the motion an amendment adding a claim to the application for reissue.

(4) Where appropriate, request the benefit of the filing date of an earlier application filed in the United States or abroad.

(i) [Reserved]

(j) [Reserved]

(k) A motion under § 1.635(k) shall contain a certificate by the moving party stating that the moving party has conferred with all opposing parties in an effort in good faith to resolve by agreement the issues raised by the motion. A moving party shall indicate in the motion whether any other party plans to oppose entry of the order accompanying the motion.

§1.638 Opposition and reply, time for filing opposition and reply.

(a) An opposition may not be filed to a motion under § 1.671(g) unless ordered by an examiner-in-chief. Unless otherwise ordered by an examiner-in-chief, any opposition to any other motion shall be filed within 20 days after service of the motion. An opposition shall: (1) Identify any material fact set forth in the motion which is in dispute and (2) include an argument why the relief requested in the motion should be denied.

(b) A reply to an opposition shall not be filed unless authorized by this subpart or an examiner-in-chief or the motion was filed under § 1.635 (a) through (j). Unless otherwise ordered by an examiner-in-chief, any reply shall be filed within 15 days after service of the opposition. A reply shall be directed only to new points raised in the opposition.

§ 1.639 Evidence in support of motion, opposition, or reply.

(a) Satisfactory proof of any material fact alleged in a motion, opposition, or reply must be filed and served with the motion, opposition, or reply unless the proof relied upon is part of the interference file or the file of any patent or application involved in the interference or any earlier application

filed in the United States of which a party has been accorded benefit.

(b) When a motion is under § 1.635 (a) through (i), the proof shall be limited to patents, printed publications, and affidavits attesting to the accuracy of a translation. When a party believes that testimony is necessary to support or oppose a motion, the party shall describe the nature of the testimony needed. If the examiner-in-chief finds that testimony is needed to decide the motion, the examiner-in-chief may grant appropriate interlocutory relief and enter an order authorizing the taking of testimony and deferring a decision on the motion to final hearing.

§ 1.640 Motions, hearing and decision, redeclaration of interference, order to show cause.

(a) A hearing on a motion may be held in the discretion of the examiner-in-chief. The examiner-in-chief shall set the date and time for any hearing. Unless otherwise ordered by the examiner-in-chief, each party will be entitled to no more than 20 minutes of oral argument at the hearing. An examiner-in-chief may direct that a hearing take place by telephone.

(b) Motions will be decided by an examiner-in-chief. An examiner-in-chief may consult with a primary examiner in deciding motions involving a question of patentability. An examiner-in-chief may grant or deny any motion or take such other action which will secure the just, speedy, and inexpensive determination of the interference.

(1) When motions under § 1.635 (a) through (i) are decided, the examiner-in-chief will, when necessary, set a time for filing any amendment to an application involved in the interference, for filing a supplemental preliminary statement as to any new counts involved in the interference, and for serving copies of documents filed under § 1.131 or 1.608(b) which have not been previously served. A supplemental preliminary statement shall meet the requirements specified in § 1.623, 1.624, 1.625, or 1.626, but need not be filed if a party states that it intends to rely on a preliminary statement previously filed under § 1.621(a). After the time expires for filing any amendment and supplemental preliminary statement, the examiner-in-chief will, if necessary, redeclare the interference.

(2) After a decision is entered on motions filed under § 635 (a) through (i), a further motion under § 1.635 (a) through (i) will not be considered.

(c) When a decision on any motion under § 1.635 is entered which does not result in the issuance of an order to show cause under paragraph (d), a party may file a request for reconsideration within 15 days after the date of the decision. The filing of a request for reconsideration will not stay any time period set by the decision. The request for reconsideration shall specify with particularity the points misapprehended or overlooked in rendering the decision. No opposition to a request for reconsideration shall be filed unless requested by an examiner-in-chief or the Board. A request for reconsideration will ordinarily not be granted unless an opposition has been requested by an examiner-in-chief or the Board. The request for reconsideration shall be decided by a panel of the Board consisting of at least three examiners-in-chief, one of whom will normally be the examiner-in-chief who decided the motion.

(d) An examiner-in-chief may issue an order to show cause why judgment should not be entered against a party when:

(1) A decision on a motion is entered which is dispositive of the interference against the party as to all counts.

(2) The party is a junior party who fails to file a preliminary statement.

(3) The party is a junior party whose preliminary statement fails to overcome the effective filing date of another party.

(e) When an order to show cause is issued under paragraph (d) of this section, the Board shall enter a judgment in accordance with the order unless, within 15 days after the date of the order, the party against whom the order issued files a paper which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 15 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party.

§ 1.641 Unpatentability discovered by examiner or examiner-in-chief.

During the pendency of an interference, if the examiner-in-chief becomes aware of a reason why a claim corresponding to a count is not patentable, the examiner-in-chief may notify the parties of the reason and set a time within which each party may present its views. After considering any timely filed views, the examiner-in-chief shall decide how the interference shall further proceed.

§ 1.642 Addition of new application to interference.

During the pendency of an interference, if the examiner-in-chief becomes aware of an application not involved in the interference which claims the same patentable invention as a count in the interference, the examiner-in-chief may add the application to the interference on such terms as may be fair to all parties.

§ 1.643 Prosecution of interference by assignee.

(a) An assignee of record in the Patent and Trademark Office of the entire interest in an application or patent involved in an interference is entitled to conduct prosecution of the interference to the exclusion of the inventor.

(b) An assignee of a part interest in an application or patent involved in an interference may file a motion for entry of an order authorizing it to prosecute the interference. The motion shall show: (1) The inability or refusal of the inventor to prosecute the interference or (2) other cause why the ends of justice require that the assignee of a part interest be permitted to prosecute the interference. The examiner-in-chief may allow the assignee of a part interest to prosecute the interference upon such terms as may be appropriate.

§ 1.644 Petitions in interference.

(a) There is no appeal to the Commissioner in an interference from a decision of an examiner-in-chief or a panel consisting of more than one examiner-in-chief. The Commissioner will not consider a petition in an interference unless:

(1) The petition is from a decision of an examiner-in-chief or a panel and the examiner-in-chief or the panel shall be of the opinion: (i) That the decision involves a controlling question of procedure or an interpretation of a rule as to which there is a substantial ground for a difference of opinion, and (ii) that an immediate decision on petition by the Commissioner may materially advance the ultimate termination of the interference.

(2) The petition seeks to invoke the supervisory authority of the Commissioner.

(3) The petition seeks relief under § 1.183.

(b) A petition under paragraph (a)(1) of this section filed more than 15 days after the date of the decision of the examiner-in-chief or the panel may be dismissed as untimely. A petition under paragraph (a)(2) of this section shall not be filed prior to decision by the Board awarding judgmment and shall not relate to: (1) The merits of priority of invention or patentability or (2) the admissibility of evidence under the Federal Rules of Evidence. Any petition under paragraph (a)(3) of this secton shall be timely if it is made as part of, or

simultaneously with, a proper motion under § 1.635. Any opposition to a petition shall be filed within 15 days of the date of service of the petition.

(c) The filing of a petition shall not stay the proceeding unless a stay is granted in the discretion of the examiner-in-chief, the panel, or the Commissioner.

(d) Any petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support of the petition or opposition shall accompany or be embodied therein. The petition will be decided on the basis of the record made before the examiner-in-chief or the panel and no new evidence will be considered by the Commissioner in deciding the petition. Copies of documents already of record in the interference shall not be submitted with the petition or opposition.

(e) Any petition under paragraph (a) of this section shall be accompanied by the petition fee set forth in § 1.17(h).

(f) Any request for reconsideration of a decision by the Commissioner shall be filed within 15 days of the decision of the Commissioner and must be accompanied by the fee set forth in § 1.17(h). No opposition to a request for reconsideration shall be filed unless requested by the Commissioner. A request for reconsideration will ordinarily not be granted by the Commissioner.

(g) Where reasonably possible, service of any petition, opposition, or request for reconsideration shall be such that delivery is accomplished within one working day. Service by hand-delivery or Express Mail complies with this paragraph.

(h) An oral hearing on the petition will not be granted except when considered necessary by the Commissioner.

(i) The Commissioner may delegate to appropriate Patent and Trademark Office employees the determination of petitions under this section.

§ 1.645 Extension of time, late papers.

(a) A party may file a motion seeking an extension of time to take action in an interference, file a notice of appeal (§§ 1.302, 1.304), or commence a civil action (§ 1.303, 1.304). The motion shall be filed within sufficient time to actually reach the examiner-in-chief before expiration of the time for taking action, filing the notice, or commencing the civil action. A moving party should not assume that the motion will be granted even if there is no objection by any other party. The motion will be denied unless the moving party shows good cause why an extension should be granted. The press of other business arising after an examiner-in-chief sets a time for taking action will not normally constitute good cause. A motion seeking additional time to take testimony because a party has not been able to procure the testimony of a witness shall be accompained by an affidavit setting forth the name of the witness, any steps taken to procure the testimony of the witness, the dates on which the steps were taken, and the facts expected to be proved through the witness.

(b) Any paper belatedly filed will not be considered except upon motion, accompanied by an affidavit, which shows sufficient cause why the paper was not timely filed.

(c) The provisions of § 1.136 do not apply to time periods in interferences.

§ 1.646 Service of papers, proof of service.

(a) Every paper filed in the Patent and Trademark Office in an interference shall be served upon all other parties except:

(1) Preliminary statements when filed under § 1.621; preliminary statements shall be served when service is ordered by an examiner-in-chief.

(2) Certified transcripts filed under §§ 1.676 or 1.684; copies of transcripts shall be served as part of a party's record under § 1.653(c).

(b) Service shall be on an attorney or agent for a party. If there is no attorney or agent for the party, service shall be on the party. An examiner-in-chief may waive or order additional service where appropriate.

(c) Unless otherwise ordered by an examiner-in-chief, service of a paper may be made as follows:

(1) By handing a copy of the paper to the person served.

(2) By leaving a copy of the paper with someone employed by the person at the person's usual place of business.

(3) When the person served has no usual place of business, by leaving a copy of the paper at the person's residence with someone of suitable age and discretion then residing therein.

(4) By mailing a copy of the paper by first class mail; when service is by mail the date of mailing is regarded as the date of service.

(5) When it is shown to the satisfaction of an examiner-in-chief that none of the above methods of obtaining or serving the copy of the paper was successful, the examiner-in-chief may order service by publication of an appropriate notice in the Official Gazette.

(d) An examiner-in-chief may order that a paper be served by Express Mail or its commercial equivalent.

(e) Proof of service must be made before a paper will be considered in an interference. Proof of service may appear on or be affixed to the paper. Proof of service shall include the date and manner of service. In the case of personal service under paragraph (c)(1) through (c)(3) of this section, proof of service shall include the names of any person served and the person who made the service. Proof of service may be made by an acknowledgment of service by or on behalf of the person served or a statement signed by the party or the party's attorney or agent containing the information required by this section. A statement of an attorney or agent attached to, or appearing in, the paper stating the time and manner of service will be accepted as prima facie proof of service.

§ 1.647 Translation of documents in foreign language.

When a party relies on a document in a language other than English, a translation of the document into English and an affidavit attesting to the accuracy of the translation shall be filed with the document.

§ 1.651 Setting times for discovery and taking testimony, parties entitled to take testimony.

(a) At an appropriate stage in an interference, an examiner-in-chief shall set: (1) A time for filing motions for additional discovery under § 1.687(c), and (2) testimony periods for taking any necessary testimony.

(b) Where appropriate, testimony periods will be set to permit a party to:

(1) Present its case-in-chief and/or case-in-rebuttal.

(2) Cross examine an opponent's case-in-chief and/or a case-in-rebuttal.

(c) A party is not entitled to take testimony to present a case-in-chief unless:

(1) The examiner-in-chief orders the taking of testimony under § 1.639(b).

(2) The party alleges in its preliminary statement a date of invention prior to the effective filing date of the senior party.

(3) A testimony period has been set to permit an opponent to prove a date of invention prior to the effective date of the party and the party has filed a preliminary statement alleging a date of invention prior to that effective date.

(4) A motion is filed showing good cause why a testimony period should be set.

(d) Testimony shall be taken during the testimony periods set under paragraph (a) of this section.

§ 1.652 Judgment for failure to take testimony or file record.

If a junior party fails to timely take testimony authorized under § 1.651, or file a record under § 1.653(c), an examiner-in-chief, with or without a motion by another party, may issue an order to show cause why judgment should not be entered against the junior party. When an order is issued under this section, the Board shall enter judgment in accordance with the order unless, within 15 days after the date of the order, the junior party files a paper which shows good cause why judgment should not be entered in accordance with the order. Any other party may file a response to the paper within 15 days of the date of service of the paper. If the party against whom the order was issued fails to show good cause, the Board shall enter judgment against the party.

§ 1.653 Record and exhibits.

(a) Testimony shall consist of affidavits under § 1.672 (b) and (e), transcripts of depositions under §§ 1.672 (b) and (c) and 1.634(d), agreed statements of fact under § 1.672(f), and recorded answers under § 1.684(c).

(b) An affidavit shall be filed as set forth in § 1.672 (b) or (e). A certified transcipt of a deposition including a deposition cross-examining an affiant, shall be filed as set forth in §§ 1.676 or 1.684. An original agreed statement shall be filed as set forth in § 1.672(f). Recorded answers shall be filed as set forth under § 1.684(c).

(c) In addition to the items specified in paragraph (b) of this section and within a time set by an examiner-in-chief each party shall file three copies and serve one copy of a record consisting of:

(1) An index of the names of each witness giving the pages of the record where the direct testimony and cross-examination of each witness begins.

(2) An index of exhibits briefly describing the nature of each exhibit and giving the page of the record where each exhibit is first identified and offered into evidence.

(3) A copy of the counts.

(4) A copy of each: (i) Affidavit, (ii) transcript, including transcripts of cross-examination of any affiant, (iii) agreed statement relied upon by the party, and (iv) recorded answers filed under paragraph (b) of this section.

(5) A copy of each notice, official record, and publication relied upon by the party and filed under § 1.682(a).

(6) A copy of any evidence from another interference, proceeding, or action relied upon by the party under § 1.683.

(7) A copy each request for an admission and the admission and each written interrogatory and the answer upon which a party intends to rely under § 1.688.

(d) One copy of the record filed in the Patent and Trademark Office shall be a ribbon copy.

(e) The pages of the record shall be serially numbered.

(f) The name of each witness shall appear at the top of each page of each affidavit or transcript of deposition of the witness.

(g) The record may be typewritten or printed.

(h) When the record is printed, it may be produced by standard typographical printing or by any process capable of producting a clear black permanent image. All printed matter except on covers must appear in at least 11 point type on opaque, unglazed paper. Margins must be justified. Footnotes may not be printed in type smaller than 9 point. The page size shall be 8½ by 11 inches (21.8 by 27.9 cm.) with type matter 6½ by 9½ inches (16.5 by 24.1 cm.). The record shall be bound to lie flat when open.

(i) When the record is typewritten, it must be clearly legible on opaque, unglazed, durable paper approximately 8½ by 11 inches (21.8 by 27.9 cm.) in size (letter size). Typing shall be double-spaced on one side of the paper in not smaller than pica-type with a margin of 1½ inches (3.8 cm.) on the left-hand side of the page. The pages of the record shall be bound with covers at their left edges in such manner to lie flat when open in one or more volumes of convenient size (approximately 100 pages per volume is suggested). Multigraphed or otherwise reproduced copies conforming to the standards specified in this paragraph may be accepted.

(j) Each party shall file its exhibits with the record specified in paragraph (c) of this section. One copy of each documentary exhibit shall be served. Documentary exhibits shall be filed in an envelope or folder and shall not be bound as part of the record. Physical exhibits, if not filed by an officer under § 1.676(c), shall be filed with the record. Each exhibit shall contain a label which identifies the party submitting the exhibit and an exhibit number, the style of the interference (e.g., Jones v. Smith), and the interference number. Where possible, the label should appear at the bottom right-hand corner of each documentary exhibit.

(k) Any testimony, record, or exhibit which does not comply with this section may be returned under § 1.618(a).

§ 1.654 Final hearing.

(a) At an appropriate stage of the interference, the parties will be given an opportunity to appear before the Board to present oral argument at a final hearing. The examiner-in-chief shall set a date and time for final hearing. Unless otherwise ordered by the examiner-in-chief or the Board, each party will be entitled to no more than 60 minutes of oral argument at final hearing.

(b) The opening argument of a junior party shall include a fair statement of the junior party's case and the junior party's position with respect to the case presented on behalf of any other party. A junior party may reserve a portion of its time for rebuttal.

(c) After final hearing, the interference shall be taken under advisement by the Board. No further paper shall be filed except under § 1.658(b) or as authorized by an examiner-in-chief or the Board. No additional oral argument shall be had unless ordered by the Board.

§ 1.655 Matters considered at final hearing.

(a) At final hearing, the Board may consider any properly raised issue including: (1) Priority of invention and derivation by an opponent from a party who filed a preliminary statement under § 1.625 (2) patentability of the invention, (3) admissibility of evidence (4) any interlocutory matter deferred to final hearing by an examiner-in-chief, and (5) any other matter necessary to resolve the interference. The Board may also consider whether any interlocutory order entered by an examiner-in-chief or the Board was manifestly erroneous or an abuse of discretion. All interlocutory orders shall be presumed to have been correct and the burden of showing manifest error or an abuse of discretion shall be on the party attacking the order.

(b) A party shall not be entitled to raise at final hearing a matter which properly could have been raised by a motion under § 1.635 (a) through (j) unless: (1) The motion was properly filed (2) the matter was properly raised by a party in an opposition to a motion under § 1.635 (a) through (j) and the motion was granted over the opposition, or (3) the party shows good cause why the issue was not timely raised by motion or opposition.

(c) To prevent manifest injustice, the Board may consider an issue even though it would not otherwise be entitled to consideration under this section.

§ 1.656 Briefs at final hearing.

(a) Each party shall be entitled to file briefs for final hearing. The examiner-in-

chief shall determine the briefs needed and shall set the time and order for filing briefs.

(b) The opening brief of a junior party shall contain under appropriate headings and in the order indicated:

(1) A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(2) A statement of the issues presented for decision in the interference.

(3) A statement of the facts relevenat to the issues presented for decision with appropriate references to the record.

(4) An argument, which may be preceded by a summary, which shall contain the contentions of the party with respect to the issues to be decided, and the reasons therefor, with citations to the cases, statutes, other authorities, and parts of the record relied on.

(5) A short conclusion stating the precise relief requested.

(6) An appendix containing a copy of the counts.

(c) The opening brief of the senior party shall conform to the requirements of paragraph (b) of this section except:

(1) A statement of the issues and of the facts need not be made unless the party is dissatisfied with the statement in the opening brief of the junior party and

(2) An appendix containing a copy of the conunts need not be made if the copy of the counts in the opening brief of the junior party is correct.

(d) Briefs may be printed or typewritten. If typewritten, legal-size paper may be used. The opening brief of each party in excess of 50 legal-size double-spaced typewritten pages or any other brief in excess of 25 legal-size double-space typewritten pages shall be printed unless a satisfactory reason be given why the brief should not be printed. Any printed brief shall comply with the requirements of § 1.653(h). Any typewritten brief shall comply with the requirements of § 1.653(i), except legal-size paper may be used and the binding and covers specified are not required.

(e) An original and three copies of each brief must be filed.

(f) Any brief which does not comply with the requirements of this section may be returned under § 1.618(a).

(g) Any party, separate from its opening brief, but filed concurrently therewith, may file an original and three copies of concise proposed findings of fact and conclusions of law. Any proposed findings of fact shall be supported by specific references to the record. Any proposed conclusions of law shall be supported by citation of cases, statutes, or other authority. Any opposing party, separate from its opening or reply brief, but filed concurrently therewith, may filed a paper accepting or objecting to any proposed findings of fact or conclusions of law; when objecting, a reason must be given. The Board may adopt the proposed findings of fact and conclusions of law in whole or in part.

(h) If a party intends at final hearing to maintain any objection previously made to the admissibility of any of an opponent's evidence, the party shall file with its opening brief an original and three copies of a motion to suppress the evidence. Any objection previously made to the admissibility of an opponent's evidence is waived unless the motion required by this paragraph is filed. An original and three copies of an opposition to the motion may be filed with an opponent's opening brief or reply brief as may be appropriate.

§ 1.657 Burden of proof as to date of invention.

A rebuttable presumption shall exist that, as to each count, the parties made their invention in the chronological order of the earlier of their filing dates or effective filing dates. The burden of proof shall be upon a party who contends otherwise.

§ 1.658 Final decision.

(a) After final hearing, the Board shall enter a decision resolving the issues raised at final hearing. The decision may: (1) Enter judgment, in whole or in part, (2) remand the interference to an examiner-in-chief for further proceedings, or (3) take further action not inconsistent with law. A judgment as to a count shall state whether or not each party is entitled to a patent containing the claims in the partys' patent or application which correspond to the count. When the Board enters a decision awarding judgment as to all counts, the decision shall be regarded as a final decision.

(b) Any request for reconsideration of a decision under paragraph (a) of this section shall be filed within 14 days after the date of the decision. The request for reconsideration shall specify with particularity the points misapprehended or overlooked in rendering the decision. Any reply to a request for reconsideration shall be filed within 14 days of the date of service of the request for reconsideration. Where reasonably possible, service of the request for reconsideration shall be such that delivery is accomplished within one working day. Service by hand-delivery or Express Mail complies with this paragraph. The Board shall enter a decision on the request for reconsideration. If the Board shall be of the opinion that the decision on the request for reconsideration significantly modifies its original decision under paragraph (a) of this section, the Board may designate the decision on the request for reconsideration as a new decision under paragraph (a) of this section.

(c) A judgment in an interference settles all issues which: (1) Were raised and decided in the interference, (2) could have been properly raised and decided in the interference by a motion under § 1.635 (a) through (d) and (f) through (j), and (3) could have been properly raised and decided in an additional interference with a motion under § 1.635(e). A party who could have properly moved, but failed to move, under § 1.635 (a) through (j), shall be stopped to take ex parte or inter partes action in the Patent and Trademark Office after the interference which is inconsistent with the party's failure to properly move.

§ 1.659 Recommendation.

(a) Should the Board have knowledge of any ground for rejecting any application claim not involved in the judgment of the interference, it may include in its decision a recommended rejection of the claim. Upon resumption of ex parte prosecution of the application, the primary examiner shall be bound by the recommendation and shall enter and maintain the recommended rejection unless an amendment or showing of facts not previously of record is filed which, in the opinion of the primary examiner, overcomes the recommended rejection.

(b) Should the Board have knowledge of any ground for reexamination of a patent involved in the interference as to a patent claim not involved in the judgment of the interference, it may include in its decision a recommendation to the Commissioner that the patent be reexamined. The Commissioner will determine whether reexamination will be ordered.

(c) The Board may make any other recommendation to the primary examiner or the Commissoner as may be appropriate.

§ 1.661 Termination of interference.

An interference may be terminated by summary judgment under § 1.617(g), by judgment after an order to show cause under §§ 1.640(e) or 1.652, by judgment after final hearing under § 1.658, or as otherwise provided in this subpart.

§ 1.662 Request for entry of adverse judgment; reissue filed by patentee.

(a) A party may, at any time during an interference, request and agree to entry of an adverse judgment. The filing by an applicant or patentee of a written disclaimer of the invention, concession of priority or unpatentability, or abandonment of the invention will be construed as a request for entry of an adverse judgment against the applicant or patentee. The filing of a statutory disclaimer under 35 U.S.C. 253 by a patentee will be construed as a request for entry of an adverse judgment against the patentee. Upon the filing by a party of a request for entry of an adverse judgment, the Board may enter judgment against the party.

(b) If a patentee involved in an interference files an application for reissue during the interference and omits all claims of the patent corresponding to the counts of the interference for the purpose of avoiding the interference, judgment may be entered against the patentee. A patentee who files an application for reissue other than for the purpose of avoiding the interference shall timely file a motion under § 1.635(h) or show good cause why the motion could not have been timely filed.

(c) After entry of a judgment under this section, if an interference no longer exists, the interference may be dissolved as to any party against whom judgment was not entered and any further posecution of any application involved in the interference shall be ex parte before a primary examiner.

§ 1.663 Status of claim of defeated applicant after interference.

Whenever an adverse judgment is entered as to a count against an applicant from which no appeal (35 U.S.C. 141) or other review (35 U.S.C. 146) has been or can be taken or had, the claims of the application corresponding to the count stand finally disposed of without further action by the primary examiner. Such claims are not open to further ex parte prosecution.

§ 1.664 Action after interference.

(a) After termination of an interference, the primary examiner will promptly take such action in any application previously involved in the interference as may be necessary. Unless entered by order of an examiner-in-chief, amendments presented during the interference shall not be entered, but may be subsequently presented by the applicant subject to the provisions of this part provided prosecution of the application is not otherwise closed.

(b) After judgment, the application of any party may be held subject to further examination, including an interference with another application.

§ 1.665 Second interference.

A second interference between the same parties will not be declared upon an application not involved in an earlier interference for an invention defined by a count of the earlier interference. See § 1.658(c).

§ 1.666 Filing of interference settlement agreements.

(a) Any agreement or understanding between parties to an interference, including any collateral agreements referred to therein, made in connection with or in contemplation of the termination of the interference, must be in writing and a true copy thereof must be filed before the termination of the interference as between the parties to the agreement or understanding.

(b) If any party filing the agreement or understanding under paragraph (a) of this section so requests, the copy will be kept separate from the file of the interference, and made available only to Government agencies on written request, or to any person upon petition accompanied by the fee set forth in § 1.17(i) and on a showing of good cause.

(c) Failure to file the copy of the agreement or understanding under paragraph (a) of this section will render permanently unenforceable such agreement or understanding and any patent or the parties involved in the interference or any patent subsequently issued on any application of the parties so involved. The Commissioner may, however, upon petition accompanied by the fee set forth in § 1.17(h) and on a showing of good cause for failure to file within the time prescribed, permit the filing of the agreement or understanding during the six month period subsequent to the termination of the interference as between the parties to the agreement or understanding.

§ 1.671 Evidence must comply with rules.

(a) Evidence consists of testimony and exhibits, official records and publications filed under § 1.682, evidence from another interference, proceeding, or action filed under § 1.683, and discovery relied upon under § 1.688, and the specification (including claims) and drawings of any application or patent:

(1) Involved in the interference.

(2) To which a party has been accorded benefit in the notice declaring the interference or by a motion granted under § 1.635(f).

(3) For which a party has sought, but has been denied, benefit by a motion under § 1.635(f).

(4) For which benefit was rescinded by a motion granted under § 1.635(g).

(b) Except as otherwise provided in this part, the Federal Rules of Evidence shall apply to interference proceedings. Those portions of the Federal Rules of Evidence relating to criminal actions, juries, and other matters clearly not relevant to interferences shall not apply.

(c) Unless the context is otherwise clear, the following terms of the Federal Rules of Evidence shall be construed as indicated:

(1) "Courts of the United States," "U.S. Magistrate," "court," "trial court," or "trier of fact" means examiner-in-chief or Board as may be appropriate.

(2) "Judge" means examiner-in-chief.

(3) "Judicial notice" means official notice.

(4) "Civil action," "civil proceeding," "action," or "trial," mean interference.

(5) "Appellate court" means United States Court of Appeals for the Federal Circuit or a United States district court when judicial review is under 35 U.S.C. 146.

(6) "Before the hearing" in Rule 703 means before giving testimony by oral deposition or affidavit.

(7) "The trial or hearing" in Rules 803(24) and 804(5) means the taking of testimony by oral deposition.

(d) Certification is not necessary as a condition to admissibility when the record is a record of the Patent and Trademark Office to which all parties have access.

(e) An affidavit filed during ex parte prosecution of an application or an affidavit filed under 1.608(b) shall not be admissible evidence unless a notice of deposition of the affiant is given and the opponent files a notice of election under 1.672(b).

(f) The significance of documentary and other exhibits shall be discussed with particularity by a witness during oral deposition or in an affidavit.

(g) A party must file a motion seeking permission from an examiner-in-chief prior to taking testimony or seeking documents or things under 35 U.S.C. 24. The motion shall describe the general nature and show the admissibility in the interference of the testimony, document, or thing.

(h) Evidence which is not taken or sought and filed in accordance with this subpart shall not be admissible.

§ 1.672 Manner of taking testimony.

(a) Testimony of a witness shall be taken by oral deposition or affidavit in accordance with this subpart.

(b) A party wishing to take the testimony of a witness whose testimony will not be compelled under 35 U.S.C. 24 shall notice a deposition of the witness under § 1.673. Unless otherwise ordered by an examiner-in-chief, within 10 days of the service of the notice, any opponent may file a notice of election to have the party present the testimony of the witness by affidavit. If a notice of election is timely filed by any opponent, the testimony of the witness shall be filed in the Patent and Trademark Office. The affidavit may be in the form of a transcript of an ex parte deposition. After the affidavit is filed and within a time set by an examiner-in-chief, any opponent may file a request to cross examine the witness on oral deposition. The request shall state any objection to the admissibility of any evidence presented in or with the affidavit. If an opponent elects not to cross examine on oral deposition, within the time set by the examiner-in-chief, the opponent shall file a paper stating any objection to the admissibility of any evidence presented in or with the affidavit. If any opponent requests cross-examination of an affiant the party shall re-notice the deposition for the purpose of cross-examination by any opponents. Any redirect and recross shall take place at the deposition. At any deposition for the purpose of cross-examination, the party shall not be entitled to rely on any document or thing not mentioned in one or more of the affidavits filed under this paragraph, except to the extent necessary to conduct proper redirect. The party who gives notice or re-notice of a deposition shall be responsible for obtaining a court reporter and for filing a certified transcript of the deposition as required by § 1.676.

(c) A party wishing to take the testimony of a witness whose testimony will be compelled under 35 U.S.C. 24 must first obtain permission from an examiner-in-chief under § 1.671(g). If permission is granted, the party shall notice a deposition of the witness under §1.673 and may proceed under 35 U.S.C. 24. The testimony of the witness shall be taken on oral deposition.

(d) If the parties agree in writing, a deposition may be taken before any person authorized to administer oaths, at any place, upon any notice, and in any manner, and when so taken may be used like other depositions.

(e) If the parties agree in writing, the testimony of any witness may be submitted in the form of an affidavit in which case a notice of deposition under § 1.672(b) shall not be required. The affidavit of the witness shall be filed in the Patent and Trademark Office.

(f) If the parties agree in writing, an agreed statement may be submitted setting forth: (1) How a particular witness would testify if called, or (2) the facts in the case of one or more of the parties. The agreed statement shall be filed in the Patent and Trademark Office.

§ 1.673 Notice of examination of witness.

(a) A party withing to take testimony shall file and serve a single notice of deposition stating the time and place of each deposition to be taken. The notice shall specify the name and address of each witness and the general nature of the testimony to be given by the witness. If the name of a witness is not known, a general description sufficient to identify the witness or a particular class or group to which the witness belongs may be given instead.

(b) A party shall serve, but not file, with the notice:

(1) A copy of each document in the party's possession, custody, or control and upon which the party intends to rely.

(2) A list of and a proffer of reasonable access to things in the party's possesison, custody, or control and upon which the party intends to rely.

(c) A party shall not be permitted to rely on any witness not listed in the notice, or any document not served or any thing not listed as required by paragraph (b) of this secton, except upon a motion promptly filed which is accompanied by any proposed notice, additional documents, or lists and which shows sufficient cause why the notice, documents, or lists were not served in accordance with this section.

(d) Each opposing prty shall have a full opportunity to attend a deposition and cross examine. If an opposing party attends a deposition of a witness not named in a notice and cross examines the witness or fails to object to the taking of the deposition without notice, the opposing party shall be deemed to have waived any right to object to the taking of the deposition or lack of proper notice.

(e) The parties shall not take depositions in more than one place at the same time or so nearly at the same time that reasonable opportunity to travel from one place of deposition to another cannot be had. Depositions may be noticed for a reasonable place in the contiguous 48 States of the United States without approval by an examiner-in-chief. Unless the parties agree in writing, a deposition may not be noticed for any other place without approval of an examiner-in-chief.

(f) Before serving a notice of deposition, a party shall have an oral conference with all opponents to attempt to agree on a mutually acceptable place and time for conducting the depostion. A certificate shall appear in the notice stating that the oral conference took place or explaining why the conference could not be had.

(g) A copy of the notice of deposition shall be attached to the certified transcript of the deposition filed under § 1.676(a).

§ 1.674 Persons before whom depositions may be taken.

(a) Within the United States or a territory or insular possession of the United States a deposition shall be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held.

(b) Unless the parties agree in writing, the following persons shall not be competent to serve as an officer: (1) A relative or employee of a party, (2) a relative or employee of an attorney or agent of a party, or (3) a person interested, directly or indirectly, in the interference either as counsel, attorney, agent, or otherwise.

§ 1.675 Examination of witness, reading and signing transcript of deposition.

(a) Each witness before giving an oral deposition shall be duly sworn according to law by the officer before whom the deposition is to be taken.

(b) The testimony shall be taken in answer to interrogatories with any questions and answers recorded in their regular order by the officer or by some other person, who shall be subject to the provisions of § 1.674(b), in the presence of the officer unless the presence of the officer is waived on the record by agreement of all parties.

(c) All objections made at the time of the deposition to the qualifications of the officer taking the deposition, the manner of taking it, the evidence presented, the conduct of any party, or any other objection to the proceeding shall be noted on the record by the officer. Evidence of objected to shall be taken subject to any objection.

(d) Unless the parties agree in writing or waive reading and signature by the witness on the record at the deposition, when the testimony has been transcribed a transcript of the deposition shall be read by the witness and then signed by the witness in the presence of any notary.

§ 1.676 Certification and filing by officer, marking exhibits.

(a) The officer shall prepare a certified transcript of the deposition by attaching to a transcript of the deposition a copy of the notice of deposition, any exhibits to be annexed to the certified transcript, and a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before commencement of testimony by the witness.

(2) The transcript is a true record of the testimony given by the witness.

(3) The name of the person by whom the testimony was recorded and, if not recorded by the officer, whether the testimony was recorded in the presence of the officer.

(4) The presence or absence of any opposing party.

(5) The place where the deposition was taken and the day and hour when the deposition began and ended.

(6) The officer is not disqualified under § 1.674.

(b) If the parties waived any of the requirements of paragraph (a) of this section, the certificate shall so state.

(c) The Officer shall note on the certificate the circumstances under which a witness refuses to sign a transcript.

(d) Unless the parties agree otherwise in writing or on the record at the deposition, the officer shall securely seal the certified transcript in an envelope endorsed with the style of the interference (e.g., Smith v. Jones), the interference number, the name of the witness, and the date of sealing and shall promptly forward the envelope to Box INTER, Commissioner of Patents and Trademarks, Washington, D.C. 20231. Documents and things produced for inspection during the exmination of a witness, shall, upon request of a party, be marked for identification and annexed to the certified transcript, and may be inspected and copied by any party, except that if the person producing the documents and things desires to retain them, the person may: (1) Offer copies to be marked for identification and annexed to the certified transcript and to serve thereafter as originals if the person affords to all parties fair opportunity to verify the copies by comparison with the originals, or (2) offer the originals to be marked for identification, after giving to each party an opportunity to inspect and copy them, in which event the documents and things may be used in the same manner as if annexed to the certified transcript. The exhibits shall then be filed as specified in § 1.653 (j). If the weigtht or bulk of a document or thing shall reasonably prevent the document or thing from being annexed to the certified transcript, it shall, unless waived on the record at the deposition by all parties, be authenticated by the officer and forwarded to the Commissioner in a separate package marked and addressed as provided in this paragraph.

§ 1.677 Form of a transcript of deposition.

(a) A transcript of a deposition must be typewritten on opaque, unglazed, durable paper approximately 8½ by 11 inches (21.8 by 27.9 cm.) in size (letter size). Typing shall be double-spaced on one side of the paper in not smaller than pica-type with a margin of 11½ inches (3.8 cm.) on the left-hand side of the page. The pages must be serially numbered throughout the entire record of each party (§ 1.653(e)) and the name of the witness must be typed at the top of each page (§ 1.653(f)). The questions propounded to each witness must be consecutively numbered unless paper with numbered lines is used and each question must be followed by its answer.

(b) In order to have a ribbon copy of the transcript available (§ 1.653 (d)), the witness and officer may sign and the officer may file a copy of the transcript as part of the certified transcript (§ 1.676).

(c) Exhibits must be numbered consecutively and each must be marked as required by § 1.653(j).

§ 1.678 Transcript of deposition must be filed.

Unless otherwise ordered by an examiner-in-chief, a certified transcript of a deposition must be filed in the Patent and Trademark Office within 30 days from the date of the deposition. If a party refuses to file a certified transcript, the examiner-in-chief or the Board may take appropriate action under § 1.616. If a party refuses to file a certified transcript, any opponent may move for leave to file the certified transcript and include a copy of the transcript as part of the opponent's record.

§ 1.679 Inspection of transcripts.

A certified transcript filed in the Patent and Trademark Office may be inspected by any party. The certified transcript may not be removed from the Patent and Trademark Office for printing (§ 1.653(h)) unless authorized by an examiner-in-chief upon such terms as may be appropriate.

§ 1.682 Official records and printed publications.

(a) A praty may introduce into evidence, if otherwise admissible, any official record or printed publication not used in taking the testimony of a witness, by filing a notice offering the official record or publication into evidence. If the evidence relates to the party's case-in-chief, the notice shall be filed prior to close of testimony of the party's case-in-chief. If the evidence relates to rebuttal, the notice shall be filed prior to the close of testimony of the party's case-in-rebuttal. The notice shall: (1) Identify the official record or printed publication, (2) identify the portion thereof to be introduced in evidence, (3) indicate generally the relevance of the portion sought to be introduced in evidence, and (4) be accompanied by a copy of the official record or printed publication. Unless otherwise ordered by an examiner-in-chief, any written objection to the notice or to the admissibility of the official record or printed publication shall be filed within 15 days of service of the notice.

(b) When the official record is an earlier application to which a party has been accorded benefit or for which a party seeks benefit, compliance with §§ 1.612, 1.635, and 1.637 is sufficient notice under this section.

§ 1.683 Testimony in another interference, proceeding, or action.

(a) A party may file a motion for leave to use in an interference testimony of a witness from another interference, proceeding, or action involving the same parties, subject to such conditions as may be deemed appropriate by an examiner-in-chief. The motion shall specify with particularity the exact testimony to be used and shall demonstrate its admissibility.

(b) Any objection to the admissibility of the testimony of the witness shall be made in an opposition to the motion.

§ 1.684 Testimony in a foreign country.

(a) An examiner-in-chief may authorize testimony of a witness to be taken in a foreign country. A party seeking to take testimony in a foreign country shall file a motion:

(1) Naming the witness.

(2) Describing the particular facts to which it is expected that the witness will testify.

(3) Stating the grounds on which the moving party believes that the witness will so testify.

(4) Demonstrating that the expected testimony is admissible.

(5) Demonstrating that the testimony cannot be taken in this country at all or cannot be taken in this country without hardship to the moving party greatly exceeding the hardship to which all opposing parties will be exposed by the

taking of the testimony in a foreign country.

(6) Accompanied by an affidavit stating that the motion is made in good faith and not for the purpose of delay or harassing any party.

(7) Accompanied by written interrogatories to be asked of the witness.

(b) Any opposition to the motion shall state any objection to the written interrogatories and shall include any cross-interrogatories to be asked of the witness. A reply to the opposition is permitted which shall be limited to stating any objection to any cross-interrogatories proposed in the opposition. Any reply shall be filed within 10 days of service of the opposition.

(c) If the motion is granted, the moving party shall be responsible for obtaining answers to the interrogatories and cross-interrogatories before an officer qualified to adminster oaths in the foreign country under the laws of the United States or the foreign country. The officer shall prepare recorded answers to the interrogatories and cross-interrogatories and shall transmit the recorded answers to Box INTER, Commissioner of Patents and Trademarks, Washington, D.C. 20231, with a certificate signed and sealed by the officer and showing:

(1) The witness was duly sworn by the officer before answering the interrogatories and cross-interrogatories.

(2) The recorded answers are a true record of the answers given by the witness.

(3) The name of the person by whom the answers were recorded and, if not recorded by the officer, whether the answers were recorded in the presence of the officer.

(4) The presence or absence of any party.

(5) The place, day, and hour that the answers were recorded.

(6) A copy of the recorded answers was read by or to the witness before the witness signed the recorded answers and that the witness signed the recorded answers in the presence of the officer. The officer shall state the circumstances under which a witness refuses to read or sign recorded answers.

(7) The officer is not disqualified under § 1.674.

(d) If the parties agree in writing, the testimony may be taken before the officer or oral deposition.

(e) Unless false swearing in the giving of testimony before the officer shall be punishable as perjury under the laws of the foreign country where testimony is taken, the testimony shall not be entitled to the same weight as testimony taken in the United States. The weight of the testimony shall be determined in each case.

§ 1.685 Errors and irregularities in depositions.

(a) An error in a notice for taking a deposition is waived unless a motion to quash the notice is filed as soon as the error is, or could have been, discovered.

(b) An objection to a qualification of an officer taking a deposition is waived unless:

(1) The objection is made on the record of the deposition before the deposition begins.

(2) If discovered after the deposition, a motion to suppress the deposition is filed as soon as the objection is, or could have been, discovered.

(c) An error or irregularity in the manner in which testimony is transcribed, a certified transcript is signed by a witness, or a certified transcript is prepared, signed, certified, sealed, indorsed, forwarded, filed, or otherwise handled by the officer is waived unless a motion to suppress the deposition is filed as soon as the error or irregularity is, or could have been, discovered.

(d) An objection to the competency of a witness, admissibility of evidence, manner of taking the deposition, the form of questions and answers, any oath or affirmation, or conduct of any party at the deposition is waived unless an objection is made on the record at the deposition stating the specific ground of objection.

(e) Any error, irregularity, or objection which a party wishes considered by the Board at final hearing shall be included in a motion to suppress under § 1.656(h). Nothing in this section precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of an examiner-in-chief or the Board.

§ 1.687 Additional discovery.

(a) A party is not entitled to discovery except as authorized in this subpart.

(b) Where appropriate, a party may obtain production of documents and thing during cross-examination of an opponent's witness or during the testimony period of the party's case-in-rebuttal. If the witness refuses to produce a requested document or thing, the party may move for additional discovery under paragraph(c) of this section.

(c) Upon a motion brought by a party within the time set by an examiner-in-chief under § 1.651 or thereafter as authorized by § 1.645 and upon a showing that the interest of justice so requires, an examiner-in-chief may order additional discovery, as to matters under the control of a party within the scope of the Federal Rules of Civil Procedure, specifying the terms and conditions of such additional discovery.

(d) The parties may agree to discovery among themselves at any time. In the absence of an agreement, a motion for addition discovery shall not be filed except as authorized by this subpart.

§ 1.688 Use of discovery.

(a) A party may introduce into evidence, if otherwise admissible, an admission to a written request for an admission or an answer to a written interrogatory obtained by discovery under § 1.687 by filing a copy of the request for admission and admission or a copy of the written interrogatory and answer. If the admission or answer relates to a party's case-in-chief, the admission or answer shall be filed prior to the close of testimony of the party's case-in-chief. If the admission or answer relates to the party's rebuttal, the admission or answer shall be filed prior to the close of testimony of the party's case-in-rebuttal. Unless otherwise ordered by an examiner-in-chief, any written objection to the admissibility of an admission or answer shall be filed within 15 days of service of the admission or answer.

(b) A party may not rely upon any other matter obtained by discovery unless it is introduced into evidence under this subpart.

(35 U.S.C. 6)

RULE CORRELATION TABLE

Old	New
1.201(a)	1.601(a).
1.201(b)	1.601(b), (c).
1.201(c)	1.602.
1.202	None.
1.203(a)	1.603(a), (b).
1.203(b)	1.605(a).
1.203)c)	1.605(b).
None	1.604(a).
1.203(d)	1.604(b).
1.204(a)	None.
1.204(b)	1.608(b).
1.204(c)	1.608(c).
1.205(a)	1.606(a), (b).
1.205(b)	1.607(a), (c).
1.205(c)	1.607(d).
None	1.608(a).
1.206(a)	1.607 (b).
1.207(a)	1.609.
None	1.610.
1.207(b)	1.611.
1.208	1.613.
1.211	1.614.
1.212	1.615.
None	1.616.
1.228	1.617.
None	1.618.
1.215(a)	1.621(a).
1.215(b)	1.621(b).
1.215(c)	1.621(c).
1.216(a)	1.622(a), (b).
1.216(a) (1)-(6)	1.623(a).
1.216(b)	1.623(b), 1.624(b), 1.625(b).
1.216(c)	1.666.
1.217(a)	1.624(a), 1.625(a).

RULE CORRELATION TABLE—Continued

Old	New
1.217(b)	1.623(a).
1.218	1.621(a).
1.219	1.627.
1.222	1.628.
1.223	1.629.
1.224	1.630.
1.225	1.640(d), (e).
1.226	1.612.
1.227	1.631.
1.231	1.635 through 1.640
1.237	1.641.
1.238	1.642.
1.242	1.643.
1.243	1.635(k), 1.636, 1.637(k), 1.638 through 1.640.
1.244	1.644.
1.245	1.645.
1.246	1.645.
1.247	1.646.
1.248	1.646.
None	1.647
1.251	1.651.
1.252	1.652.
1.253	1.653.
1.254	1.656.
1.255	1.656(c).
1.256	1.654.
1.257(a)	1.657.
1.257(b)	1.658(c), (d).
1.258	1.655.
1.259	1.659.
1.261	1.661.
1.262	1.662(a).
1.263	1.662(a).
1.264	1.662(b).
1.265	1.663.
1.266	1.664.
1.267	1.665.
1.268	1.666.
1.271	1.671.
1.272(a)	1.672(a), (b).
1.272(b)	1.672(c).
1.272(c)	1.672(d), (e).
1.273(a)	1.673(a), (c), (d)
New	1.673(e).
1.273(b)	1.673(f).
1.274	1.674.
1.275	1.675.
1.276	1.676.
1.277	1.677.
1.278	1.678.
1.279	1.679.
1.281	1.645.
1.282	1.682.
1.283	1.683.
1.285	1.685.
1.286	Eliminated
1.287(a)(1)(i), (ii)	1.673(b).
1.287(a)(1)(iii)	1.673(a).
1.287(a)(2), (3)	Eliminated.
1.287(b)	Eliminated.
1.287(c)	1.687.
1.287(d)(1)	1.673(c).
1.287(d)(2)	1.616.
1.287(e)	1.687(d).
1.288	1.688.

Dated: July 19, 1983.

Gerald J. Mossinghoff,

Commissioner of Patents and Trademarks.

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August 1, 1983

Part III

Department of Energy

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Proposed Rulemakings and Public Hearings Regarding State Petitions for Exemption From Federal Standards for Clothes Dryers and Kitchen Ranges and Ovens

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket Nos. CE-SPRM] NY001, WI002, CA003, MN004, OR005]

Energy Conservation Program for Consumer Products; Proposed Rulemakings and Public Hearings Regarding State Petitions for Exemption From Federal Standards for Clothes Dryers and Kitchen Ranges and Ovens

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Notice of proposed rulemakings and public hearings.

SUMMARY: The Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act, as a general matter requires that the Department of Energy prescribe an energy efficiency standard for each of certain major household appliances unless it determines, by rule, that a standard will not result in significant conservation of energy, is not technologically feasible, or is not economically justified.

On December 22, 1982, OE issued a Final Rule with respect to clothes dryers and kitchen ranges and ovens in which DOE determined that an energy efficiency standard for either of these products would not result in a significant conservation of energy and would not be economically justified. In addition, the Final Rule set forth the procedures by which States may obtain exemption for state or local efficiency standards that are statutorily preempted as a result of a final rule with respect to energy efficiency standards and procedures by which manufacturers may obtain a rule to preempt State or local efficiency standards for which there is no Federal final rule.

DOE has received petitions from the States of California, New York, Wisconsin, Minnesota and Oregon requesting, in each case, that the State energy efficiency standard requiring intermittent ignition devices (IIDs) for clothes dryers and/or kitchen ranges and ovens be exempted from Federal preemption.

The Department of Energy is today proposing to grant each State's petition. Therefore, DOE is proposing to amend Title 10, Part 430 of the Code of Federal Regulations to include a determination of exemption from Federal preemption for each State's applicable standard requiring IIDs for clothes dryers and/or kitchen ranges and ovens.

The purpose of this notice of proposed rulemakings is to provide interested persons an opportunity to comment on the proposed rules and to invite interested persons to participate in the rulemaking process.

DATES: Written comments on the proposed rules must be received by the Department by October 17, 1983.

Oral views, data, and arguments may be presented at any other public hearings to be held in the five States and in Washington, D.C., on September 13, 15, 20, 23, 26, and 30, 1983. Requests to speak at the hearings being held September 13 and 15 must be received by the Department no later than 4 p.m., September 7, 1983; speakers will be notified by 4 p.m., September 8, 1983. Ten copies of the statement of each speaker for these two hearings must be received by the Department no later than 4 p.m., September 9, 1983. Requests to speak at the hearings being held September 20 and 23 must be received by the Department no later than 4 p.m., September 14, 1983; speakers will be notified by 4 p.m., September 15, 1983. Ten copies of the statement of each speaker for these two hearings must be received by the Department no later than 4 p.m.; September 16, 1983. Requests to speak at the hearings being held September 26 and 30 must be received by the Department no later than 4 p.m., September 20, 1983; speakers will be notified by 4 p.m., September 21, 1983. Ten copies of the statement of each speaker for these two hearings must be received by the Department no later than 4 p.m., September 23, 1983.

The length of each presentation is limited to 20 minutes.

ADDRESSES: Written comments, statements and requests to speak at the hearings are to be submitted to: U.S. Department of Energy, Office of Conservation and Renewable Energy, Office of Hearings and Dockets, Energy Efficiency Program for Consumer Products, Docket No. CE-CP-SPRM (appropriate State code) Mail Station 6B-025, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9319.

The six hearings are to be held at 212 East Washington Avenue, Room 215, Small Business Administration, Madison, Wisconsin, on September 13, 1983, at 1:00 p.m.; at the U.S. Courthouse/Federal Building, Room B-44, 110 South Fourth Street, Minneapolis, Minnesota, on September 15, 1983, at 9:00 a.m.; at 333 Market Street, Suite 700, Internal Revenue Service, San Francisco, California, on September 20, 1983, at 9:00 a.m.; at the Edith Green-Wendell Wyatt Federal Building, Room 229, 1220 Southwest Third Avenue, Portland, Oregon, on September 22, 1983, at 9:00 a.m.; at Jacob K. Javits Federal Building, 26 Federal Plaza, Room 305C, New York, New York, on September 26, 1983, at 9:00 a.m.; and at the U.S. Department of Energy, Forrestal Building, Room 1E-245, 1000 Independence Avenue SW., Washington, D.C., on September 30, 1983, at 9 a.m.

Copies of the State petitions and transcripts of public hearings, and public comments received may be obtained from the DOE Freedom of Information Reading Room: U.S. Department of Energy, Freedom of Information, Public Reading Room, Forrestal Building, Room 1E-190, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6020.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-113, Room GH-068, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9127,

Lona Feldman, Assistant General Counsel for Conservation and Renewable Energy, U.S. Department of Energy, Mail Station GC-33, Room 6B-144, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9507,

or

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-33, Room 6B-128, Forrestal Building, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-9513,

U.S. Department of Energy, Conservation and Renewable Energy, Office of Hearings and Dockets, Room 6B-025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-9319.

SUMMARY:

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I. Introduction

a. Authority

Part B of Title III of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619), [1] Created the Energy Conservation Program for Consumer Products Other Than Automobiles (the Act). The consumer products subject to this program (referred to hereafter as "covered products") are: refrigerators and refrigerator-freezers; freezers; dishwashers; clothes dryers; water heaters; room air conditioners; home heating equipment, not including furnaces; television sets; kitchen ranges and ovens; clothes washers; humidifiers and dehumidifiers; central air conditioners; and furnaces, as well as any other consumer product classified by the Secretary of Energy, if the product uses a specified minimum amount of energy. *See* Section 322. The Secretary has not so classified any additional products.

Under the Act, the program consists essentially of three parts; testing, labeling, and energy efficiency standards.

For each of the covered products, DOE is required to establish energy efficiency standards that are designed to achieve the maximum improvement in energy efficiency that is technologically feasible and economically justified. Section 325 (a)(1) and (c). The Act provides, however, that no standard for a product is to be established if there is no test procedure for the product, or if DOE determines by rule either that a standard would not result in significant conservation of energy or that a standard is not technologically feasible or economically justified. Section 325(b).

Section 327 of the Act addresses the effect of Federal rules concerning testing, labeling, and standards on State laws or regulations concerning such matters. Generally, all such State laws or regulations are superseded by the Federal rule. Section 327(a). A rule by DOE that an efficiency standard is not technologically feasible, economically justified, or likely to save significant amounts of energy is a rule that supersedes any State standard. Section 325(b). If, because there is no Federal rule, a State efficiency standard is not superseded, persons subject to it may petition DOE to have it superseded on the basis that there is no significant State or local interest sufficient to justify the regulation and such regulation unduly burdens interstate commerce. Section 327(b)(1).

A State whose energy efficiency standard is superseded may petition the Department for a rule that it not be superseded, on the basis that there is a significant State or local interest to justify the standard and the State standard is a stricter standard. However, DOE cannot issue the requested rule if the State standard would unduly burden interstate commerce. Section 327(b)(3).

b. Background

On December 22, 1982, DOE published a final rule with respect to two covered products, clothes dryers and kitchen ranges and ovens (47 FR 57198). (Hereafter referred to as the December 1982 rule). With respect to both products, DOE determined that a standard would not result in a significant conservation of energy and would not be economically justified. The December 1982 rule also established procedures governing petitions to DOE both by states to obtain exemption from preemption of State or local energy efficiency standards as well as by manufacturers to obtain exemption from State or local energy efficiency standards.

II. Discussion

a. General

Section 327(a)(2) of EPCA, as amended, provides that any Federal standard applicable under Section 325 supersedes any non-identical State or local standard. Section 325(b) explicitly requires that a "no-standard" standard also supersedes any State or local standard. Section 327(b)(3), however, provides that a State may petition for and DOE may issue a rule exempting a State or local standard from supersession.

State standards subject to preemption include: energy efficiency requirements applicable to any particular type (or class) of covered products established by mandatory State or local building codes, including codes that incorporate consensus standards, such as those developed and issued by the American Society of Heating, Refrigerating, and Air Conditioning Engineers, Inc. (ASHRAE). For example, prohibitions on standing pilot lights are subject to preemption, as are prohibitions on the manufacture and sale of appliances with less than a certain efficiency.

In the December 1982 rule, DOE established the effective dates upon which supersession of State and local standards would take place and the general procedures by which States could petition for rules exempting their State or local standards for all covered products.

DOE determined that State and local laws for a particular product would be superseded 180 days after **Federal Register** publication of a final rule governing that particular product unless within 60 days of publication, a State had filed with the Department a notice of intent to petition DOE for an exemption for that product. The full petition itself had to be filed within 120 days of publication of the rule. When such a submission is made, the State or local rule will remain in effect until DOE reaches a final determination on the State petition.

In its petition, a State is required to present information which would appear on its face to show that the State's regulation is more stringent than the Federal standard and that there is a significant State or local interest in issuance of the State's regulation. The State is not required to provide information concerning the State regulation's impact on interstate commerce. A person opposing the State's petition should present information which would show that the State's proposed rule would place an undue burden on interstate commerce. Such a person may also present information to rebut the State's initial submission. Information presented by both the State and opposing persons would be open for comment and rebuttal.

In reviewing the petitions, the DOE will evaluate and analyze all factual and legal material presented by the petitioners and all other interested or opposing parties. It is DOE's intention in applying Section 327 to determine whether a State standard unduly burdens interstate commerce by balancing the significant State interest in having a standard with the burden, if any, on interstate commerce created by the standard.

Because Section 327(b)(3) requires DOE to consider each State petition individually before DOE can issue a rule exempting the State or local standard from preemption, DOE cannot issue a rule that makes a blanket determination for all five States.

The Department must, of course, treat such petitions as requests for rulemaking and must adhere to general rulemaking procedures. The DOE must conduct an environmental review pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, to determine whether or not the adoption

[1] Part B of Title III of EPCA, as amended by NECPA, is referred to in this notice as the "Act."

of the proposed rule will be a major Federal action having a significant impact on the quality of the environment. The DOE must also consider the impact of the proposed regulation on small businesses pursuant to the Regulatory Flexibility Act, 5 U.S.C. 501 et seq. Finally, under Executive Order 12291 (46 FR 1393, February 19, 1981), the DOE is required to prepare a regulatory impact analysis if DOE determines that the proposed rule is a major rule, as that term is defined in the Order.

Five states, New York, California, Wisconsin, Minnesota, and Oregon, each has submitted a notice of intent to petition and each has petitioned the Department for a rule to allow the State to maintain its applicable energy efficiency standard for clothes dryers and/or kitchen ranges and ovens.

Each of the five States has met the filing requirements set forth in December 1982 rule. Each notice of intent to petition and each petition was received within the proper time period. Each petition also presented information demonstrating that its regulation is more stringent than the Federal standard and that there is a significant State interest to justify the State regulation. Moreover, DOE has made a preliminary determination that there does not appear to be any undue burden on interstate commerce resulting from the State regulations and statutes. Accordingly, DOE is proposing to amend § 430.33 to issue rules which permit each of the five States to maintain applicable appliance energy efficiency standards for clothes dryers and/or kitchen ranges and ovens.

b. Summary of State Petitions

1. New York (NY001). The Petition submitted by the New York State Energy Office seeks a rule exempting from Federal preemption Section 16–116 of New York State's Energy Law as it pertains to gas kitchen ranges and ovens. Section 16–116 of New York's law prohibits the sale, delivery or installation of any stove or range using a gaseous fuel (other than propane) that is not equipped with an IID. Exempted from this requirement are gas stoves or ranges containing a separate component specifically designed to provide space heating.

In its Petition, New York argues that this requirement produces substantial benefits for the citizens of New York and does not create an undue burden on interstate commerce. New York asserts that although gas kitchen ranges and ovens equipped with IIDs have higher first costs than those with pilot lights, the life cycle costs are less, saving New Yorkers $37.57 [2] to $1152.45 [3] over the life of the appliance. According to the Petition, in terms of Statewide fuel savings, gas kitchen ranges and ovens with IIDs save 92 million—186 million [4] therms per year. At the January 1, 1983 State average retail price of $0.758/therm for a consumer using 150 therms per month, the associated Statewide cost savings are $69.7 million—$141 million per year. New York points out that at least 36 percent [5] of these annual savings is directly attributable to Section 16–116, giving the IID requirement a value to the State's economy of between $25.1 million and $50.6 million per year. The State argues that the law also contributes to improvement in indoor air quality by eliminating pollutants emitted by standing pilot lights. Finally, New York notes that Section 16–116, which has been in effect since 1980, has not created an undue burden on manufacturers competing in the New York market and continuation of the law will place no new burden on the industry.

DOE has reviewed New York's Petition in accordance with the requirements of Section 327(b)(3) of the Act and § 430.47 of the regulation. Based on its analysis, DOE has determined that New York has provided prima facie evidence showing that Section 16–116 is more stringent than DOE's rule for gas kitchen ranges and ovens, is justified by a significant State interest and does not appear to impose an undue burden on interstate commerce. Accordingly, DOE proposes to issue a rule amending § 430.33 exempting Section 16–116 of the New York Energy Law from the preemptive provisions of Section 327(a)(2)(A) of the Act.

2. Wisconsin (WI002). The Petition submitted by the Wisconsin Department of Administration seeks a rule exempting from Federal preemption Wisconsin's Statute 101.655 (1981) as it pertains to gas clothes dryers and gas kitchen ranges and ovens. The Wisconsin law prohibits the sale, distribution or installation of a new gas appliance that is not equipped with a State certified IID.

In its Petition, Wisconsin states that its law for both products saves substantial amounts of natural gas, produces life cycle cost savings and does not create an undue burden on interstate commerce. Wisconsin states that it bans approximately 100,000 pilot lights per year [6] under the law. According to the State, the Wisconsin law saves approximately 150 billion Btu's of energy per year.[7] Although the IID on the appliance raises the first cost by approximately $70 for a stove,[8] Wisconsin states that at the current Wisconsin rate of 65¢/therm, the cost is paid back within three years. The State also asserts that up to $15 million in fuel bills would be saved if all of Wisconsin's 700,000 gas kitchen ranges and ovens were equipped with IIDs. The State offers no estimate of savings for clothes dryers.

Wisconsin states that since July 1, 1980, the effective date of the Wisconsin law, no manufacturer has asked for exemption from this rule based on loss of sales or inability to ship products across State lines. Accordingly, Wisconsin asserts that its rule has not burdened interstate commerce in the past and thus no burden is anticipated if the ban on pilot lights for gas clothes

[2] Simple life cycle cost savings were computed using the following assumptions: cost of IID $60.00; cost of installing an electrical outlet for the IID-equipped range, $75.00; consumer financing of the added cost of the IID and installation of electrical outlet for a five year term at an interest rate of 18 percent per year; a natural gas rate of $0.593 per therm; a pilot light energy consumption rate of 175 Btu per hour (*See* DOE Engineering Analysis Document, March 1982, page D7–9); a range equipped with three pilot lights, pilot lights contribute useful space heating for 200 days per year at 92 percent efficiency; and a useful life of a range of 18 years (*See* DOE Engineering Analysis Document, March 1982, page 42). These assumptions were made to arrive at a lower bound of life cycle cost savings for residents of the State of New York.

[3] Simple life cycle cost savings were computed using the following assumptions: cost of IID $20.00; electrical service already available at range; no financing of additional cost of IID; natural gas rate of $1.416 per therm; pilot light energy consumption rate of 175 Btu per hour (*See* DOE Engineering Analysis Document, March 1982, page D7–9); range equipped with three pilot lights, pilot lights do not contribute to useful space heating; and a useful life of a range of 18 years (*See* DOE Engineering Analysis Document, March 1982, page 42). These assumptions were made to arrive at an upper bound of life cycle cost savings for residents of the State of New York.

[4] The underlying assumption is that there are 4,033,000 gas kitchen ranges and ovens in the State and, for the lower figure, that pilot lights contribute useful space heating per footnote 2, while for the higher figure, pilot lights do not contribute to useful space hearing.

[5] This figure resulted from an analysis of national gas range and oven sales included in the petition that showed that in States that do not ban pilots, 64 percent of sales were units equipped with IIDs. The remaining sales, 36 percent, were units equipped with pilot lights.

[6] The Petition references data collected from the Association of Home Appliance Manufacturers and the 1980 Census, and the assumption that gas ranges have three pilot lights and gas clothes dryers have one pilot light.

[7] An IID is estimated to save 15 therms of natural gas per year.

[8] The Petition references DOE's Engineering Analysis Document, June 1980, pages D7–25 and D7–26, as the source for this estimate. (DOE notes that in this document the replacement of pilot lights with IIDs is estimated to increase the price of a standard gas oven by $33.60 and a gas cooking top by $35.10.)

dryers and gas ranges and ovens is maintained.

DOE has reviewed Wisconsin's Petition in accordance with the requirements of Section 327(b)(3) of the Act and Section 430.47 of the regulation. Based on this analysis, DOE has determined that Wisconsin has provided prima facie evidence showing that Wisconsin's Statute 101.655 (1981) is more stringent than DOE's rule for gas clothes dryers and gas kitchen ranges and ovens, is justified by a significant State interest and does not appear to impose an undue burden on interstate commerce. Accordingly, DOE proposes to issue a rule amending § 430.33 exempting Wisconsin Statute 101.655 (1981) from the preemptive provisions of Section 327(a)(2) of the Act.

3. California (CA003). The Petition submitted by the California Energy Commission (CEC) seeks a rule exempting from Federal preemption Sections 25960 and 25964 of California's Public Resources Code and Title 20, California Administrative Code, Section 1605 and Title 24, California Administrative Code Sections 2–5352(1) and 2–5365 as they pertain to gas kitchen ranges and ovens. The California laws prohibit the sale or installation of gas appliances using a gaseous fuel (other than propane) that is not equipped with a State-certified IID.

The CEC states that the California laws produce substantial benefits to the citizens of the State and impose no burden on interstate commerce. According to the CEC, gas kitchen ranges and ovens equipped with IIDs represent an annual savings per consumer of more than $18 in Northern California and more than $15 in Southern California. The CEC states that IIDs and $30 to $40 to the initial cost of the appliance, which is repaid in less than three years. The CEC asserts that utility bill savings will total more than $400 per consumer during the average life of a gas range and oven from 1983-2002. Statewide savings for gas kitchen ranges and ovens purchased in 1983 are projected to be $5.6 million [9] in 1983. Further, CEC claims a total savings of $1.8 billion [10] for all gas ranges and ovens purchased during the period 1983–2002. CEC also asserts that the California laws result in a reduction of pollutant levels through replacement of pilot lights with IIDs.

Moreover, the CEC alleges that the California laws have not disrupted in the appliance industry serving the State. CEC asserts that the State knows of no manufacturer that has moved out of California or gone out of business as a result of the laws; and that there appears to be no greater decline in the sales of gas kitchen ranges and ovens in California, nor any greater shift to electric appliances in California than in other states. Accordingly the CEC foresees no undue burden on interstate commerce created by continuation of these laws.

DOE has reviewed California's Petition in accordance with the requirements of Section 327(b)(3) of the Act and Section 430.47 of the regulation. Based on this analysis, DOE has determined that California has provided prima facie evidence showing that Sections 25960 and 25964 of the California Public Resources Code, Title 20, California Administrative Code, Section 1605 and Title 24, California Administrative Code, Sections 2–5352(1) and 2–5365 are more stringent than DOE's rule for gas kitchen ranges and ovens, are justified by a significant State interest and do not appear to impose an undue burden on interstate commerce. Accordingly, DOE proposes to issue a rule amending § 430.33 exempting Section 25960 and 25964 of the California Public Resources Code, Title 20, California Administrative Code, Section 1605 and Title 24, California Administrative Code, Sections 2–5352(1) and 2–5365 from the preemptive provisions of Section 327(a)(2) of the Act.

4. Minnesota (MN004). The Petition submitted by the Minnesota Department of Energy seeks a rule exempting from Federal preemption Minnesota Statue Section 116J.19, Subd. 14, as it pertains to gas clothes dryers and gas kitchen ranges and ovens. Minnesota's law prohibits the sale or installation of gas clothes dryers and gas kitchen ranges and ovens that are equipped with a continuously burning gas pilot light.

In its Petition, Minnesota asserts that its law results in significant savings of both energy and money for the citizens of Minnesota and does not create an undue burden on interstate commerce. Specifically, Minnesota argues that its appliance standard ensures that 96,743 [11] MCF of gas are saved each year due to the ban on gas pilot lights. Thus, at a current cost of $5.67/MCF, Minnesota asserts that $548,533 is saved each year due to the standard. By 1995, Minnesota asserts that 1,660,000 [12] pilot lights will have been banned, saving enough natural gas to heat 20,750 homes. According to the Petition, an IID also is cost effective, saving approximately $117 [13] over an average 18-year life of the appliance. Subtracting the $45 cost of an IID, results in a net cost savings of $72 per consumer.

Moreover, Minnesota points out that its law contributes to indoor air quality in homes. In addition, the State asserts that no complaints have ever been submitted to it concerning any negative impacts on interstate commerce produced by its law.

DOE has reviewed Minnesota's Petition in accordance with the requirements of Section 327(b)(3) of the Act and Section 430.47 of the regulation. Based on its analysis, DOE has determined that Minnesota has presented prima facie evidence to demonstrate that Minnesota Stat. Section 116J.19, Subd. 14 is more stringent than DOE's rule for gas clothes dryers and gas kitchen ranges and ovens, is justified by a significant State interest and does not appear to impose an undue burden on interstate commerce. Accordingly, DOE proposes

[9] This is an estimate of the value of the first year energy saved by all California installed kitchen ranges and ovens in 1983 having IIDs versus all California installed kitchen ranges and ovens in 1983 having pilots. Assumptions include a net energy savings of 35.5 therms per year per unit and an average 1983 gas cost of $.46 per therm. No discounting of savings due to beneficial heating and allowed exceptions to the California IID regulation are included.

[10] This is an estimate of the value of the energy saved in 20 years by all kitchen ranges and ovens installed in California after 1983 having IIDs versus all kitchen ranges and ovens installed in California after 1983 having pilots. The assumptions include those mentioned in footnote 9, *supra*, along with a prediction of future gas prices based on escalation schedule which outraces a 4 percent discount rate resulting in a 2002 gas price of $1.09 per therm in 1983 dollars. Also, the post 1983 kitchen ranges and ovens in the California stock for each year is predicted by a CEC applicance stock model. Other assumptions such as a 10 percent discount rate, rigorous retirement of kitchen ranges and ovens of an 18 year life, the existence of IIDs in California regardless of Federal preemption, and beneficial heating would all result in a reduction of this estimate. California realizes the arguable nature of its assumptions and offers a defense of most of them in its discussion. Notwithstanding California believes the savings would still be significant.

[11] The underlying assumptions for this figure are: the wasted energy consumption of a pilot light is 1.5 milion Btu per year (after accounting for the contribution of the pilot to useful space heating); average annual shipments of gas ranges and ovens and gas clothes dryers to Minnesota since 1975 were 15,575 units per year and 17,770 units per year, respectively; the average gas range contains three pilot lights, and the gas clothes dryers contains one pilot light.

[12] The assumption is that by 1995, 470,000 gas ranges and ovens and 250,000 gas clothes dryers in service in Minnesota prior to 1977 (when Minnesota's ban on pilot lights went into effect) will have been replaced with IID-equipped units. (Minnesota uses DOE's estimated useful lifetime of 18 years for those products.)

[13] It is assumed that an IID saves 1.5 MCF of gas per year. At a natural gas price of $5.67 per MCF, this amounts to a yearly savings of $8.50. The real cost of capital above energy price inflation is assumed to be three percent. Then the present value of energy cost savings over the average product life span of 18 years is $117.

to issue a rule amending § 430.33 exempting Minnesota Stat. Section 116J.19, Subd. 14 from the preemptive provision of Section 327(a)(2) of the Act.

5. Oregon (OR005). The Petition submitted by the Oregon Department of Energy seeks a rule exempting from Federal preemption Section 1 of the Oregon Revised Statutes (ORS) 479.770 as it pertains to gas clothes dryers and gas kitchen ranges and ovens. The Oregon law prohibits the sale of gas clothes dryers and gas kitchen ranges and ovens unles they are equipped with IIDs.

In its Petition, Oregon asserts that its law results in significant savings of both energy and money for the citizens of Oregon. Oregon points out that the average citizen can save about 15.3 therms of gas per year.[14] or about $9.60 per year for clothes dryers equipped with IIDs. Gas kitchen ranges and ovens equipped with an IID save about 23.3 therms per year [15] or about $14.70 per year. Oregon notes that savings since the law became effective in January 1979, are over 150,000 therms.[16] Oregon projects savings in the year 2002 of nearly one million therms per year.[17]

Oregon further alleges that its law contributes to improving indoor air quality in homes by reducing the combustion products emitted by pilot lights. Moreover, the State notes that although all of Oregon's market is supplied by out-of-state manufacturers, the State has not received any manufacturer complaints to date. Thus, retaining the law creates no undue burden on interstate commerce.

DOE had reviewed Oregon's Petition in accordance with the requirements of Section 327(b)(3) of the Act and § 430.47 of the regulations. Based on its analysis, DOE has determined that Oregon has presented prima facie evidence showing that Section 1 ORS 479.770 is more stringent than DOE's rule for gas clothes dryers and gas kitchen ranges and ovens, is justified by a significant State interest and does not appear to impose an undue burden on interstate commerce. Accordingly, DOE is proposing to issue a rule amending § 430.33 exempting Section 1 ORS 479.770 from the preemptive provisions of Section 327(a)(2) of the Act.

[14] This is based on one 175 Btu/hr pilot light running all year.

[15] This is based on three 175 Btu/hr pilot lights running all year adjusted for beneficial heating.

[16] This is based on Oregon's estimate of the stock of kitchen ranges and ovens and clothes dryers and the assumption that absent the Oregon law, 33 percent of the stock of kitchen ranges and ovens and clothes dryers would have pilots.

[17] This based on the assumption mentioned above in footnotes 14, 15, 16 and the Oregon estimate of kitchen ranges and ovens and clothes dryer stock in 2002.

III. Environmental, Regulatory Impact, and Small Entity Impact Reviews

a. Environmental Review

In each case where DOE is requested to approve State standards, DOE conducts a National Environmental Policy Act (NEPA) review on a case-by-case basis. Currently, the five States have regulations requiring IIDs on gas clothes dryers and/or gas kitchen ranges and ovens. Granting the petitions received from these States will mean that these regulations will remain in effect. The Department's proposed rule to grant these petitions will result in no change in the environmental status quo of the five States, and therefore, will clearly have no significant environmental impact. No environmental assessment or environmental impact statement is required.

It should also be noted that the Department has prepared and issued an Environmental Assesssment (EA) (DOE/EA-0113) on the imppact of setting and implementing energy efficiency standards for all 13 types of consumer products identified in Section 322(a)(1)-(13) of the Act. A Finding of No Significant Impact and Notice of Availability of that EA were published with the June 30, 1980, proposed rule for minimum energy efficiency standards for eight of the products (45 FR 44088). Copies of the EA may be obtained from the address indicated at the beginning of this notice.

b. Regulatory Impact Review

In light of the foregoing analysis of the effect of the proposed actions, DOE has concluded that the rules are not "major rules" for purposes of Executive Order 12291 because they 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 government agencies, or geographic 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. Therefore, in accordance with section 3(c)(3) of the Executive Order, which applies to rules other than major rules, the proposed rules were submitted to OMB for review without a regulatory impact analysis.

c. Small Entity Impact Review

In light of the foregoing, the Department has determined and hereby certifies pursuant to section 605(b) of the Regulatory Flexibility Act that the proposals, if promulgated, will not have a "significant economic impact on a substantial number of small entities." The impacts on small businesses which are appliance manufacturers were assessed very closely together with other relevant factors. For purposes of assessing these impacts, the term "small business" was defined in consultation with the Small Business Administration.

IV. Public Comment Procedures

a. Participation in Rulemakings.

DOE encourages the maximum level of public participation in these rulemakings.

Individual consumers, representatives of consumer groups, manufacturers' associations, States or other governmental entities, utilities, retailers, distributors, manufacturers, and others are urged to submit written statements on the proposals. The Department also encourages interested persons to participate in the public hearings to be held in New York, New York; Madison, Wisconsin; Minneapolis, Minnesota; Portland, Oregon; San Francisco, California; and Washington, D.C., at the times and places indicated at the beginning of this notice.

Copies of each State's notice of intent and petition may be found in the DOE Freedom of Information Reading Room. Interested persons may obtain copies of any of these documents by writing to the address specified at the beginning of this notice.

The DOE has established a comment period of 75 days following publication of this notice, for persons to comment upon these proposals. All comments and transcripts of all hearings will be available for review in the DOE Freedom of Information Reading Room.

b. Written Comment Procedures

Interested persons are invited to participate in this proceeding by submitting written data, views or arguments with respect to the subjects set forth in this notice. Instructions for submitting written comments are set forth at the beginning of this notice and below. It is requested that, wherever reasonably possible, comments for each petition be addressed separately.

Comments should be labeled both on the envelope and on the documents "Appliances (Docket No. CE-CP-SPRM [appropriate State code(s)]) and must be received by the date specified at the

beginning of this notice in order to insure full consideration. Ten (10) copies are requested to be submitted. All comments received by the date specified at the beginning of this notice and other relevant information will be considered by DOE before final action is taken on the proposed rules.

All written comments received on the proposed rules will be available for public inspection at the Freedom of Information Reading Room.

Pursuant to the provisions of 10 CFR 1004.11, any person submitting information or data which is believed to be confidential and exempt by law from public disclosure, should submit one complete copy of the document, and if possible, 10 copies from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information of data and treat it according to its determination.

Factors of interest to DOE, when evaluating requests for confidentiality include: (1) A description of the item; (2) an indication as to whether and why such items of information have been treated by the submitting party as confidential within the industry; (3) whether the information is generally known or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the personal competitive injury which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) whether disclosure of the information would be in the public interest.

c. Public Hearings

1. *Procedure for Submitting Requests to Speak.* In order to have the benefit of a broad range of public viewpoints in these rulemakings, DOE will hold six public hearings. Listed at the beginning of this notice are the dates, addresses, and DOE contacts for these hearings. Any person who has an interest in these proceedings, or who is a representative of a group or class of persons having an interest, may make a written request for an opportunity to make an oral presentation at the public hearing. Such requests should be labeled both on the letter and the envelope, "Appliances: Petitions for Exemption from Preemption of State Efficiency Standards (Docket No. CE-CP-SPRM [appropriate States(s)])" and should be sent to the proper address and must be received by the time specified at the beginning of this notice.

The person making the request should briefly describe the interest concerned and, if appropriate, state why he or she is a proper representative of the group or class of persons that has such an interest, and give a telephone number where he or she may be contacted. Each person requesting an opportunity to speak should give a concise summary of the proposed oral presentation. Each person selected to be heard will be so notified by DOE by the date specified at the beginning of this notice.

Each person selected to be heard is requested to submit 10 copies of the statement by the date given at the beginning of this notice. In the event any persons wishing to testify cannot meet this requirement, alternative arrangements can be made in advance with the Office of Hearings and Dockets by so indicating in the letter requesting to make an oral presentation.

2. *Conduct of Hearing.* DOE reserves the right to select the persons to be heard at this hearing, to schedule the respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation is limited to 20 minutes.

A DOE official will be designated to preside at the hearing. The hearing will not be a judicial or an evidentiary-type hearing, but will be conducted in accordance with 5 U.S.C. 553 and Section 336(a)(1) of the Act. Each day, at the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement, subject to time limitations. The rebuttal statements will be given in the order in which the initial statements were made. The official conducting the hearing will accept additional comments or questions from those attending, as time permits. Any interested person may submit to the presiding official written questions to be asked of any person making a statement at the hearing. The presiding official will determine whether the question is relevant and whether time limitations permit it to be presented for answer.

Any further procedural rules regarding proper conduct of the hearing will be announced by the presiding official.

A transcript of each hearing will be made, and the entire record of this rulemaking, including the transcripts, will be retained by DOE and made available for inspection at the DOE Freedom of Information Reading Room as provided at the beginning of this notice. Any person may purchase a copy of the transcript from the transcribing reporter.

3. *Consolidation of Hearings.* DOE may consolidate any or all of the public hearings if DOE does not receive sufficient interest concerning a particular hearing. In that event, DOE will contact each speaker and provide that person the opportunity to present testimony at another State hearing or at the hearing to be held in Washington, D.C.

In consideration of the foregoing, it is proposed to amend Part 430 of Chapter II of Title 10, Code of Federal Regulations, as set forth below.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C. July 22, 1983.

Joseph J. Tribble,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. Section 430.33 is revised to read as follows:

§ 430.33 Preemption of State regulations.

Any State regulation providing for any energy efficiency standard or other requirement with respect to the energy efficiencies or energy use of a covered product that is not identical to a Federal standard (including a determination of no standard) in effect under this subpart is preempted by that standard, except that with respect to:

(a) Clothes dryers:

(1) All gas clothes dryers in Wisconsin subject to Wisconsin Statute 101.655 (1981) are exempt from preemption;

(2) All gas clothes dryers in Minnesota subject to Minnesota Statute Section 116J.19, Subd. 14, are exempt from preemption; and

(3) All gas clothes dryers in Oregon subject to Section 1 of the Oregon Revised Statutes 479.770 are exempt from preemption.

(b) Kitchen ranges and ovens:

(1) All gas kitchen ranges and ovens in New York subject to the New York State Energy Law, Section 16-116, are exempt from preemption;

(2) All gas kitchen ranges and ovens in Wisconsin subject to Wisconsin Statute 101.655 (1981) are exempt from preemption;

(3) All gas kitchen ranges and ovens in California subject to Sections 25964 of the California Public Resources Code, Title 20, California Administrative Code,

Sections 2-5352(1) and 2-5365, are exempt from preemption;

(4) All gas kitchen ranges and ovens in Minnesota subject to Minnesota Statute Section 116J.19, Subd. 14, are exempt from preemption; and

(5) All gas kitchen ranges and ovens in Oregon subject to Section 1 of the Oregon Revised Statutes 479.770 are exempt from preemption.

[FR Doc. 83-20552 Filed 7-29-83; 8:45 am]

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federal register

Monday
August 1, 1983

Part IV

Department of Labor

Employment and Training Administration
Assistant Secretary for Veterans' Employment and Training

Services for Veterans; Proposed Rule

DEPARTMENT OF LABOR

Employment and Training Administration

Assistant Secretary for Veterans' Employment and Training

20 CFR Parts 652 and 653

Services for Veterans; Proposed Rule

AGENCY: Office of the Assistant Secretary for Veterans' Employment and Training, Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule is intended to implement certain amendments to the Veterans' employment and training laws administered by the Department. It reflects the provisions of 38 U.S.C. requiring State employment service agencies to provide priority services to veterans, legislative mandates that have not changed. Further, the proposed rule clarfies the role and responsibilities of the Assistant Secretary for Veterans' Employment and Training in administering certain veterans' programs and activities that were previously under the jurisdiction of the Employment and Training Administration. The proposed rule also requests comments from interested parties.

DATE: Comments must be received no later than August 31, 1983.

ADDRESS: Comments should be addressed to William C. Plowden, Jr., Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210; Attention: Joseph C. Juarez, Director, Office of Policy, Planning, and Legislation.

FOR FURTHER INFORMATION CONTACT: Joseph C. Juarez (202) 523-9110.

SUPPLEMENTARY INFORMATION: Current veterans' services regulations at 20 CFR Part 653, Subpart C, were issued on March 27, 1979. At that time the Employment and Training Administration (ETA) was responsible for administering services to veterans in accordance with Title 38, United States Code, Chapters 41 and 42. Public Law 96-466, Veterans' Rehabilitation and Education Amendments of 1980, enacted on October 17, 1980, established the position of Assistant Secretary of Labor for Veterans' Employment by amendments to 38 U.S.C. 2002A. Thus, the responsibility within the Department of Labor for administering provisions of 38 U.S.C. Chapters 41 and 42 now rests with the Assistant Secretary for Veterans' Employment and Training (ASVET), as the position is now titled.

However, 38 U.S.C. remains very clear in several sections that Congress has assigned legislative mandates to the "public employment service system" to provide priority services to veterans. Sections 2004, 2007, and 2012 all have specific references to functions to be carried out by State employment service agencies. Further, in Sections 2000, 2002, 2002A, and 2003 the Assistant Secretary for Veterans' Employment and Training is charged with the responsibility to work closely with those agencies to ensure that the legislative mandates are carried out.

In addition, several other amendments to 38 U.S.C. Chapters 41, 42 and 43 were enacted since 1979. Of particular significance was the provision of Pub. L. 96-466 which added a new section 2003A to 38 U.S.C. establishing the Disabled Veterans Outreach Program (DVOP) as a permanent program, administered by the ASVET. Also, Pub. L. 97-306, the Veterans' Compensation, Education and Employment Amendments of 1982, further clarified the responsibilities of the State and Assistant State Directors for Veterans' Employment and Training as well as the administration of the DVOP program.

These proposed rules simplify the current regulations at 20 CFR 653, Subpart C, which they replace, by deleting requirements that are more properly addressed by administrative guidelines. Deletions include: (1) The detailed instructions for State agencies to provide services for veterans, (2) lists of duties and functions of VETS and State agency staffs, and (3) the description of the veterans' preference indicators of compliance system with its statistical methodology and numerical values.

An important addition to the regulations was the administration of the Disabled Veterans Outreach Program by the Assistant Secretary for Veterans' Employment and Training (ASVET). Also, the authority for determining compliance with the regulations was changed from ETA to the ASVET in the proposed rule.

With respect to reporting and recordkeeping, ASVET will continue to utilize previously approved reports and forms currently in use by the State employment service system.

Therefore, the proposed rules at 20 CFR Part 652, Subpart B, described in this document are necessary to implement the legislative amendments described above, particularly to transfer the responsibility for administration of services for veterans from the Employment and Training Administration to the Assistant Secretary for Veterans' Employment and Training.

Classification—Executive Order 12291

The proposed rule is procedural in character. Therefore, it is not classified as a "major rule" under Executive Order 12291 on Federal Regulations because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of limited States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required. In addition, this proposed rule does not affect any trade-sensitive activity because it does not apply in any way to governments, industries or firms engaged in international trade.

Regulatory Flexibility Act

The Department believes that this proposed rule will not have "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. No. 96-354, 91 Stat. 1164 (5 U.S.C. 605(b)). The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the proposed rule is procedural in character. This proposed rule implements amendments to 38 U.S.C. Chapters 41 and 42 and primarily concerns changes at the national level in the administration of ongoing programs with no significant economic impact expected with respect to small entities. Accordingly, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 652

Grant programs—Labor, Employment service programs.

Accordingly, Title 20, Chapter V of the Code of Federal Regulations is amended as set forth below:

PART 653—[AMENDED]

Subpart C (§§ 653.200—653.231)—[Removed and Reserved]

1. Part 653 is amended by removing and reserving Subpart C.

2. Part 652 is added, consisting at this time of Subpart B only, to read as follows:

PART 652—Establishment and Functioning of State Employment Services

Subpart B—Services For Veterans

Purpose and Definitions

Sec.
652.100 Purpose and scope of subpart.
652.101 Definitions of terms used in subpart.

Federal Responsibilities

652.110 Role of the Assistant Secretary for Veterans' Employment and Training (ASVET)

Standards of Performance Governing State Agency Services to Veterans and Eligible Persons

652.120 Standards of performance governing State agency services.
652.121 Performance standard on facilities and support for VETS staff.
652.122 Reporting and budget requirements.
652.123 Performance standards governing the assignment and role of Local Veterans' Employment Representatives (LVER's).
652.124 Standards of performance governing State agency cooperation and coordination with other agencies and organizations.
652.125 Standards of performance governing complaints of veterans and eligible persons.

State ES Agency Compliance

652.130 Determination of compliance.
652.131 Secretary's annual report to Congress.

Standards of Performance Governing The Disabled Veterans Outreach Program (DVOP)

652.140 Administration of DVOP staff.
652.141 Functions of DVOP staff.
652.142 Stationing of DVOP staff.

Authority: 38 U.S.C. chapters 41 and 42; Wagner-Peyser Act, as amended, 29 U.S.C. 49 et seq.

Subpart B—Services for Veterans

Purpose and Definitions

§ 652.100 Purpose and scope of subpart.

(a) This subpart contains the Department of Labor's regulations for implementing 38 U.S.C. 2001–2012, Chapters 41 and 42 which require the Secretary of Labor to provide eligible veterans and eligible persons the maximum of employment and training opportunities, with priority given to the needs of disabled veterans and veterans of the Vietnam era, through the public employment service system established pursuant to the Wagner-Peyser Act, as amended.

(b) This subpart describes the roles and responsibilities of the Assistant Secretary for Veterans' Employment and Training (ASVET) and the staff of the Veterans' Employment and Training Service (VETS).

(c) This subpart describes the performance standards for determining compliance of State agencies in carrying out the provisions of 38 U.S.C., Chapters 41 and 42 with respect to:

(1) Providing services to eligible veterans and eligible persons to enhance their employment prospects,

(2) Priority referral of special disabled veterans and veterans of the Vietnam era to job openings listed by Federal contractors pursuant to 38 U.S.C. 2012(a), and

(3) Reporting of services provided to eligible veterans and eligible persons pursuant to 38 U.S.C. 2007(c) and 2012(c).

(d) Performance standards are contained in this subpart at §§ 652.140 through 652.142 on the conduct of the Disabled Veterans Outreach Program (DVOP) in accordance with 38 U.S.C. 2003A.

§ 652.101 Definitions of terms used in subpart.

"Assistant Secretary for Veterans' Employment and Training (ASVET)" shall mean the official of the Department of Labor as described in § 652.110.

"Assistant State Director for Veterans' Employment and Training (ASDVET)" shall mean a Federal employee who is designated as an assistant to a State Director for Veterans' Employment and Training (SDVET).

"Disabled Veteran" shall mean (a) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans Administration, or (b) a person who was discharged or released from active duty because of a service-connected disability.

"Eligible person" shall mean:

(a) The spouse of any person who died of a service-connected disability, or

(b) The spouse of any member of the armed forces serving on active duty who at the time of application for assistance under this subpart, is listed, pursuant to 37 U.S.C. 556 and the regulations issued thereunder, by the Secretary concerned, in one or more of the following categories and has been so listed for a total of more than 90 days: (1) Missing in action, (2) captured in line of duty by a hostile force, or (3) forcibly detained or interned in line of duty by a foreign government or power, or

(c) The spouse of any person who has a total disability permanent in nature resulting from a service-connected disability or the spouse of a veteran who died while a disability so evaluated was in existence.

"Eligible veteran" shall mean a person who (a) served on active duty for a period of more than 180 days and was discharged or released therefrom with other than a dishonorable discharge, or (b) was discharged or released from active duty because of a service-connected disability.

"Local Veterans' Employment Representative (LVER)" shall mean an official of a State agency, designated by the State agency administrator to serve veterans and eligible persons pursuant to this subpart.

"Regional Director for Veterans' Employment and Training (RDVET)" is the representative of the ASVET on the staff of the Veterans' Employment and Training Service (VETS) at the regional level. The RDVET also supervises all other VETS staff within the region to which assigned. The RDVE shall report to, be responsible to, and be under the administrative direction of the ASVET.

"Service delivery point (SDP)" shall mean any place or location at which a state agency provides services.

"Special disabled veteran" shall mean (a) a veteran who is entitled to compensation (or who but for the receipt of military retired pay would be entitled to compensation) under laws administered by the Veterans Administration for a disability rated at 30 percent or more, or (b) a person who was discharged or released from active duty because of a service-connected disability.

"State agency" means the State governmental unit designated pursuant to Section 4 of the Wagner-Peyser Act, as amended, to cooperate with the United States Employment Service (USES) in the operation of the public employment service system.

"State Director for Veterans' Employment and Training (SDVET)" is the representative of the ASVET on the staff of the Veteran's Employment and Training Service (VETS) at the State level.

"United States Employment Service (USES)" shall mean the component of the Employment and Training Administration of the Department of Labor, established under the Wagner-Peyser Act of 1933, as amended, to maintain and coordinate a national system of public employment service agencies.

"Veteran of the Vietnam era" shall mean an eligible veteran who: (a) served on active duty for a period of more than 180 days, any part of which occurred during the Vietnam era (August 5, 1964

through May 7, 1975) and was discharged or released therefrom with other than a dishonorable discharge; or (b) was discharged or released from active duty for a service-connected disability if any part of such active duty was performed during the Vietnam era.

"Veterans Employment and Training Service (VETS)" shall mean the organizational component of the Department of Labor administered by the Assistant Secretary of Labor for Veterans' Employment and Training established to promulgate and administer policies and regulations to provide eligible veterans and eligible persons the maximum of employment and training opportunities according to 38 U.S.C. 2002.

Federal Responsibilities

§ 625.110 Role of the Assistant Secretary for Veterans' Employment and Training (ASVET).

(a) As the principal veterans advisor to the Secretary of Labor the ASVET shall formulate, promulgate and administer policies, regulations, grant procedures, grant agreements and administrative guidelines and administer them through the Veterans' Employment and Training Service (VETS) so as to provide eligible veterans and eligible persons the maximum of employment and training opportunities, with priorty given to the needs of disabled veterans and veterans of the Vietnam era, through existing programs, coordination and merger of programs and implementation of new programs.

(b) ASVET shall oversee activities carried out by State agencies pursuant to 38 U.S.C., Chapters 41 and 42.

(c) ASVET shall ensure that appropriate records and reports are maintained by State agencies within their management information systems to fulfill their obligations under this subpart.

Standards of Performance Governing State Agency Services to Veterans and Eligible Persons

§ 652.120 Standards of performance governing State agency services.

(a) Each State agency shall assure that all of its SDP's, using LVERs and other staff, shall provide maximum employment and training opportunities to eligible veterans and eligible persons, with priority given to disabled veterans and veterans of Vietnam era for all available services.

(b) SDP's shall observe the following order of priority in making referrals of qualified applicants to job openings or training opportunities:

(1) Special disabled veterans;

(2) Veterans of the Vietnam era:

(3) Disabled veterans other than special disabled veterans;

(4) All other veterans and eligible persons;

(5) Nonveterans.

§ 652.121 Performance standard on facilities and support for VETS staff.

Each State agency shall provide adequate and appropriate facilities and administrative support such as office space, furniture, telephone, equipment and supplies to VETS staff.

§ 652.122 Reporting and budget requirements.

(a) State agencies shall provide RDVETs, SDVETs, and ASDVETs with access to regular and special internal State agency reports which relate in whole or in part with services to veterans and/or eligible persons.

(b) Each State agency shall make reports and prepare budgets pursuant to instructions issued by the ASVET and in such format as the ASVET shall prescribe.

§ 652.123 Performance standards governing the assignment and role of Local Veterans' Employment Representatives (LVERs).

(a) At least one member of each State agency staff, preferably an eligible veteran, shall be assigned by each State agency administrator as a Local Veterans' Employment Representative (LVER) in each SDP in accordance with terms/requirements of a grant agreement as approved by the ASVET.

(b) Each LVER shall perform, at the SDP level, the duties prescribed at 38 U.S.C. 2003 required by 38 U.S.C. 2004.

§ 652.124 Standards of performance governing State agency cooperation and coordination with other agencies and organizations.

Each State shall formally establish cooperative working relationships or agreements with the Veterans Administration (VA) office serving the State to maximize the use of VA training programs for veterans and eligible persons. Such relationships or agreements may be described in the Governor's Coordination and Special Services Plan prepared according to section 121 (b) of the Job Training Partnership Act (Pub. L. 97-300).

§ 652.125 Standards of performance governing complaints of veterans and eligible persons.

Each SDP shall display information on the complaint system to advise veterans and eligible persons about procedures for filing complaints.

State ES Agency Compliance

§ 652.130 Determination of Compliance.

(a) The ASVET shall have authority for applying the requirements and remedial actions necessary to implement 20 CFR 658, Subpart H.

(b) The ASVET shall establish appropriate program and management measurement and appraisal mechanisms to ensure that the standards of performance set forth in §§ 652.120 through 652.125 are met. A full report of those State agencies in noncompliance with the standards of performance and their corrective action plans shall be incorporated into the Secretary's annual report to the Congress cited at § 652.11 of this subpart.

(c) If it is determined by the ASVET certain State agencies are not complying with the performance standards at §§ 652.120 through 652.125 such State agencies shall be required to provide documentary evidence to the ASVET that their failure is based on good cause. If good cause is not shown, the ASVET, pursuant to Subpart H of Part 658 of this chapter, shall formally designate the State agency as out of compliance, shall require it to submit a corrective action plan for the following program year, and may take other action against the State agency pursuant to Subpart H of Part 658 of this chapter.

§ 652.131 Secretary's annual report to Congress.

The Secretary, through the ASVET, shall report, after the end of each program year, on the success of the Department and the State agencies in carrying out the provisions of this subpart.

Standards of Performance Governing the Disabled Veterans Outreach Program (DVOP)

§ 652.140 Administration of DVOP staff.

(a) The ASVET shall negotiate and enter into grant agreements with each State to carry out the requirements of 38 U.S.C. 2003A for support of a Disabled Veterans Outreach Program (DVOP) to meet the employment needs of veterans, especially disabled veterans of the Vietnam era.

(b) The ASVET shall be responsible for the supervision and monitoring of the DVOP program, including monitoring of the appointment of DVOP specialists.

(c) DVOP specialists shall be in addition to and shall not supplant local veterans' employment representatives assigned under § 652.123 of this subpart.

§ 652.141 Functions of DVOP staff.

Each DVOP specialist shall carry out the duties and functions for providing services to eligible veterans according to provisions of 38 U.S.C. 2003A (b) and (c).

§ 652.142 Stationing of DVOP staff.

DVOP specialists shall be stationed at various locations in accordance with 38 U.S.C. 2003A(b)(2).

Signed at Washingon, D.C., this 25th day of July 1983.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 83-20745 Filed 7-29-83; 8:45 am]

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federal register

Monday
August 1, 1983

Part V

Department of Energy

Federal Energy Regulatory Commission

Sales and Transportation by Interstate Pipelines and Distributors; Final Rules

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

Interstate Pipeline Blanket Certificates for Routine Transactions and Sales and Transportation by Interstate Pipelines and Distributors

[Docket Nos. RM81-19-000; RM81-29-000; Order No. 234-B]

Issued: July 20, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its blanket certificate program for interstate pipelines at Subpart F of Part 157 of its regulations to authorize transportation under the blanket certificate for any end user, including those who use gas as a boiler fuel, until July 1, 1985. One purpose of this experimental program is to add flexibility to the market and thereby partially mitigate market distortions that currently may exist or that may emerge in the near future. This final rule is issued together with a companion final rule (Order No. 319) issued July 20, 1983, in Docket No. RM81-29-000, published elsewhere in this issue.

EFFECTIVE DATE: This final rule will become effective upon the effective date of Order No. 319 issued in Docket No. RM81-29-000. The Commission will publish a confirmation of effective date document in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

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

Robert C. Platt, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8455.

SUPPLEMENTARY INFORMATION:

Before Commissioners: C. M. Butler III, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

I. Introduction

In a companion final rule issued by the Federal Energy Regulatory Commission (Commission),[1] the blanket certificate program for interstate pipelines was expanded to include transportation of gas to specific categories of end-users which would be designated from time to time, pursuant to § 157.209(e) of the Commission's regulations. This final rule designates all end-users to be eligible for the purpose of authorizing transportation service under the blanket certificate program, through June 30, 1985.

II. Background

Historically, industrial end-users located outside producing regions have purchased gas from interstate pipelines and local distribution companies. These pipelines and distributors generally sold gas from their system supplies rather than transported user-owned gas to end-users. Under these arrangements, pipelines and distributors who sold the gas on an interruptible basis were able to balance their sensitive high-priority loads so as to use their system capacity more efficiently. Moreover, large industrial users provided a reliable base of demand so that pipelines could contract for new long-term supplies. Under this industry structure, interstate pipelines generally assumed the responsibility for assuring that gas supply and demand remained in balance over the long term. Because an interstate pipeline bought gas from a large number of sources and served numerous end-users, pipelines could provide greater operational flexibility than would have resulted from matching specific production with specific end-users.

In 1978, Congress enacted the Natural Gas Policy Act (NGPA) which made major statutory changes to regulation of the natural gas industry. Under the incentive ceiling prices and monthly escalation mechanism established in Title I of the NGPA, the price of natural gas has risen steadily. At the same time, the price of fuel oil has fallen substantially so that the delivered price of natural gas appears to be approaching and, in some cases, exceeding the price of alternative fuels. Concurrently, interstate pipelines claim to have suffered loss of industrial loads due to, among other things, conservation, a decline in economic activity, and competition from alternative fuels.

These pipelines seemingly are unable to respond to price competition from alternative fuels and the corresponding loss of industrial loads. Under the rolled-in rate structures of most interstate pipelines, the price of natural gas offered to industrial end-users may be uncompetitive because this price reflects the average cost of all of the pipeline's gas supplies, including gas purchased under high-price contracts. In addition, some interstate pipelines entered into contracts with high percentage take-or-pay obligations, which may be exacerbating the pipelines' ability to keep gas costs competitive. As a result, some industrial end-users may be considering the use of alternative fuels, even though some individual producers may be willing to commit gas supplies to the end-users at competitive prices.

This disparity between the rolled-in delivered gas prices and the marginal price at which producers are willing to sell gas may have detrimental consequences to gas consumers in the interstate market. To the extent these distortions cause industrial end-users to switch to alternative fuels, the remaining users, which include residential, small commercial and industrial process customers, would be required to pay a higher share of the pipeline's costs. In addition, as the demand for gas becomes less certain due to competitively priced alternative fuels, some producers may choose not to explore for and develop new long-term gas supplies. Market forces appear not to have been able to avert this trend, perhaps because industry practices and the existing regulatory structure interfere with the responsiveness of wellhead prices to the recent decline in the price of alternative fuels.

The Commission is concerned that the current decline in demand for gas may have a long-term detrimental impact on the exploration and development of new domestic gas reserves. Moreover, changes in the price and availability of alternative fuels, changes in the level of national industrial activity and potential changes in the statutory framework of wellhead price regulations are adding a substantial element of uncertainty to the natural gas market.

In light of this dilemma, the Commission has considered a number of innovative responses to make wellhead gas markets more responsive to price signals from the industrial market. First, the Commission is considering proposals by interstate pipelines to sell gas at special discount rates to industrial users who would otherwise switch to alternative fuels.[2] A principal

[1] Order No. 319, issued July 20, 1983, Docket No. RM81-29-000.

[2] Michigan-Wisconsin Pipe Line Company, 22 FERC ¶ 61,210 (1983); Columbia Gas Transmission Corp., Docket No. CP82-485, 21 FERC ¶ 61,326 (1982), 22 FERC ¶ 61,139 (1983); Northwest Pipeline Corporation, 23 FERC ¶ 61,173; Northern Natural Gas Company, 21 FERC ¶ 61,324 (1982), rescinded, 22 FERC ¶ 61,173 (1983).

Commission concern in these cases is that nonindustrial customers not be compelled to subsidize such discount sales. Second, the Commission has approved a rate settlement in Transcontinental Gas Pipe Line Corporation [3] which permits an interstate pipeline to act as a broker between traditional producer-suppliers facing reduced takes and customers seeking gas at a delivered price competitive with alternative fuels.[4] Third, the Commission has issued the companion final rule in Docket No. RM81-29 which provides, among other things, expanded and expedited blanket authority to transport gas on behalf of high priority categories of end-users.

Finally, the Commission is issuing this Final Rule which has the effect of opening up for a limited period of time end-user transportation to all categories of end-users. The Commission believes that the use of the end-user transportation provision of the blanket certificate program is a further step which can be taken to partially mitigate the market distortions that currently may exist or that may emerge in the near future.

III. Discussion

Under § 157.209 of the blanket certificate rule adopted today in a companion order, interstate pipelines holding a blanket certificate would be authorized to transport gas to certain high-priority end-users, such as schools, hospitals, and process, feedstock and agricultural users. This final rule would expand the category of end-users eligible to receive direct sale gas transported under the expedited blanket certificate authorization to include industrial and boiler fuel users during a two-year experimental period extending through June 30, 1985. Each transportation arrangement to an industrial or boiler fuel user for a period of more than 120 days would be subject to the notice and protest procedure of § 157.205 of the blanket certificate regulations. As discussed further below, for transactions not exceeding 120 days in duration, the self-implementing authority under § 157.209 would be available.

In this manner, authorization of interstate pipeline transportation would be greatly expedited, and the Commission hopes that this flexibility will more easily permit gas to reach markets at prices reflective of the supply and demand characteristics of those markets. In addition, it may mitigate the pressures being felt by interstate pipelines because of high take-or-pay obligations and shield customers without alternative fuel capability from increased pipeline fixed costs. The Commission believes that this designation will encourage willing buyers and sellers of natural gas to enter into purchase contracts directly. At the same time, this rule should provide some stimulus to the exploration and development of long-term domestic gas reserves.

Under this rule, end-users would be able to contract directly with producers, intrastate pipelines, and distributors for categories of supplies specified in § 157.209(a)(1). Although individual direct sales to end-users would not be subject to the Commission's jurisdiction under the Natural Gas Act, in cases involving first sales, such sales would be subject to Title I ceiling prices under the NGPA.[5]

This designation is based upon the present market condition of excess deliverability as projected for the next two years. As a result, the duration of this designation shall be limited to a two-year experimental period extending through June 30, 1985. During the spring of 1985, the Commission will conduct a comprehensive review of gas markets to determine what, if any, future designations under the blanket certificate rule are appropriate.

IV. Summary of Comments

The Commission's decision to implement this experimental program is based, in part, on the comments received in response to its two blanket certificate proposed rulemakings. In addition, on May 12, 1981, the Secretary of Energy, acting through his delegate, the Administrator of the ERA, proposed a rule to the Commission pursuant to Section 403 of the DOE Organization Act requesting the Commission to incorporate the fuel oil displacement program established by Order No. 30 into the blanket certificate program. The Commission sought comments on the ERA proposal as well as petitions for rulemaking filed by Consolidated Edison Company of New York, *et al.* in Docket No. RM81-19.[6] The overwhelming majority of the comments received in response to the notice supported incorporating transportation to end-users with alternative fuel capability within the scope of a final blanket certificate rule.

The Order No. 30 program was a short-term experimental program addressed to a national need to displace fuel oil consumption. That national need no longer exists, and the Order No. 30 program will be terminated 90 days after the effective date of the companion final rule. However, the Commission does find a need to encourage the efficient operation of the wellhead market and to create the short-term demand for gas necessary to stimulate the exploration and development of new long-term gas reserves. Therefore, the Commission is designating all end-use categories, including those which were eligible for the Order No. 30 program, as eligible for transportation under the blanket certificate. The benefits of this experimental program will be maximized if all end-users are eligible to participate. Accordingly, the restrictions previously codified in 10 CFR Part 595, which were specifically designed for fuel oil displacement, are not continued under this program.

Several comments, however, oppose continuation of allowing boiler fuel users to obtain expedited authorization of transportation of gas supplies. They argue that the use of natural gas as boiler fuel should not be encouraged in light of declining domestic natural gas reserves, and they cite studies which project a return to natural gas curtailment before 1985. The Commission believes that these comments fail to distinguish between long-term natural gas reserves and current deliverability. At present, the available deliverability of gas exceeds current demand.

The annual demand for natural gas has not grown in proportion to the newly available supplies for the interstate market. This is due to a number of factors. First, many areas have suffered an economic decline resulting in less industrial gas consumption. Despite the addition of new high-priority loads, annual sales on many interstate pipelines have been declining. Second, many gas users who experienced curtailment in the 1970's have acquired alternative fuel capability, and current gas prices make continued use of other fuels economically advantageous. Third, the rising price of gas and other petroleum products has resulted in conservation and investment in more energy-efficient equipment.

[3] Docket Nos. RP83-11, RP83-30 (April 28, 1983) 23 FERC ¶ 61,199 and Docket No. CP83-279 (May 13, 1983) 23 FERC ¶ 61,221.

[4] The Transco experimental program is for a limited seven-month period and, with one exception, the purchasers are distributors rather than end-users.

[5] Some of these contracts would, of course, be subject to the NGPA Title I ceiling prices for as long as such ceiling prices apply. However, given present competition from alternative fuels, these new contracts would probably be at prices significantly below Title I ceiling prices.

[6] Order No. 30-F, 46 FR 30491 (June 9, 1981).

This decline in short-term demand has been accompanied by a reduction in the exploration and development of long-term gas reserves. This is of particular concern to the Commission because changes in domestic deliverability generally lag three to five years behind changes in exploration and development activity. Thus, in order to assure adequate gas supply in 1986 and following years (when the high-deliverability gas fields in the Gulf Coast are projected to decline), the Commission must assure a stable level of short-term demand today.

The Commission, therefore, does not believe that the need to assure long-term supplies is inconsistent with this program which facilitates transportation of gas to all end-users for a limited term. In fact, creating a short-term demand should encourage the exploration and development of new long-term gas reserves.

One comment opposes extending the Order No. 30 program on the grounds that it thwarts a national energy policy of converting boilers to use coal. However, because the burner-tip price of natural gas has been more expensive than coal, it is unlikely that the gas transported under this experimental program would displace coal. In addition, it is unlikely that an industrial user would base a long-term decision on whether or not to install coal burning capacity on the existence of a short-term experimental program.

Finally, one comment opposed extending the Order No. 30 program, contending that intrastate consumers will be placed at a disadvantage compared with end-users served by interstate pipeline. Given the present structure of the blanket certificate rule, transportation of direct sale gas is equally available to all end-users irrespective of whether the end-user was traditionally served by intrastate or interstate pipelines. Thus, we see no disadvantage to intrastate gas consumers under this rule.

Several commenters suggested authorizing transportation transactions for boiler fuel use under the blanket certificate, but making each individual transaction subject to the notice and protest procedure of § 157.205. The Commission generally agrees with this suggestion. The notice and protest procedure in § 157.205 procedure will permit all interested persons to participate in the review of these transactions. In addition, the § 157.205 procedure will serve the same goals which the hearing procedures under § 284.208 are currently serving. These goals include giving first priority to the system supplies of interstate pipelines by permitting interstate pipelines seeking to acquire gas for their own system supplies the opportunity to object to particular direct sale arrangements. Thus, any interstate pipeline which would seek to acquire the subject gas supplies for its system supply could raise an objection under § 157.205.

However, at the same time, the Commission recognizes that, because of the rapidly changing prices of alternative fuels, many of the potential purchasers of gas under this program are only willing to commit to these transactions on a short-term "spot" basis. In like manner, potential sellers may be willing to commit their excess deliverability only on a short-term basis. As a result, short-term direct sales to end-users will be subject to the 45 day delay inherent in the § 157.205 notice and protest procedure.

In recognition of the needs of the parties for prompt authorization, the Commission is authorizing these transactions on a self-implementing basis for a term of up to 120 days. The 120 day period is the same total duration authorized for emergency sales under § 157.45. If the parties contemplate a sale of longer than 120 days duration, the transaction could commence on a self-implementing basis. Within the 120 day period, the pipeline could also complete the notice and protest procedure of § 157.205 and obtain the long-term authorization.

For example, the first four months of a one-year arrangement can commence on a self-implementing basis under § 157.209(a)(2), while the notice and protest procedure is completed for the authorization of the eight month period. Because the second authorization would usually be obtained prior to the end of the first 120 days, the two separate authorizations would permit uninterrupted service for the entire year. In this manner, the 120 day self-implementing authorization can serve a role similar to that of a temporary certificate under section 7(c)(1)(B) of the Natural Gas Act. We also note however, that a transaction may be authorized under § 157.209(a)(2) only once, with no provision for renewal or rollover. If a customer seeks to engage in a transaction exceeding 120 days, it should simultaneously seek authorization of a separate long term transaction under the notice and protest procedure under § 157.209(b)(2).

The Commission believes that the public convenience and necessity supports such a self-implementing, experimental authorization under the blanket certificate. Because of the short-term nature of the transactions under this experiment, they would not raise the type of load growth and gas supply concerns which are inherent in longer term transactions. Furthermore, the market-ordering benefits which arise from the increased participation made possible by automatic authorization of such spot transactions warrant their inclusion in the blanket certificate program.

Because designation of end-uses for 120 day self-implemeting authorization is an integral part of the experiment discussed above, the authorization of 120 day transactions will expire on June 30, 1985, the same expiration date designated for transactions subject to the notice and protest procedure.

Several commenters attacked any extension of the so-called "curtailment immunity" provision of § 284.206. Section 284.206 provides that volumes of gas delivered under Order No. 30 would not be considered as either a supply or market in future natural gas curtailments. The commenters argue that, notwithstanding this provision, each curtailment plan must be considered on its own merits after an assessment of the plan's actual impact upon pipeline customers. The Commission agrees that § 284.206 should not be continued under the blanket certificate program. The purpose for which the exception was adopted—to provide an incentive to displace fuel oil during an emergency—is no longer present. Hence, deliveries under this rule will be treated as any other end-user direct sales program when formulating future curtailment plans. The nature of such future curtailment plans will be determined under section 4 in individual tariff proceedings, and such plans will be formulated after a consideration of each plan's actual impact.

V. Conclusion

The Commission has carefully considered the comments filed in Docket Nos. RM81-19 and RM81-29 before issuing this rule. By implementing this experimental program and incorporating it into the blanket certificate program, the Commission intends to add some flexibility to the natural gas markets and to stimulate the development of long-term reserves. This experiment will continue through June 30, 1985, at which time the Commission will evaluate the effects of this program and decide on appropriate modifications or extensions, as necessary.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act [7] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The purpose of this rulemaking is to make the certificate process more efficient by streamlining and expediting the Commission's review of routine certificate applications by interstate pipelines. This blanket certificate program is specifically designed to reduce the regulatory burdens of the certificate process on all entities, large or small, who ultimately may be affected by the process, either directly or indirectly.

Therefore, in view of the nature of the blanket certificate program which is to reduce regulatory burdens, direct and indirect, on large and small entities, the Commission finds that the amendments to the program by this final rule do not impose any regulatory or administrative burdens on a significant number of small entities and that they do not require an expense of resources by such entities. Accordingly, the Commission certifies that the rule does not have a significant economic impact on a substantial number of small entities.

VII. Effective Date

This final rule relieves restrictions on interstate pipelines by providing streamlined procedures for obtaining authorization to engage in certain transactions. However, the designation in this rule cannot take effect without the regulations issued today in Docket No. RM81-29-000, which are subject to Office of Management and Budget review of their filing requirements under the Paperwork Reduction Act, 44 U.S.C. 3501-3520 (Supp. IV 1980), before becoming effective. Therefore, in accordance with section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Commission waives the requirement for publication 30 days before the effective date and makes the final rule effective upon the effective date of the companion rule issued today in Docket RM81-29-000.

List of Subjects in 18 CFR Part 157

Natural gas.

(Natural Gas Act, 15 U.S.C. 717, Natural Gas Policy Act of 1978, Pub. L. No. 95-621, 92 Stat. 3350, 15 U.S.C. 3301; Public Utilities Regulatory Policy Act of 1978, Section 608, Pub. L. 95-617, 92 Stat. 3173, 15 U.S.C. 717f)

Accordingly, the Commission shall amend its regulations in Part 157, Chapter I, Title 18 Code of Federal Regulations, as set forth below.

By the Commission. Chairman Butler dissented. Commissioner Sheldon concurred with a separate statement attached.

Kenneth F. Plumb,

Secretary.

PART 157—[AMENDED]

Section 157.209 is amended by adding new paragraphs (e)(1) and (e)(2) to read as follows:

§ 157.209 Transportation.

* * * * *

(e) *Designation of end-uses.* * * *

(1) *Automatic authorization.* For the period beginning on [effective date] and ending on 11:59 p.m., June 30, 1985, any end-use of gas shall be eligible for transportation pursuant to § 157.209(a)(2) for a term that does not exceed 120 days, if the natural gas was purchased by the end-user from:

(i) A producer and such natural gas was not committed or dedicated to interstate commerce on November 8, 1978,

(ii) An intrastate pipeline, or

(iii) A local distribution company and the volumes purchased are attributable to the company's local supply.

(2) *Prior notice.* For the period beginning on [effective date] and ending on 11:59 p.m., June 30, 1985, any end-use of gas shall be eligible for transportation pursuant to § 157.209(b)(2), if the natural gas was purchased by the end-user from:

(i) A producer and such natural gas was not committed or dedicated to interstate commerce on November 8, 1978,

(ii) An intrastate pipeline, or

(iii) A local distribution company and the volumes purchased are attributable to the company's local supply.

* * * * *

SHELDON, Commissioner, *concurring:*

This rule includes certain off-system sales. the terms and conditions relating to an off-system sale under a blanket certificate are generaly in accord with the Commision's Statement of Policy issued April 25, 1983, in Docket No. PL83-2-000. I dissented to that Statement of Policy and continue to disagree with the majority in that matter. However, I do believe that off-system sales should be given blanket certificate authorization and for this reason, I concur with the majority in this Final Rule.

Georgiana H. Sheldon,

Commissioner.

[FR Doc. 83-20104 Filed 7-29-83; 8:45 am]

BILLING CODE 6717-01-M

[7] 50 U.S.C. 601-612 (Pub. L. 96-354, September 19, 1980).

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18 CFR Parts 157 and 284

[Docket No. RM81-29-000; Order No. 319]

Sales and Transportation by Interstate Pipelines and Distributors; Expansion of Categories of Activities Authorized Under Blanket Certificate

Issued: July 20, 1983.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its blanket certificate program for interstate pipelines at Subpart F of Part 157 of its regulations. The final rule expands the categories of activities authorized under a blanket certificate to include the transportation of natural gas for high priority end users, for other categories of end users that may be designated by the Commission (see Order No. 234-B, issued July 20, 1983, in Docket Nos. RM81-19-000 and RM81-29-000 published elsewhere in this issue), and for the system supply of another pipeline or local distribution company. The final rule also includes in the blanket certificate program specified off-system sales transactions between interstate pipelines. In addition, Part 284 of the Commission's regulations is amended to expand the blanket certificate program established by § 284.222, presently applicable to Hinshaw pipelines, to include all local distribution companies served by interstate pipelines and to revise the regulations implementing section 311(a) of the Natural Gas Policy Act of 1978 (NGPA). The final rule further simplifies and streamlines the Commission's certificate procedures under section 7 of the Natural Gas Act and eases restrictions on transportation arrangements authorized under section 311(a) of the NGPA.

EFFECTIVE DATE: The final rule is effective upon Commission publication in the **Federal Register** of notice of the Office of Management and Budget's approval and control number under the Paperwork Reduction Act.

FOR FURTHER INFORMATION CONTACT:

Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North

Capitol Street, NE., Washington, D.C. 20426, (202) 357-8033;
Robert J. Cupina, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-9036.

SUPPLEMENTARY INFORMATION:

Before Commissioners: C. M. Butler III, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is issuing this final rule to implement Phase II of the blanket certificate program at Subpart F of Part 157 of its regulations. This rule expands the category of activities authorized under a blanket certificate to include specified off-system sales transactions between interstate pipelines and certain transportation arrangements. In addition, the final rule amends Part 284 of the Commission's regulations to expand the blanket certificate program established by § 284.222, presently applicable to Hinshaw pipelines, to include all local distribution companies served by interstate pipelines and to revise the regulations implementing section 311(a) of the Natural Gas Policy Act of 1978 (NGPA).

II. Background

The Commission has instituted a blanket certificate program that comprehensively reforms and simplifies its certificate procedures under section 7 of the Natural Gas Act, 15 U.S.C. 717f. The first phase of this program was implemented by a final rule issued in Docket No. RM81-19-000 (Order No. 234, issued May 28, 1982, 47 FR 24254, June 4, 1982; Order on Rehearing, Order No. 234-A, issued August 31, 1982, 47 FR 38871, September 3, 1982). The final rule, which became effective July 6, 1982, established procedures for issuing to jurisdictional natural gas companies a one-time blanket certificate of public convenience and necessity. Upon acceptance of the certificate, an interstate pipeline is authorized to undertake certain routine activities subject only to reporting requirements and to undertake other activities subject to prior notice and protest procedures. The activities which are presently authorized under a blanket certificate include the construction and operation of certain facilities and sales taps, storage services, underground storage testing and development, abandonments, and delivery point and customer name changes. In the final rule implementing the first phase of the program (Order No. 234), the Commission deferred consideration of its proposals relating to transportation, stating that they would be considered in the final rule issued in this docket.

The Commission proposed the second phase of the blanket certificate program in a Notice of Proposed Rulemaking (Phase II Notice) issued in this docket on April 27, 1981 (46 FR 24585, May 1, 1981). In the Phase II Notice, the Commission proposed to expand the category of activities that an interstate pipeline is authorized to perform under the blanket certificate to include certain sales for resale to other interstate pipelines. In addition, the Commission proposed to eliminate the volumetric and end-use restrictions for transportation to high priority end users (such as schools, hospitals, essential agricultural users, commercial, process and feedstock users) that were proposed in the Phase I Notice (issued March 10, 1981, 46 FR 16903, March 16, 1981). The Phase II Notice also proposed several changes which do not relate to blanket certificates for interstate pipelines. These amendments to Part 284 of the regulations would permit successive extensions of self-implementing transportation arrangements authorized by section 311(a) of the NGPA and would make Order No. 63 blanket certificates (§ 284.222), presently available to Hinshaw pipelines, available to local distribution companies served by an interstate pipeline.

Many interested persons filed comments in response to the Phase I and the Phase II Notices. In addition, public hearings were held on May 4 and June 5, 1981. The Commission has considered the comments, both written and oral, filed in this docket and in Docket No. RM81-19-000 prior to the issuance of this final rule.

III. Transportation

The Notices proposed to authorize transportation services for certain end users and for the system supply of other pipelines and distributors.

A. Transportation to End Users

1. *Category of end users.* The Commission has a number of separate transportation programs to end users for different categories of uses. An interstate pipeline may transport gas sold by producers to the pipeline's existing commercial, process and feedstock users pursuant to § 2.79 of the Commission's regulations (the Order No. 2 program). Subpart E of Part 157, promulgated by Order No. 27, permits interstate pipelines to transport gas to schools, hospitals, and essential agricultural users. Another Commission program authorizes the transportation of fuel oil displacement gas during a designated fuel oil shortage emergency period. (Subpart F of Part 284, promulgated by Order No. 30). The eligibility criteria and certificate conditions are different for each program. Except for certain Order No. 30 transactions,[1] the regulations under each program require separate certification for each transaction.

Under the proposed rule in Phase I, high priority end users who are eligible to participate in the Order No. 2 and the Order No. 27 programs would be able to obtain pipeline transportation of their natural gas under the blanket certificate, thereby eliminating the need for separate certification of each transaction. Transportation to high priority end users for a term of five years or less would be automatically authorized. Transportation for a period greater than five years would be authorized under the prior notice and protest procedures in § 157.205 of the regulations. The proposed rule also retained the eligibility criteria and certificate conditions for each program.

In the Phase II Notice, the Commission proposed to consolidate the Order No. 2 and Order No. 27 transportation programs under the blanket certificate by eliminating the volumetric restrictions in the Order No. 2 program and simplifying all end-use requirements consistent with the less restrictive Order No. 27 program. Neither the proposal nor this final rule affect the current regulations implementing those programs.

With respect to the Order No. 30 program, on May 21, 1981, the Commission issued Order No. 30-F (Docket No. RM79-34, 46 FR 30491, June 9, 1981) which extended the program until the 90th day following the effective date of the final rule for Phase I of the blanket certificate program. The Order also requested that comments be filed in the Phase I docket (RM81-19-000) on whether the Order No. 30 program should be incorporated into the blanket certificate program. Order No. 234, the Phase I final rule, deferred consideration of this question until the final rule is issued in this docket.[2]

[1] Certain transportation arrangements in the Order No. 30 program are authorized on a generic basis under section 311(a)(1) of the NGPA. (18 CFR 284.202.)

[2] Order No. 234 also extended the Order No. 30 program until 90 days after the effective date of the final rule in this docket.

Most of the commenters supported the Commission's proposals to include transportation for high priority end users in the blanket certificate program. Many of those who opposed inclusion of these transportation arrangements in the blanket certificate program were distributors. They expressed concern that adoption of the Commission's proposal might result in a diversion of substantial volumes of gas from interstate pipelines and could lead to a loss of a distributor's customers because an end user may decide to circumvent its distributor and make its own purchases. The distributors feared that such action would result in lower distributor sales and higher fixed costs that would be passed on to residential and other consumers.

The Commission recognizes that adoption of this proposal would allow high priority users to increase their natural gas consumption for high priority uses beyond their contract entitlements. However, the proposal would, nevertheless, protect the pipeline's other customers by requiring that the transporting pipeline have capacity sufficient to perform the service without detriment or disadvantage to the pipeline's other customers who are dependent on the pipeline's general system supply. In fact, such arrangements may be beneficial to the pipeline's customers because a pipeline authorized to transport under these programs would receive revenues for using capacity that, while paid for by its existing customers, might otherwise not have been fully utilized. These revenues would reduce the costs to be borne by other customers.

Furthermore, the Commission does not believe that there would be any significant load loss, as feared by some of the distributors, because these transportation arrangements can be accomplished only if the interstate pipeline and any distributor involved, which in most cases will be the distributor already serving the end user, agree to the arrangement.

The commenters that opposed the Commission's proposal also claimed that it is inconsistent with the original purpose of the Order No. 2 and the Order No. 27 programs, which were designed to provide temporary, not permanent, relief from curtailment for high priority users. They alleged that the present availability of natural gas supplies and the decrease in curtailments make inclusion of these programs in the blanket certificate unnecessary.

The Commission is not persuaded by these arguments. First, as noted in the Phase II Notice, the policies developed by the Commission with respect to these types of transactions were shaped by the Natural Gas Act's regulatory scheme that prevailed until the enactment of the NGPA in 1978. The enactment of the NGPA and the subsequent improvement in the available deliverability of gas supplies, however, has led us to reconsider these policies.

A direct sale program can serve a variety of policy objectives. Although these programs were originally designed to be a "stop-gap measure" rather than a permanent palliative to curtailment,[3] the emphasis of the programs has shifted. For example the primary objective of Order No. 30 was the reduction of fuel oil consumption. In the context of present natural gas markets, the primary objective of a direct sale program should be market-ordering. Direct sale arrangements make price competition from competing fuels directly felt in wellhead gas markets and serve to keep wellhead prices responsive to reductions in the burner tip price of other fuels.

By providing end users with an alternative to purchasing all of their gas requirements from the system supply of a distributor or interstate pipeline, these programs encourage pipelines to adopt gas purchasing practices which keep their delivered prices competitive. In addition, to the extent that an end user consumes gas purchased in a direct sale instead of switching to alternative fuels, the transportation service to the end user continues to bear some of the fixed costs of the transporting pipeline which might otherwise be shifted to the pipeline's remaining customers. For these reasons, the Commission finds transportation of direct sale gas to end users to serve the public convenience and necessity. This finding is consistent with the intent of section 608 of the Public Utility Regulatory Policies Act (PURPA) [4] and longstanding Commission policy to assure adequate gas supplies to high priority end users. In addition, the Commission's experience with these transactions in the past has been that they are relatively routine and noncontroversial and, therefore, appropriate for streamlined approval procedures.

Most of the commenters also supported the Phase II proposal to consolidate, in the blanket certificate, the Order No. 2 and the Order No. 27 programs in a manner consistent with the less restrictive requirements of the Order No. 27 program.

The Commission agrees with these commenters. Given the Commission's general policy to promote transportation on behalf of high priority end users and the present surplus of natural gas, there is no reason to maintain, in the blanket certificate program, the current distinctions between the two transportation programs. Therefore, for these reasons and the reasons discussed in the Notices, the Commission adopts its proposal to expand the blanket certificate program to include transportation of natural gas to high priority end users in a manner consistent with the requirements of the Order No. 27 program.

Accordingly, in the final rule, there is no limitation on the volumes of gas that may be transported for high priority end uses under the blanket certificate. In addition, as with the Order No. 27 program, transportation under the blanket certificate is not restricted to the certificate holder's existing customers, so that natural gas owned by an end user that is not presently served by the certificate holder is eligible for transportation under the blanket certificate.

Proposed § 157.202(l) defined those end uses that would be qualified for transportation authorization under a blanket certificate. Specifically, paragraph (l)(2) of the proposed definition referred to those users "eligible to receive gas" under the Order No. 2 program. Several commenters suggested that the definition be modified because it appeared to retain the eligibility criteria for the Order No. 2 program. The Commission agrees with these commenters and amends the proposed definition so as to eliminate the references to the Order No. 2 and the Order No. 27 programs. Section 157.202(l), now § 157.202(b)(13) of the final rule, defines high priority end uses as: the use of natural gas in a school or hospital or similar institution as defined in § 281.103(a) (11) or (12); any use certified by the Secretary of Agriculture in 7 CFR 2900.3 as an "essential agricultural use" under section 401(c) of the NGPA; the use of natural gas in a large commercial establishment (50 Mcf or more on a peak day); the process or feedstock use of natural gas; and natural gas used for plant protection.

Proposed §§ 157.202(l)(3) and 157.209(d)(4)(ii) authorized the Commission to specifically designate other end uses as eligible for

[3] Order No. 2, Docket No. RM75-25, issued February 28, 1978, FERC Stat. & Regs. ¶ 30,005 at 30,025.

[4] Section 608 of PURPA amended section 7(c) of the Natural Gas Act to authorize the Commission to issue a certificate of public convenience and necessity for the transportation of natural gas developed by an end user or purchased from a producer for high priority uses as defined, by rule, by the Commission.

transportation authorization under the blanket certificate. That proposal is adopted in the final regulations at § 157.209(e) and will provide the Commission with the flexibility to respond to changing market conditions by authorizing certain categories of transportation to end users on a temporary basis.[5]

2. *Order No. 30 Program.* Subpart F of Part 284 of the Commission's regulations, promulgated by Order No. 30, authorizes transportation to an end user of fuel oil displacement gas during a designated fuel oil shortage emergency period. Many of the Order No. 30 transactions may take place on a self-implementing basis. Others require separate certification for each transaction. Only end users certified by the Economic Regulatory Administration (ERA) of the Department of Energy as displacing fuel oil (rather than coal) are eligible to participate in the Order No. 30 program.

The Order No. 30 program was originally set to expire on May 31, 1980. However, on May 22, 1980, the ERA referred a proposed rule for a one-year extension to the Commission under section 403 of the Department of Energy Organization Act. As a result, Order No. 30–B was issued to extend the program for three months to give the Commission an opportunity to conduct a notice and comment rulemaking on the extension.

In Order No. 30–D, the Commission extended the program until May 31, 1981. The ERA then proposed inclusion of the fuel oil displacement program as a part of the Commission's comprehensive blanket certificate program (FERC Stat. & Regs. ¶ 37,509, 46 FR 27355 (May 19, 1981)), and Consolidated Edison filed a petition for a rulemaking to implement ERA's proposal.[6] As a result, in Order No. 30–F, issued May 1, 1981, the Commission requested comments in the Phase I docket (Docket No. RM81–19–000) on whether the Order No. 30 program should be incorporated into the blanket certificate program. At the same time, the Commission extended the Order No. 30 program until the ninetieth day following the effective date of the final rule for Phase I of the blanket certificate program. In Order No. 234, which implemented the Phase I blanket certificate rule, the program was extended until 90 days after the final rule is effective in Phase II.

After careful consideration of all the comments received on this question, the Commission has determined not to include the Order No. 30 program in its present form as a permanent part of the blanket certificate. The Order No. 30 program was established as a temporary response to a fuel oil shortage emergency. In light of the current abundant oil supplies and lower prices, there is no longer a basis for finding that a fuel oil shortage emergency exists.

Moreover, the companion order issued with this final rule authorizes transportation to all end users under the blanket certificate through June 30, 1985. This means that the types of transactions previously authorized under the Order No. 30 regulations may be authorized under a blanket certificate for the time being. Since the Order No. 30 program will not expire until 90 days after the effecive date of this final rule, there should not be a gap in authorization of these transactions.

A pipeline who chooses not to use these procedures may still request authorization for these types of transportation arrangements under section 7(c) of the Natural Gas Act or, in some instances, under section 311(a) of the NGPA.

3. *Eligible sellers.* As proposed, a certificate holder would be authorized to transport gas on behalf of a high priority end user if the gas is purchased from a producer or is owned and developed by the end user. A number of commenters, however, requested that blanket certificate authorization also apply to natural gas purchased by the end user from an intrastate pipeline or from the local supplies of a local distribution company.

When the Commission designed its previous direct sale programs, there was substantial concern that such arrangements potentially could divert needed new gas resources from the system supply of interstate pipelines and that, because direct sales were not subject to price regulation under the Natural Gas Act, such arrangements would generally bid-up wellhead prices. Neither concern remains relevant under the transition to decontrol instituted by the NGPA. A uniform set of ceiling prices applies to producers irrespective of the type of purchaser. In addition, the Commission expects the price for direct sale gas generally will not exceed the price of alternative fuels, so that it is unlikely that such sales to end users would bid-up wellhead prices.

The Commission believes that such an amendment would facilitate the transportation and delivery of excess supplies of natural gas, and is a logical extension of the blanket certificate transportation program to end users. Moreover, permitting intrastate pipelines and distributors to make such sales should increase competition between sellers and thereby minimize costs to end users seeking to acquire gas in direct sales arrangements.

The Commission believes that both of these additional sources of direct sale gas will not divert gas which would otherwise be available to interstate system supplies. Instead, these additional sources of direct sale gas may further encourage domestic exploration and development and may generally further the market ordering objectives of the direct sale program.

Accordingly, in response to comments, the Commission deletes the proposed first sale requirement and includes in § 157.209(a)(1) of the final regulations transportation authorization for gas owned and developed by a high priority end user and for gas purchased by the end user from a producer, an intrastate pipeline, or the local supplies of a local distribution company.

4. *Term of each transaction.* The Commission proposed that transportation to high priority end users for a term of five years or less be automatically authorized without further Commission approval, and that transportation to high priority end users for a term of greater than five years be authorized under the prior notice and protest procedures of § 157.205.

A number of commenters objected to the Commission's proposal for several reasons. Some commenters suggested that all transportation arrangements should be subject to the prior notice and protest procedures. They stated that, in this way, there is an opportunity to review and protest *any* proposed transaction before it is authorized. These commenters argued that the transportation arrangements proposed for inclusion in the blanket certificate are not routine and warrant prior review.

The Commission disagrees with these commenters. As previously stated, the Commission's experience is that transportation of gas purchased by a high priority end user for a term of not more than five years is fairly routine and noncontroversial and, therefore, appropriate for automatic authorization under § 157.209(a).

Other commenters suggested that there should be an exception in the final rule for reserves owned and developed by a high priority end user so as to automatically authorize transportation of this gas for terms in excess of five years. They suggested automatic

[5] In this regard, a companion order is being issued today in Docket Nos. RM81–19–000 and RM81–29–000 under which all end uses are designated as qualified for transportation services under the blanket certificate through June 30, 1985.

[6] Petition for Rulemaking, filed March 4, 1981, Docket No. RM81–22–000.

authorization for a term up to ten years or the life of the reserves, whichever is less.

The Commission agrees with these commenters that such authorization is justified by the inherent risk involved in exploration and the need for sufficient time to economically recover such reserves. In addition, such an approach, which is consistent with the standards of the Order No. 27 program, may encourage end users to explore for and develop their own reserves. (*See* 18 CFR 157.105(a)(2).) Accordingly, § 157.209(a)(1)(ii) of the final regulations allows automatic authorization for reserves owned and developed by a high priority end user for a term up to ten years or the life of the reserves, whichever is less.

A few commenters proposed an outer limit on the term of the transportation arrangements in § 152.209(b) that are authorized under the prior notice and protest procedures of § 157.205. They argued that a proposed term of more than ten years, for example, should not be eligible for blanket certificate authorization. The Commission believes that the prior notice and protest procedures for long term transactions provide adequate protection because a person has the opportunity to review and protest a proposed transaction, and, if the protest is not resolved, the transaction can only be authorized in a section 7 proceeding.

B. Transportation for System Supplies

In the Phase I notice, the Commission proposed to provide blanket certificate authorization for the transportation of natural gas on behalf of any local distribution company, interstate pipeline, or intrastate pipeline, where the local distribution company or pipeline receives such gas for its system supply. Authorization would be subject to the prior notice and protest procedures in § 157.205 and could be for any term.

These transactions currently may be authorized under other Commission regulations.[7] Those regulations limit self-implementing transactions to two years or less and require prior Commission approval under § 284.107 for terms longer than two years. In the Notice, the Commission stated its intention to retain the programs presently in effect, but to give a pipeline the option of proceeding under a blanket certificate instead of requesting prior Commission approval pursuant to § 284.107. The Commission deferred consideration of the proposal until this final rule.

No commenters opposed the Commission's proposal. The Commission believes that the proposal is a reasonable adjunct to the current regulations that limit self-implementing transactions to two year terms. In addition, as already noted, any such transportation arrangement could be authorized under the blanket certificate only after prior notice. In this way, staff and other interested persons would have the opportunity to review the proposed transaction before it could be authorized.

For these reasons, the Commission adopts proposed § 157.209(b)(2), now paragraph (b)(3), to authorize the transportation of natural gas on behalf of other pipelines and local distribution companies where such gas is received by the pipeline or local distribution company for its system supply. This authorization is subject to the prior notice and protest procedures of § 157.205. The final regulations at § 157.209(c)(2) describe the information that should be included in a request for authorization. This information is essentially the same as that required by the existing regulations in an application for prior approval under § 284.107.

C. Reporting Requirements

The information required by the final regulations is necessary in order to fully apprise the Commission of the transportation arrangemets that take place under the blanket certificate. Without this information, the Commission would be unable to fulfill its regulatory responsibilities. The information that is collected will aid the Commission in assessing the impact of the streamlined procedures and the blanket certificate program.

1. *Initial report for self-implementing transactions.* Section 157.209(g)(1) of the final regulations requires that a certificate holder file an initial report within thirty days of the commencement of any transportation arrangement that is automatically authorized under § 157.209(a). This requirement is consistent with the Commission's treatment of other types of self-implementing transportation arrangements in current Commission programs. (*See* 18 CFR 284.106.) The Commission needs the information contained in the initial reports in order to evaluate the extent to which these transactions are automatically authorized under the blanket certificate. The information required by § 157.209(g)(1) is similar to, but not as detailed as, the information required by § 284.106(a) relating to initial reports of self-implementing transportation arrangements under section 311(a)(1) of the NGPA.

2. *Content of request under prior notice and protest procedures.* The Commission proposed that requests for transportation authorization on behalf of end users include the information specified in § 157.103 of the regulations. That section describes the contents of an application for certification of end-users transportation arrangements under the Order No. 27 program.

The proposed regulations are amended in the final rule by deleting some of the information required by § 157.103. Moreover, the final regulations do not reference § 157.103, but specifically list the information that must be included in a request for authorization made pursuant to the prior notice and protest procedures in § 157.205.

3. *Annual report.* Section 157.207 establishes general reporting requirements applicable to all certificate holders. Paragraph (a) requires the certificate holder to file an annual report on or before May 1. The annual report provides information on arrangements authorized under the blanket certificate. This final rule adds a new subparagraph to § 157.207(a) to require the certificate holder include in its annual report the information specified in § 157.209(g)(2) of the final rule.

In the Notice, the Commission proposed that detailed information relating to individual transactions be included in the annual report. However, that information is not needed in the annual report because it is submitted in initial reports and in requests for authorization under §157.205. Therefore, the information described in the final regulations at § 157.209(g)(2) relates to total volumes and revenues for natural gas transported in the previous year pursuant to § 157.209.

4. *Final report.* As proposed, § 157.207(c) of the final regulations requires a certificate holder to file a final report at the conclusion of any transportation service authorized under § 157.209.

In the Phase I Notice, the Commission also proposed that, for end-user transportation arrangements, the information required by § 157.105(f) should be included in a final report.

The Commission has determined, however, that much of this information is unnecessary. Therefore, the final rule requires only some of the information specified in § 157.105(f) relating to the end use of the gas transported and the average delivered cost per MMBtu. In

[7] Subparts B and G of Part 284 authorize an interstate pipeline to transport natural gas on behalf of any local distribution company, intrastate pipeline, or interstate pipeline.

addition, the final rule requires that a description and the cost of any facilities that were constructed in order to provide the transportation service should be included in the final report.

D. Treatment of Revenues

In the Phase I Notice the Commission proposed § 157.206(g) for the treatment of revenues received for the transportation of natural gas (including storage service) authorized under the blanket certificate. Under that proposed section, a pipeline may choose (1) to include representative revenues or volumes in test period based rates and, to the extent the revenues or volumes attributable to such services fall within the representative levels, retain all transportation revenues, or (2) to exclude transportation volumes and revenues from the test period based rates and credit to Account No. 191 either all revenues in excess of one cent per MMBtu or all revenues in excess of demonstrated out-of-pocket expenses.

The Commission's proposal is identical to other regulations governing the treatment of transportation revenues in other Commission programs such as the Order No. 27 program (proposed for inclusion in the blanket certificate) and programs established in Part 284 of the regulations to facilitate transportation of natural gas by interstate pipelines. Historically, in these programs interstate pipelines charged cost-based transportation rates, and revenues or volumes from such transportation were considered in establishing the pipeline's subsequent sales and transportation rates. However, in some cases transportation volumes and revenues were excluded from test period data used to calculate interstate pipeline rates due to the short-term, non-recurring nature of the transportation service. In order to keep costs and revenues in balance, the Commission adopted § 284.103(d) (identical to proposed § 157.206(g)) to provide for a crediting of revenues from short-term transportation under certain circumstances. The one cent per MMBtu amount allowed to be retained by the transporter was designed to be a rough estimate of associated out-of-pocket costs.

The proposed regulations were meant to give the pipeline a choice. They were intended to allow a pipeline that chose to include representative levels of short-term transportation service in the test period data used to determine its base rates to retain all transportation revenues attributable to such services. If the pipeline chose not to treat short-term transportation services in its rate case, then it could retain either one cent per MMBtu or its demonstrated out-of-pocket costs, whichever was greater. All remaining revenues were required to be credited to Account No. 191, thereby flowing directly to the pipeline's sales customers under the PGA mechanism. The first alternative may be termed the "representative levels" option while the second may be referred to as the "revenue crediting" option.

It has come to the Commission's attention, however, that the wording of the proposed regulations is ambiguous and does not clearly reach the intended result. The interstate pipelines which addressed the revenue treatment issue in their comments in this proceeding indicated they interpreted our existing regulations, § 284.103(d) to require the crediting of transportation revenues to the extent actual transportation volumes or revenues exceeded representative test period levels. Under this interpretation, a pipeline would of course have only a limited incentive to elect to establish a representative level of transportation volumes: to the extent actual transportation fell *below* representative levels, the pipeline would under-recover its full cost of service, while revenues derived from *exceeding* the rate design transportation levels (except for one cent per MMBtu) would in effect be paid over to the pipeline's sales customers through crediting to the Account No. 191. Thus, under this interpretation of the regulations, the pipeline's reward for electing to risk under-recovery of costs is limited to one cent per MMBtu—the same benefit obtained without risk of under-recovery under the revenue crediting option.

The Commission recognizes that the regulations may be read to require revenue crediting if revenues or volumes exceed representative levels. However, in practice, the Commission has allowed a pipeline to retain all revenues if it includes representative levels of volumes or revenues in its rate case. This approach is consistent with traditional ratemaking principles and provides a corresponding reward for the risk that a pipeline takes when it chooses to include representative levels in its rate case. Therefore, in order to clarify the Commission's intent and remove any ambiguity, the final regulations at § 157.206(h) are modified from the proposal to clearly require revenue crediting only where a pipeline has not included representative levels in its rate case. Thus a pipeline which takes the risk of transportation levels under the blanket certificate falling below design levels may retain the benefits if those actual levels exceed design levels.

These regulations will provide an incentive for interstate pipelines to provide transportation service more readily in many cases. And in any event, if the pipeline elects the representative levels option, it has an undisputed incentive *between rate cases* to transport as much gas as possible, just as is the case with sales levels set in the ordinary rate proceedings.

But since a significant number of transportation tariffs on file with the Commission are at levels between 20 and 40 cents per Mcf or MMBtu, and because these amounts are either under- or over-recovered to the extent actual levels deviate from design levels, the risk of under-recovery of costs is a realistic possibility.

Accordingly, for one class of transportation customer, the industrial end user, a different type of incentive may be appropriate. What may be appropriate is an incentive mechanism which imposes no risk of under-recovery of costs while providing a more limited opportunity to increase revenues, as compared to the representative levels option. As explained in more detail below, the Commission has determined to allow pipelines to adopt such an option for a limited, experimental period.

The end user stands on a different footing from other shippers for several reasons. First, the volumes to be moved in individual transactions tend to be far less than the volumes to be transported for other interstate or intrastate pipelines or local distribution companies.[8] In addition, since most end users are served through local a distribution company, the pipeline may frequently be unfamiliar with the end user, its gas purchasing personnel, its particular service requirements or even its general business standing. It may not be surprising that in some instances, a pipeline may be less than enthusiastic about tailoring its overall operations to accommodate the requirements of such relatively unfamiliar, small volume shippers. Nor may it be surprising that a pipeline may have been reluctant to offer such a service where the penalty for overestimating volumes for this non-traditional service was substantial under-recovery on a unit basis but the reward for exceeding design volumes was minimal.

Thus end users would appear to have been confronted with greater

[8] For example, based on reports filed with the Commission, the total volume of gas transported for *all* customers under the Order No. 533/Order No. 2 programs has averaged below 19,000 Mcf/d since early in 1979. No gas has moved under these programs since late in 1981.

institutional and informational barriers in negotiating with pipelines for transportation than have been faced by larger and more established shippers.

This analysis is supported by the many commenters who argued that additional financial incentives are needed to encourage pipelines to undertake transportation to end users. In fact, all of the commenters who addressed this point, including the ERA, favored some type of financial incentive for interstate pipelines to engage in end-user transportation. End users pointed to the reluctance or the refusal on the part of the pipelines to transport their gas. As noted earlier, pipelines cited the regulations that allow only one cent per MMBtu to be retained as not providing a sufficient financial incentive. The comments do not state, however, how much more gas would have been transported for end users if there had been greater economic incentives.

To date, the Commission's programs to authorize transportation to end users seem to have met with only limited participation. During the height of curtailment, a total of 6,065,969 Mcf of natural gas was delivered under the Order No. 2 program during the November 1976–March 1977 period to over 100 industrial facilities in 16 states.[9] Since that time, participation in the program has dropped, due in part to the lack of available pipeline transportation,[10] as well as to a decline in curtailment of system supplies. In 1982, there were no ongoing Order No. 2 transportation arrangements and ten ongoing under Order 27.

The Commission has carefully considered these facts and the comments submitted on this issue. In view of the importance of removing impediments to transportation during this period of excess gas deliverability, as well as legislative and pricing uncertainty, the Commission has decided to initiate a short-term experiment in situations where the pipeline does not establish representative levels. As previously noted, a pipeline that establishes levels has an incentive to exceed those levels and retain all revenues. Although it is not certain that a financial incentive would greatly encourage transportation to end users, it is a reasonable assumption. The Commission's goal is to have the available data to hopefully answer that question at the conclusion of this experiment.

The approach adopted by the Commission in this rule is similar to one which has been incorporated into some recent legislative proposals. Under this approach, an Additional Incentive Charge (AIC) of up to 5 cents per MMBtu is established which may be charged to end users for the transportation of gas. Such a charge would share the economic benefits received by an end user who has contracted for low-priced supplies with other on-system customers, because, under the AIC approach, revenues from end-user transportation arrangements would be used to offset a portion of the fixed costs of the pipeline which would otherwise be borne by sales customers. This incentive for the pipeline does not affect the appropriate sharing of cost responsibility between sales and transportation customers.

The final rule provides for the use of an AIC in conjunction with the revenue crediting requirements of § 157.206(h)(1) on an experimental basis for the period of approximately eighteen (18) months. Only end-user transportation arrangements authorized under § 157.209 (a), (b)(1), or (b)(2) performed before February 1, 1985, would be eligible for AIC treatment. The Commission is limiting this experiment only to these end-users transportation arrangements because the record in this proceeding indicates that these shippers are encountering problems in securing pipeline transportation. Intrastate pipelines and distributors appear to be receiving transportation service when requested, and such transportation is authorized generically under § 284.122(a).

In this regard, the Commission stresses the experimental value of this program. The courts have consistently granted us considerable latitude where we undertake a "justifiable experiment" in the course of a "continuing search for solutions" to critical problems facing the gas industry.[11] In allowing agency experimentation, the courts have emphasized that, to pass judicial muster, the agency action must be limited in duration and that the agency must subject the results to "meaningful review and analysis and evaluation before the experimental practice is allowed to continue or to become institutionalized as a more permanent procedure." [12]

The Commission will closely monitor transportation under the blanket certificate in order to ascertain the effectiveness of this financial incentive for end-user transportation and the effects of the program on sales customers and other shippers. Upon the conclusion of this experimental period, the Commission will determine what incentives, if any, may be appropriate for the future. To aid the Commission in its evaluation, § 157.209(g)(3) of the final rule requires a certificate holder to file an interim report midway through the program.

The final rule provides that an interstate pipeline that does not establish representative levels of transportation volumes or revenues for this type of service in its rate case may elect to participate in the AIC experiment by filing a tariff for end-user transportation under section 4 of the Natural Gas Act. This tariff would allow a pipeline to charge, collect and retain an additional charge which may exceed the blanket certificate holder's otherwise applicable transportation rate by an amount per MMBtu up to the AIC. No end user is required to pay the AIC. The final rule merely permits a certificate holder to collect and retain an incentive charge if the shipper agrees to make the payment. The maximum AIC is applied to each transaction as a whole regardless of the number of transporting pipelines. For example, if the AIC is five cents per MMBtu, and there are three pipelines transporting under a blanket certificate in the transaction, the five cents per MMBtu may be allocated among the pipelines in any proportion as the parties agree so long as the total amount does not exceed five cents per MMBtu.

The Commission is aware that a pipeline may have a rate settlement in effect under which the pipelines would be allowed to retain all revenues in excess of representative amounts for certain end-user transportation services. Since the settlements were negotiated prior to the implementation of this end-user transportation program in the blanket certificate, it is clear that the transportation services authorized by this rule could not have been included in representative levels. Therefore, because the election to use representative levels did not include services subject to this rule, volumes transported under the blanket certificate may not be counted towards those representative levels. Until such time as a certificate holder establishes representative levels reflecting these services in a new rate case, the pipeline must credit such revenues from this

[9] Order No. 2, *supra* n.2, at n.7.

[10] *See, e.g.*, Cerro Wire & Cable Co. v. Transcontinental Gas Pipe Line Corp., 12 FERC ¶ 61,158; American Bakeries Company, 14 FERC ¶ 61,156.

[11] Public Service Comm. v. FPC, 467 F. 2d 361, 371 (D.C. Cir. 1972). *See also* APGA v. FPC, *supra*, 567 F. 2d at 1031 (the courts give extra deference to the Commission when it articulates a tentative balance on an issue, announcing that it is prepared to re-evaluate the equilibrium it sought to achieve.)

[12] *Id.*

program in excess of the sum of any AIC charge and one cent per MMBtu to Account No. 191.

The question of choosing the appropriate AIC amount is difficult. The Office of Regulatory Analysis has evaluated the potential revenue impact of various AIC levels based on historical data. This evaluation has been made part of the public file of this proceeding. While this evaluation suggests that even a full five cent AIC amount collected from *all* end-user transportation in 1981 would have a modest impact on pipelines' rates of return, review of the data does not single out a particular AIC level suited to provide the requisite incentive for end-user transportation. Therefore, the Commission has examined the available data and tentatively finds that such evidence supports the reasonableness of the AIC level chosen for this experimental period. The Commission has attempted to choose an AIC level that is neither too high nor too low but in a zone of reasonableness that is sufficient to encourage transportation. If the level is too high for the market, the certificate holder and shipper can negotiate a lower incentive charge. If the rate is too low, it may not provide sufficient incentive. We note that the comments generally reflected that one cent was too low to provide any meaningful incentive. Ten cents per MMBtu was suggested as appropriate by Delhi Pipeline. We believe this is too high and, therefore, the Commission has adopted a range from one to five cents as just and reasonable. With this in mind, the Commission has exercised its discretion and selected a maximum AIC of five cents per MMBtu.

In evaluating the reasonableness of incentives levels, the Commission notes that the shippers who will be negotiating with the pipeline companies for transportation will be end users purchasing gas in transactions which are direct sales, not jurisdictional sales for resale under the Natural Gas Act.[13] We expect, moreover, the sales price to be below—and perhaps considerably below—the applicable ceiling prices under the NGPA.[14]

Under these circumstances, the end user's willingness to purchase natural gas for transportation under the blanket certificate is a function of competition in the burnertip or end-use markets. In other words, the amount an end user is willing to pay for natural gas is limited by the delivered price of available alternate fuels or gas supply sources. As a result, the end user is more concerned with the *delivered* price of the gas supply than with the allocation of that sum between the producer and any transporters. Unless the total amount paid to acquire the gas is less than the cost of available alternate fuels (or gas supply sources) the end user will not purchase the gas in the first instance and the issue of the appropriate transportation rate is moot.

While we must satisfy ourselves that the transportation rate, including any AIC, is "just and reasonable" under the NGA, the evolving conditions in the end-user markets appear to allow for a wider play of competitive forces in establishing such a rate.[15]

If we are generally correct in our assessment that natural gas is presently in surplus supply and overpriced in many of its marginal uses, then, effectively, it will be the producer who pays for the AIC, *not* the end user. This will result because the producer will be forced to accept a lower sales price for the gas than he would be able to negotiate if the transportation margin (including any AIC) were smaller.[16] Under these circumstances there would be no question but that the AIC rate is just and reasonable under the Natural Gas Act because the customer purchasing transportation service—the customer the Commission is obligated to protect from unjust and unreasonable charges—does not in economic fact pay for the incentive.

If, on the other hand, we are generally wrong in our assessment and it turns out that natural gas remains underpriced in many of its marginal uses, then the end users will indeed pay the full authorized AIC and will therefore pay more for transportation under the AIC approach than had no AIC amount been permitted. However, they will still be better off because they would not agree to pay the transportation rate unless the total gas cost was less than other available energy supplies. In any event, as the program is limited to an 18-month experimental period, the Commission will be able to revise the program in light of experience from all the contingencies being tested.[17]

Under any of these contingencies underlying the AIC option, however, the pipeline's sales customers will plainly benefit from any increase in end-user transportation because the bulk of the revenues will be credited to the Account No. 191 for their benefit. Moreover, the transportation charges retain their cost "anchor" departing therefrom only to the extent of the AIC.

The Commission of course is not limited solely to costs in establishing just and reasonable rates under the Natural Gas and Federal Power Acts. Court cases under these and other statutes make it clear that the Commission has broader flexibility to use its rate and price setting power functionally to advance sound public policy goals.[18]

As the Commission said very recently in Opinion No. 170, *Ohio Edison Company:*[19]

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[13] These sales in most cases will be "first sales" subject to maximum lawful ceiling prices under the NGPA.

[14] The current surplus of deliverability from lower-48 domestic supplies has been estimated by the Energy Information Administration to total at least 2.6 Tcf for the six-month period April through September 1983. *See* Memorandum from Diana Lique, Acting Director, Reserves and Natural Gas Division, Office of Oil and Gas, Energy Information Administration. A copy of this memorandum has been placed in the public files in this docket. While there may be some disagreement over the exact extent of the current surplus, it is clear that it is large and has been swelling over the last year. Allowing easier transportation for end users should help convert some of this excess supply into lower prices for delivered gas.

[15] Compare with Computer and Communications Industry Association v. Federal Communications Commission, 693 F.2d 198 (D.C. Cir. 1982), *cert. denied,* 51 U.S.L.W. 3824 (May 16, 1983). (Regulatory forebearance upheld where competitive market forces found adequate to assure just and reasonable rates under section 201 of the Communications Act of 1934.)

[16] This situtation is directly comparable to determining the incidence of a sales tax. Regardless of whether the tax is legally imposed upon the buyer, elasticity of demand will determine the extent to which the tax is either absorbed by the seller through reduced margins or effectively passed on to the buyer. *See, e.g.,* Musgrave and Musgrave, *Public Finance in Theory & Practice* (1973) at 427–428.

[17] American Airlines v. CAB, 359 F.2d 624, 633 (1966). The court noted that "a month of experience will be worth a year of hearings." We concur. The court in that case proceeded to uphold a "blocked space" program as a reasonable projection, taking into account the agency's duty to re-evaluate in the light of experience.

[18] *See, e.g.,* Colorado Interstate Gas Co. v. FPC, 324 U.S. 581, 601 (1945); City of Detroit v. FPC, 230 F.2d 810 (D.C. Cir. 1955), cert. denied, 352 U.S. 829 (1956) (while cost "anchor" must be used as point of departure just and reasonable rates not limited solely to rate base cost methods); Permian Basin Area Rate Cases, 390 U.S. 747, 796 (1968) (Commission not limited solely to cost in establishing just and reasonable rates but may use price "functionally"); FPC v. Texaco, 417 U.S. 380, 399–400 (1974) (while Commission may not place exclusive reliance on market prices in setting just and reasonable rates, a market price "may certainly be taken into account along with other factors"), Tenneco Oil Co. v. FERC, 571 F.2d 834, 845 (5th Cir.), cert. dismissed, 439 U.S. 801 (1978) (same); American Public Gas Ass'n. v. FPC, 567 F.2d 1016, 1058 (D.C. Cir. 1977), *cert. denied,* 435 U.S. 907 (1978) (Commission "not bound strictly to cost" in setting just and reasonable rates). See also American Public Power Ass'n v. FPC, 522 F.2d 142 (D.C. Cir. 1975) (approving Commission rule under Federal Power Act allowing for future test years for ratemaking purposes) and FPC v. Conway Corp., 426 U.S. 271 (1976) (Commission must take unregulated rates into account in setting just and reasonable rates under the Federal Power Act).

[19] 23 FERC ¶ 61,344 (June 3, 1983).

In coordination transactions, however, such as this case involves, the Commission allows rates which are less closely related to accounting costs but which approximate economic costs or serve other policy objectives. In these transactions, an "adder" is allowed as in incentive to the selling utility to engage in coordination transactions. Without some incentive above its incremental costs, a utility has no reason to undertake a coordination transaction. It is also important to note that such transactions usually reduce the cost of service to the buying utility and thus the ultimate consumer.

The AIC incentive is analogous.

Accordingly, the Commission finds that the AIC rate satisfies the just and reasonable standard of the Natural Gas Act and the sound public policy goals articulated herein.

The Commission recognizes that allowing this type of incentive rate to be charged may have the potential, over the long run, of encouraging pipelines to prefer to provide transportation for end users vis-a-vis other sales or transportation services. This, however, is not our intention.

But the uncertainty and novelty associated with providing such services in today's markets argue in favor of offering particular encouragement at present. The absence of established institutional relationships for providing these services argues likewise. The reporting requirements discussed above will assist the Commission and the public in monitoring developments between now and January 31, 1985, and enable the Commission to modify the program at that time as appropriate.

These are unusual times for the natural gas industry. With the transition to competitive wellhead prices, where competitive pressures from alternate fuels are pushing the price of more and more gas below the maximum lawful prices prescribed by law, end users confronted with the need to lower production costs may be expected to seek out the lowest priced, reliable gas supply available.

The AIC approach is designed to assist end users in this process by allowing for greater flexibility within the industry to move gas supplies more readily to marginal uses. Even if experience dictates the program be terminated in 1985, the AIC program will be valid while it is in operation, as an experiment.[20]

In addition, if, as a result of the rule, some users switch from another fuel to natural gas, this may help to relieve take or pay pressures and help stabilize industrial demand for gas. The promise of a market for gas may in turn assist in encouraging continued exploration and development efforts. As a result, incentives to encourage pipelines to transport such gas would serve an important national objective and would be consistent with Congressional objectives evidenced by section 608 of PURPA.[21] Moreover, in establishing the Department of Energy and the Commission, Congress expressly declared that one of its purposes was to "foster and assure competition among parties engaged in the supply of energy and fuels." [22] Given these public interest considerations, we reiterate our finding that the transportation rates that include an AIC are just and reasonable for this experimental period.[23]

IV. Off-System Sales

In the Phase II Notice the Commission proposed to permit certain sales for resale between interstate pipelines under the blanket certificate. The Phase II Notice proposed a new § 157.210 to authorize those transactions subject to the prior notice and protest procedures in § 157.205.

Most of the commenters supported the concept of including off-system sales in the blanket certificate. Others, however, objected to the Commission's proposal because they believe that the potential damage to the public interest from off-system sales are such that a case-by-case review is required. They argued, for example, that there is a need to examine the price in each proposed transaction to ensure that existing customers are not damaged by pipelines' buying "high" and selling "low". Interstate pipelines, it is argued, should be husbanding their gas supplies instead of selling off-system.

Sales under proposed § 157.210 are intended to permit the selling pipeline to alleviate problems resulting from excess deliverability or take-or-pay commitments and, at the same time, to make supplies available to interstate pipelines needing gas. The Commission believes that the public interest will be served by making it generally easier for interstate pipelines to make off-system sales subject to generic qualifications rather than requiring a case-by-case certification of each transaction.

The use of the prior notice and protest procedures in § 157.205 for off-system sales should provide adequate protection. Persons will have the opportunity to examine each proposed transaction and file a protest. If the protest is not withdrawn within the period of time specified in § 157.205, the certificate holder would be required to proceed under section 7(c). Accordingly, for the reasons discussed above and in the Notice, the final regulations authorize specified off-system sales transaction between interstate pipelines. Such authorization is subject to the prior notice and protest procedures in § 157.205.

The decision to include, in the blanket certificate program, certain off-system sales is consistent with the Commission's Statement of Policy issued April 25, 1983, in Docket No. PL83-2-000. Furthermore, the terms and conditions relating to an off-system sale under a blanket certificate are generally in accord with the Statement of Policy and supported by the record in this proceeding.

A. Take-or-Pay Liability

As already noted, some commenters are concerned that off-system sales may be detrimental to the selling pipeline's on-system customers, in the sense that contracted reserves are being sold away. In addition, it is argued that the effect of such sales may be to increase the on-system customers' average cost of gas.

In order to assure that the pipeline's customers receive some benefit from these sales, the final rule requires that the selling pipeline must have at least a potential take-or-pay liability.

B. Term

In § 157.210(a)(2) the Commission proposed to limit the term of each off-system sale that may be authorized under the blanket certificate to one year.

Several commenters objected to the one-year limitation. Some stated that it is unnecessary because the prior notice and protest procedures provide adequate protection. Others noted that, because a take-or-pay obligation prompting an off-system sale may extend longer than one year, the blanker certificate should either allow for a longer term or allow for extensions of the one-year term.

[20] Compare with APGA v. FPC, *supra*, 567 F.2d at 1055 (upholding validity of FPC advanced payments program during effective period notwithstanding subsequent termination).

[21] Section 608 gives the Commission express authority to certificate such end-user transportation arrangements. The end-user transportation authority for high priority users in the blanket certificate is an exercise of the Commission's authority under section 608 of PURPA as well as section 7(c) generally.

[22] *See* section 102(12) of the Department of Energy Organization Act, 42 U.S.C. 102(12) (Supp. II 1978). Even prior to enactment of the DOE Act, the courts have recognized the Commission's obligation, when establishing a just and reasonable rate, to "consider competitive factors." Central Iowa Power Cooperative v. FERC, 606 F. 2d 1156, 1162 (D.C. Cir. 1979). *See also* Otter Tail Power Co. v. United States, 410 U.S. 366 (1973); California v. FPC, 369 U.S. 482 (1962).

[23] Fuels Research Council, Inc. v. FPC, 374 F.2d 842 (7th Cir. 1967).

The Commission is unable to determine, at this time, whether the considerations that lead to authorization of an off-system sale now will continue to exist a year or more from now. The rapid changes that have taken place in the natural gas market during the last year have convinced the Commission that pipelines and interested persons should be given sufficient flexibility with respect to these transactions. In addition, a pipeline's gas supplies and take-or-pay exposure would be difficult to accurately forecast for periods more than one year in advance.

Accordingly, the Commission retains the one-year limit on the term of an off-system sale. After the one-year term, however, a certificate holder may request authorization for an additional year subject to the prior notice and protest procedures.

C. Volumetric Limit

In § 157.210(a)(3) the Commission proposed to limit the volume of gas sold under the blanket certificate to no more than 100,000 MMBtu per day.

The commenters generally opposed any volumetric limitation on off-system sales as too restrictive. They argued that the other conditions imposed by the proposed rule such as the system supply requirement and the one-year term make further restrictions on volume unnecessary. The commenters also noted that under the prior notice procedures in § 157.205, an interested person could file a protest to protect any interest that might be aggrieved by such a sale.

The Commission agrees with these commenters. The basic premise of the off-system sales program is that there is a surplus of natural gas. The imposition of a volumetric limitation is inconsistent with this premise. If there is surplus gas, it can be sold regardless of the volume sold to each buyer. In the event that gas supply declines and there is no longer a surplus, a sale cannot take place. Accordingly, the volumetric restriction proposed in § 157.210(a)(3) is deleted in the final rule, and a new paragraph (a)(3) is added which codifies the requirement that there be a surplus.

D. Price

The Commission proposed in § 157.210(a)(4) that the price for these sales would be established by a rate schedule that provides for a commodity charge and permits the selling pipeline to recover its average purchased gas costs and any transportation costs associated with delivery.

Many commenters opposed the Commission's proposal to set the sales price at the pipeline's average purchased gas price plus transportation costs. They argued that, because that price includes old gas, it is likely that the seller's customers would be subsidizing the sale, and new markets would be encouraged to switch to gas at an unrealistically low market price. In an environment with partial deregulation of wellhead prices, pipelines may buy deregulated gas at prices that are above prices for alternative fuels, yet still market this gas by rolling it in with the cost of cheaper regulated gas.

In considering the price, the Commission has balanced competing considerations. If the price of the off-system sale is so low that the selling interstate pipeline cannot recover its cost of purchasing the gas, then its on-system customers would carry the unrecovered costs. On the other hand, if the price is excessive, it may violate the statutory requirement that jurisdictional rates be "just and reasonable."

To ensure that the sales off-system would not be made at a price lower than is available to on-system customers, the Commission has determined that the price of a proposed transaction should be the higher of the system average load factor rate that was proposed by the Commission in § 157.210(a)(5) or the approximate replacement cost of the gas sold off-system.

The Commission believes that the selling pipeline generally could replace any gas it sold off-system through additional purchases of section 102 gas. Thus, the final rule provides that, for blanket certificate authorization, the transaction must be priced at the higher of the pipeline's system average load factor rate (based upon the rates in effect at the time the transaction is proposed) or its average section 102 gas acquisition cost (based upon the pipeline's most recent purchased gas adjustment filing at the time the transaction is proposed). Pursuant to § 157.205, interested persons have the opportunity to review the proposed transaction and file a protest if they believe that a higher price is warranted.

E. Treatment of Revenues

In the Phase II Notice, the Commission proposed to amend § 157.206(g) to include the treatment of sales revenues.

As discussed above, the Commission believes that a pipeline should have the option either to credit revenues in excess of one cent per MMBtu or to establish representative levels of off-system sales or revenues in its rates. A pipeline that chooses to assume a risk and establishes representative volumes or revenues in its general rate proceeding should not be required to forego a potential reward by crediting revenues that exceed the representative levels. This policy is consistent with the policy articulated above with respect to the treatment of transportation revenues. Accordingly, the final rule at § 157.206(h) determines the treatment of both transportation revenues and off-system sales revenues.

F. Other Conditions

Proposed § 157.210(a)(5) prohibits the sale of gas acquired by the certificate holder solely or primarily for the purpose of making a sale under proposed § 157.210.

This provision is retained in the final rule. Sales under § 157.210 are intended to permit the selling pipeline to alleviate problems posed by excess deliverability or take-or-pay commitments. If a series of pipelines were to sell repeatedly the same gas under the blanket certificate, such a series of sales would create undesirable rate consequences to the customers of participating pipelines.

Proposed § 157.210(a)(6) states that the buyer of natural gas in a given off-system sale must not be an interstate pipeline supplier of the seller during the duration of the sale.

One commenter asked that the term "supplier" be clarified as not including a pipeline that is providing a transportation or exchange service for the certificate holder or a pipeline that is a supplier of the certificate holder under a long term contract where there are no current sales. The Commission does not intend that the requirement apply to transportation or exchange services, but does intend that "supplier" mean any interstate pipeline currently authorized to sell gas to the certificate holder, even where there are no current sales. The final regulations are clarified in this respect.

The Commission also proposed in § 157.210(a)(7) that the sale shall be subject to interruption by the certificate holder to the extent that natural gas subject to the sale is required to provide adequate service to the certificate holder's other customers at the time of sale.

This condition is consistent with the Commission's treatment of off-system sales previously authorized on a case-by-case basis. Furthermore, the basic assumption in off-system sales is that the gas is surplus to the requirements of the pipeline's historic market. The final rule is clarified to mean adequate service to the certificate holder's *on-system* customers. The Commission does not take a position at this time on the relative priority to be accorded to

more than one off-system sale, but will leave that to the contracting parties.

G. Reporting Requirements

The contents of a request for authorization subject to the prior notice and protest procedures are described in § 157.210(b). In addition to the contents proposed in § 157.210(b), the final rule requires the certificate holder to provide (1) a copy of the contract if the identity of the buyer is known, (2) a statement quantifying the extent of actual or potential take-or-pay liability, (3) a gas supply/requirements balance demonstrating sufficient surplus so that service to the certificate holder's on-system customers will not be affected, and (4) identification of the delivery points.

V. Other Amendments

A. Successive Transportation Arrangements Under Section 311(a) of the NGPA

Section 311(a)(1) of the NGPA permits the Commission to authorize interstate pipelines to transport natural gas on behalf of intrastate pipelines or local distribution companies. Section 311(a)(2) permits the Commission to authorize intrastate pipelines to transport natural gas on behalf of interstate pipelines or local distribution companies served by an interstate pipeline.

Subparts B and C of Part 284 of the Commission's current regulations implementing section 311(a) of the NGPA authorize such transportation arrangements without prior Commission approval if, among other things, the transported gas is for system supplies and the term of the transportation does not exceed two years. The regulations further provide for a single, two-year extension of these self-implementing arrangements. The transporting pipeline must file a request for an extension at least 90 days before the expiration of the initial authorization. If the Commission does not take contrary action during this period, the authorization is automatically extended for up to two years. Transportation arrangements for initial terms of longer than two years or extensions after the first two-year extension are subject to the procedures for prior Commission approval in §§ 284.107 and 284.127.

The Commission proposed in the Phase II Notice to amend § 284.105 in Subpart B and § 284.125 in Subpart C of its regulations implementing section 311(a) of the NGPA to allow unlimited, successive, two-year extensions of the self-implementing transportation arrangements. As with the first two-year extension, successive extensions would be subject to Commission review before becoming effective.

In addition, the Commission proposed to amend § 284.125(b) to clarify that, if the intrastate pipeline proposes to charge a rate during the extension which is different from the rate previously charged, the new rate is subject to the requirements and approval procedures of § 284.123.

All but one of the commenters that addressed the proposed successive two-year extensions supported such a change. The one commenter that did not support the proposal suggested that a prior notice and protest/settlement procedure, similar to that in § 157.205 of the blanket certificate program, should be included for successive two-year extensions. The final rule does not incorporate this suggestion. The Commission believes that the opportunity for prior Commission review of a proposed extension adequately protects the public interest. Each such extension is noticed in the **Federal Register** and interested persons have the opportunity to intervene and protest any extension. If there is a potential problem with such a transaction, the Commission could take action to deny or modify the proposed extension.

The Commission's past experience with proposed two-year extensions has been that they are fairly routine and non-controversial. The Commission agrees with the commenters that successive two-year extensions are appropriate for the proposed streamlined approval procedures. Accordingly, the Commission adopts its proposed revisions to §§ 284.105 and 284.125 to allow for unlimited, successive, two-year extensions of the self-implementing transportation arrangements.[24]

The regulations implementing section 311(a) of the NGPA have been in effect for approximately four years. The Commission is aware that many pipelines have already received the single extension allowed by the regulations and have applied for an additional extension. The current regulations require that the pipeline apply for such an extension under §§ 284.107 or 284.127 which require prior Commission approval. The amendments as proposed did not apply to future extensions of these transactions. This result was not intended by the Commission. Therefore, the final regulations provide that pipelines may apply for future, unlimited, successive, two-year extensions of these transactions under §§ 284.105 and 284.125 of the regulations.

In addition, the Commission adopts the proposed amendment to § 284.125(b) to clarify that if the intrastate pipeline proposes to charge a rate during the extension which is different from the rate previously charged, the new rate is subject to the procedures for approval in § 284.123. This clarifying language ensures that the 90-day review period for extension and the 150-day rate determination period in § 284.123(b)(2) do not conflict.

B. Transportation of Direct Sale Gas Under Section 311 of the NGPA

As previously discussed, in this final rule the Commission has expanded the blanket certificate program to include transportation by a certificate holder of direct sale gas to end users. Frequently, the seller's supply is located near an intrastate pipeline. Ordinarily, the intrastate pipeline would prefer authorization under section 311(a)(2) of the NGPA to permit it to transport the gas to the interstate pipeline without becoming subject to Natural Gas Act jurisdiction. Under the regulations implementing section 311(a)(2), however, this type of transportation would not qualify for self-implementing authorization because the gas is delivered to an end user and is not for the system supply of a pipeline or distributor.

In the Phase II Notice, the Commission proposed to amend § 284.122(b) to create an exception to the system supply test so as to permit such incidental intrastate transportation without prior Commission approval, if the transportation by the interstate pipeline is authorized under the blanket certificate.

The commenters supported the proposed amendment to § 284.122(b) because it provides the "missing link" in expeditiously moving end-user owned gas pursuant to blanket certificate authorization. The Commission agrees that without this intrastate capability, the streamlined authorization features of the blanket certificate would be frustrated. Accordingly, the Commission adopts the proposed change to § 284.122(b) to allow, on a self-implementing basis, intrastate pipeline transportation which is incidental to an interstate pipeline's transportation of end-user owned gas under a blanket

[24] The Order No. 60 and Order No. 63 blanket certificate programs in Subpart G of Part 284 authorize certain transportation arrangements "to the same extent and in the same manner" that transportation on behalf of intrastate pipelines or by intrastate pipelines is authorized by Subparts B and C. (18 CFR 284.221(b) and 284.222(b).) Thus, the amendment to the Subpart B and C regulations allowing successive two-year extensions also applies to the Order Nos. 60 and 63 programs.

certificate. This amendment also applies to situations in which the transported natural gas is sold to the end user by the intrastate pipeline.[25]

C. Order No. 63 Blanket Certificate Program

Sections 311 and 312 of the NGPA permit the Commission to authorize intrastate pipelines to transport, sell, or assign natural gas to the interstate market. In Order No. 63 the Commission promulgated § 284.222 to establish a blanket certificate program under section 7(c) of the Natural Gas Act for Hinshaw pipelines. This program permits Hinshaw pipelines to perform the same kind of transactions intrastate pipelines are permitted to perform under sections 311 and 312 of the NGPA without jeopardizing the Hinshaw pipeline's exempt status under section 1(c) of the Natural Gas Act. These blanket certificates permit a Hinshaw pipeline to make its excess supplies available to the interstate market and to use its transportation facilities to transport gas, thereby eliminating the need for interstate pipelines to build duplicate facilities or use less direct transportation routes.

In the Phase II Notice, the Commission proposed to amend § 284.222 to expand the eligibility for the Order No. 63 blanket certificate to any local distribution company that is served by an interstate pipeline. Under the proposal, any local distribution company that is served by an interstate pipeline and holds a blanket certificate may transport natural gas on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline, subject to the terms and conditions of Subpart C of Part 284. The certificate holder may also sell volumes attributable to local supplies and assign contractual rights to purchase surplus gas from local supplies, subject to the terms and conditions of Subparts D and E of Part 284.

Most of the commenters that addressed this issue supported the Commission's proposal as giving parity to distributors that may not be Hinshaw pipelines. Many noted that because such an amendment would facilitate short-term economic transactions to adjust surpluses and deficits of supply, the development of self-help supplies would be encouraged.

The Commission agrees that the policies underlying the blanket certificate program for Hinshaw pipelines should apply equally to local distribution companies. The relatively few local distribution companies that do not qualify as Hinshaw pipelines because they do not transport or sell gas for resale in interstate commerce, but are involved solely in the distribution function, are essentially similar to Hinshaw pipelines and, therefore, should not be treated differently with respect to eligibility for an Order No. 63 blanket certificate. Moreover, only volumes attributable to local supply are included in the sale authorization.

Two commenters raised a question concerning the status of municipally-owned distribution systems for purposes of eligibility for an Order No. 63 blanket certificate. Apparently, there is some confusion because, under the NGPA, the term "local distribution company" is defined as including municipally-owned distributors. Under the Natural Gas Act, however, "local distribution company" is not defined. In addition, "municipalities" are excluded from the definition of "person" under the Natural Gas Act. As already noted, the Order No. 63 blanket certificate program authorizes a certificate holder to perform the kinds of transactions intrastate pipelines are permitted to perform under sections 311 and 312 of the NGPA. The blanket certificate, however, is a certificate of public convenience and necessity issued to a natural gas company under section 7 of the Natural Gas Act. Section 2 of the Act defines "natural gas company" to mean a person engaged in the sale for resale or transportation of natural gas in interstate commerce. Municipalities are expressly excluded from the definition of "natural gas company." Therefore, municipalities cannot be issued certificates under section 7(c) of the Natural Gas Act and are not eligible to receive Order No. 63 blanket certificates.[26]

VI. Summary of Regulations

Paragraphs (a)(13) and (14) are added to § 157.202 to define "high priority end use" and "high priority end user," respectively, for purposes of new § 157.209, *Transportation.*

Section 157.204, *Application procedure,* is amended to require that any currently effective transportation rate schedules or off-system sales rate schedules to be applied to blanket certificate transactions be submitted with an application for a blanket certificate.

Section 157.206, *Standard conditions,* is amended by adding a new paragraph (h) for the treatment of transportation (including storage service) and off-system sales revenues.

A new paragraph (a)(2) is added to § 157.207(a) and the remaining paragraphs are renumbered accordingly. The new paragraph requires that the annual report include, for transportation arrangements authorized pursuant to § 157.209, the information specified in § 157.209(g)(2).

Section 157.207(e) is amended to require a final report within thirty days of the termination of a transportation arrangement authorized pursuant to § 157.209 or of an off-system sale authorized pursuant to § 157.210. The paragraph concerning final reports is further amended to describe the additional information that must be included for end-user transportation arrangements.

Section 157.209, *Transportation,* is added to the blanket certificate regulations. That section automatically authorizes transportation of natural gas to high priority end users for terms up to five years, or for terms up to ten years or the life of the reserves, whichever is less, for reserves owned and developed by the high priority end user. Transportation to high priority end users for longer terms is subject to the prior notice and protest procedures of § 157.205. Transportation for other end users, as designated by the Commission from time to time, may also be authorized by § 157.209.

Section 157.209(b)(3) authorizes a certificate holder to transport gas for the system supply of another interstate pipeline, an intrastate pipeline, or a local distribution company. Such authorization is also subject to the prior notice and protest procedures.

Section 157.209 describes the contents of a request for authorization under the prior notice procedures, the special conditions which must be satisfied in order for the transportation to be authorized, and the reporting requirements for initial and annual reports.

A new § 157.210, *Sales for resale,* is added to the blanket certificate regulations. That section authorizes off-system sales between interstate pipelines subject to the prior notice procedures in § 157.205.

Paragraph (a) describes the conditions that must be met in order for a proposed transaction to qualify for blanket

[25] The amendment to § 284.122(b) is incorporated by reference, to apply to transactions authorized in § 284.222.

[26] Municipalities may engage in Order No. 63 activities without obtaining Commission authorization. *See* Panhandle Eastern Pipeline Co. v. City of Rolla, 26 FPC 736 (1961). This does not preclude the possibility that the Commission may nevertheless assert its Natural Gas Act jurisdiction in other types of transactions. *See* Public Service Company of North Carolina v. FERC, 587 F. 2d 716 (5th Cir. 1979).

certificate authorization. Paragraph (b) of § 157.210 describes the contents of a request for authorization.

In addition to the amendments to the above described blanket certificate regulations at Subpart F of Part 157, the final rule also amends the Part 284 regulations which implement other Commission transportation programs pursuant to sections 311(a) (1) and (2) of the NGPA. The Subpart B and Subpart C regulations are amended at §§ 284.105 and 284.125 to permit successive, two-year extensions of the self-implementing arrangements authorized under those subparts.

Section 284.122 is amended to permit, on a self-implementing basis, the transportation of natural gas by an intrastate pipeline where such transportation is incidental to transportation on behalf of an end user under § 157.209 of the blanket certificate regulations.

The final rule amends § 284.222 to expand the Order No. 63 blanket certificate program, presently applicable to Hinshaw pipelines, to include all local distribution companies served by interstate pipelines.

VII. Other Issues

The Commission has received two requests to re-open the proceeding in this docket to allow for additional comments by interested parties.[27] The requests allege that the record in this docket is more than two years old and may not accurately reflect current market conditions. They argue that additional comment would provide a more adequate record upon which to base a final rule.

The Commission is not persuaded that further public comment is necessary. The requests do not provide any data to support the allegations, nor do they argue that current market conditions require a rule different from the proposal. In fact, the company that filed one of the requests admits that its position as presented in comments filed early in the proceeding has not changed. In issuing this final rule, the Commission has carefully considered all of the comments filed in this proceeding in light of conditions prevailing at the time the comments were submitted as well as in light of current market conditions. For these reasons, the Commission believes that further public comment would serve no purpose and issues this final rule.

[27] Southern California Gas Company filed its petition on June 8, 1983, and Northern Indiana Public Service Commission's request was received on June 6, 1983.

VIII. Procedures

After the final rule was issued in Phase I, many interstate pipelines applied for blanket certificates under the section 7(c) hearing procedure. Section 157.206(a)(1) of the standard conditions that attached to each blanket certificate reserved to the Commission the right to amend the requirements of Subpart F of Part 157 from time to time. In addition, each blanket certificate was expressly framed as follows:

> Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant to perform the activities specified in Subpart F of Part 157 of the Commission's Regulations, as amended from time to time.[28]

Thus, the scope of the authority of each outstanding blanket certificate depends on the current scope of Subpart F of Part 157. This final rule amends Subpart F to include additional sales and transportation authority within the scope of the blanket certificate program. By amending Subpart F, the Commission is effectively expanding the scope of each outstanding blanket certificate which has been issued to date. Therefore, a pipeline which holds such a blanket certificate need not make further section 7 application to the Commission prior to engaging in the transactions added to Subpart F by this final rule.

Although no further certificate application is required, a blanket certificate holder may need to file additional tariffs with the Commission pursuant to section 4 of the Natural Gas Act. In particular, if the certificate holder does not have a generally applicable transportation tariff on file, the pipeline will have to establish such a tariff prior to transporting gas pursuant to § 157.209. Also, the certificate holder would have to establish a tariff to make off-system sales to other interstate pipelines pursuant to § 157.210 at a rate level which conforms to the requirements of § 157.210(a)(4).

Finally, certificate holders seeking to participate in the AIC experiment authorized by this final rule must file an AIC tariff pursuant to § 157.209(f) prior to engaging in end-user transportation where an AIC is collected.

In sum, although no further Commission certificate proceedings are required to grant certificate holders the additional authority provided by this rule, implementation of this rule will necessitate compliance tariff filings by each interstate pipeline seeking to engage in these newly authorized activities.

[28] *See, e.g.*, Arkansas Louisiana Gas Company, 20 FERC ¶62,408 (1982); Tennessee Gas Pipeline Company, 20 FERC ¶62,409 (1982); Northern Natural Gas Company, 20 FERC ¶62,410 (1982); Natural Gas Pipeline Company of America, 20 FERC ¶62,415 (1982).

IX. Regulatory Flexibility Act

The Regulatory Flexibility Act[29] requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. The purpose of this rulemaking is to make the certificate process more efficient by streamlining and expediting the Commission review of routine certificate applications. This blanket certificate program is specifically designed to reduce the regulatory burdens of the certificate process on all entities, large and small, who ultimately may be affected by the process, either directly or indirectly.

In the Notice of Proposed Rulemaking in this docket, the Commission certificated that this rulemaking would not have a significant impact on a substantial number of small entities. This certification was based upon the nature of the blanket certificate program and the characteristics of the entities subject to the process.

Therefore, in view of the nature of the blanket certificate program which is to reduce regulatory burdens, direct and indirect, on large and small entities, the Commission finds that the amendments to the program by this final rule do not impose any regulatory or administrative burdens on a significant number of small entities and that they do not require an expense of resources by such entities. Accordingly, the Commission certifies that the rule does not have a significant economic impact on a substantial number of small entities.

X. Effective Date

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3520 (Supp. IV 1980), and the Office of Management and Budget's (OMB) regulations, 48 FR 13,666, 13,694 (1983) (to be codified at 5 CFR Part 1320), require that OMB approve certain information collection requirements imposed by agency rule. The information collection provisions in Subpart F of Part 157 are being submitted to OMB for its approval. Interested persons can obtain information on these information collection provisions by contacting the Office of the General Counsel, Rulemaking and Legislative Analysis, Federal Energy Regulatory Commission,

[29] 50 U.S.C. 601–612 (Pub. L. 96–354, September 19, 1980).

RC-421, 825 North Capitol Street, NE., Washington, D.C. 20426 (Attention: Barbara Christin) (202) 357-8033. Comments on the information collection provisions can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for the Federal Energy Regulatory Commission).

This final rule relieves restrictions on interstate pipelines by providing streamlined procedures for obtaining authorization to engage in certain transactions. Therefore, in accordance with section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the Commission waives the requirement for publication 30 days before the effective date and makes the final rule effective upon Commission publication in the **Federal Register** of notice of OMB's approval and control number under the PRA.

(Natural Gas Act, 15 U.S.C. 717-717w; Natural Gas Policy Act, 15 U.S.C. 3301-3432; Department of Energy Organization Act; 42 U.S.C. 7101-7352; E.O. 12009, 3 CFR 142)

List of Subjects

18 CFR Part 157

Natural gas.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Parts 157 and 284 of Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission. Chairman Butler dissented. Commissioner Sheldon concurred with a separate statement attached.

Kenneth F. Plumb,

Secretary.

PART 157—[AMENDED]

1. Section 157.202 is amended by adding new paragraphs (b) (13) and (14) to read as follows:

§ 157.202 Definitions

* * * * *

(b) * * *

(13) "High priority end use" means any use of natural gas:

(i) Certified by the Secretary of Agriculture under 7 CFR 2900.3 as an "essential agricultural use" under section 401(c) of the Natural Gas Policy Act of 1978;

(ii) In a hospital or school or similar institution as defined in § 281.103(a) (11) and (12) of this chapter;

(iii) In a commercial establishment that uses 50 Mcf or more of natural gas on a peak day;

(iv) For plant protection; or

(v) For process and feedstock needs.

(14) "High priority end user" means any person who consumes natural gas in a high priority end use.

§ 157.203 [Amended]

2. Section 157.203(b) is amended by inserting "157.209(a)," between "§§ 157.208(a)," and "157.211(a)."

§§ 157.203 and 157.205 [Amended]

3. Sections 157.203(c) and 157.205(a) are amended by inserting "157.209(b), 157.210" between "§§ 157.208(b)," and "157.211."

4. Section 157.204(d)(4) is revised to read as follows:

§ 157.204 Application procedure.

* * * * *

(d) * * *

(4) A list of any currently effective rate schedules which would apply to any service authorized by §§ 157.209, 157.210, or 157.213 and an explanation of the treatment of revenues under such rate schedules.

* * * * *

5. Section 157.206 is amended by adding a new paragraph (h) to read as follows:

§ 157.206 Standard conditions.

* * * * *

(h) *Treatment of revenues.* (1) Except as provided in paragraphs (h) (2) and (3) of this section, all revenues received for transportation (including storage service) or for sales for resale authorized under the blanket certificate in excess of the sum of

(i) An allowance of one cent per MMBtu; and

(ii) The AIC per MMBtu that may be collected pursuant to § 157.209(f) for end-user transportation, shall be credited to Account No. 191 and flowed back to the certificate holder's customers.

(2) A certificate holder is not required to credit revenues to Account No. 191 pursuant to paragraph (h)(1) of this section:

(i) If representative levels of revenues attributable to such services have been credited in arriving at a test period cost of service; or

(ii) If representative levels of volumes transported have been included in billing determinants for the purpose of establishing rates.

A certificate holder that treats end-user transportation revenues in accordance with this subparagraph may not elect to collect an AIC authorized in § 157.209(f).

(3) The certificate holder may elect to forego the one cent per MMBtu allowance provided in paragraph (h)(1) of this section. In such a case the certificate holder is not required to credit to Account No. 191 any amount which, upon application, the Commission finds to have been demonstrated as representing the out-of-pocket expenses of the certificate holder in connection with a transaction authorized under this Subpart.

6. Section 157.207 is amended by adding a new paragraph (a)(2) and renumbering paragraphs (a)(2) through (a)(8) as (a)(3) through (a)(9). The new paragraph (a)(2) reads as follows:

§ 157.207 General reporting requirements.

(a) * * *

(2) For each transportation arrangement authorized pursuant to § 157.209, the information specified in § 157.209(g);

* * * * *

7. Section 157.207(c) is amended by removing "§ 157.213" and inserting instead "§§ 157.209, 157.210, or 157.213"; by adding "sold or" after "natural gas" in paragraph (c)(4); by removing the word "and" after the semicolon in paragraph (c)(5), changing the period to a semicolon and inserting the word "and" after the semicolon at the end of paragraph (c)(6), and adding a new paragraph (c)(7), to read as follows:

§ 157.207 General reporting requirements.

* * * * *

(c) * * *

(7) In the case of transportation to an end user authorized under §§ 157.209 (a), (b)(1), or (b)(2):

(i) The end use of such volumes;

(ii) The cost, description, and completion date of any facilities that were constructed in order to provide the services, and their locations; and

(iii) The average delivered price per MMBtu paid, itemized by amounts paid to:

(A) The seller;

(B) Each pipeline and distributor involved in transporting the natural gas; and

(C) Any other parties; and

(iv) The AIC per MMBtu collected pursuant to § 157.209(f).

* * * * *

8. Subpart F of Part 157 is amended by adding new §§ 157.209 and 157.210 to read as follows:

§ 157.209 Transportation.

(a) *Automatic authorization.* (1) The certificate holder is authorized to transport natural gas on behalf of a high priority end user for a high priority end use, for a term that does not exceed:

(i) Five years, if such natural gas was purchased from

(A) A producer and was not committed or dedicated to interstate commerce on November 8, 1978,

(B) An intrastate pipeline, or

(C) A local distribution company and the volumes purchased are attributable to the company's local supply; or

(ii) Ten years or the life of the reserves, whichever is less, if the natural gas reserves are owned and developed by the high priority end user.

(2) The certificate holder is authorized to transport natural gas on behalf of an end user for the end uses designated by the Commission in paragraph (e)(1) of this section.

(b) *Prior notice.* Subject to the notice requirements of § 157.205, the certificate holder is authorized to transport natural gas:

(1) As described in paragraph (a)(1)(i) of this section, but for a term in excess of five years, or as described in paragraph (a)(1)(ii) of this section, but for a term in excess of ten years or the life of reserves, whichever is less;

(2) On behalf of an end user for the end uses designated by the Commission in paragraph (e)(2) of this section; or

(3) On behalf of any:

(i) Local distribution company;

(ii) Interstate pipeline; or

(iii) Intrastate pipeline.

(c) *Contents of request.* (1) In addition to the requirements of § 157.205(b), requests for activities described in paragraphs (b)(1) and (b)(2) shall contain:

(i) The name of the end user;

(ii) The volumes of gas to be transported on a peak day, average day, and annual basis;

(iii) A copy of the proposed transportation agreement indicating the proposed transportation rate, including the AIC separately stated, together with a breakdown and justification of the proposed rate level to the extent indicated in § 284.106 of this chapter for interstate pipelines or § 284.126 of this chapter for intrastate pipelines;

(iv) A statement by the distributor or intrastate pipeline that it has capacity sufficient to perform the transportation service without detriment or disadvantage to its other customers;

(v) A description, projected cost, and location of any facilities that will be constructed in order to provide the transportation service, as well as any other facilities that will be utilized;

(vi) The proposed end use and a statement that it is a qualified end use;

(vii) The total end-use requirements profile for natural gas at the location where the transported gas will be used;

(viii) A copy of the gas purchase contract with the seller underlying the proposed transaction;

(ix) If an intermediary participates in the transaction between the end user and the seller and charges a fee, the amount of the fee and terms of payment and the intermediary's affiliation, if any, with the producer, pipeline and/or distributor; and

(x) If the end user assumes the cost of the construction of any facilities in order to consummate the purchase, the cost, terms of payment, ownership, and date of construction of the facilities.

(2) In addition to the requirements of § 157.205(b), requests for activities described under paragraph (b)(3) of this section shall contain: a description of the transportation service, including:

(i) The identity of the parties;

(ii) The dates of commencement and termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported;

(iv) The points between which the natural gas is to be transported; and

(v) The basis for any rates and charges, as provided under § 284.103 of this chapter.

(d) *Special conditions.* (1) Any transportation authorized under either paragraphs (a) or (b) of this section shall be subject to the following conditions:

(i) Except as provided in paragraph (f) of this section, the rates and charges shall be subject to the requirements of § 284.103 of this chapter; and

(ii) The contract for the transportation shall provide that service under the contract shall be subject to the availability of capacity sufficient to provide the service without detriment or disadvantage to the certificate holder's existing customers who are dependent upon the certificate holder's general system supply.

(2) Any transportation authorized under paragraph (b)(3) of this section is conditioned upon the transported natural gas being delivered directly or indirectly to the interstate pipeline, intrastate pipeline, or local distribution company, which receives such natural gas for its system supply for resale.

(e) *Designation of end uses.* The Commission may authorize transportation of natural gas under this section for other categories of end uses described below.

(1) *Automatic authorization.* [Reserved]

(2) *Prior notice.* [Reserved]

(f) *Added incentive charge tariffs.* (1) The certificate holder may file a special added incentive charge (AIC) tariff applicable to transportation authorized by paragraphs (a), (b)(1) and (b)(2) of this section which is performed on or before January 31, 1985.

(2) Any AIC tariff filed pursuant to this paragraph shall contain:

(i) An express termination date, no later than January 31, 1985;

(ii) A one-part transportation charge stated in terms of the quantity of gas transported which is based upon the following components which are separately stated:

(A) The per unit cost of transportation derived from the certificate holder's last general rate case, and

(B) An incentive allowance not to exceed five cents per MMBtu for each transaction.

(3) In any subsequent general rate filing by the certificate holder, the revenues derived from the incentive allowance shall be separately reflected and identified in any test period revenues studies.

(g) *Reporting requirements.*—(1) *Initial report.* Within thirty days after commencing a transportation arrangement authorized by § 157.209(a), the certificate holder shall file with the Commission an initial report, under oath, signed by a senior official of the company, containing a description of the transportation service which includes:

(i) The identity of the parties;

(ii) The dates of commencement and projected termination of the service;

(iii) The estimated total and maximum daily quantities of natural gas to be transported;

(iv) The end use of the gas and a justification of the basis for its heligibility for transportation under this Subpart;

(v) The price the end user is paying for the purchased natural gas;

(vi) The points between which the natural gas is to be transported; and

(vii) The rate to be charged, including the AIC separately stated, together with a breakdown and justification of the rate level to the extent indicated in § 284.106 of this chapter.

(2) *Annual report.* The annual report filed by the certificate holder shall contain, for transactions authorized under § 157.209(a)(1), (a)(2), (b)(1), (b)(2), and (b)(3) the following information specified for each of these authorizing paragraphs:

(i) Total volumes transported and the source of such volumes;

(ii) Total revenues received, including AIC amounts separately stated;

(iii) The average delivered price per Mcf paid, itemized by amounts paid to:

(A) The seller;

(B) Each pipeline and distributor involved in transporting the gas, including AIC amounts separately stated; and

(C) Any other parties; and

(iv) The total cost and completion dates for any facilities constructed in order to provide the services.

(3) *Interim report.* On or before June 1, 1984, the certificate holder shall file an interim report, under oath, signed by a senior official of the company, which states, for the period from [effective date of final rule] through April 31, 1984:

(i) Actual volumes of natural gas transported pursuant to paragraphs (a), (b)(1), and (b)(2) of this section;

(A) To which the AIC tariff authorized by paragraph (f) of this section was applicable;

(B) To which § 157.206(h)(2) was applicable for the treatment of the revenues received from the transportation of such volumes; and

(C) To which neither the AIC nor § 157.206(h)(2) was applicable, together with a statement explaining how such revenues were treated;

(ii) For the volumes of natural gas stated pursuant to paragraph (g)(3)(i)(A) of this section;

(A) The average AIC per MMBtu paid by the end user to the certificate holder for each transaction; and

(B) The average AIC per MMBtu paid by the end user for each transaction.

§ 157.210 Sales for resale.

(a) *Prior notice.* Subject to the notice requirements of § 157.205, the certificate holder is authorized to sell natural gas in interstate commerce for resale, if:

(1) The buyer is an interstate pipeline acquiring the gas for its system supplies;

(2) The sale does not exceed a period of one year;

(3) The certificate holder has a surplus of gas supplies that is in excess of the amount required to serve the certificate holder's existing on-system customers and that is at least equal to the volumes to be sold in the proposed transaction;

(4) The sale is made at the higher of the certificate holder's:

(i) System average load factor rate (based upon the rates in effect at the time the request is filed pursuant to § 157.205); or

(ii) Average section 102 gas acquisition cost (based upon the certificate holder's most recent purchased gas adjustment filing at the time the request is filed pursuant to § 157.210);

(5) The sale does not involve the sale of any natural gas acquired by the certificate holder solely or primarily for the purpose of making a sale under this section;

(6) The buyer is not an interstate pipeline authorized to sell gas to the certificate holder during the duration of the sale;

(7) The certificate holder has actual or potential take or pay liability; and

(8) The sale is subject to interruption by the certificate holder to the extent that natural gas subject to the sale is required to provide adequate service to the certificate holder's on-system customers at the time of the sale.

(b) *Contents of request.* In addition to the requirements of § 157.205(b), requests filed for activities described in paragraph (a) of this section shall contain:

(1) The identity of the seller and buyer;

(2) The dates of commencement and anticipated termination of the sale;

(3) The estimated total and daily quantities (in MMBtu's) of natural gas to be sold in the transaction;

(4) The rate to be charged and the applicable rate schedules;

(5) An affidavit that service pursuant to the sale is subject to interruption to the extent that natural gas subject to the sale under this section is required to enable the certificate holder to provide adequate service to its on-system customers;

(6) The total quantity of gas being sold in transactions authorized by this section at the time of the request;

(7) A copy of the contract, if the identity of the buyer is known;

(8) A statement quantifying the extent of actual or potential take-or-pay liability;

(9) A gas supply/requirements balance demonstrating a sufficient surplus such that service to the certificate holder's on-system customers will not be affected by the proposed sale; and

(10) Identification of delivery points.

PART 284—[AMENDED]

10. Section 284.105 is amended by revising paragraph (a) to read as follows:

§ 284.105 Extensions.

(a) *General rule.* An interstate pipeline seeking to extend a transportation arrangement (1) initially authorized under § 284.102(a), (2) subsequently extended under this section, or (3) extended for an additional two year term under § 284.107 shall file an extension report as required in § 284.106(c).

* * * * *

§ 284.106 [Amended]

11. Section 284.106(c) is amended by inserting "including those subsequently extended under §§ 284.105 or 284.107," after "§ 284.102(a)."

12. Section 284.106 is amended by removing the word "and" after the semicolon in paragraph (c)(1), changing the period to a semicolon and inserting the word "and" after the semicolon at the end of paragraph (c)(2), and adding a new paragraph (c)(3), to read as follows:

§ 284.106 Reporting requirements.

* * * * *

(c) * * *

(3) The actual volumes transported for the period commencing with the first day of the initial authorization or previous extension and ending with the date of the report.

* * * * *

13. Section 284.122 is amended by revising paragraph (b)(1) to read as follows:

§ 284.122 Transportation by intrastate pipelines.

* * * * *

(b) *Limitations.* (1) Authorization under paragraph (a) is limited to an arrangement:

(i)(A) which does not exceed a period of two years, and

(B) in which the transported natural gas is delivered directly or indirectly to an interstate pipeline, intrastate pipeline, or local distribution company, which receives such natural gas for its system supply for resale, or

(ii) in which natural gas is purchased by a qualified end user and transported by an interstate pipeline pursuant to a blanket certificate issued under Subpart F of Part 157 of this chapter.

* * * * *

14. Section 284.125 is amended by revising paragraphs (a) and (b) to read as follows:

§ 284.125 Extensions.

(a) *General rule.* An intrastate pipeline seeking to extend a transportation arrangement (1) initially authorized under § 284.122(a), (2) subsequently extended under this section, or (3) extended for an additional two year term under § 284.127 shall file an extension report as required in § 284.126(c).

(b) *Approval.* (1) If an extension report as required in § 284.126(c) is duly filed, the proposed extension may take effect unless the Commission, prior to the beginning of the proposed extension, and after opportunity for written comments, determines, by order, that the proposed extension is not authorized. If the intrastate pipeline proposes to charge a rate during the extension which is different than the rate previously charged, the new rate is subject to the requirements and approval procedures of § 284.123.

(2) If the Commission determines, by order, that the proposed extension shall be modified, the extension may take effect only as modified.

* * * * *

§ 284.126 [Amended]

15. Section 284.126(c) is amended by inserting "including those subsequently extended under §§ 284.125 or 284.127," after "§ 284.122(a)."

16. Section 284.126 is amended by removing the word "and" after the semicolon in paragraph (c)(1), changing the period to a semicolon and inserting the word "and" after the semicolon at the end of paragraph (c)(2), and adding a new paragraph (c)(3) to read as follows:

§ 284.126 Reporting requirements.

* * * * *

(c) * * *

(3) The actual volumes transported for the period commencing with the first day of the initial authorization or previous extension and ending with the date of the report.

* * * * *

17. Section 284.222 is amended by revising the section heading in paragraphs (a) through (e) to read as follows:

§ 284.222 Certain transportation, sales and assignments by local distribution companies.

(a) *Applicability.* This section applies to local distribution companies served by interstate pipelines, including persons who are not subject to the jurisdiction of the Commission, by reason of section 1(c) of the Natural Gas Act.

(b) *Blanket certification.* Any local distribution company served by an interstate pipeline or any Hinshaw pipeline may apply for a blanket certificate under this section. Upon application therefore, the Commission will conduct a hearing pursuant to section 7(c) of the Natural Gas Act and § 157.11 and Subpart H of Part 385 of this chapter and, if required by the present or future public convenience and necessity, the Commission will issue a blanket certificate to such local distribution company or Hinshaw pipeline. Such certificate will authorize the certificate holder to engage in the sale, transportation, or assignment of natural gas, that is subject to the Commission's jurisdiction under the Natural Gas Act, to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities by Subparts C, D, and E and § 284.203 of this Part (as amended from time to time), except as otherwise provided in paragraph (e)(2) of this section.

(c) *Application procedure.* Applications for blanket certificates shall state:

(1) The exact legal name of applicant; its principal place of business; whether an individual, partnership, corporation or otherwise; the state under the laws of which it is organized or authorized; the agency having jurisdiction over rates and tariffs; and the name, title, and mailing address of the person or persons to whom communications concerning the application are to be addressed;

(2) The volumes of natural gas which:

(i) Were received during the most recent 12-month period by the applicant within or at the boundary of a state, and

(ii) Were exempt from the Natural Gas Act jurisdiction of the Commission by reason of section 1(c) of the Natural Gas Act, if any;

(3) The total volume of natural gas received by the applicant from all sources during the same time period;

(4) Citation to all currently valid declarations of exemption issued by the Commission under section 1(c) of the Natural Gas Act if any;

(5) A statement that the applicant will comply with the conditions in paragraph (e) of this section;

(6) A form of notice suitable for publication in the **Federal Register**, as contemplated by § 157.9 of this chapter, which will briefly summarize the facts contained in the application in such way as to acquaint the public with its scope and purpose; and

(7) A statement of the methodology to be used in calculating rates for services to be rendered, setting forth any elections under § 284.123 or paragraph (e)(2) of this section and a sample calculation employing the methodology using current data. If a rate election is made under paragraph (e)(2) of this section, this statement shall contain the following items (reflecting the 12-month period used to justify costs in the most recently approved rate case conducted by an appropriate state regulatory agency):

(i) Total operating revenues,

(ii) Purchase gas costs,

(iii) Distribution costs (which include that portion of the common costs allocated to the distribution function),

(iv) The volume throughput of the system categorized by sales, transportation and exchange service, and

(v) A study which determines transportation costs on a unit revenue basis in accordance with paragraph (e)(2) of this section, including any supporting work papers.

(d) *Effect of certificate.* (1) A certificate issued pursuant to this section will authorize the certificate holder to engage in transactions of the type authorized by Subparts C, D, and E and § 284.203 of this part.

(2) Acceptance of a certificate or conduct of an activity authorized thereunder will:

(i) Not impair the continued validity of any exclusion under section 1(c) of the Natural Gas Act which may be applicable to the certificate holder, and

(ii) Not subject the certificate holder to the Natural Gas Act jurisdiction to the Commission except to the extent necessary to enforce the terms and conditions of the certificate.

(e) *General conditions.* (1) Except as provided in paragraph (e)(2) of this section, any transaction authorized under a blanket certificate shall be subject to the same rates and charges, terms and conditions and reporting requirements that would apply if the transaction were authorized for an intrastate pipeline by Subparts C, D, and E and § 284.203 of this part (as amended from time to time).

(2) *Rate election.* If the certificate holder does not have any existing rates on file with the appropriate state regulatory agency for city-gate service, the certificate holder may make the rate election specified in § 284.123(b)(1) only if:

(i) The certificate holder's existing rates are approved by an appropriate state regulatory agency,

(ii) The rates and charges for any transportation are computed by using the portion of the certificate holder weighted average annual unit revenue (per MMBtu) generated by existing rates which is attributable to the cost of gathering, treatment, processing, transportation, delivery or similar service (including storage service), and

(iii) The Commission has approved the method for computing rates and charges specified in paragraph (e)(2)(ii) of this section.

(3) *Incremental pricing.* Prior to engaging in any sale or assignment under the blanket certificate to a buyer subject to the incremental pricing provisions of Title II of the NGPA and Part 282 of this chapter, the selling pipeline shall receive an undertaking from the buyer to incrementally price the gas volumes sold to the same extent required for transactions authorized under section 311(b) or 312 of the NGPA.

(4) *Volumetric test.* The volumes of natural gas sold or assigned under the blanket certificate may not exceed the volumes obtained from sources other than interstate supplies.

(5) *Filings.* Any filings made with the Commission that report individual transactions shall reference the docket number of the proceeding in which the blanket certificate was granted.

(6) *Tariff filings.* (i) The tariff filing requirements of Part 154 of this chapter shall not apply to transactions authorized by the blanket certificate.

(ii) The certificate holder shall file with the Commission a copy of all contracts applicable to a transaction authorized by the blanket certificate as a part of the initial full report required by §§ 284.126 and 284.148. The certificate holder shall also file with the Commission each amendment to such contracts, within 30 days of the execution of the amendment.

* * * * *

SHELDON, Commissioner, *concurring:*

This rule includes certain off-system sales. The terms and conditions relating to an off-system sale under a blanket certificate are generally in accord with the Commission's Statement of Policy issued April 25, 1983, in Docket No. PL83-2-000. I dissented to that Statement of Policy and continue to disagree with the majority in that matter. However, I do believe that off-system sales should be given blanket certificate authorization and for this reason, I concur with the majority in this Final Rule.

Georgiana H. Sheldon,

Commissioner.

[FR Doc. 83-20105 Filed 7-29-83; 8:45 am]

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Monday
August 1, 1983

Part VI

Department of Transportation

Federal Highway Administration
Urban Mass Transportation Administration

Environmental Impact and Related Procedures; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 622

Urban Mass Transportation Administration

23 CFR Part 771

[FHWA Docket No. 83-20]

Environmental Impact and Related Procedures

AGENCY: Federal Highway Administration (FHWA), and Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA and UMTA are proposing changes to their regulation which covers the preparation of environmental impact statements and related documents and compliance with other Federal environmental requirements. The changes are intended to streamline the project development process for FHWA and UMTA grant programs and provide increased decisionmaking authority to agency field offices. The essential elements of the environmental process are governed by the regulations of the Council on Environmental Quality and would not be affected by these proposed changes.

DATE: Comments must be received on or before September 30, 1983.

ADDRESS: Submit written comments, preferably in triplicate to FHWA Docket No. 82-12, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. R. E. Gatz, Office of Environmental Policy (202-426-0106), or Mr. E. Kussy, Office of the Chief Counsel (202-426-0791), in the Federal Highway Administration (FHWA); or in the Urban Mass Transportation Administration (UMTA), Mr. A. Marner, Office of Planning Assistance (202-426-2360), all at 400 Seventh Street, SW., Washington, D.C. 20590. The FHWA and UMTA hours are from 7:45 to 4:15 p.m. Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA and the UMTA are proposing a number of changes to the joint FHWA/UMTA environmental regulation which was published in the Federal Register on October 30, 1980 (45 FR 71968). This regulation was effective for all Administration actions taken after December 29, 1980. In the Subsequent 18 months, FHWA and UMTA have received a number of suggestions from their field offices relative to proposed changes which would eliminate duplicative requirements contained in the present environmental regulation and other FHWA and UMTA regulations and would also provide increased flexibility to project applicants and increased decisionmaking authority to the Administration's field offices. Recommendations made as the result of FHWA's priority review of the environmental process are also being proposed at this time (46 FR 21620, April 13, 1981).

The environmental process followed by FHWA and UMTA is governed by the regulation which was issued by the Council on Environmental Quality (CEQ) on November 29, 1978 (40 CFR Parts 1500-1508) and by DOT Order 5610.1C, which was issued on September 18, 1979. The changes being proposed by FHWA and UMTA would not affect the process required by the CEQ regulation and the DOT Order.

In addition to those proposed changes which are designed to streamline the project development process, numerous modifications would be made throughout the regulation in order to eliminate excess verbiage, update references, clarify existing provisions, and generally improve the readability of the regulation. Because of the large number of changes proposed and their pervasiveness, the full text of the regulation with revisions is being published as part of this notice of proposed rulemaking. Recent changes made by the FHWA as a result of the elimination of the environmental action plan requirement (47 FR 21780, May 20, 1982) have been incorporated in the text of the regulation.

The most important proposed changes are discussed below. This includes changes which would improve the environmental process as well as the most noteworthy editorial revisions. The FHWA and UMTA are particularly interested in receiving comments on these proposed changes, suggestions for additional revision that would eliminate duplication and delay in the environmental aspects of the project development process, and any other suggestions that would further the objectives of NEPA.

Section 771.103 of the existing regulation consists of a listing of statutes and Executive Orders that provide authority for or otherwise relate to the FHWA/UMTA environmental process. On February 24, 1982, the FHWA issued Technical Advisory T 6640.8, Guidance Material for the Preparation of Environmental Documents (47 FR 10698, March 11, 1982), which includes a detailed list and annotated description of various environmental laws, regulations, and Executive Orders which could be applicable to FHWA and UMTA projects. The Technical Advisory can be easily updated and is readily available to the public as prescribed in 49 CFR Part 7. For these reasons, it is proposed to delete this section from the regulation. The principal statutes covered by the regulation would be referenced in the authority citation and the purpose section (proposed § 771.101).

Section 771.113(a) of the existing regulation places limits on the kinds of project development activities which can be undertaken prior to completion of the NEPA process. Only preliminary design and property acquisition in carefully limited circumstances are permitted before the environmental process is completed. The language in this paragraph supports, and should be read in conjunction with, § 1506.1 of the CEQ regulation, "Limitations on actions during NEPA Process." These provisions ensure that the Administration's decision on whether to implement an alternative under consideration in the environmental document will not be influenced by a previous commitment to a particular course of action. This limitation on actions supports one of the primary purposes of the National Environmental Policy Act—that Federal agencies consider environmental effects, including alternative courses of action, before reaching a decision to proceed with major construction projects.

It is important to note that the limitation on premature commitments applies to actions that may be proposed entirely for local funding by an applicant or prospective applicant for Federal funds. If the action in question is an integral part of a larger project which is the subject of an environmental document, that action cannot be "segmented" from the overall proposal and advanced as a separate proposal for funding purposes or matters of convenience.

The Surface Transportation Assistance Act of 1982 amended Section 3(a)(1)(A) of the Urban Mass Transportation Act by adding a provision that gives UMTA the discretion to make grants or loans for "* * * the acquisition of rights-of-way, and relocation, for fixed guideway corridor development for projects in

advanced stages of * * * alternatives analyses or preliminary engineering." For UMTA's major fixed guideway projects, the draft and final EIS's are developed during alternatives anlayses and preliminary engineering. A blanket authorization for land acquisition during alternatives analysis or preliminary engineering would, therefore, create a conflict with NEPA compliance since such acquisition could result in a substantial commitment to a particular course of action before the NEPA process is completed.

The UMTA has considered how this new authority to make grants for advance land acquisition and relocation can be implemented consistent with its responsibilities under NEPA and the results or pertinent litigation (*National Wildlife Federation v. Snow,* 561 F. 2d 227 (D.C. Cir., 1976)) and has decided not to expand the language governing early property acquisition. The UMTA has concluded that this amendment was not intended to override the existing requirements of the NEPA process. Accordingly, prior to the completion of the NEPA process, property acquisition will be limited to "hardship" or "protective" buying. These terms are defined in 23 CFR 712.204(d) and repeated here for convenience. Hardship acquisition is done to "alleviate particular hardship to a property owner, on his request, in contrast to others because of an inability to sell his property."

Early relocation would occur in such cases. Protective buying is done to "prevent imminent development and increased costs of a parcel which would tend to limit the choice of alternatives." The FHWA has issued guidelines and UMTA will prepare similar guidance describing the documentation needed to support requests for hardship and protective buying. As in the past, this type of land acquisition is reserved for extraordinary or emergency situations involving a particular parcel or a limited number of parcels within the proposed transportation corridor. Documentation supporting these claims will continue to be reviewed in the Regional Offices of FHWA and UMTA.

Section 771.113(c) of the existing regulation dealing with UMTA Letters of Intent has been changed by deleting the sentence specifying that the scope of the environmental document must address the entire project covered by the proposed Letter of Intent. The proper scope of environmental documents is a continuing concern of UMTA; however, the sentence was deleted here because it was out of place in the section on timing of Administration actions.

Sections 771.111(e), 771.123(k) and 771.125(i) of the existing regulation include coordination requirements notification of the A-95 clearinghouse in the adjoining State when a pending project has the potential to affect that State. This requirement would be deleted in the proposed regulation. The A-95 agency was eliminated by Executive Order 12372 (47 FR 30959, July 16, 1982). However, FHWA and UMTA believe that an institution for information exchange, similar to an A-95 type clearinghouse, is one of the best vehicles achieve this necessary early coordination. These institutions are herein referred to as "clearinghouses." The final rule will be consistent with regulations implementing E.O. 12372.

The paragraph in the existing regulation (§ 771.111(g)) which discusses tiered environmental impact statements (EIS's) would be modified slightly. Because of the nature of its program, FHWA believes the tiered EIS has only very limited application to the highway program and considers the discussion of tiering in § 1502.20 of the CEQ regulation to be adequate for FHWA applicants. Because of the types of projects it funds, UMTA believes additional information on tiering could be helpful to its applicants. Accordingly, the section on tiered EIS's would be modified to better reflect the tiered EIS approach as it relates to the UMTA program (see proposed § 771.109(g)).

The UMTA is proposed to revise the list of actions which normally require EIS's (Class I Actions). New construction or extention of fixed guideway systems, including raillines and busways, have normally required EIS's in the past. Proposed § 771.113(a) would eliminate exclusive busways from Class I because of the potential to construct a busway on or a alongside an existing highway facility where the environmental impacts may not be significant. In such cases, an environmental assessment (EA) would be required. It should be noted that UMTA will require an EIS for the construction of a fixed guideway for buses which is not integrated with an existing highway facility. It is also proposed to delete the Class I Action involving the construction of major transportation related developments. In the past, this category covered a variety of urban redevelopment projects related to urban transit needs. Often the UMTA assistance was used by the applicant in conjunction with funds from the Department of Housing and Urban Development and the Economic Development Administration. Because of budget limitations, funding for these projects is rarely pursued.

Instead, UMTA is focusing its resources on basic transit improvements. The deletion of this Class I Action should add flexibility in handling any such urban development projects. In the future, the environmental process will be determined by UMTA on a case-by-case basis. If the proposed project involves substantial demolition, displacement of a large number of individuals or businesses, or substantial disruption to local traffic patterns, an EIS will usually be required.

Since issuance of the current regulation in 1980, the FHWA and UMTA have received numerous suggestions for additional categorical exclusions and for modifications to existing categorical exclusions. These suggestions have been reviewed and it has been determined that many of them warrant adoption.

In order to accommodate these and future suggestions with a minimum of redtape and delay and to streamline the categorical exclusion process, it is proposed to divide the list of categorical exclusions into two separate lists, each with its own set of review procedures.

The first list is in the regulation under proposed § 771.113(b)(1). Once a class of actions is placed on that list, individual actions proposed for funding by applicants would not require documentation or approval under proposed § 771.115(b) if they fall within one or more of the listed classes.

The majority of actions on this list would be taken from the list of categorical exclusions in existing § 771.115(b). These actions primarily involve administrative, planning, design and some very light construction activities which, on the basis of past experience with similar action, do not involve significant environmental impacts or substantial planning, time or resources.

Proposed categorical exclusion 1 in § 771.113(b)(1) represents a combination of nonconstruction categorical exclusions taken from § 771.115(b)(1)-(7) and (23) of the existing regulation. Similarly, proposed categorical exclusions 2, 3, 4, 5, 6, 7, 9, 10, 11, 13, 14, 15 and 17 are taken respectively from § 771.115(b) (8), (10), (11), (12), (15), (17), (19), (20), (21), (23), (24), (26) and (29) of the existing regulation.

The existing categorical exclusion for certain aspects of the rural public transportation program, § 771.115(b)(18), would be modified in proposed categorical exclusion 8 to include the purchase of vehicles with rural public transportation (Section 18) funds. This

proposed revision would not change current policy or procedure, but would clearly identify the purchase of vehicles as a categorical exclusion in keeping with instructions previously issued on this subject.

Proposed categorical exclusion 12 would modify existing § 771.115(b)(22) to permit the use of minor amounts of additional land in conjunction with the rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities. The proposed revision to this categorical exclusion would cover proposed actions where the reconstruction of transit facilities could result in an insignificant expansion of the property line. This minor expansion of an existing facility would not be expected to cause significant traffic, noise or air quality effects, provided the facility is compatible with the surrounding land use.

Proposed categorical exclusions 17 and 18 are new and relate primarily to FHWA activities. Proposed categorical exclusion 17 would allow the FHWA to approve the use of highway right-of-way for other than highway purposes (see 23 CFR 1.23(c)) as a categorical exclusion where the permitted use would not have impacts of a sufficient magnitude to require the preparation of either an EIS or an EA. An example of such a joint use of highway right-of-way might be the proposed construction of a parking lot on highway right-of-way under a bridge.

Proposed categorical exclusion 18 would permit the acquisition of property interests known as scenic easements adjacent to the highway right-of-way.

Proposed categorical exclusion 19 is new and relates primarily to UMTA funded activities. It would permit bus and rail car rehabilitation work to proceed as a categorical exclusion.

The second list of categorical exclusions would be included in proposed § 771.113(b)(2) of the regulation and would contain examples of activities which would generally be considered categorical exclusions, but which would require approval by the Administration on a project-by-project basis under proposed § 771.115(b). This is the procedure currently required for all categorical exclusions.

Although the FHWA and UMTA believe that the examples on this list meet the criteria for categorical exclusion, these actions would generally involve a greater degree of construction activity than the actions to be listed on a nationwide basis under proposed § 771.113(b)(1). Because of the possible scale of these actions, individual Federal approval is deemed warranted, with supporting information required as needed.

In addition to the examples of categorical exclusions listed in proposed § 771.113(b)(2), this section would also permit applicants to recommend additional actions for processing as categorical exclusions. If the Administration determines that such an action meets the criteria for categorical exclusion as defined in § 1508.4 of the CEQ regulation and proposed § 771.115(a), the action would be processed as a categorical exclusion.

A discussion of the examples of categorical exclusions included in proposed § 771.113(b)(2) follows.

Existing § 771.115(b)(9) covers the reconstruction of modification of existing bridge structures, but specifically exempts bridges which are on or eligible for the National Register of Historic Places or which provide access to barrier islands. Proposed § 771.113(b)(2)(i) would eliminate these two exceptions. Full compliance with the requirements of the National Historic Preservation Act of 1966 would continue to be required for all bridges on or eligible for the National Register. However, a National Register listing would not automatically preclude the Administration from processing the action as a categorical exclusion as provided by the existing regulation. The FHWA and UMTA also believe that the constraints placed on the use of this categorical exclusion in the existing regulation provide adequate protection with respect to barrier islands. Both the present and the proposed provision limit this categorical exclusion to the reconstruction or modification of an existing bridge on essentially the same alignment or location. These limitations would continue to prohibit the processing of a project to provide new access to a barrier island as a categorical exclusion.

Proposed § 771.113(b)(2)(ii) would modify existing § 771.115(b)(13) to allow certain highway reconstruction projects to be processed as categorical exclusions and to specifically include the reconstruction of existing ramps and ramp configurations. Reference to the amount of additional right-of-way and the degree of changes in access control required would be deleted from the example. Phrases such as "minor amounts of right-of-way" and "substantial changes in access control" have proven difficult to apply on a national basis. However, right-of-way acquisition and changes in access control are factors that would continue to be considered in determining the appropriateness of categorical exclusion. Proposed § 771.113(b)(2)(iii) would modify existing § 771.115(b)(14) by deleting identical references to right-of-way and access control.

Proposed § 771.113(b)(2) (iv) and (v) are taken without change from § 771.115(b) (16) and (25) respectively.

Proposed § 771.113(b)(2)(vi) is new and would permit the construction of truck weigh stations, rest areas and rest area improvements to be processed as categorical exclusions with Administration approval.

Proposed § 771.113(b)(2)(vii) is new and is being proposed in response to problems that have developed under § 771.115(b)(24) with respect to bus transfer facilities. The existing exclusion covers the installation of small passenger and bus shelters where no substantial land acquisition or traffic disruption would occur. In the past, project applicants have proposed that bus transfer facilities be processed under this categorical exclusion. Rather than encourage this broad interpretation, UMTA is now proposing a new categorical exclusion to cover bus transfer facilities. It has been UMTA's experience that these facilities do not normally cause significant environmental impacts. In this regard, the proposed categorical exclusion would apply only where there is compatability with surrounding land use and adequate road capacity. Bus transfer facilities proposed for residential neighborhoods would not be exempted from environmental analysis.

Proposed § 771.113(b)(2)(viii) covers the construction of rail storage and maintenance facilities. It is recognized that such facilities can normally be built and operated without adverse impact on the surrounding community. However, this judgement must take into consideration the existing land use and zoning, the size of the proposed facility, and the potential for noise impacts. Comments are specifically invited on the conditions or criteria that should apply to this categorical exclusion.

Proposed § 771.113(b)(2)(ix) covers rulemaking actions. We have found that rulemaking actions which do not meet the criteria requiring regulatory impact analysis under Executive Order 12291, meet the criteria for categorical exclusion. This convenient relationship between the regulatory procedures of Executive Order 12291 and the environmental procedures of this regulation is continued from the current rule. The reference in the existing rule to Executive Order 12044, is changed to reflect that Executive Order 12291 has superseded Executive Order 12044.

Proposed § 771.117(h) would continue to require a 30-day public review period

for an EA for a proposed action which would normally require an EIS under § 771.113(a). However, the penultimate sentence in the present regulation has been revised and the last sentence has been deleted because some offices incorrectly interpreted the existing language as requiring two sequential 30-day time periods.

Proposed § 771.121 would address the procedures associated with draft EIS's. The most important changes to existing § 771.123 are discussed below.

Scoping is the process used to determine the scope of issues to be addressed and for identifying the significant issues related to a proposed action (40 CFR 1501.7). Since the existing regulation took effect in December 1980, UMTA has had mixed results from its scoping meetings. Some meetings have raised new issues and provided a forum for previously unknown public opinion. Other meetings have been characterized by a perfunctory information exchange between project sponsors and the public. Flexibility would be added to the scoping requirement for UMTA EIS's in proposed § 771.121(b). Scoping would be achieved by soliciting comments by mail on the proposed scope of the EIS or by holding meetings. Decisions on how scoping will be achieved would be made jointly by the applicant and UMTA.

Proposed § 771.121(g) retains the basic requirements concerning public hearings held in conjunction with the circulation of the draft EIS. The minimum period of availability of the draft EIS prior to the public hearing would be reduced from 30 days to 15 days in order to be fully consistent with the CEQ regulation (40 CFR 1506.6(c)(2)). Applicants for most UMTA grants are encouraged to coordinate the preparation of the draft EIS with the submission of the grant application so that the EIS can be distributed for comment prior to the grant application public hearing. This would permit the applicant to hold a single hearing for purposes of the grant application and the draft EIS. This approach would generally not be feasible in the case of major urban transportation investments, because applicants are encouraged not to select a preferred alternative at the draft EIS stage, which occurs early in the planning process. Draft EIS's undertaken at this early stage, prior to submission of a grant application, would require a separate hearing. The intention is to encourage early preparation of the EIS and to solicit input from the public on the potential environmental effects of project alternatives.

Proposed § 771.123 would address the procedures associated with final EIS's. The most important changes to existing § 771.125 are discussed below.

Paragraph (a)(1) would require the final EIS to identify the environmental mitigation measures that are to be incorporated into the proposed action, but would no longer require the final EIS to include when appropriate a description of the procedure to be followed to assure that all environmental mitigation measures are implemented. Implementation and monitoring of mitigation measures are required under §§ 1505.2(c) and 1505.3 of the CEQ regulation. Since FHWA and UMTA continue to be bound by the CEQ regulation, consolidation of this Section will merely avoid duplication. In addition, proposed § 771.107(b) of this regulation would retain the existing FHWA/UMTA requirements which assign responsibility for these functions in accordance with the CEQ regulation. In light of these existing requirements, the inclusion of implementation procedures in the EIS itself is duplicative and unnecessary.

Proposed § 771.123(c) would require the final EIS to be reviewed for compliance with applicable laws, regulations and policies. This would replace the requirement in § 771.125(d) for a legal sufficiency review by the Administration's Chief Counsel or designee. The requirement for agency legal review comes from DOT Order 5610.1C. This requirement has not been changed and FHWA and UMTA continue to believe that a review by agency Counsel to assure compliance with applicable legal requirements is essential. Each Administration will issue appropriate internal operating instructions to implement this requirement. This change would be made in the regulation because the legal review reflects an internal procedural requirement not affecting the responsibilities of grant applicants. An identical change would be made in proposed § 771.133(j) with respect to Section 4(f) documents.

771.123(d) would revise the requirements concerning prior concurrence in certain final EIS's. Section 771.125(e) currently requires prior concurrence by the Administration Washington Headquarters and the Office of the Secretary of Transportation in final EIS's prepared for actions in one or more of the following categories:

(1) Any highway project on a new location in an urbanized area of over 100,000 population or bypassing such area.

(2) Any new controlled access freeway.

(3) New construction or extension of a fixed guideway transit system.

(4) Any major transportation related development whose construction requires the preparation of an EIS (see § 771.115(a)(4)) if the proposed Administration grant assistance exceeds $5 million or if the proposed total cost of publicly and privately funded construction is expected to exceed $50 million.

(5) Any action to which a Federal, State or local government has indicated opposition on environmental grounds (which has not been resolved to the written satisfaction of the objecting agency).

(6) Any action for which the Administration or the Office of the Secretary of Transportation requests that the FEIS be reviewed at the Washington Headquarters office.

Recently, the Office of the Secretary determined that prior concurrence would no longer be required by that office. Accordingly, § 771.123(d) would limit prior concurrence to the Administration Washington Headquarters. Based on past experience with the concurrence process, the FHWA and UMTA are also proposing to revise the categories for which prior concurrence would be required. The proposed categories in § 771.123(d) would allow the Administration to exercise greater discretion in selecting those environmental documents that warrant review and would permit resources in the Headquarters office to be concentrated on the areas of greatest need.

As an example of the type of actions for which a request would be made under § 771.123(d)(i), the FHWA intends to require prior concurrence for all final EIS's prepared for gaps in the Interstate system. Both the FHWA and UMTA intend to issue supplemental guidance to their field offices to clearly identify those categories of actions which require prior concurrence.

Proposed § 771.125 would continue existing requirements with respect to the record of decision in existing § 771.127 with one exception. The requirement for a preliminary record of decision would be eliminated. That particular requirement goes beyond the requirements of the CEQ regulation and is considered to be unnecessary. Reference to the preliminary record of decision would also be dropped from the section on final EIS's.

Existing § 771.129, Reevaluation, would be revised and retitled as § 771.127, Reevaluation and supplemental statements. The proposed section would be substantially shorter

than the existing version and would provide for greater consistency with requirements of the CEQ regulation. Existing provisions concerning the circumstances under which a supplement is necessary would be clarified; the need to periodically reevaluate the anticipated impacts of a proposed action would be emphasized; and the requirements and responsibilities concerning reevaluations would be clarified.

Proposed § 771.127(a) would clearly provide that a draft or final EIS may be supplemented at any time. Proposed § 771.127(b) would require the applicant to prepare a written reevaluation if an acceptable final EIS is not submitted to the Administration within 3 years from the date of circulation of the draft EIS. A significant worsening of the anticipated adverse impacts of the proposed action would require either a supplement to the draft EIS or a new draft EIS.

In proposed § 771.127(c), UMTA is proposing that a supplemental draft EIS may be warranted for major urban mass transportation investments where the alternative analysis/draft EIS had been circulated during the early planning stage, well before specific project details are known. If the original draft EIS contained sufficient detail on alternatives, a final EIS would be prepared during the preliminary engineering phase as outlined in the UMTA major investment procedures (45 FR 71987; October 30, 1980). If a significant time period had elapsed since the draft EIS and the project impacts had been refined substantially, UMTA would use its discretion to prepare and circulate a supplemental draft EIS. This option would be required in order to preserve the opportunity for agencies and the public to offer comments on a document that had been substantially changed.

In the case of actions with approved final EIS's, proposed § 771.127(d) would require the applicant to prepare a written evaluation prior to proceeding with major project approvals or authorizations and prior to filing any application for a Federal permit. If the evaluation shows significant changes in the anticipated adverse environmental impacts, a supplemental EIS would be required. Written evaluations are currently required at 3- and 5-year intervals where major steps have not occurred to advance an action after approval of the final EIS. These evaluations would no longer occur automatically at 3- and 5-year intervals under the proposed regulation.

Existing § 771.131, Emergency action procedures, has been reprinted in its present format. However, FHWA is considering changes to this section to also permit the Administrator, after consultation with the CEQ to waive certain requirements in order to accelerate certain transportation projects in accordance with the requirements of Section 129 of the Surface Transportation Assistance Act of 1982. This Act requires the Secretary to seek ways to "reduce the time required from the request for project approval through the completion of construction." The FHWA seeks suggestions concerning how § 771.129 can be rewritten to achieve the objectives of the National Environmental Policy Act and Section 129. Such acceleration would be in addition to the special procedures now available for emergency actions.

Proposed § 771.133 would address the procedures for compliance with Section 4(f) of the Department of Transportation Act (49 U.S.C. 1653(f), 23 U.S.C. 138). The most important changes to existing § 771.135 are discussed below.

Paragraph (f) would modify existing regulatory language concerning the applicability of Section 4(f) requirements to archeological sites. Currently, Section 4(f) does not apply to archeological resources which do not warrant preservation in place and are, in fact, recovered. Frequently, the State Historic Preservation Officer and the Advisory Council on Historic Preservation suggest that resources of mimimal importance be preserved in place rather than recovered so that the resources will be preserved for future study. Often resources are so umimportant that, once catalogued, the expense of a recovery effort is not warranted. This proposed change would make it clear that so long as an archeological site is important chiefly for the materials which it contains and the appropriate State and Federal historic preservation officials agree with the proposed mitigation effort, Section 4(f) would not apply. Recovery of a resource would not be required in order for an action to be advanced without a Section 4(f) determination in appropriate instances.

As previously noted, § 771.133(j) would require review of the final Section 4(f) document for compliance with applicable laws, regulations and policies, but would delete reference to internal FHWA operating responsibilities.

Two new regulatory provisions would be added to recognize current policy and procedure with respect to the preparation and circulation of separate Section 4(f) evaluations. Section 771.133(l)(2) would require a separate Section 4(f) evaluation when the 4(f) property is identified after the categorical exclusion, finding of no significant impact or final EIS has been processed. It should be noted that a separate evaluation is required only where § 771.133 (f) or (g) requires consideration under Section 4(f). Section 771.133(m) would indicate that preparation and circulation of a separate Section 4(f) evaluation does not necessarily require preparation of an EIS or supplemental EIS or withdrawal of any previous approvals for those aspects of the proposed action not directly affected by the Section 4(f) property.

The FHWA and UMTA have received a number of comments on the application of Section 4(f) to existing transportation facilities. Examples include highway bridges and certain mass transit facilities which are on or eligible for the National Register of Historic Places and proposed for improvement with Federal funds. Many commenters have suggested that Section 4(f) requirements should not be applicable to such facilities. Proposed § 771.133(o) would clarify existing FHWA and UMTA practice on this issue. While Section 4(f) clearly applies to work which impairs the historic significance of an existing historic transportation facility, work which does not damage historic significance, such as repair and restoration work, does not require the application of Section 4(f). Properties on or eligible for inclusion on the National Register will continue to receive full consideration under the requirements of the National Historic Preservation Act. Comments are invited on this proposed clarification and on any other actions that FHWA and UMTA could take in an attempt to address the applicability of Section 4(f) to existing transportation facilities.

In addition to the proposed changes discussed above, most sections of the existing regulation would be revised in one or more of the following respects: deletion of superfluous and redundant language, editorial corrections, and updating of obsolete references.

Changes are proposed throughout the document to eliminate duplication between this regulation and the provisions of other regulations. As an example, existing § 771.105(f) would be deleted because those requirements exist in various other regulations. In addition, reference to metropolitan planning organizations (MPO's) would be deleted throughout the regulation since the role of the MPO in the project development process is clearly defined in FHWA/UMTA planning regulations (23 CFR Part 450, 49 CFR Part 613).

In order to clarify requirements for preparation of environmental documents, the discussion of the preparation of the draft EIS in proposed § 771.121(c) would be consistent with instructions for the preparation of the final EIS in proposed § 771.123(a)(1).

Provisions in § 771.109 which excluded EIS's submitted prior to the effective date of the FHWA regulation which implemented the CEQ regulation have been eliminated. The FHWA believes that all EIS's now submitted must comply with the new regulation and, thus, these provisions are no longer required.

A Table of Sections which cross-references the current sections of 23 CFR 771 with the proposed sections in this notice of proposed rulemaking follows.

CROSS-REFERENCE TABLE OF SECTIONS (23 CFR PART 771)

Current section	Proposed section
771.101	771.101
771.103 (deleted)	771.101
771.105	771.103
771.107	771.105
771.109	771.107
771.111	771.109
771.113	771.111
771.115	771.113
771.117	771.115
771.119	771.117
771.121 (no change)	771.119
771.123	771.121
771.125	771.123
771.127	771.125
771.129	771.127
771.131	771.129
771.133	771.131
771.135	771.133
771.137 (no change)	771.135

These proposed amendments are considered to be significant under DOT regulatory policies and procedures because the effected regulation involves important departmental policy as implemented by the FHWA and UMTA. An evaluation of the environmental impact procedures is available for inspection in the public docket and a summary may be obtained by contacting Mr. Gatz at the address provided above under the heading "For Further Information Contact." Although the proposed amendments are designed to streamline the project development process, it is not anticipated that they would have a significant economic effect. Accordingly, the FHWA and UMTA have determined that this document does not contain a major proposal under Executive Order 12291. For the same reason and because the impact of the proposed amendments would fall on Federal and State governments, under the criteria of the Regulatory Flexibility Act, it is certified that these amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities.

This proposed regulation would apply to both FHWA and UMTA actions. It would be published as Part 771 of Title 23 of the Code of Federal Regulations (CFR) with a cross-reference in Part 622 of Title 49 of the CFR. No amendments would be required to the provisions of Part 622 as such.

In consideration of the foregoing and under the authority of 42 U.S.C. 4321 *et seq.*, 23 U.S.C. 101 *et seq.*, 49 U.S.C. 1601 *et seq.*, 49 U.S.C. 1653(f), and the delegations of authority at 49 CFR 1.48(b) and 1.51, it is proposed to amend Chapter I of Title 23, Code of Federal Regulations, by revising Part 771 as set forth below.

(Catalog of Federal Domestic Assistance Program Numbers: 20.205, Highway Research, Planning and Construction; 20.500, Urban Mass Transportation Capital Grants; 20.501, Urban Mass Transportation Capital Improvement Loans; 20.502, Urban Mass Transportation Grants for University Research and Training; 20.503, Urban Mass Transportation Managerial Training Grants; 20.504, Urban Mass Transportation Technology; 20.505, Urban Mass Transportation Technical Studies Grants; 20.506, Urban Mass Transportation Demonstration Grants; 20.507, Urban Mass Transportation Capital and Operating Assistance Formula Grants; 20.509, Public Transportation for Rural and Small Urban Areas; 20.510, Urban Mass transportation Planning Methods, Research and Development; 23.003, Appalachian Development Highway Systems; 23.008, Appalachian Local Access Roads)

The regulations implementing EO 12372 or OMB Circular No. A-95 (whichever is applicable) on intergovernmental consultation on Federal programs and activities apply to these programs.

List of Subjects in 23 CFR Part 771 and 49 CFR Part 622

Environmental impact statements, Grant programs—transportation, Highways and roads, Mass transportation, Historic preservation, National parks, Public lands—multiple use, Recreation areas, Wildlife refuges.

Issued on July 27, 1983.

G. Kent Woodman,

Acting Administrator, Urban Mass Transportation Administration.

R. A. Barnhart,

Federal Highway Administrator, Federal Highway Administration.

It is proposed to revise Part 771 to read as set forth below.

PART 771—ENVIRONMENTAL IMPACT AND RELATED PROCEDURES

Sec.
771.101 Purpose.
771.103 Policy.
771.105 Definitions.
771.107 Applicability and responsibilities.
771.109 Early coordination, public involvement, and project development.
771.111 Timing of Administration actions.
771.113 Classes of actions.
771.115 Categorical exclusions.
771.117 Environmental assessments.
771.119 Findings of no significant impact.
771.121 Draft environmental impact statements.
771.123 Final environmental impact statements.
771.125 Record of decision.
771.127 Reevaluation and supplemental statements.
771.129 Emergency action procedures.
771.131 Compliance with other requirements.
771.133 Section 4(f) of the Department of Transportation Act.
771.135 International actions.

Authority: 42 U.S.C. 4321 *et seq.;* 23 U.S.C. 109, 138, and 315; 49 U.S.C. 1602(d), 1604(h), 1610, and 1653(f); 40 CFR Part 1500, *et seq.;* 49 CFR 1.48(b) and 1.51.

§ 771.101 Purpose.

This regulation prescribes the policies and procedures of the Federal Highway Administration (FHWA) and the Urban Mass Transportation Administration (UMTA) for implementing the National Environmental Policy Act of 1969, as amended (NEPA), and the regulations of the Council on Environmental Quality (CEQ), 40 CFR Parts 1500–1508. This regulation sets forth all FHWA, UMTA, and Department of Transportation (DOT) requirements under NEPA for the processing of transportation projects. This regulation also sets forth procedures to comply with 23 U.S.C. 109(h) and 49 U.S.C. 1604(h)(2) and 1610 to make the certifications required by 49 U.S.C. 1602 and 1604(i).

§ 771.103 Policy.

It is the policy of the Administration that:

(a) To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated into a single process, and compliance with all applicable environmental requirements be reflected in the appropriate environmental document require by this regulation; [1]

[1] FHWA Technical Advisory T 6640.8, February 24, 1982, provides detailed guidance on the format and content of FHWA NEPA documents. It also includes a detailed list and annotated description of various environmental laws, regulations, and executive Orders which could be applicable to FHWA projects. The Technical Advisory is available for inspection and copying as prescribed

(b) Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation and of national, State, and local environmental protection goals;

(c) Public involvement and a systematic interdisciplinary approach be essential parts of the development process for proposed actions;

(d) Measures necessary to mitigate adverse impacts be incorporated into the proposed action. Measures necessary to mitigate adverse impacts are eligible for Federal funding when it is determined that:

(1) The impacts for which the mitigation is proposed actually result from the Administration action;

(2) The proposed mitigation represents a reasonable public expenditure when considered in light of the severity of impacts of the action and the social, economic, and environmental benefits of the proposed mitigation measures; and

(3) The proposed measures would assist in complying with a statute, Executive Order, or Administration regulation or policy.

(e) Costs incurred by the applicant which are directly related to the preparation of environmental documents requested by the Administration be eligible for Federal assistance in accordance with Administration procedures.

§ 771.105 Definitions.

The definitions contained in the CEQ regulation and in titles 23 and 49 of the United States Code are applicable to this regulation. In addition, the following definitions apply:

(a) Environmental studies—the investigations of potential environmental impacts made to determine the appropriate environmental process to be followed and subsequent investigations that assist in the preparation of the appropriate environmental document.

(b) Action—the approval of construction of highway or transit projects with funds administered by FHWA or by UMTA. It also includes approval of activities such as joint and multiple use permits, changes in access control, etc., which may or may not involve a commitment of Federal funds.

(c) Administration—the FHWA or UMTA, whichever is the designated lead agency for the proposed action.

in 49 CFR Part 7, Appendixes D and G, from FHWA Headquarters and field offices.

§ 771.107 Applicability and responsibilities.

(a)(1) The provisions of this regulation and the CEQ regulation apply to proposals for Administration action over which the Administration exercises sufficient control and responsibility to alter the action being proposed. Actions taken by the applicant which do not require Federal approvals, such as preparation of a regional transportation plan, are not Administration actions.

(2) The provisions of this regulation do not apply to, affect, or alter decisions, approvals, authorizations, or other actions made by the Administration prior to the effective date of this regulation.

(3) Environmental documents accepted or prepared by the Adminstration after the effective date of this regulation will be developed in accordance with this regulation.

(b) It shall be the responsibility of the applicant, in cooperation with the Administration, to implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to this regulation. The FHWA will assure that this is accomplished through reviews and approvals of designs, plans, specifications, and estimates (PS&E) and construction inspections. The UMTA will assure implementation of committed mitigation measures through incorporation by reference in the grant agreement.

(c) The Administration, in cooperation with the applicant, has the responsibility to manage the preparation of the appropriate environmental document. The role of the applicant is determined by the Administration in accordance with the CEQ regulation as described below.

(1) *Statewide agency.* If the applicant is a public agency that has statewide jurisdiction (for example, a State highway agency or a State department of transportation) or is a local unit of government acting through a State agency and meets the requirements of § 102(2)(D) of NEPA, the applicant may prepare the EIS and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document in accordance with § 102(2)(D) of NEPA. All applicants in this group qualify as joint lead agencies with the Administration (all FHWA applicants qualify under this paragraph).

(2) *Joint lead agency.* If the applicant is a public agency and is subject to State or local requirements comparable to NEPA, then the Administration and the applicant may prepare the EIS and other environmental documents as joint lead agencies. The applicant will initially develop substantive portions of the environmental document although the Administration will be responsible for its scope and content.

(3) *Cooperating agency.* If the applicant is a local public agency that has special expertise in the proposed action, the applicant may be a cooperating agency. A local applicant for capital assistance under the Urban Mass Transportation Act (UMT Act) of 1964, as amended, is presumed to be a cooperating agency. During the environmental process, the Administration will determine the scope and content of the appropriate environmental document with the applicant before decisions are made on the scope and depth of the environmental analysis. The applicant may be directed to carry out these decisions.

(4) *Other.* In all other cases, the role of the applicant is limited to providing environmental studies and commenting on environmental documents. All private institutions or firms are limited to this role.

(d) States operating under an approved certification in accordance with 23 CFR Part 640 may substitute for projects which are the subject of such certification, State laws, regulations, directives, and standards which meet the objectives in this regulation in lieu of §§ 771.111(a)(2) and 771.111(b).

§ 771.109 Early coordination, public involvement, and project development.

(a) Early coordination involves the input from and exchanges of information with the public and public agencies from the inception of proposals for actions to the preparation of the environmental document. Applicants intending to apply for funds should notify the Administration at the time that a project concept is identified. When requested, the Administration will advise the applicant, insofar as possible, of the probable class of action and related environmental laws and requirements and of the need for specific studies and findings which would normally be developed concurrently with the environmental document.

(b) Any requested identification of the probable class of action will be made at the Transportation Improvement Program (TIP) approval stage, or at an earlier stage, if sufficient information is available to identify the probable impacts of the proposed action (23 CFR Part 450).

(c) When the FHWA and UMTA are involved in the development of

multimodal projects, the agencies will be joint lead agencies or one agency will be designated as the lead ageny. When the FHWA or UMTA acts as a joint lead agency with another Federal agency, mutually acceptable procedures will be established on a case-by-case basis.

(d) During the early coordination process, the Administration, in cooperation with the applicant, may request other appropriate agencies to become cooperating agencies. Agencies with jurisdiction by law should be requested to become cooperating agencies.

(e) Early notification to and solicitation of views from other States and Federal land management entities significantly affected by the proposed action or any alternative thereto shall be accomplished by the applicant in cooperation with the Administration. The Administration will prepare a written evaluation of any issues identified which indicate a significant disagreement and furnish it to the applicant for incorporation into the environmental assessment (EA) or draft EIS.

(f) In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are evaluated, the project evaluated in each EIS or finding of no significant impact (FONSI) prepared for a proposed action shall:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be useable and a reasonable expenditure even if no additional transportation improvements in the area are accomplished; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

(g) For major urban mass transportation investments, the tiering of EIS's, as discussed in the CEQ regulation (40 CFR 1502.20), may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and areawide air quality and land use implication of the major alternatives. The second tier EIS would address site-specific details on project impacts, costs, and mitigation measures.

(h) In lieu of the procedures required by 23 CFR Part 790, a State may, to comply with 23 U.S.C. 128, adopt public involvement/public hearing and other procedures, subject to FHWA acceptance, which include provisions for one or more public hearings to be held at a convenient time and place, or the opportunity for such hearings, for any Federal-aid project which requires the acquisition of significant amounts of right-of-way; substantially changes the layout or functions of connecting roadways or of the facility being improved; has a significant adverse impact on abutting real property; or otherwise has a significant social, economic, environmental, or other effect. The public involvement/public hearing procedures accepted hereunder must assure reasonable notice to the public of the hearing opportunity as well as the availability of explanatory information. These procedures must be fully coordinated with the NEPA process. Approvals made by FHWA prior to May 11, 1982, of procedures for use in lieu of Part 790 remain valid. Changes in such procedures require FHWA acceptance.

(i) Information on the UMTA environmental process may be obtained from: Director, Office of Planning Assistance, Urban Mass Transportation Administration, Washington, D.C. 20590. Information on the FHWA environmental process may be obtained from: Director, Office of Environmental Policy, Federal Highway Administration Washington, D.C. 20590

§ 771.111 Timing of Administration actions.

(a) The Administration, in cooperation with the applicant, will complete all work, including any necessary design work, required to make those decisions necessary to complete a FONSI or an EIS and to comply with other related laws and regulations, which to the extent possible, must be accomplished coincidently with the NEPA process. However, final design activities, property acquisition (other than hardship or protective buying pursuant to 23 CFR 712.204(d)), or construction shall not proceed until the following have been completed:

(1)(i) The action has been classified as a categorical exclusion, or

(ii) A FONSI has been adopted, or

(iii) A final EIS has been approved and available for the prescribed period of time, and a record of decision, when required, has been prepared and signed; and

(2) For FHWA actions, the FHWA Division Administrator has received and accepted the public hearing transcripts, reports, and certifications required by 23 U.S.C. 128.

(b) For FHWA actions, the completion of the requirements set forth in paragraph (a) of this section is considered acceptance of the general location of the proposed action unless otherwise specified by the appropriate FHWA official. For those categorical exclusions which require location approval, this approval will be made by the FHWA after consultation with the applicant.

(c) Letters of Intent issued under the authority of Section 3(a)(4) of the UMT Act are used by UMTA to indicate an intention to obligate future funds for multiyear capital transit projects. Letters of Intent will not be issued by UMTA until the NEPA process is completed.

§ 771.113 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EIS's).* Actions that may significantly affect the environment require an EIS (40 CFR 1508.27). Examples of these actions are:

(1) Any new controlled access freeway.

(2) Any highway project of four or more lanes on a new location.

(3) New construction or extension of fixed rail transit facilities (e.g., rapid rail, light rail, commuter rail, automated guideway transit).

(b) *Class II (Categorical exclusions).* Actions that do not individually or cumulatively have a significant effect on the environment may be categorically excluded from the requirement to prepare an EA or EIS. They include:

(1) The following actions meet the criteria for categorical exclusions in the CEQ regulation (§ 1508.4) and § 771.115(a) of this regulation and may be advanced as categorical exclusions by the Administration without subsequent action under § 771.115(b).

(i) Activities which do not involve or lead directly to construction such as planning and technical studies; grants for training and reserach programs; research activities as defined in 23 U.S.C. 307; approval of a unified work program and any findings required on the planning process pursuant to 23 U.S.C. 134; approval of TIP's under 23 CFR Part 450 and statewide programs under 23 CFR Part 630; approval of project concepts under 23 CFR Part 476; engineering to define the elements of a proposal or alternate so that environmental effects can be assessed; and Federal-aid system revisions under 23 U.S.C. 103, which establishes classes of highways on the Federal-aid highway system.

(ii) Approval of utility installations along or across a transportation facility.

(iii) Construction of bicycle and pedestrian lanes, paths, and facilities.

(iv) Activity included in the State's "highway safety plan" under 23 U.S.C. 402.

(v) Transfer of Federal lands pursuant to 23 U.S.C. 317 when the subsequent action is not an FHWA action.

(vi) Alterations to existing buildings to provide for noise reduction and the installation of noise barriers.

(vii) Landscaping.

(viii) Program administration, technical assistance activities, and the purchase of vehicles by the applicant to administer Section 18 funds (rural public transportation program).

(ix) Project administration and operating assistance to transit authorities to continue existing service or increase service to meet demand.

(x) Purchase of vehicles of the same type (same mode) either as replacements or to increase the size of the fleet where such increase can be accommodated by existing facilities or by new facilities which themselves are within a categorical exclusion.

(xi) Track and railbed maintenance and improvements when carried out within the existing right-of-way.

(xii) Rehabilitation or reconstruction of existing rail and bus buildings and ancillary facilities where only minor amounts of additional land are required and there is not a substantial increase in the number of users.

(xiii) Purchase and installation of operating or maintenance equipment to be located within the transit facility and with no significant physical impacts off the site.

(xiv) Installation of signs, small passenger and bus shelters, and traffic signs where no substantial land acquisition or traffic disruption will occur.

(xv) Acquisition of land in which the property will not be modified, the land use will not be changed, and displacements will not occur. For projects other than UMTA advance land loans, this categorical exclusion is limited to the acquisition of minor amounts of land. This is undertaken for the purpose of maintaining the current land use and preserving alternatives to be considered in the environmental process. Advance land acquisition shall not limit the evaluation of alternatives, including shifts in alignment for a construction project, which may be required in the NEPA process.

(xvi) Emergency repairs under 23 U.S.C. 125 which do not substantially change the design and are commenced during or immediately after the occurrence of a natural disaster of catastrophic failure.

(xvii) Administration approvals of permits for joint use of transportation rights-of-way where the permitted use does not have impacts of sufficient magnitude to require preparation of an EIS or EA.

(xviii) Acquisition of scenic easements.

(xix) Bus and rail care rehabilitation.

(2) Additional actions which meet the criteria for categorical exclusion in the CEQ regulation (§ 1508.4) and § 771.115(a) of this regulation. Such actions may be treated as categorical exclusions upon Administration approval under § 771.115(b). Examples of such actions include:

(i) Reconstruction or modification of an existing bridge structure or modification of an existing bridge structure on essentially the same alignment or location. This categorical exclusion includes projects to widen a one-lane bridge to two lanes when the approach roadway is a two-lane facility.

(ii) Modernization of an existing highway by resurfacing, restoration, rehabilitation, reconstruction, widening less than a single-lane width, adding shoulders, adding auxiliary lanes for localized purposes (e.g., weaving, turning, climbing), correcting substandard curves and intersections, and reconstructing existing ramps and ramp configurations.

(iii) Highway safety or traffic operations improvement projects including the correction or improvement of high-hazard locations, elimination of roadside obstacles, highway signing, pavement marking, traffic control devices, railroad warning devices, and lighting.

(iv) Ridesharing activities and transportation corridor fringe parking facilities.

(v) Construction of new bus storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and located on or near a street with adequate capacity to handle anticipated bus and support vehicle traffic.

(vi) Truck weigh stations and rest area construction and improvements.

(vii) Construction of bus transfer facilities when located in a commercial area or other high activity center in which there is adequate street capacity for projected bus use.

(viii) Construction of rail storage and maintenance facilities in areas used predominantly for industrial or transportation purposes where such construction is not inconsistent with existing zoning and where there is no significant noise impact on the surrounding community.

(ix) Promulgation of rules, regulations, and directives for which a regulatory impact analysis is not required by Section 3 of Executive Order 12291.

(c) *Class III (EA's).* Actions in which the significance of the impact on the environment is not clearly established. All actions that are not Class I or II are Class III. All actions in this class require the preparation of an EA to determine the appropriate environmental document required. In the case of rules, regulations, or directives for which a regulatory impact analysis is required by Executive Order 12291, the EA may be contained in the regulatory impact analysis and need not be a separate document.

§ 771.115 Categorical exclusions.

(a)(1) Categorical exclusions are actions which meet the definition contained in § 1508.4 of the CEQ regulation and (based on past experience with similar actions) do not involve significant environmental impacts. These actions will not induce significant foreseeable alterations in land use, planned growth, development patterns, or natural or cultural resources.

(2) Any action which may be classified as a categorical exclusion but which involves extraordinary circumstances will require the Administration, in cooperation with the applicant, to conduct appropriate environmental studies and determine whether an EIS is needed. For purposes of this paragraph extraordinary circumstances include situations that are likely to involve:

(i) Significant impacts on the environment;

(ii) Substantial controversy on environmental grounds;

(iii) Significant impacts on properties protected by Section 4(f) of the DOT Act and Section 106 of the National Historic Preservation Act; or

(iv) Inconsistencies with any Federal, State, or local law or administrative determination relating to the environment.

(b) Except as provided in § 771.113(b)(1), a recommendation by an applicant that a proposed action be processed as a categorical exclusion must be approved by the Administration. The Administration may require sufficient information to determine if the proposal meets the criteria for a categorical exclusion.

§ 771.117 Environmental assessments.

(a) The EA shall be prepared by the applicant in consultation with the Administration for each action that is

not a categorical exclusion and does not clearly require the preparation of an EIS or where, in the opinion of the Administration, the EA would assist in determining the need for an EIS.

(b) For actions that require an EA, the applicant, in consultation with the Administration, will, at the earliest appropriate time, begin consultation with interested agencies and others to achieve the following objectives: define the scope of the project, identify alternatives, determine which aspects of the proposed action have potential for environmental impact, identify measures and alternatives which might mitigate adverse environmental impacts, and identify other environmental review and consultation requirements which should be performed concurrently with the EA. The applicant will accomplish this through an early coordination process (i.e., procedures under § 771.109) or through a scoping process. A summary of the contacts made and comments received will be included in the EA.

(c) The EA is subject to Administration approval before it is made available to the public as an Administration document.

(d) The EA need not be circulated for comment, but the document must be made available for public inspection at the applicant's office and at the appropriate Administration field offices in accordance with paragraphs (e) and (f) of this section. Notice of the availability of the EA shall be sent by the applicant to the State and areawide clearinghouses.

(e) When a public hearing is required as part of the application for Federal funds, the EA will be prepared in advance of the notice of the public hearing. The notice of the public hearing in local newspapers will announce the availability of the applicant's EA and where it may be obtained or reviewed. The FHWA public hearing requirements are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accordance with 23 CFR 771.109(h). The UMTA public hearing requirements are found in 49 U.S.C. 1602(d) and 1604(i).

(f) When a public hearing is not required, the applicant shall place a notice in a newspaper(s) similar to a public hearing notice and at a similar stage of development of the action advising the public of the availability of the EA and where information concerning the action may be obtained. The notice shall invite comments from all interested parties. Comments shall be submitted in writing to the applicant or the Administration within 30 days of the publication of the notice unless the Administration determines a shorter period is warranted.

(g) If no significant impacts are identified, the applicant will furnish the Administration a copy of the EA, revised as appropriate, the public hearing transcript when a public hearing was held, and a summary of any comments received and responses thereto and recommend a FONSI.

(h) If, at any point in the EA process, the Administration determines that the proposed action may have a significant impact on the environment, the preparation of an EIS will be required. Actions in § 771.113(a) will normally require preparation of an EIS. If an action in these categories is processed with an EA, copies of the EA will be made available for public review (including State and areawide clearinghouses) for 30 days before the Administration makes its final decision. (See CFR 1501.4(e)(2).) This public availability will be announced by a notice similar to a public hearing notice.

§ 771.119 Findings of no significant impact.

(a) The Administration, after review of the EA and any public hearing comments or other comments received regarding the EA, and if in agreement with the applicant's recommendations pursuant to § 771.117(g), will make a separate written FONSI incorporating the EA and any other appropriate environmental documents.

(b) After a FONSI has been made by the Administration, a notice of the availability of the FONSI shall be sent by the applicant to State and areawide clearinghouses and the document will be available from the applicant or the Administration upon request by the public.

(c) If another Federal agency has issued a FONSI on an action which includes an element proposed for Administration funding, the Administration will evaluate the FONSI, and if it is determined that the proposed Administration-funded action and its environmental impacts are adequately identified and assessed, the Administration will issue its own FONSI incorporating the other agency's FONSI.

§ 771.121 Draft environmental impact statements.

(a) A draft EIS will be prepared when the Administration determines that the action may cause significant impacts on the environment. When the decision has been made by the Administration to prepare an EIS, the Administration will issue a Notice of Intent for publication in the **Federal Register.** Applicants are encouraged to announce the intent to prepare an EIS by appropriate means at the local level.

(b) After publication of the Notice of Intent, the Administration, in cooperation with the applicant, will begin a scoping process. The scoping process will be used to identify the range of alternatives and impacts and the significant issues to be addressed in the EIS and to achieve the other objectives of 40 CFR 1501.7. For FHWA, scoping is normally achieved through public and agency involvement procedures required by § 771.109, and through other early coordination activities. For UMTA, scoping is achieved by soliciting agency and public responses to the proposed action by letter or by holding scoping meetings. If a scoping meeting is to be held, it should be announced in the Administration's Notice of Intent and by appropriate means at the local level.

(c) The draft EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The draft EIS shall discuss all reasonable alternatives to the proposed action and summarize the studies, reviews, consultations, and coordination required by environmental laws and Executive Orders to the extent appropriate at this stage in the enviromental process.

(d) An applicant which is a "joint lead" or "cooperating" agency may select a consultant to assist in the preparation of an EIS subject to the concurrence of the Administration to assure compliance with 40 CFR 1506.5(c). A "statewide" agency may select a consultant in accordance with applicable procedures. The Administration will select any such consultant for "other" applicants. (See 23 CFR 771.107(c) for definitions of these terms.)

(e) The Administration, when satisfied that the draft EIS complies with NEPA requirements, will approve the draft EIS for circulation by signing and dating the title page.

(f) A lead, joint lead, or a cooperating agency shall be responsible for printing the EIS. The initial printing of the draft EIS shall be in sufficient quantity to meet requirements for copies which can reasonably be expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the draft EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be

directed to the nearest location where the statement may be reviewed.

(g) The draft EIS shall be circulated for comment by the applicant on behalf of the Administration. The UMTA requires a public hearing during the circulation period of all draft EIS's. The FHWA public hearing requirements are as described in 23 CFR Part 790 unless other procedures have been adopted and accepted in accordance with § 771.109(h). If a public hearing is required, the draft EIS shall be available for a minimum of 15 days in advance of the public hearing. The availability of the draft EIS shall be included in any public hearing notice and mentioned at any public hearing presentation with a request for public comments. If a public hearing is not required, a notice shall be placed in a newspaper similar to a public hearing notice advising where the draft EIS is available for review, how copies may be obtained, and where the comments should be sent.

(h) The draft EIS shall be circulated to:

(1) Public officials, private interest groups, and members of the public known to have an interest in the proposed action or the draft EIS; and

(2) Government agencies expected to have jurisdiction or responsibility over, or interest or expertise in, the proposed action. Comments should be obtained directly from appropriate State and local agencies, except where review is secured through a mechanism established pursuant to the regulations implementing EO 12372 or OMB Circular A-95 (whichever is applicable).

(i) The **Federal Register** public availability notice (40 CFR 1506.10) shall establish a period of not less than 45 days for the return of comments on the draft EIS. The notice and the draft EIS transmittal letter shall identify where comments are to be sent.

(j) The applicant shall furnish copies of the draft EIS to those States and Federal land management entities which may be significantly affected by the proposed action or any of the alternatives. These copies shall be accompanied by a request that such State or entity advise the Administration in writing of any disagreement with the evaluation of impacts in the statement. The Administration will furnish the comments received to the applicant along with a written assessment of any disagreements for incorporation into the final EIS.

§ 771.123 Final environmental impact statements.

(a)(1) After circulation of a draft EIS and consideration of comments received, a final EIS shall be prepared by the Administration in cooperation with the applicant or, where permitted by law, by the applicant with appropriate guidance and participation by the Administration. The final EIS shall identify the preferred alternative, discuss substantive comments received on the draft EIS and all reasonable alternatives considered, summarize citizen involvement, and identify the environmental mitigation measures that are to be incorporated into the proposed action. The final EIS should also document compliance, to the extent possible, with all applicable environmental laws and Executive Orders or provide reasonable assurance that their requirements can be met.

(2) For UMTA-funded major urban mass transportation investments (new construction or extension of a fixed guideway), the applicant shall prepare a report identifying a locally preferred alternative. Approval may be given to begin preliminary engineering on the principal alternative(s) currently under consideration. During the course of such preliminary engineering, the applicant will refine project costs, effectiveness, and impact information with particular attention to alternative designs, operations, detailed location decisions and appropriate mitigation measures. These studies will be used to prepare the final EIS.

(b) Every reasonable effort shall be made to resolve interagency disagreements on proposed actions before processing the final EIS. If significant issues remain unresolved, the final EIS shall identify those issues and the consultations and other efforts made to resolve them.

(c) The final EIS shall be reviewed for compliance with applicable laws, regulations, and policies.

(d) The Administration will indicate approval of the final EIS for an action by signing and dating the title page. However, final EIS's prepared for actions in one or more of the following categories shall be subject to prior concurrence by the Administration Washington Headquarters.

(1) *For FHWA and UMTA projects:*

(i) Any action for which the Administration requests that the final EIS be reviewed at the Washington Headquarters office.

(ii) Any action to which a Federal, State, or local government has indicated objections on environmental grounds or any action with major unresolved issues.

(2) *For FHWA projects:* All programmatic final EIS's or programmatic Section 4(f) statements.

(3) *For UMTA projects:* Major urban mass transportation investments as defined by UMTA's September 22, 1976, policy on major investments (41 FR 41512).

(e) The signature of the UMTA approving official on the title page constitutes UMTA authorization to circulate the final EIS; compliance with Section 14 of the UMT Act and fulfillment of the grant application requirements of Sections 3(d)(1) and (2) and Sections 5(h) and 5(i) of the UMT Act. The approval of the final EIS does not commit UMTA to approval of any grant request for future funding of the preferred alternative.

(f)(1) After review of a draft EIS on an action in one or more of the categories in paragraph (d) of this section, the Administration may determine that the final EIS may be processed without prior concurrence of the Administration Headquarters office. This determination will include consideration of:

(i) Adequacy of early coordination with other Federal, State, and local government agencies; and

(ii) Adequacy of the draft EIS in identifying environmental impacts of, and reasonable alternatives to, the proposed action.

(2) Any determination under this paragraph is subject to review and withdrawal at any time prior to approval of the final EIS.

(g) The initial printing of the final EIS shall be in sufficient quantity to meet the request for copies which can be reasonably expected from agencies, organizations, and individuals. Normally, copies will be furnished free of charge. However, with Administration concurrence, the party requesting the final EIS may be charged a fee which is not more than the actual cost of reproducing the copy or may be directed to the nearest location where the statement may be reviewed.

(h) At the time the final EIS is distributed and filed with EPA, the applicant is responsible for making the final EIS available through the mechanism established pursuant to the regulations implementing EO 12372 or to OMB Circular A-95 (whichever is applicable). The applicant shall also publish a notice of availability in local newspapers and furnish the document to any persons, organizations, or agencies that made substantive comments on the draft EIS or requested a copy. At the time the final EIS is filed with EPA, the final EIS shall also be available for public review at the applicant's offices and at appropriate Administration offices. A copy should also be made available for public review at

institutions such as local government offices, libraries, and schools, as appropriate.

§ 771.125 Record of decision.

(a) The Administration shall complete and sign a record of decision (ROD) (40 CFR 1505.2) no sooner than 30 days after publication of the final EIS notice in the **Federal Register** or 90 days after publication of a notice for the draft EIS, whichever is later. The ROD should document any required Section 4(f) approval in accordance with § 771.133(k). No further approvals may be given except for administrative actions taken to secure further project funding and other actions consistent with 40 CFR 1506.1 until any required ROD has been signed. An ROD is not required for those EIS's where the draft EIS was filed with EPA prior to July 30, 1979 (for FHWA, November 30, 1979).

(b) If the Administration subsequently wishes to take an action which was not identified as the proposed action in the final EIS, or proposes to make substantial changes to the mitigation measures or findings discussed in the ROD, a revised ROD shall be subject to review by those Administration offices which would review the final EIS under § 771.123(d).

§ 771.127 Reevaluation and supplemental statements.

(a)(1) The draft EIS or final EIS may be supplemented at any time. A supplemental EIS will be required only when:

(i) Changes to the proposed action would result in significant adverse environmental impacts not previously identified; or

(ii) New information or circumstances, changes to the proposed action, changes in the project area, or changes to the proposed mitigation measures indicate there will be a significant worsening of the anticipated adverse impacts described in the EIS. If there is uncertainty whether the changes are significant enough to warrant a supplemental EIS, the applicant will develop appropriate environmental studies to assess the impacts of the changes. If it is determined that the changes result in significant adverse environmental impacts which were not identified in the EIS, a supplemental EIS will be prepared. If no supplemental EIS is required after the studies have been made, the Administration shall so indicate in the project file.

(2) A supplemental EIS will not be necessary if the Administration decides to fund an alternative adequately covered in the final EIS but not identified as the proposed action.

(3) A decision to prepare a supplement to the final EIS shall not require withdrawal of the previous approvals for those aspects of the proposed action not directly affected.

(4) A supplement is to be developed in the same manner (except that scoping is not required) as a new EIS (draft and final, with a ROD).

(b) If an acceptable final EIS is not submitted to the Administration within 3 years from the date of the draft EIS circulation, a written evaluation of the draft EIS shall be prepared by the applicant in cooperation with the administration prior to the submission of the final EIS. The purpose of this evaluation is to determine whether a supplement to the draft EIS or a new draft EIS is needed pursuant to (a)(1) of this section.

(c) A supplemental draft EIS may be prepared for UMTA major urban mass transportation investments if there is a substantial change in the level of detail on project impacts and costs developed during the environmental process. When tiering is used, the supplemental draft EIS will not reevaluate issues addressed in the original draft EIS. The supplement will address site-specific impacts and refined cost estimates that have been developed since the original EIS.

(d) The applicant shall consult with the Administration and prepare a written evaluation to assure that the anticipated environmental impacts of the proposed action as described in the final EIS have not significantly changed prior to proceeding with major project approvals or authorizations and prior to filing any application for a Federal permit. If there have been significant changes in the anticipated adverse environmental impacts, a supplemental EIS shall be prepared.

§ 771.129 Emergency action procedures.

Requests for deviations from the procedures in this regulation because of emergency situations shall be referred to the Administration's Washington Headquarters for evaluation and decision after consultation with CEQ, through DOT, in accordance with 40 CFR 1506.11 for evaluation and decision.

§ 771.131 Compliance with other requirements.

The final EIS or FONSI should document compliance with requirements of all applicable environmental laws, Executive Orders, and other related requirements. If full compliance is not possible by the time the final EIS or FONSI is prepared, the final EIS or FONSI should reflect consultation with the appropriate agencies and provide reasonable assurance that the requirements will be met. Approval of the environmental document by the Administration constitutes approval of any required findings and determinations that are contained therein.

§ 771.133 Section 4(f) of the Department of Transportation Act.

(a)(1) No Administration action will use land from a significant publicly owned park, recreation area, or wildlife and waterfowl refuge or any significant historic site unless a determination is made that:

(i) There is no feasible and prudent alternative to the use of land from the property; and

(ii) The proposed action includes all possible planning to minimize harm to the property resulting from such use.

(2) Supporting information must demonstrate that there are unique problems or unusual factors involved in the use of alternatives and that the cost, environmental impacts, or community disruption resulting from such alternatives reaches extraordinary magnitudes.

(b) The Administration will determine the application of Section 4(f). Any use of lands from a Section 4(f) property shall be evaluated early in the development of the action when alternatives to the proposed action are under study.

(c) Consideration under Section 4(f) is not required when the Federal, State, or local official having jurisdiction over a park, recreation area, or refuge determines that it is not significant. The Administration will review the official's determination to assure its reasonableness. In the absence of a satisfactory determination, the Section 4(f) land will be considered to be significant.

(d) In determining the application of Section 4(f) to historic sites, the Administration, in cooperation with the applicant, will consult with the State Historic Preservation Officer and local officials and will identify properties on or eligible for the National Register of Historic Places. For purposes of Section 4(f), a historic site is significant only if it is on or eligible for the National Register, unless the Administration determines that the application of Section 4(f) is otherwise appropriate.

(e) Where Federal lands or other public land holdings (e.g., State forests) are administered under statutes permitting management for multiple uses, and, in fact, are managed for multiple uses, Section 4(f) applies only to portions of such lands which are being used for or are designated in the

plans of the administering agency as being for park, recreation, wildlife or waterfowl refuge, or historic purposes. The determination of significance shall be made by the official having jurisdiction over the lands. The Administration will review the agency's determination to assure its reasonableness.

(f)(1) Section 4(f) applies to all archeological sites on or eligible for inclusion on the National Register, including those discovered during construction except as follows: Section 4(f) does not apply if the Administration, after consultation with the State Historic Preservation Officer and the Advisory Council on Historic Preservation, determines that the archeological resource is important chiefly because of what can be learned by data recovery (even if it is agreed to not immediately recover the resource) and has minimal value for preservation in place.

(2) For sites discovered during construction, where Section 4(f) applies, the Section 4(f) process will be expedited. In such cases, the evaluation of feasible and prudent alternatives will take account of the level of investment already made and the review process, including the consultation with other agencies, will be shortened as appropriate.

(g) Designations of park and recreation lands, wildlife and waterfowl refuges, and historic sites are sometimes made and determinations of significance changed late in the development of a proposed action. With the exception of the treatment of archeological resources in paragraph (f) of this section, an action may proceed without consideration under Section 4(f) if the property interest in the Section 4(f) type lands was acquired for transportation purposes prior to the designation or change in the determination of significance and if an adequate effort was made to identify properties protected by Section 4(f) prior to acquisition.

(h) The evaluations of alternatives to avoid the use of Section 4(f) land and of possible measures to minimize harm to such lands shall be presented in the draft EIS or EA or, for those projects classified as categorical exclusions, in a separate document. The document containing the Section 4(f) evaluation shall be provided for coordination and comment to the official having jurisdiction over the Section 4(f) property and to the Department of the Interior, and as appropriate, to the Department of Agriculture and the Department of Housing and Urban Development. A time limit of 45 days shall be established by the Administration for receipt of comments.

(i) The discussion in the final EIS, FONSI, or separate Section 4(f) evaluation shall specifically address:

(1) The reasons why alternatives to avoid a Section 4(f) property are not feasible and prudent; and

(2) All measures which will be taken to minimize harm to the Section 4(f) property.

(j) The final Section 4(f) document shall be reviewed for compliance with applicable laws, regulations and policies.

(k) The Administration will document and make the Section 4(f) approval either in its approval of the final EIS or in the ROD for actions processed with EIS's. In those cases where the Section 4(f) approval is documented in the final EIS, the Administration will summarize the basis for its Section 4(f) approval in the ROD. Actions requiring the use of Section 4(f) property and proposed to be processed with a FONSI or classified as a categorical exclusion shall not proceed until notified by the Administration of Section 4(f) approval. For those actions processed with FONSI or classified as a categorical exclusion, any required Section 4(f) approval will be documented separately.

(l) Circulation of a separate Section 4(f) evaluation will be required when:

(1) A modification of the alignment or design requires the use of section 4(f) property after the categorical exclusion, FONSI, or final EIS has been processed;

(2) The Section 4(f) property is identified after the categorical exclusion, FONSI, or final EIS has been processed;

(3) A modification of the alignment or design which significantly increases the use of Section 4(f) land is found to be necessary after the original Section 4(f) approval; or

(4) Another agency is the lead agency for the NEPA process, unless another DOT element is preparing the Section 4(f) evaluation.

(m) If the Administration determines under § 771.131(l) (1), (2), or (3) that Section 4(f) is applicable after the categorical exclusion, FONSI, of final EIS has been processed, the decision to prepare and circulate a Section 4(f) evalution shall not necessarily require the preparation of an EIS or supplemental EIS, nor shall it require withdrawal of any previous approvals for those aspects of the proposed action not directly affected by the Section 4(f) property.

(n) An analysis required by Section 4(f) may involve different levels of detail where the Section 4(f) involvement is addressed in a tiered EIS.

(1) When the first tier broad-scale EIS is prepared, the detailed information necessary to complete the Section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation may be made on the potential impacts that a proposed action will have on Section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of Section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first tier EIS stage. This preliminary determination is then incorporated into the first tier EIS.

(2) A Section 4(f) approval made when additional design details are available shall include a determination that:

(i) The preliminary Section 4(f) determination made pursuant to paragraph (n)(1) of this section is still valid,

(ii) There are no feasible and prudent design alternatives to the use of such Section 4(f) land,

(iii) The proposed action includes all possible planning to minimize harm.

(o) Section 4(f) does not apply to work on transportation facilities that are on or eligible for inclusion on the National Register provided that:

(1) the Administration determines that such work will not adversely affect the historic qualities of the property that caused it to be on or eligible for the National Register, and

(2) the Administration determination has not been objected to by a State or Federal agency charged by law with responsibilities in the area of historic preservation in accordance with the National Historic Preservation Act.

§ 771.135 International actions.

(a) The requirements of this part apply to:

(1) Administration actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans and Antarctica).

(2) Administration actions significantly affecting the environment of a foreign nation not participating in the action or not otherwise involved in the action.

(3) Administration actions which significantly affect the environment of a foreign nation and which provide a product or action producing a toxic emission or effluent that is prohibited or strictly regulated in the United States by Federal law.

(4) Administration actions outside the U.S., its territories, and possessions which significantly affect natural resources of global importance designated for protection by the President or by international agreement.

(b) If communication with a foreign government concerning environmental studies or documentation is anticipated, the Administration shall coordinate such communication with the Department of State through the Office of the Secretary of Transportation.

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Part VII

Office of Personnel Management

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Charitable Organizations; Final Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 950

Solicitation of Federal Civilian and Uniformed Services Personnel for Contributions to Private Voluntary Charitable Organizations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The United States Office of Personnel Management (OPM) is issuing revised regulations governing solicitation of Federal civilian and uniformed services personnel for contributions to private voluntary organizations under the authority of Executive Orders No. 12353 (March 23, 1982), Charitable Fund-Raising, 47 FR 12,785 (March 23, 1982), and No. 12404 (February 10, 1983), Charitable Fund-Raising, 48 FR 6685 (February 15, 1983). These regulations provide a system for administering the annual solicitation campaigns and set forth eligibility criteria for organization participation.

EFFECTIVE DATE: August 31, 1983.

FOR FURTHER INFORMATION CONTACT: Joseph A. Morris, General Counsel (202) 632-4632, as to matters related to litigation; or Ronald E. Brooks, Assistant for Regional Operations to the Deputy Director (202) 632-5544, as to general information on the Combined Federal Campaign.

SUPPLEMENTARY INFORMATION: On Friday, June 24, 1983, OPM published a notice in the **Federal Register**, 48 FR 29458, of proposed revisions to the regulations, codified at 5 CFR Part 950, that govern the Combined Federal Campaign (CFC). The revised regulations were proposed in order to implement Executive Order No. 12404 (February 10, 1983). For the convenience of all who must work with these regulations, this notice of final rulemaking sets forth 5 CFR Part 950, as amended, in full.

The essential purpose of the CFC has been, from its inception, the generation of support for human health and welfare charities. For most of the first two decades of the life of the CFC there was nearly unanimous concurrence that its focus was properly placed on human health and welfare charity rather than on the entire universe of voluntary, non-profit, and philanthropic activities.

In the wake of judicial findings that the former groundrules of the CFC inadequately and imprecisely distinguished among kinds of philanthropies, OPM was persuaded a few years ago to experiment with a relaxation of its standards of eligibility for the CFC. Over a three-year period, several entities that are not health and welfare charities (and therefore would not have been admitted to the Campaign) were admitted. President Reagan has determined, however, that the CFC should be returned to its true and historical objective, the support of human health and welfare charity.

The basic rules presently authorizing and controlling charitable solicitation in the Federal workplace were established by President Reagan in Executive Order No. 12353 (March 23, 1982), 47 FR 12,785 (March 25, 1982). The regulations hitherto set forth at 5 CFR Part 950 were promulgated as final rules at 47 FR 29,496 (July 6, 1982) in implementation of that Executive Order.

Executive Order No. 12404

On February 10, 1983, President Reagan issued Executive Order No. 12404, which amended Executive Order No. 12353 by providing a clear statement of the purposes of the CFC and by clarifying the criteria that determine the eligibility of a private voluntary charitable agency for authorization to solicit contributions in the Federal workplace. The new Executive Order makes clear that the Campaign's objectives are: "* * * to lessen the burdens of government and of local communities in meeting needs of human health and welfare; to provide a convenient channel through which Federal public servants may contribute to these efforts; to minimize or eliminate disruption of the Federal workplace and costs to Federal taxpayers that such fund-raising may entail; and to avoid the reality and appearance of the use of Federal resources in aid of fund-raising for political activity or advocacy of public policy, lobbying, or philanthropy of any kind that does not directly serve needs of human health and welfare."

In furtherance of these objectives, the President has provided precise criteria of admission to the Campaign. The Campaign is to open to "* * * voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families. Such direct health and welfare services must be available to Federal employees in the local campaign solicitation area, unless they are rendered to needy persons overseas. Such services must directly benefit human beings, whether children, youth, adults, the aged, the ill and infirm, or the mentally or physically handicapped. Such services must consist of care, research, or education in the fields of human health or social adjustment and rehabilitation; relief of victims of natural disasters and other emergencies; or assistance to those who are impoverished and therefore in need of food, shelter, clothing, education, and basic human welfare services."

To make as clear and as emphatic as possible that his intent is to focus the CFC on support for health and welfare needs, the President has provided expressly that "(a)gencies that seek to influence the outcomes of elections or the determination of public policy through political activity or advocacy, lobbying, or litigation on behalf of parties other than themselves shall not be deemed charitable health and welfare agencies and shall not be eligible to participate in the Combined Federal Campaign." This is by no means a declaration that advocacy, political activities or non-health-and-welfare philanthropies are necessarily bad in any sense. It is, rather, a decision by the President to apply scarce Federal resources, and to limit impositions on Federal employees, to those objects that the President has determined warrant the Government's most urgent attention. In the President's judgment, highest priority should go to the health and welfare needs of poor, needy, ill, and infirm human beings.

The President has also eliminated the former requirement that all charities taking part in the Combined Federal Campaign be national in scope; local charities that provide direct human health and welfare services will now be permitted to participate in the Combined Federal Campaign in the local solicitation areas they serve. Because local voluntary agencies will now be eligible, and eligibility has been thereby liberalized, eligibility criteria for federated groups and national voluntary agencies can be tightened for more efficient administration without limiting access to the Combined Federal Campaign.

Proposed Regulations

Proposed revisions intended to implement Executive Order No. 12404, and to improve technical aspects of administration of the CFC, were published in the **Federal Register** on June 24, 1983. Pursuant to the President's instructions, OPM sought to resolve, through its proposed revisions, the several problems caused previously by the admission of advocacy, legal defense, and other such groups to the Combined Federal Campaign. In so doing, OPM was careful not to discriminate against any particular viewpoint but to exclude advocacy groups evenhandedly, confining

participation in the Campaign to traditional health and welfare charities.

At the same time, OPM proposed regulations to make allowance explicitly for the fact that a private, voluntary, charitable agency that directly provides health and welfare services to human beings could, in the course of events, undertake a certain amount of incidental lobbying, litigation, or other activities other than the rendering of human health and welfare services. In order to distinguish such agencies from the advocacy groups excluded by Executive Order No. 12404, and to enhance objectivity and predictability of decision-making, the proposed regulations established a simple numerical standard: 15 percent of total annual expenditures may be directed to such activities. The 15 percent standard was devised as the most reasonable point of demarcation between health-and-welfare service providers and other organizations substantially oriented toward political or other non-health-and-welfare activity. It also has the virtues of ease of administration and similarity to parallel standards that already have congressional sanction and operational familiarity to the charitable community.

OPM further recognized that a purely numerical test based on expenditures may be unduly rigid, particularly in a context where much significant activity consists of volunteered services that do not readily lend themselves to precise quantification or expression in terms of expenditures. Accordingly, regulations were proposed to permit otherwise eligible health and welfare charities that do not meet the percentage test to petition for reconsideration of their applications for admission to the Combined Federal Campaign if they can show that certain conditions can be satisfied. These conditions include circumstances in which an evaluation of expenditures alone significantly distorts the true picture of a charity's activities. They also include situations in which a charity can demonstrate that activities that do not, on their face, constitute the delivery of qualifying health and welfare services in fact do directly further the charity's ability to render them. If any such petitions are granted, OPM will issue written decisions in explanation of its determinations. The purpose of this procedure is to enhance the consistency and predictability of the eligibility process for the benefit of current and future applicants, without creating an unduly burdensome new system of paperwork.

Comments were invited on all aspects of the proposed regulations and views were sought with respect to a list of specific questions concerning CFC eligibility standards. By the end of the 30-day comment period, which closed July 25, 1983, OPM had received more than 2,200 comments—from national and local voluntary agencies, federated charitable groups, local Federal CFC organizations, Federal Executive Boards, Federal agencies, Federal employees, employee organizations, unions, and private citizens and organizations.

Most of the comments (88 percent) were supportive of the proposed changes, especially as those changes were directed at focusing participation in the CFC on health and welfare agencies. Another 3 percent of the comments supported the proposed changes but had specific suggestions for other changes.

Of the remaining 9 percent of the comments, most objected to limiting participation in the campaign to health and welfare agencies and also suggested that the proposed changes were being considered too late in the year to run effective CFCs in the fall of 1983, urging instead that the 1983 campaign be run under the current regulations. Still other comments had general and/or specific suggestions and objections.

With respect to the timing of the proposed changes, and whether the 1983 CFC should be conducted under the previous or the new regulations, most commenters urged OPM to conduct the 1983 campaign under the proposed changes and to adhere to the timetable OPM announced on June 27, 1983. (See *The Application Process*, set forth below in this discussion of supplementary information.) Many of these comments came from local United Ways, which serve as Principal Combined Fund Organizations (PCFOs) in most campaigns and hence have primary responsibility for the day-to-day conduct of local campaigns. United Ways from across the country have assured OPM that they can carry out an effective campaign this year under the announced schedule. Moreover, many commenters advised OPM that the disruptions and fall-offs that afflicted last year's Campaign can be expected again this year if the proposed changes are not effected. Accordingly, OPM will proceed to conduct the 1983 CFC under these final regulations, as here amended, and according to the schedule set forth below. (OPM will also obey, of course, any applicable court orders. See *Pending Litigation*, set forth below in this discussion of supplementary information).

Although most of the comments supported limiting participation in the CFC to health and welfare agencies, most of the commenters who submitted objections focused on this central aspect of Executive Order No. 12404 and on the proposed regulations implementing this requirement. A number of commenters claimed that it was unconstitutional for OPM to exclude advocacy groups from the CFC, arguing that the First and Fifth Amendment rights of such organizations were thus violated. (See discussion of *Pending Litigation*, set forth below). OPM disagrees with these commenters and has made no substantive change on this matter in the final regulations.

OPM firmly believes that the President's decision to focus the CFC on support for health and welfare needs, to the exclusion of all other kinds of non-profit activity, is not only worthy but constitutional and sound. In evaluating constitutional objections to Executive Order No. 12404 and to these regulations, it should not be forgotten that no one has a right to solicit or assemble for the propagation of views in the Federal workplace unless the Government expressly consents. Plainly, when the Government consents, as it has here, its obligation is to be precise about the limits of its consent and to enforce those limits neutrally and objectively. OPM's new regulations are intended to meet that obligation. Neutral and objective criteria to determine eligibility have been established. These regulations make clear unequivocally that an entity's eligibility is not to turn on the individual values or preferences of the Government officials who manage the Campaign.

The 15 percent cap on non-health-and-welfare-related services and activities, which was set forth in the proposed regulatory changes and is here published in final form, was the subject of a substantial amount of comment, both from those who supported the general limitation contained in Executive Order No. 12404 and those who objected to that limitation. A few commenters thought the rule permitted too much advocacy, while many thought it just right. Some commenters, however, expressed their concern that the rule did not conform to current tax law, that it would require agencies to conform their operations to two sets of standards (those of the CFC and those of the IRS), and that it was too restrictive because it afforded less flexibility than the tax law while covering more activities. Some argued that rulemaking and litigating activities should be exempt from the rule; and the ceiling should be higher than the 20 percent IRS ceiling because

of the broader range of activities included. Moreover, many commenters expressed concern about those advocacy limitations that would deny organizations within the CFC the right to take part in "a public referendum, initiative or similar procedure," and that would require them to include—as advocacy expense—the cost of activity designed to influence Federal legislation. These changes, they argued, would disallow participation in processes that are critical to the planning and delivery of health and welfare services and would limit advocacy activities beyond the restrictions in current tax law.

After carefully considering these comments, OPM has decided to retain the 15 percent rule as set forth in the proposed regulations. We realize that this rule diverges in some respects from the corresponding tax law. It serves, however, not only to implement the intent of Executive Order No. 12404 but to distinguish more clearly those agencies whose primary activities are in the area of health and welfare from agencies whose principal activities are litigation and political advocacy.

The 15 percent rule is established in recognition of the fact that some litigating, lobbying, and non-electoral adovcacy is unavoidable for many public charities. The mechanics of the rule track in many significant respects the ceilings on lobbying-related activities imposed upon tax-exempt groups by Congress in the tax laws. To be sure, the IRS and the CFC standards are not exactly identical; but, given the significant different context in which the rules arise, sufficient paralels have been drawn so that charities should not have difficulty in working with these regulations. Furthermore, the regulations allow any charity to petition for reconsideration of its admission application, notwithstanding the 15 percent cap, if it can show its non-charitable expenditures to be fair in relationship to the magnitude of the health and welfare services that it renders.

With respect to the national eligibility criteria, several commenters objected to the change at § 950.303(a), which increases from 200 to 300 the number of local combined campaigns in which a national federated group must have at least 10 local voluntary presences in order to be eligible for national participation, and the change at § 950.403(c)(3)(iv), which increases from 75 to 200 the number of local chapters, affiliates, or representatives an agency must have promoting its campaign if it is to demonstrate national scope. It was argued that these increases tend to favor large, established organizations while excluding smaller or newer charities.

It should be pointed out, however, that smaller, local charities are now expressly recognized for participation in the Combined Federal Campaign by Section 1(b)(5) of Executive Order No. 12404. It is no longer necessary, therefore, to be a national agency or federation in order to participate in the CFC. At the same time, federated groups and voluntary agencies with national scope are expected to bear important burdens of local and national campaign management. Smaller entities are not capable of shouldering these tasks; it is thus appropriate that smaller entities build their ties to the CFC at their own local level, while national organizations cooperate with CFC Administrators on a nationwide basis. Accordingly, OPM has retained these changes in the final regulations.

Although many commenters commended the provision in Executive Order No. 12404 that permits local non-affiliated agencies to participate in local campaigns, a number expressed concern about the proposed provision of § 950.501 that permits local Federal Coordinating Committees, at their discretion, to debar such agencies from participating in the local campaign for a period not to exceed three (3) years if they receive less than $3,000 in designated contributions in a local campaign for a single year. We recognize that this provision may impose some hardship on certain local non-affiliated charities. However, OPM believes it is necessary to preserve this discretion for local Federal Coordinating Committees in order to insure local autonomy and to enhance the efficiency of the local campaign. A local campaign could be overwhelmed by a vast number of very small groups whose donor support did not exceed the transaction costs associated with their participation. This authority to debar is discretionary, however, and not mandatory, and OPM expects that local Federal Coordinating Committees will wield it with prudence and sound judgment. If experience in future campaigns shows that this rule requires modification, OPM will certainly entertain suggestions for reform. For the present, though, because the opening of the CFC to purely local, unaffiliated groups is so new, and because the need for some safety valve is apparent, the rule will stand.

Of substantial concern for a number of commenters was the local eligibility process, including the local eligibility criteria set forth at § 950.405(a)(6), and the process for appealing the decisions of local Federal Coordinating Committees as set forth at § 950.211(h) and § 950.525(e). With respect to the local eligibility criteria, it was urged that these be precisely drawn in order to give clear guidance to both local Federal Coordinating Committees and applicant agencies alike. A number of commenters complained that the local appeal process has been ambiguous, has been arbitrary in practice, and has left a great deal of discretion in the hands of the local Federal Coordinating Committee. Few of these comments contained specific proposals, however, for revision of the proposed regulations.

OPM has decided to proceed with the revisions of the local eligibility and appeals process that it has proposed. There is a limit, of course, to how precisely the local eligibility criteria can be drawn. For this reason, we have stated that local Federal Coordinating Committees should be guided, in their interpretation of "direct and substantial presence," by "the totality of the circumstances in each case, including, but not necessarily limited to," the factors thereafter listed. We will proceed with a local appeals process that purposely places a substantial degree of responsibility for control of the Campaign in the hands of the local Federal Coordinating Committee. Here, again we are responding to the concerns of local Federal officials and local charities that they be able to control their local campaigns. At the same time, the new appeals mechanism contains time frames providing for expeditious action and ensures that all relevant parties have notice of appeals and of decisions thereon. This responds directly to criticisms of past campaigns in which appeals were taken without the knowledge of some parties and were decided on grounds of which some parties were unaware.

In addition to discussing the regulatory revisions proposed by OPM, many commenters availed themselves of the opportunity to suggest changes in other provisions of these rules. For example, some commenters made particularly persuasive and constructive suggestions for changes in the accounting and auditing groundrules of the Campaign. OPM will continue to evaluate these and other recommendations, and to assimilate them with the lessons derived from continued administration of the CFR. Comments on selected topics of CFC management will probably be solicited, and related regulatory changes may be proposed, early in 1984.

Changes From the Proposed Regulations

In response to many comments that advanced the clarity of the proposed regulations or that pointed out technical problems, we incorporated the suggestions in the final regulations. A number of those changes warrant discussion.

1. It was noted by several commenters that Executive Order No. 12404 provided that "participation in the Combined Federal Campaign shall be limited to voluntary, charitable, health and welfare agencies that provide or support direct health and welfare services to individuals or their families" but that in § 950.101(a)(1)(i) of the proposed changes the "or support" language had been omitted, thus narrowing the apparent intent of the Executive Order and possibly leading to the exclusion of numerous organizations whose principal activities are in the area of support for direct health and welfare services. "Support" in this sense means the furnishing of funds, personnel, equipment, supplies, and the like to the direct providers of services, as opposed to the rendering of services to immediate beneficiaries or recipients. This omission has been corrected in the final regulations. Thus, the language in § 950.101(a)(1)i) has been amended to clarify that the definition of a qualified organization under this section includes organizations which do not themselves render qualifying services, but which materially or financially support the rendering of such services.

2. The word "Direct" has been deleted from § 950.101(a)(1)(i) (J) and (K) of the proposed regulations. The requirement of direct relief is incorporated in § 950.101(a)(1)(i); thus, its inclusion in subsections (J) and (K) is redundant and unnecessary.

It should be noted here that the use of the term "direct" in §950.101 is entirely unrelated to the "direct services" requirement invalidated several years ago by the United States District Court for the District of Columbia. In *NAACP Legal Defense and Educational Fund, Inc. v. Campbell*, 504 F. Supp. 1365 (D.D.C. 1980), the district court held that the "direct services" requirement, as employed in a manual on CFC fund-raising issued pursuant to Executive Order No. 10927, did not meet First Amendment standards because it was too vague and imprecise. The "direct services" language before the district court in 1980 is no longer in effect and is not the source of the "direct services" criterion in these regulations. To the extent the new Executive Order contains a "direct services" criterion, its purpose is not so much to exclude any particular kind of group as it is to limit to a manageable number the charities that are set before the local contributor. It is a rational criterion under which local employees can be addressed by charities familiar to them for an informed contribution of funds.

3. Section 950.309, concerning federated and overseas campaigns, has been amended at subsection (a)(3) to make it clear that member agencies of federated groups are responsible for furnishing to their respective federated groups adequate evidence of their compliance with all eligibility requirements of this Part, and federated groups are responsible for ensuring that such adequate evidence is properly furnished and, as needed, revised. This responds to comments urging that federated groups—who bear the certification burden—have some sanctioned authority to ensure disclosure and compliance by voluntary agencies.

4. Subpart D of these regulations, governing eligibility requirements for national voluntary agencies, has been amended at § 950.401(c) to make clear that all recognized national voluntary agencies must meet the requirements of Executive Order No. 12404, as well as the requirements of Executive Order No. 12353.

5. Section 950.405(a), governing the eligibility of national voluntary agencies, has been amended at subsection (2) to make clear the additional requirement that an otherwise eligible organization also must be eligible to receive tax deductible contributions under § 170 of the Internal Revenue Code of 1954, as amended.

6. Section 950.501, which spells out the conditions under which local voluntary agencies are authorized to participate in local campaigns, has been amended to include a subsection that makes clear that an on-base morale, welfare, and recreational activity authorized by a military base commander may be supported from CFC funds. The new § 950.501(e) thus parallels § 950.309(e)(4), which permits on-base health and welfare activities to be supported from CFC funds as part of the Overseas Campaign.

7. Section 950.513, governing contributions, has been amended at subsection (a) to make it clear that the contributor's information leaflet must explain that when a gift is earmarked to a specific recipient, the Principal Combined Fund Organization will remit such funds, less approved administrative costs, in accordance with the donor's wishes as those funds are collected. The mechanical provisions heretofore inadvertently set forth in this section have been transferred, without substantive change, to § 950.523(i)(2).

8. Section 950.525(e) which describes the appeals process with respect to local campaign participation, has been amended to make it clear that the Director may on his own review any decision of a local Federal Coordinating Committee. This addition was requested by commenters in order to underscore the plenary power of the Director to assure that local campaigns are conducted in a manner consistent with the objectives and purposes of the CFC nationwide.

Pending Litigation

Near the end of the comment period, on July 15, 1983, the United States District Court for the District of Columbia entered an order in *NAACP Legal Defense and Educational Fund, Inc.* v. *Devine*, Civil Action No. 83-928 (*NAACP Defense Fund*). That lawsuit generally questioned the constitutional validity of Executive Order No. 12404. The court order, however, more narrowly enjoined OPM from excluding seven plaintiff legal defense funds from the CFC if such exclusions were based on certain eligibility criteria set forth in Executive Order No. 12404. (See Executive Order No. 12353, sections 2(b)(1)–2(b)(3), as amended by Executive Order No. 12404, section 1(b)). The court order has been applied subsequently to other organizations seeking to obtain eligibility in the CFC through litigation. See *Planned Parenthood Federation of America, Inc.* v. *Devine*, U.S.D.C., D.C., Civil Action No. 83-2118 (order entered July 26, 1983) (*Planned Parenthood*).

The Government is appealing from the district court's order in *NAACP Defense Fund* and will vigorously defend Executive Order No. 12404 in all other pending litigation. Unless and until the court's order in *NAACP Defense Fund* is modified or reversed, OPM will, of course, obey it. OPM will also treat organizations similarly situated to the *NAACP Defense Fund* plaintiffs (*i.e.*, similarly organized, non-profit corporations undertaking comparable activities) as if the injuction applied to them as well. Nonetheless, there are sound reasons for proceeding with this rulemaking notwithstanding pending litigation and the issuance of the District Court's order in *NAACP Defense Fund*.

First, this rulemaking is plainly required by, and effectuative of, an order of the President of the United States. The setting aside or deviating from an Executive Order is not something to be done lightly, and, if all

by officers of one of the other coequal Branches of Government, it should abide the maturely considered action and unambiguous command of that other Branch.

Second, aside from the specific commands of the District Court's orders in *NAACP Defense Fund* and *Planned Parenthood* regarding particular plaintiffs, there remain profound ambiguities in its decision concerning how the Executive Order must be construed. OPM believes that it is prudent policy, while awaiting further guidance from the Judicial Branch, not to speculate more than is necessary as to the ramifications of the District Court's opinion. Plainly, however, the District Court's opinion and order leave intact the facial validity of the Executive Order, and thus rulemaking pursuant thereto is appropriate.

Third, this rulemaking is made under Executive Order No. 12404. OPM believes that its administrative construction of the Order should be spread of record so as to assist all interested parties, including the Judicial Branch, in understanding the meaning and effects of the Order.

Fourth, in the event that the Government prevails in pending litigation and if the District Court's decision in *NAACP Defense Fund* should, upon review, be reversed or modified so as to permit full effectuation of the purposes and eligibility criteria established by the President, then a regulatory framework should be immediately ready to implement them. On the other hand, once in place, this regulatory structure can be modified to accommodate adjustments, if any, that may be required by further judicial action.

Finally, it appears that the issuance of the District Court's decision in *NAACP Defense Fund* during the comment period has not inhibited the flow of public discussion on this rulemaking. A significant number of comments were received after the court's decision was rendered, and several commenters in fact addressed the possible implications of the decision with respect to substantive aspects of administration of the CFC.

The Application Process

With respect to the application process, the National Eligibility Committee will hold its meeting on August 31, 1983, the effective date of these new regulations. On March 4, 1983, OPM issued a memorandum to all 1982 CFC participants as well as to all organizations that had inquired about CFC participation, advising those organizations of the provisions of Executive Order No. 12404 and inviting applications prepared in accordance with the regulations of July 6, 1982, which could be updated when the new regulations appeared.

On June 27, 1983, following the publication of the proposed new regulations, OPM again informed interested parties of the timetable for the fall campaign—and in particular of the August 15, 1983, deadline for the receipt of applications or application revisions for national eligibility—and advised these organizations that planned to apply to submit both their national and local applications at that time under the guidelines set forth in the proposed regulations.

At the conclusion of the National Eligibility Committee meeting on August 31, 1983, the Director of OPM will receive the recommendations of the Committee and will make his decisions about national eligibility. OPM will then immediately notify all applicants and all local Federal Coordinating Committees of the Director's decisions. Appeals by any applicants denied admission to the Campaign will be decided by September 9, 1983.

Local Federal Coordinating Committees now should be in the process of receiving, assembling, and preliminarily reviewing applications for local participation. The OPM memorandum of June 27, 1983, informed these local Committees to begin preliminary analysis of applications and prepare materials for the Campaign. The local eligibility process, including appeals from the decisions of local Federal Coordinating Committees, should be able to be completed by early October. This will permit local campaigns, which normally run from four to six weeks in length, to take place during October and November.

E.O. 12291, Federal Regulations

OPM has determined that this is not a major rule for the purposes of Executive Order No. 12291, Federal Regulations, because it 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 government agencies, or geographic 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.

Regulatory Flexibility Act

I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. The nominal costs to voluntary charitable agencies and charitable federated groups that are associated with application for admission to, and voluntary participation in, the Combined Federal Campaign are essentially the same as under current and past procedures.

List of Subjects in 5 CFR Part 950

Charitable contributions, Government employees.

United States Office of Personnel Management.

Donald J. Devine,

Director.

Accordingly, the Office of Personnel Management amends 5 CFR by revising Part 950 to read as follows:

PART 950—SOLICITATION OF FEDERAL CIVILIAN AND UNIFORMED SERVICE PERSONNEL FOR CONTRIBUTIONS TO PRIVATE VOLUNTARY ORGANIZATION

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Authority: E.O. No. 12353 (March 23, 1982), 47 FR 12785 (March 25, 1982), 3 CFR, 1982 Comp., p. 139, and E.O. No. 12404 (February 10, 1983), 48 FR 6685 (February 15, 1982).

Subpart A—Administration and General Provisions

§ 950.101 Definitions.

(a) (1) The terms "voluntary agency," "voluntary health and welfare agency," "voluntary charitable agency," and "voluntary charitable health and welfare agency" mean an organization that:

(i) Is organized and operated for the purpose of rendering, or of materially or financially supporting the rendering of, one or more of the following services directly to, and for the direct benefit of, human beings:

(A) Delivery of health care to ill or infirm individuals;

(B) Education and training of personnel for the delivery of health care to ill or infirm individuals;

(C) Health research for the benefit of ill or infirm individuals;

(D) Delivery of education, training, and care to physically and mentally handicapped individuals;

(E) Treatment, care, rehabilitation, and counseling of juvenile delinquents, criminals, released convicts, persons who abuse drugs or alcohol, persons who are victims of intra-family violence or abuse, persons who are otherwise in need of social adjustment and rehabilitation, and the families of such persons;

(F) Relief of victims of crime, war, casualty, famine, natural disasters, and other catastrophes and emergencies;

(G) Neighborhood and community-wide services that directly assist needy, poor, and indigent individuals, including provision of emergency relief and shelter, recreation, transportation, the preparation and delivery of meals, educational opportunities, and job training;

(H) Legal aid services that are provided to needy, poor, and indigent individuals solely because of their inability to afford legal counsel and without a policy or practice of discrimination for or against the kind of cause, claim, or defense of the individual;

(I) Protection of families that, on account of need, poverty, indigence, or emergency, are in long-term or short-term need of family, child care, and maternity services, child and marriage counseling, foster care, and guidance or assistance in the management and maintenance of the home and household;

(J) Relief of needy, poor, and indigent infants and children, and of orphans, including the provision of adoption services;

(K) Relief of needy, poor, and indigent adults and of the elderly;

(L) Assistance, consistent with the mission of the Department of Defense, to members of the armed forces and their families;

(M) Assistance, consistent with the mission of the Federal agency or facility involved, to members of its staff or service who, by reason of geographic isolation, emergency conditions, injury in the line of duty, or other extraordinary circumstances, have exceptional health or welfare needs; or

(N) Lessening of the burdens of government with respect to the provision of any of the foregoing services;

(ii) Meets all eligibility requirements established in this Part; and can show that it met all such requirements for the full fiscal year of the organization for the period immediately preceding the closing date established by the Director for the submission of its application for admission to the Combined Federal Campaign for a particular year;

(iii) Is an organization described in, and qualifying under, 26 U.S.C. 501(c)(3); is not an "action organization" within the meaning of 26 CFR 1.501(c)(3)-1(3); and is eligible to receive tax-deductible contributions under 26 U.S.C. 170;

(iv) Does not participate in, or intervene directly or indirectly in, any political campaign on behalf of or in opposition to any candidate for public office, or on behalf of any side or position in a public referendum, initiative, or similar procedure; and

(v) Except as provided in 5 CFR 950.101(a)(4), has articles of organization that do not expressly empower the organization to, and the organization does not, expend more than the proportions set forth in 5 CFR 950.101(a)(2) of its total expenditures on any or all of the following activities:

(A) Activities that are not in furtherance of the purposes set forth in 5 CFR 950.101(a)(1)(i);

(B) Activities (other than activities directly related to the organization's participation in the Combined Federal Campaign) for purposes of influencing legislation or rulemaking at any level of Federal, State, or local government; and

(C) Activities for purposes of litigation (including contributing to the expenses thereof), other than litigation undertaken as a necessary part of the provision of legal aid services as set forth in 5 CFR 950.101(a)(1)(i)(H); *provided that* the activities described in this paragraph (5 CFR 950.101(a)(1)(v)(C)) shall not include activities to protect the existence of the organization, its tax exempt status, its participation in the Combined Federal Campaign, or its own direct and private interests, as opposed to the interests of the causes or policy goals that it supports.

(2) The maximum level of expenditures permitted by 5 CFR 950.101(a)(1)(v) without disqualifying an organization from participation in the Combined Federal Campaign shall be 15% of the organization's total annual expenditures;

provided that the level of expenditures thus made in the aggregate, on any and all activities identified in 5 CFR 950.101(a)(1)(v) may not, in any one year, exceed the sum of $1,000,000; and *provided further that* no more than one-fourth of the maximum level of expenditures thus made may be expended in any one year as grass roots expenditures.

(3) For purposes of the preceding paragraph (5 CFR 950.101(a)(2)), the following definitions shall apply:

(i) The term "influencing legislation" shall have the same meaning that it has in 26 U.S.C. 4911(d);

(ii) The term "influencing rulemaking" shall have the same meaning that the term "influencing legislation" in 26 U.S.C. 4911(d) would have if the term "rulemaking" were substituted therein for the term "legislation", and the term "government agency" were substituted therein for the term "legislative body";

(iii) The term "rulemaking" shall have the same meaning that the term "rule making" has in 5 U.S.C. 551(5);

(iv) The term "expenditures" shall mean all money expended or debts incurred by the organization;

(v) The term "total annual expenditures" shall mean all expenditures made by the organization in its fiscal year; and

(vi) The term "grass roots expenditures" shall mean all expenditures made by the organization for the purposes described in 26 U.S.C. 4911(d)(1)(A) and for the purposes that would be described in 26 U.S.C. 4911(d)(1)(A) if the term "rulemaking" were substituted therein for the term "legislation."

(4) An organization that has been notified by the Director that it does not satisfy the requirements of 5 CFR 950.101(a)(1)(v) may nonetheless petition the Director for inclusion in the Combined Federal Campaign. The Director shall, from time to time, announce through the Federal Personnel Manual System or other appropriate instruments the time, place, and manner in which such a petition may be filed. The petition shall set forth specific facts and circumstances in support thereof. The Director shall grant the petition if he determines that the organization's activities described in paragraphs (A), (B), and (C) of 5 CFR 950.101(a)(1)(v), taken as a whole:

(i) Do not significantly exceed the limits described in 5 CFR 950.101(a)(2), taking into account other indices of activity not adequately accounted for by the measurement of expenditures (such as the use of volunteer services or in-kind contributions); and

(ii) Are in direct furtherance of the organization's activities described in 5 CFR 950.101(a)(1)(i). Any such determination by the Director shall be in writing, shall succinctly state the basis for the determination, and shall be available to the public.

(b) Campaign terms:

(1) "Director" shall mean the Director of the United States Office of Personnel Management, or his delegate;

(2) "Employee" shall mean any person employed by the government of the United States of any branch, unit, or instrumentality thereof, including persons in the civil service and in the uniform services;

(3) "Combined Federal Campaign" or "Campaign" or "CFC" shall mean the fund-raising program established and administered by the Director pursuant to Executive Order No. 12353, as amended by Executive Order No. 12404, and any subsidiary units of such program;

(4) "Community" shall mean a community that is defined either by generally recognized geographic bounds or by its relationship to an isolated government installation;

(5) "Direct Contributions" shall mean gifts, in cash or in donated in-kind material, given by individuals and/or other non-governmental sources directly to the spending health and welfare organization.

(6) "Indirect Contributions" shall mean gifts, in cash or in donated in-kind material, given to the spending health and welfare organizations by another health and welfare organization, but not transfers, dues or other funds from affiliated organizations or government, which are not to be considered as public "contributions."

(c) The term "Principal Combined Fund Organization" (or Organization) means the organization in a local Combined Federal Campaign that has been selected and so prescribed in § 950.509 of this Part to manage and administer the local Combined Federal Campaign, subject to the direction and control of the local Federal Coordinating Committee and the Director. All of its Campaign duties shall be conducted under the title "Principal Combined Fund Organization for ——— (local CFC)" and not under the corporate title of the qualifying federation.

§ 950.103 Summary description of the program.

(a) *Eligibility of National Voluntary Agencies.* National voluntary agencies apply to the Director each year for on-the-job solicitation privileges in the Federal Government. Early each calendar year, the Director issues a list of agencies that have met the prescribed standards as to program objective, eligibility, administrative integrity, and financial responsibility.

(b) *Assigned Campaign Periods.* In the United States, Combined Federal Campaigns are held when set by the Director, usually in the fall; the DOD Overseas Combined Federal Campaign is also usually held during the fall. The solicitation period for a combined Federal Campaign is normally limited to six weeks, but may be extended for good cause by the local Federal Coordinating Committee.

(c) *Combined Federal Campaign.* At locations where there are 200 or more Federal personnel, all campaigns must be consolidated into a single, annual drive, known as the Combined Federal Campaign. The campaign is managed by the organization designated as the Principal Combined Fund Organization, in accord with § 950.509 of this Part, under the supervision of the local Federal Coordinating Committee and the Director. Such campaigns are conducted under administrative arrangements that provide for individual voluntary agency recognition, description of each voluntary agency's services, and allocation of contributions in accordance with specific designations by donors.

(d) *Decentralized Operations.* The federalism principle shall guide Campaign organization. Following designation of a Principal Combined Fund Organization, local representatives of that Organization initiate campaigns in their local community by direct contact with the heads of Federal offices and installations. Each Federal agency conducts its own solicitation among its employees, using campaign materials, supplies, and speakers furnished by or through the Principal Combined Fund Organization, under the direction of the local Federal Coordinating Committee and the Director.

(e) *Solicitation Methods.* Employee solicitations are conducted during duty hours using methods that permit true voluntary giving and reserve to the individual the option of disclosing any gift or keeping it confidential.

(f) *Off-the-Job Solicitation.* Many worthy voluntary agencies do not participate in the on-the-job program because they do not wish to join in its coordinated arrangements or because they cannot meet the requirements for eligibility. Such voluntary agencies may solicit Federal employees at their homes as they do other citizens of the community, or appeal to them through union, veteran, civic, professional, political, legal defense, or other private organizations. In addition, limited arrangements may be made for off-the-job solicitations on military installations and at entrances to Federal buildings.

(g) *Prohibited Discrimination.* The Campaign is a means for promoting true voluntary charity among members of the Federal community. Because of the participation of the Government in organizing and carrying out the Campaign, all kinds of discrimination prohibited by law to the Government must be proscribed in the Campaign. Accordingly, discrimination for or against any individual or group on account of race, color, religion, sex, national origin of citizens, age, handicap, or political affiliation is prohibited in all aspects of management and execution of the Campaign. Nothing herein denies eligibility to any voluntary agency, which is otherwise eligible under this Part to participate in the Campaign, merely because such voluntary agency is organized by, on behalf of, or to serve persons of a particular race, color, religion, sex, national origin, age, or handicap.

§ 950.105 Federal Policy on civic activity.

Federal personnel are encouraged to participate actively in the work of

voluntary agencies—as members of policy boards or committees, heads of local campaign units, or volunteer workers—to the extent consistent with Federal agency policy and prudent use of official time. They are encouraged also to devote private time to such volunteer work.

§ 950.107 Preventing coercive activity.

True voluntary giving is basic to Federal fund-raising activities. Actions that do not allow free choices or even create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal fund-raising policy. The following activities are not in accord with the intent of Federal fund-raising policy and, in the interest of preventing coercive activities in Federal fund-raising, are not permitted in Federal fund-raising campaigns:

(a) Supervisory solicitation of employees supervised;

(b) Setting 100% participation goals;

(c) Providing and using contributor lists for purposes other than the routine collection and forwarding of contributions and installment pledges;

(d) Establishing personal dollar goals and quotas; and

(e) Developing and using lists of noncontributors.

Subpart B—Organization and Functional Responsibilities

§ 950.201 Development of policy and procedures.

(a) *Director, U.S. Office of Personnel Management.* Under Executive Orders No. 12353 (March 23, 1982), Charitable Fund-Raising, and No. 12404 (February 10, 1983), Charitable Fund-Raising, the Director is responsible for establishing charitable fund-raising policies and procedures in the Executive Branch. With the advice of appropriate interested persons and organizations and of the Executive departments and agencies concerned, he makes all basic policy, procedural, and eligibility decisions for the program. The Director may authorize the conduct of demonstration projects in one or more CFC locations to test alternative arrangements differing from those specified in this Part for the conduct of fund-raising activities in Federal agencies.

(b) *Eligibility Committees.* A National Eligibility Committee shall consist of a chairman and such other members selected by the Director as he deems necessary, who shall serve at the pleasure of the Director. Local eligibility shall be determined by the local Federal Coordinating Committees. The National Eligibility Committee is responsible for recommending to the Director:

(1) Eligibility determinations on national federations and national voluntary agencies;

(2) Modification of eligibility standards and requirements as needed; and

(3) Any other matters as requested by the Director.

§ 950.203 Program administration.

(a) *Federal Agency Heads.* The head of each Federal executive department and agency is responsible for:

(1) Seeing that voluntary fund-raising within the Federal department or agency is conducted in accordance with the policies and procedures prescribed by this Part;

(2) Designating a top-level representative as Fund-Raising Program Coordinator to work with the Director as necessary in the administration of the fund-raising program with the Federal agency;

(3) Assuring full participation and cooperation in local fund-raising campaigns by all installations of the Federal agency;

(4) Assuring that the policy of voluntary giving and clear employee choice is upheld during the fund-raising campaign; and

(5) Providing a mechanism to look into employee complaints of undue pressure and coercion in Federal fund-raising. Federal agencies shall provide procedures and assign responsibility for the investigation of such complaints. Personnel offices shall be responsible for informing employees of the proper organization channels for pursuing such complaints.

(b) *Fund-Raising Program Coordinators.* The responsibilities of Federal agency Fund-Raising Program Coordinators are to:

(1) Cooperate with the Director, the local Federal Coordinating Committee, and the Principal Combined Fund Organization in the development and operation of the program;

(2) Maintain direct liaison with the Office of the Director in the administration of the program;

(3) Publicize program requirements throughout the Federal department or agency;

(4) Answer inquiries about the program from officials and employees and from external sources; and

(5) Investigate and arrange for any necessary corrective action on complaints that allege violation of fund-raising program requirements within the Federal agency.

§ 950.205 Program coordination.

The Director coordinates the Federal agencies' administration of the fund-raising program and maintains liaison with voluntary agencies.

§ 950.207 Local voluntary agency representatives.

Federated and national voluntary agencies provide their State and local representatives with policy and procedural guidance on the Federal program. The local representatives are responsible for furnishing educational materials, speakers, and campaign supplies as may be required and appropriate to the Federal program.

§ 950.209 Local Federal agency heads.

The head of the Federal department or agency provides the heads of the local Federal offices and installations with copies of the Federal fund-raising regulations. The local Federal agency heads are responsible for:

(a) Cooperating with representatives of the local Federal Coordinating Committee, the Principal Combined Fund Organization, and local Federal officials in organizing local Federal campaigns;

(b) Undertaking official campaigns within their offices or installations and providing active and vigorous support with equal emphasis for each authorized campaign;

(c) Assuring that personal solicitations on the job are organized and conducted in accordance with the procedures set in these regulations;

(d) Assuring that authorized campaigns are kept within reasonable administrative limits of official time and expense.

§ 950.211 Local Federal coordinating committees.

(a) When there are a number of Federal agency offices and installations in the same local area, some interagency coordination is necessary in order to achieve effective community-wide campaigns and to improve general understanding and compliance with the fund-raising program. The Director assigns the responsibility for local coordination to existing organizations of Federal agency heads whenever possible and to special committees where needed. The local Federal Coordinating Committee is authorized to make all decisions within the provisions and policies established in this Part on all aspects of the local campaign, including eligibility and the supervision of the local community campaign and the Principal Combined Fund

Organization. Such decisions may be appealed, however, to the Director.

(b) *Authorized Local Federal Coordinating Committee.* Coordinating responsibility is assigned by the Director to one of the following organizations:

(1) Federal Executive Boards. The boards exist in principal cities of the United States for the purpose of improving interagency coordination. They are composed of local Federal agency heads who have been designated as Board members by the heads of their departments and agencies under Presidential authority.

(2) Federal Executive Associations and Federal Business Associations, self-organized associations of local Federal officials, and the Department of Defense National Policy Coordinating Committee.

(3) Fund-Raising Program Coordinating Committee. These committees are established in communities where there is no Federal Coordinating Committee in existence. Leadership in organizing such a committee is the responsibility of the head of the local Federal installation that has the largest number of civilian and uniformed services personnel. Local Federal agency heads or their designated representatives serve on the committee and determine all organizational arrangements.

(c) *Employee union representation.* In order to ensure employee participation in the planning and conduct of the CFC, employee representatives from the principal employee unions of local Federal installations should be invited to serve in whatever organization exercises local coordinating responsibilities.

(d) *Fund-raising responsibilities.* Within the limits of the policies, procedures, and arrangements made nationally, the fund-raising responsibilities of local Federal Coordinating Committees are to:

(1) Facilitate local campaign arrangments. The Federal Coordinating Committee (i) names a high-level chairman for the authorized Federal campaigns, (ii) provides lists of Federal activities and their personnel strength, (iii) cooperates on interagency briefing sessions and kick-off meetings, and (iv) supports appropriate publicity measures needed to assure campaign success.

(2) Administer program requirements. The Coordinating Committee is responsible for organizing the local Combined Federal Campaign, supervising the activities of the Principal Combined Fund Organization, and acting upon any problems relating to a voluntary agency's noncompliance with the policies and procedures of the Federal fund-raising program.

(3) Develop understanding of campaign program policies and procedures and voluntary agency programs. The local Federal Coordinating Committee serves as the central medium for communicating programs, policies and procedures of the Campaign and for understanding the organizations employees are being asked to support and how employees can obtain services they may need from these organizations.

(e) *Principal Combined Fund Organization.* The local Federal Coordinating Committee will supervise a local Principal Combined Fund Organization. The Principal Combined Fund Organization will raise money from Federal employees and administre the local campaign, under the direction of the local Federal Coordinating Committee.

(f) *Communication and Resolution Procedures Through the Director, Office of Personnel Management.* Each local Federal agency head will receive fund-raising directions through his Federal agency channels and will raise questions that pertain to fund-raising activities within his Federal agency by the same means. However, the local Federal Coordinating Committee refers unresolved local fund-raising questions or problems that are common to several Federal agencies directly to the Director. The Director communicates directly with the chairman of the local Federal Coordinating Committee for information about the local fund-raising situation.

(g) *Integrity of local Federal coordinating committee.* A local Federal Coordinating Committee may not serve as a Principal Combined Fund Organization.

(h) *Review of local Federal coordinating committee eligibility decisions.* Local eligibility decisions shall be made by the local Federal Coordinating Committee. Local Committees shall determine whether a voluntary agency has direct, human health and welfare services available to Federal employees in the local campaign solicitation area. Such decisions shall be made at an open meeting of the local Federal Coordinating Committee and upon giving notice to interested parties. Interested parties denied admission to the Campaign may petition the local Federal Coordinating Committee to reconsider its denial of admission. Such petition for reconsideration may be dismissed as untimely unless it is received by the local Federal Coordinating Committee within ten (10) days after the petitioning party has received actural or constructive notice of the decision of which reconsideration is sought. A petition for reconsideration shall be supported by facts justifying reversal of the original decision. If the local Federal Coordinating Committee unanimously refuses to reconsider its decision, or reconsiders its decision and unanimously affirms the denial of admission, then its decision shall be final. If at least one member of the local Federal Coordinating Committee believes that the decision merits further review, or if the local Federal Coordinating Committee, having received a petition for reconsideration, fails to act thereon within ten (10) days of its actual receipt thereof, then the matter may be appealed, pursuant to the provisions of 5 CFR 950.525(e), to the Director, whose decision shall be final.

§ 950.213 Avoidance of conflicts of interest.

Any Federal employee who serves on the Eligibility Committee, a local Federal Coordinating Committee, or as a Federal agency fund-raising program coordinator must not participate in any decision situations where, because of membership on the board or other affiliation with a voluntary agency, there could be or appear to be a conflict of interest.

Subpart C—Campaign Arrangements for Voluntary Agencies

§ 950.301 Types of voluntary agencies.

Voluntary agencies are private, nonprofit, self-governing organizations financed primarily by contributions from the public. Some are national in scope, with a national organization that provides services at localities through State or local chapters or affiliates. Others are primarily local, both in form of organization and extent of services.

§ 950.303 Types of fund-raising methods.

(a) The methods used by voluntary agencies in public fund-raising shall be either federated or independent. A national *federated* group shall meet the same eligibility criteria as a national voluntary agency, and have at least 10 local voluntary agency presences in each of at least 300 local combined campaigns. In federated campaigns, local voluntary agency representatives join contractually into a single organization for fund-raising purposes. A local United Way, united fund, community chest, or other local federated group may be considered and supported as a single agency. Local chapters or affiliates of national agencies may form local federations or be admitted as additional participating members of national federated groups.

(b) An *independent* campaign is one conducted by a local unit of a national voluntary agency through its own fund-raising organization, or by a local non-affiliated agency which otherwise meets established eligibility criteria. Voluntary agencies may conduct independent campaigns or participate in a federation.

§ 950.305 Considerations in making Federal arrangements.

(a) *On-the-Job Solicitation.* In order to have only one *on-the-job solicitation*, i.e., a Combined Federal Compaign, individual appeals must be combined into a single joint campaign of eligible health and welfare organizations in conformance with the policies and procedures prescribed in this Part.

(b) *Campaign Arrangements Established Nationally.* Basic campaign arrangements are established by the Director. Local Federal agency heads and Coordinating Committees are not authorized to vary from the established arrangements except to the extent that local variations are expressly provided for in this Part.

(c) *Number of Solicitations.* Not more than one on-the-job solicitation will be made in any year at any location on behalf of voluntary agencies, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Responsible Conduct.* In the event a national voluntary agency fails to adhere to the eligibility requirements or to the policies and procedures of the Federal program, solicitation privileges may be withdrawn by the Director at any time after due notice to the voluntary agency and opportunity for consultation.

§ 950.307 Definition of terms used in Federal arrangements.

(a) *Domestic Area.* The 50 United States, and the Commonwealth of Puerto Rico.

(b) *Overseas Area.* All other points in the world where Federal employees or members of the uniformed services are stationed.

(c) *Recognized National Voluntary Agency.* A voluntary agency that has been declared eligible by the Director for participation in campaigns in the Federal establishment.

(d) *National Voluntary Agency "Supported Primarily through United Ways, United Funds, and Community Chests."* A voluntary agency that generally solicits within the Federal establishment as a participating member of United Ways, United Funds, Community Chests, or other local federated groups that are members in good standing of, or are recognized by, United Way of America.

(e) *Federated Community.* A federated community is a geographical location within the domestic area where a federated fund-raising program exists. In a federated community, recognized national voluntary agencies can join a federated campaign group or participate individually. However, voluntary agencies "supported primarily through United Ways, United Funds, and Community Chests" are authorized to solicit on-the-job in a federated community only as participating members of the local United Way, fund, or chest.

(f) *Local non-affiliated voluntary health and welfare agency.* Local non-affiliated voluntary agencies are voluntary agencies that provide health and welfare services in the local area, and otherwise meet the established eligibility criteria of this Part, other than the national scope of 5 CFR 950.403(c).

§ 950.309 Federated and overseas campaigns.

(a) *Authorized Federated Groups.* (1) United Way of America and any local United Way, United Fund, Community Chest, or other local federated group that is a member in good standing of, or is recognized by, United Way of America and that meets the eligibility requirements in these regulations is authorized on-the-job solicitation privileges in its local campaign area on behalf of any of its member voluntary agencies that also meet these requirements. Certifications as to the eligibility requirements on behalf of local United Ways, United Funds, and Community Chests and each member voluntary agency will be made by United Way of America to the Director.

(2) The American Red Cross, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups which shall meet the eligibility standards under this Part, as determined by the Director, shall be authorized on-the-job solicitation privileges on behalf of their member voluntary agencies that also meet all requirements of this Part. Certification for each subunit that they meet such requirements will be made to the Director.

(3) A member voluntary agency of a federated group need meet only the specific eligibility requirements of § 950.405. Member agencies of federated groups are responsible for furnishing to their respective federated groups adequate evidence of their compliance with all eligibility requirements of this Part, and federated groups are responsible for ensuring that such adequate evidence is properly furnished and, as needed, revised. Failure by a member voluntary agency to meet the requirements will disqualify the federated group that certified such voluntary agency from soliciting contributions, unless after notice to the group of intent to cancel corrective action is taken to the satisfaction of the Director. If appropriate corrective action is not taken, the Director may disqualify the federated group.

(b) *Local Federated Agencies.* To be eligible for participation in the Federal fund-raising program, the local federated group must be broadly representative in its board and committee membership of the community and must be making bona fide efforts to meet community needs. Requirements for participation in a local federated group must be in writing, available to the public, reasonable, and applied fairly and uniformly to all local voluntary agencies requesting participation. Procedures must be provided by the federated group for at least one review of any decision denying participation requested by a local voluntary agency. The review must be conducted by a committee or other body within the federated group that did not participate in the original decision. A written statement of the reasons for denial must be provided to the applicant voluntary agency. Where a local chapter or affiliate of a national voluntary agency is precluded from independent participation in the Federal fund-raising program because the local voluntary agency is not approved for federated participation, such chapter or affiliate may request the Director, after securing a report by the federated group, to determine whether or not the reasons for its non-approval were "arbitrary and capricious."

(c) *"Causes."* Solicitation for a health or other "cause," e.g., for "Mental Health" or "Heart Disease," without identification of the specific voluntary agency for which the funds are sought, is not authorized. All funds collected from Federal personnel must be allocated only to specific voluntary agencies.

(d) *Designation of Federated Area.* The recognition of a local Federal Coordinating Committee by the Director designates the community served by that Committee as a recognized local campaign site. Two or more authorized local Federal Coordinating Committees are authorized to develop coordinated solicitations best suited to the needs of their localities.

(e) *Overseas Campaign—(1) DoD Overseas Combined Federal Campaign.*

(i) A Combined Federal Campaign is authorized for all Department of Defense activities in the overseas areas during a six-week period in the fall. Voluntary agencies that may participate in the Overseas Combined Federal Campaign will consist of: The American Red Cross; the United Service Organization; those national health agencies recognized for campaigns in the domestic area (the Federal Service Campaign for the National Health Agencies); and those international service agencies recognized for campaigns in the domestic area, and any national or federated voluntary agency recognized for overseas campaigns. Any of these voluntary agencies is eligible to be a Principal Combined Fund Organization.

(ii) Contributors to the DoD Overseas Combined Federal Campaign designate their gifts to one or more of the eligible agencies or the Principal Combined Fund Organization. The Principal Combined Fund Organization for the overseas campaign shall pay the amounts collected directly to the designated voluntary agencies, less "shrinkage" and the processing fee, if any, that is approved in advance of the campaign by the Federal official in the overseas area responsible for the local campaign arrangements.

(2) *Local Voluntary Agency Campaigns.* The heads of overseas offices and installations may, at their discretion, permit the solicitation of their military and civilian personnel for local voluntary agencies. Such campaigns will be conducted in accordance with the basic policies and procedures of the Federal program and at times which do not conflict with the DoD overseas Combined Federal Campaign period. The eligibility standards in Subpart D will be used as guidelines in determining the eligibility of local voluntary agencies. Federal leadership in organizing such campaigns will be assumed by the head of the overseas Federal establishment that has the largest number of Government personnel in the campaign area.

(3) *Optional Participation by Certain Civilian Agencies.* Federal civilian departments and agencies that have traditionally considered their overseas personnel as members of the National Capital Area for fund-raising purposes may continue this practice.

(4) *On-Base Health and Welfare Activities.* On-base morale, welfare and recreational activities may be supported from CFC funds.

§ 950.311 Off-the-job solicitation at places of employment.

Voluntary agencies that are not recognized for the on-the-job program may be authorized off-the-job solicitation privileges at places of Federal employment under such reasonable conditions as may be specified by the local head of the Federal installation involved, provided that such conditions are not inconsistent with this Part. Dual solicitation is not authorized, so this privilege cannot be made available to any voluntary agency that is included in the on-the-job program.

(a) *Family Quarters on Military Installations.* Voluntary agencies may be permitted to solicit at private residences or at similar on-post family public quarters in unrestricted areas of military installations at the discretion of the local commander. However, such solicitation may not be conducted by military or civilian personnel in their official capacity during duty or non-duty hours, nor may such solicitation be conducted as an official command-sponsored project. This restriction is not intended to prohibit or to discourage military and civilian personnel from participating as private citizens in voluntary agency activities during their off-duty hours.

(b) *Public Entrances of Federal Buildings and Installations.* Voluntary agencies that engage in limited or specialized methods of solicitation—for example, the use of "poppies" or other similar tokens by veterans organizations—may be permitted to solicit at entrances or in concourses or lobbies of Federal buildings or installations normally open to the general public. Solicitation privileges will be governed by the rules issued by the General Services Administration pursuant to the Public Buildings Cooperative Use Act of 1976 or later modification, or other applicable Government legal authority.

Subpart D—Eligibility Requirements for National Voluntary Agencies

§ 950.401 Purpose.

These eligibility requirements are established to ensure that:

(a) Only responsible and worthy voluntary agencies are permitted to solicit on the job in Federal installations;

(b) The funds contributed by Federal personnel will be used effectively and for the announced purposes of the soliciting voluntary agencies; and

(c) All recognized national voluntary agencies meet requirements of Executive Order No. 12353 (March 23, 1982) and Executive Order No. 12404 (February 10, 1983).

§ 950.403 General requirements for National Agencies.

(a) *Type of Agency.* Only nonprofit, tax-exempt, charitable organizations, supported by voluntary contributions from the general public and providing direct and substantial health and welfare and other appropriate national voluntary services through their national organization, affiliates or representatives are eligible for approval. All such services must be consistent with the policies of the United States Government.

(b) *Integrity of Operations.* Only voluntary agencies having a high degree of integrity and responsibility in the conduct of their affairs will be approved. Funds contributed to such organizations by Federal personnel must be effectively used for the announced purposes of the voluntary agency.

(c) *National Scope.* A national voluntary agency must demonstrate that:

(1) It is organized on a national scale with a national board of directors that represents its constituent parts, and exercises close supervision over the operations and fund-raising policies of any local chapters or affiliates.

(2) It has earned goodwill and acceptability throughout the United States, particularly in cities or communities within which or nearby are Federal offices or installations with large numbers of personnel.

(3) It has national scope, that is, scale, goodwill, and acceptability; this may be demonstrated as follows:

(i) By a voluntary agency's provision of a service in many (c. one quarter) States, or in several foreign countries, or in several parts of one large foreign nation;

(ii) By derivation of contributor support from many parts of the Nation;

(iii) By the extent of public support and the number and the geographical spread of contributors; and

(iv) By the national character of any public campaign, which may be shown by an applicant having at least 200 local chapters, affiliates, or representatives that promote its campaign.

(d) *Type of Campaign.* Approval will be granted only for fund-raising campaigns in support of current operations. Capital fund campaigns are not authorized.

§ 950.405 Specific requirements.

(a) *Eligibility.* To be eligible for approval by the Director for participation in the Combined Federal

Campaign, a national voluntary agency must be one:

(1) That is a voluntary charitable health and welfare agency as defined in 5 CFR 950.101;

(2) That is voluntary and broadly supported by the public, meaning (i) that it is organized as a not-for-profit corporation or association under the laws of the United States, a State, a territory, or the District of Columbia; (ii) that it is classified as tax-exempt under Section 501(c)(3), and is eligible to receive tax deductible contributions under Section 170 of the Internal Revenue Code of 1954, as amended; and (iii) that, with the exception of voluntary agencies whose revenues are affected by unusual or emergency circumstances, as determined by the Director, it has received at least 50 percent of its revenues from sources other than the Federal Government or at least 20 percent of its revenues from direct and/or indirect contributions in the year immediately preceding any year in which it seeks to participate in the Combined Federal Campaign (organizations founded within the past three years participating in the CFC before this Part became effective will have three (3) years, and all other organizations in the CFC will have one (1) year to comply with the 50 percent/20 percent requirement);

(3) That is directed by an active board of directors, a majority of whose members serve without compensation; that adopts and employs the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations*; that prepares and makes available to the general public an annual financial report prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and is certified, using the form in Appendix B to this Subpart, by an independent certified public accountant; that provides for an annual external audit by an independent certified public accountant;

(4) That can demonstrate to the Director, if its fund-raising and administrative expense is in excess of 25 percent of total support and revenue, that is actual expense for those purposes is reasonable under all the circumstances in its case;

(5) That ensures that its publicity and promotional activities are based upon its actual program and operations, are truthful and nondeceptive, and include all material facts; and

(6) That has a direct and substantial presence in the local campaign community, meaning that Federal employees and their families are able to receive, within a reasonable distance from their duty stations or homes, services that are directly provided by the voluntary agency or that demonstrably depend upon, or derive from, the specific research, educational, support, or similar activities of the particular voluntary agency. Demonstration of direct and substantial presence in the local campaign community, including adequate documentation thereof, shall at all times, and for all purposes, be the burden of the voluntary agency. Such direct and substantial presence shall be determined in light of the totality of the circumstances in each case, including, but not necessarily limited to, consideration of the following factors:

(i) The availability of services, such as examinations, treatments, inoculations, preventative care, counseling, training, scholarship assistance, transportation, feeding, institutionalization, sheltering, and clothing, to persons working and living in the local campaign community.

(ii) The presence within the local campaign community, or within reasonable commuting distance thereof, of a facility at which services are rendered or through which they may be obtained, such as an office, clinic, mobile unit, field agency, or direct provider; or specific demonstrable effects of research, such as personnel or facilities engaged therein or specific local applications thereof.

(iii) The availability to persons working or residing in the local campaign community of communication with the voluntary charitable agency by means of home visits, transportation, or telephone calls, provided by the voluntary agency at no charge to the recipient or beneficiary of the service.

(iv) Awareness within the local Federal community of the existence, activities, and services of the voluntary charitable agency.

Provided, that voluntary charitable health and welfare agencies whose services are rendered exclusively or in substantial preponderance overseas, and that meet all the eligibility criteria set forth in this Part except for the requirement of direct and substantial presence in the local campaign community, shall be eligible to participate in each local solicitation area of the Combine Federal Campaign.

(b) *Fund-Raising Practices.* The voluntary agency's publicity and promotional activities must assure protection against unauthorized use of its contributors lists; must permit no payment of commissions, kickbacks, finder fees, percentages, bonuses, or overrides for fundraising; and must permit no general telephone solicitation of the public.

(c) *Reports—(1) Annual Report.* The voluntary agency must prepare an annual report to the general public that includes a full description of the voluntary agency's activities and accomplishments and the names of chief administrative personnel.

(2) *Combined Reports.* Voluntary agencies which represent more than one subunit must prepare a combined annual financial report to the general public in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations.* The combined report shall include all income and expenditures for the national operations and all chapters, committees, affiliates, or satellites.

(3) *Source of Funds and Costs Report.* The voluntary agency must file a special report with the Director that discloses, on a consolidated basis, the agency's (including chapters and affiliates) sources of funds, fund-raising expense, and use of net funds in its most recent fiscal year.

§ 950.407 Application requirements.

(a) *Federated Groups.* The American Red Cross, United Ways and local community chests or united funds that are members in good standing of or are recognized by United Way of America, the National Health Agencies, the International Service Agencies, the National Service Agencies, and such other federated groups as shall be recognized under Subpart C, do not need to apply separately as National Agencies. For purposes of this Part, the American Red Cross and its chapters are recognized as operating an accounting and financial system in substantial compliance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certification to this effect by local chapters is not required.

(b) *National Agencies.* In order to be considered for solicitation privileges in domestic or overseas campaigns in the Federal service, each national voluntary agency must file an application annually. National voluntary agencies that have already been approved for fund-raising privileges in the Federal service are not required to submit the information requested in paragraphs (f) (2), (3), (4), and (8) of this section, except where there has been a substantial or significant change in these items; for example, a change in purpose of the organization or a decline in chapter coverage or activity. They are required

to furnish information in paragraphs (f) (1), (5), (6), (7), (9), (10), (11), and (12) of this section.

(c) *Time and Place of Filing.* Applications must be filed with the Office of the Director, United States Office of Personnel Management, Washington, D.C. 20415. Applicants are urged to file as early as possible in each calendar year. Deadlines by which filings must be made will be announced each year through the Federal Personnel Manual System, CFC memoranda, and other appropriate instruments.

(d) *National Eligibility.* The Director, with the assistance of a National Eligibility Committee of government officials, employee organization leaders, and private citizens, uses the information filed with the agency's application and derived from other responsible sources to make his decision on an agency's eligibility. The National Eligibility Committee shall consider the applications fairly, hold meetings and hearings as appropriate, and make recommendations to the Director. National eligibility shall only give a presumption of local eligibility; voluntary agencies must also meet the requirements of § 950.405(a)(6). Where a local chapter of an eligible national voluntary agency is denied participation in a local campaign, it may appeal to the Director, whose decision shall be final.

(e) *Notice of Decision.* Applicants for national eligibility are to be notified of the decisions as soon as possible after filing. If dissatisfied with the Director's decision, the applicants may request reconsideration of the decision by the Director. The Director's decision upon reconsideration will be final.

(f) *Form and Content of Application.* Applications shall be filed in the following form and will include the information, documents, and data specified:

(1) Corporate name and fiscal year;

(2) Statement of origin, purpose, and structure of organization, including information to show clearly that the voluntary agency meets each of the general and specific requirements of this Subpart;

(3) A list of chapters, affiliates, or representatives in alphabetical order by State; and under the State, a list of cities with chapter, affiliate, or representative by names and addresses;

(4) Demonstration of the good will and acceptability of the organization throughout the United States;

(5) Outline of the program, particularly the nature of the direct services provided by the voluntary agency and under what subparagraph of section 950.101(a)(1)(i) the application is made, written assurance of compliance with all other requirements of § 950.101(a) and §§ 950.403 through 950.405;

(6) Description of board of director's administrative activity in past year and list of current board members' names, addresses, and businesses or professions;

(7) Certification by an independent certified public accountant of compliance with an acceptable financial system and adoption of the Uniform Standards;

(8) Statement of compliance with all factors in the section on fund-raising practice;

(9) Copy of latest annual report;

(10) Copy of latest financial report prepared in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* and certification by an independent certified public accountant that the report was prepared in conformity with the Standards;

(11) Copy of latest external audit by an independent certified public accountant; and

(12) A special report to the Director, consistent with the reporting requirements of the Standards. The report must include the voluntary agency's sources of funds, expenditures by program service, and supporting services with fund-raising and other expenditures listed separately. The report must cover the most recent fiscal year and represent a consolidated statement of national and affiliate income and expenditures. The amount of contributions received from United Ways, united funds or community chests, from Federal service campaigns, and the total from all other sources, especially transfers, dues, or other funds from affiliated organizations, must be separately identified and shown. All entries must be reported in dollar and percent of total contribution. The report must be furnished in accordance with the format shown in the appendix to this Subpart.

(g) The Director shall be authorized to investigate facts and circumstances on issues relating to eligibility raised under this Part.

§ 950.409 Public announcement of recognized agencies and assigned periods.

Early in the calendar year the Director will announce the names of all national voluntary agencies eligible for participation in the Federal fund-raising program for the ensuing campaign year.

Appendix A to Subpart D—Source of Funds and Costs Report (for the year ending———)

Organization: ———————————

Public support:	
Received Directly	$
Contributions	
Special Events (net of direct benefit costs of $———)	
Legacies and bequests	
Subtotal	
Received Indirectly:	
Federated campaigns (e.g., United Way)	
Federal service campaigns	
Other Contributions	
Subtotal	
Total Support from the Public	
Revenue:	
Grants from Federal government agencies (including grants in-kind)	
Grants from state or local government agencies (including Medicaid)	
Memberships	
Program service fees (including Medicare)	
Sales of materials and services to member units (net of direct expenses)	
Sales of materials and services to the public (net of direct expenses)	
Transfers, dues, etc. from affiliated organizations, etc	
Investment Income	
Gains on investment transactions	
Other Income	
Total revenue	
Total public support and revenue	
Expenses:	
Program services:	
(program)	
(program)	
(program)	
(program)	
Subtotal	
Supporting services	
Management and general	
Fund raising	
Subtotal	
Total expenses	
Excess (deficiency) of public support and revenue over expenses	

Appendix B to Subpart D—Certificate

Name of Organization: ———————————

I certify that the above-named organization has adopted, and has prepared its financial statements in accordance with the *Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations* (1974 Edition) prepared and published by the National Health Council, Inc., the National Assembly of National Voluntary Health and Organizations, Inc. and the United Way of America.

Signature: ———————————

Address: ———————————

Subpart E—The Local Combined Federal Campaign

§ 950.501 Authorized local voluntary agencies.

(a) A local voluntary agency shall meet the same criteria as a national voluntary agency, except national scope, and shall be evaluated under the criteria set forth in this Part by the local Federal Coordinating Committee recognized by the Director for that local community.

(b) A local affiliate of an eligibile national agency shall be given a presumption of eligibility for admission to the local campaign by the local Federal Coordinating Committee, but it must also meet the local presence criterion of 5 CFR 950.405(a)(6).

(c) Local non-affiliated voluntary health and welfare agencies shall be

evaluated separately by the local Federal Coordinating Committee to determine whether they are eligible under this Part.

(d) If a local non-affiliated voluntary agency receives less than $3,000 in designated contributions in a local campaign for a single year, then the local Federal Coordinating Committee may, in its discretion, debar the local non-affiliated voluntary agency from participating in the local campaign for a period not to exceed three (3) years thereafter.

(e) An on-base morale, welfare and recreational activity authorized by a military base commander may be supported from CFC funds.

§ 950.503 Participation in Federal campaigns by local affiliated agencies.

(a) Arrangements shall be established by each local Federal Coordinating Committee to evaluate local voluntary agencies that seek to solicit separately from local federated groups. These procedures shall require eligible local voluntary agencies to preregister with the local Federal Coordinating Committee to participate in the Combined Federal Campaign for that year. An eligibility meeting shall be held to decide which agencies are eligible. Arrangements shall be made by the Central Receipt and Accounting Point to distribute contributions to eligible voluntary agencies, after appropriate adjustments are made for "shrinkage" and approved administrative costs.

(b) *Application Procedures.* In order to be eligible for participation in the Combined Federal Campaign, each local voluntary agency must submit an application for registration in the CFC to the local Federal Coordinating Committee. Applications may be submitted jointly for member agencies in federated groups. The Federal Coordinating Committee is responsible for reviewing and taking action on the applications based on eligibility requirements in this Part, especially those of subpart D. The Local Federal Coordinating Committee may request a qualified screening organization to assist in the processing and review of applications against the eligibility requirements and in recommending approval or denial of the application, but the local Federal Coordinating Committee must make the actual decisions. If the Federal Coordinating Committee determines that eligibility requirements are not met, reasons for that determination will be provided to the voluntary agency within 60 days of the receipt of the application.

§ 950.505 Responsibility of local Federal coordinating committees.

Each Federal Coordinating Committee is required to organize a Combined Federal Campaign in the local area for which it has fund-raising responsibility. The heads of Federal departments and agencies will request their local officials to cooperate fully with the decisions of the Federal Coordinating Committee in all aspects of CFC arrangements. The Federal Coordinating Committee makes all final decisions on the local campaign, subject to appeal to the Director.

§ 950.507 Local CFC plan.

(a) *CFC as Uniform Fund-Raising Method.* The Combined Federal Campaign is the only authorized fund-raising method in all areas in the United States in which 200 or more Federal employees are located. All voluntary agencies wishing to participate in fund-raising within the Federal service must do so within the framework of a local Combined Federal Campaign.

(b) *Non-Participation.* In the event that any voluntary agency does not follow these regulations for participation in a local CFC, fund-raising privileges in local Federal establishments are forfeited during that fiscal year. Voluntary withdrawal will not prejudice eligibility for the next year's Campaign.

(c) *Red Cross Participation.* In local communities where the American Red Cross is not a participating member of the local United Way, it will be regarded as a separate campaign organization in the combined campaign. American Red Cross chapters have independent authority with respect to fund-raising policy, so responsibility for deciding on participation in CFC rests with the local chapter board of directors. As with the other national organizations, in the event local American Red Cross chapters choose not to participate in CFC, they are not authorized to have a separate campaign in local Federal offices or installations during the fiscal year involved, except in the case of an emergency or disaster appeal for which specific prior approval has been granted by the Director.

(d) *Exceptions in Areas of Less than 200 Federal Employees.* Where there are fewer than 200 Federal employees in the local campaign area, it may not be practicable to hold a Combined Federal Campaign. Therefore, in such areas local Federal officials are not required to arrange for a Combined Federal Campaign. However, if they believe it would be desirable from the standpoint of the local community or the Federal Government to have such a campaign, they may contact the Director to arrange a Combined Federal Campaign regardless of the number of employees involved. Where a CFC is not conducted because of lack of sufficient Federal employees, the local united fund is authorized to solicit within the Federal establishment during the fall of the year and other Federated groups are authorized to conduct a separate spring campaign. Where the American Red Cross is not a member of the local united fund and the area will not have a CFC, then the Red Cross may conduct an independent campaign during the month of March. However, payroll deductions for charitable contributions are only authorized in conjunction with Combined Federal Campaigns.

§ 950.509 Organizing the local campaign: the Principal Combined Fund Organization.

The Local Federal Coordinating Committee shall organize the local community campaign. It will appoint a campaign chairman who will carry out campaign duties in conformance with the policies and procedures prescribed in this Part. From among the federations approved for participation in the local CFC, the local Federal Coordinating Committee shall select a Principal Combined Fund Organization to manage the campaign and to serve as fiscal agent. In doing so the Federal Coordinating Committee shall select whichever applicant organization it finds to be the local federated group in the CFC geographic area that provides through one specific, annual public solicitation for funds the greatest support for charitable agencies that depend on public subscriptions for support; that, in the judgment of the Federal Coordinating Committee, can most effectively provide the necessary campaign services and administrative support for the successful Campaign.

(a) In deciding whether an organization is the Principal Combined Fund Organization in the CFC geographic area, the Federal Coordinating Committee will consider:

(1) The number of local charitable voluntary agencies or affiliates in the CFC geographic area that rely on the applicant organization for financial support and that meet the prescribed eligibility criteria for participation in the CFC;

(2) The number of dollars raised by the applicant organization in the CFC geographic area during its last completed annual public solicitation for funds;

(3) The percentage of such dollars disbursed to the charitable voluntary agencies; and

(4) The local capacity of the applicant organization to provide the necessary

campaign services and administrative support (including operation of the Central Receipt and Accounting Point) to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part.

(b) An organization seeking to be designated the Principal Combind Fund Organization in a CFC area shall submit its application for such designation to the local Federal Coordinating Committee for approval within thirty days after the Director has determined eligible federations. All such applicants must pledge to manage the compaign fairly and equitably; to conduct organization operations separate from other voluntary agency operations; to consider advice from, be responsible to reasonable requests for information from, and to consult with other agencies; and to be subject to the decisions and supervision of the local Federal Coordinating Committee and the Director. Upon submission of a complaint by a local Federal Coordinating committee or a federated or national voluntary agency, the Director may revoke the designation as a Principal Combined Fund Organization if in his discretion he finds these pledges are not fulfilled.

(c) Applications shall include the following: (1) The names of the voluntary agencies in the area that rely on the applicant organization for financial support and that meet the eligibility criteria set in this Part;

(2) The boundaries of the area covered by the public donation solicitation of the applicant organization;

(3) The number of dollars raised in the CFC geographic area by the applicant during its last completed annual public solicitation for funds;

(4) The percentage of such dollars disbursed to the charitable agencies;

(5) Agreement to transmit contributions, as designated by Federal employees, to charitable organizations approved for participation and listing in the local CFC (minus only "shrinkage"—that is, uncollectible pledges and gifts—and the approved fee for administrative cost reimbursement);

(6) Certification that it, and its participating member organizations, are in compliance with all applicable eligibility requirements specified in this Part for participation in the CFC;

(7) Fee, if any, proposed to be charged by the applicant organization for reimbursement for administrative costs; and

(8) Statement that the applicant organization is organized to provide the necessary campaign services and support to the local Federal Coordinating Committee for a successful Federal campaign in conformance with the policies and procedures prescribed in this Part.

(d) Federated groups, member agencies of federations and other voluntary agencies certified for listing and receipt of designations through the approved local or national admission process shall be eligible to receive designations.

(e) The Principal Combined Fund Organization shall provide a form for the employee to indicate any amounts he may wish to designate to affiliated and non-affiliated beneficiaries. The Principal Combined Fund Organization shall pay the amount collected to the employee-designated beneficiary agency less "shrinkages" and the amount necessary to reimburse the Principal Combined Fund Organization for administrative expenses.

(f) The fee, if any, charged for administrative cost reimbursement must be approved in advance by the local Federal Coordinating Committee and published in the campaign literature.

(g) All contributions not designated to specific voluntary agencies or specific federated groups shall be deemed to have been designated to the Principal Combined Fund Organization. A statement of that fact shall be clearly stated on the face of each pledge card in red ink, which shall also state the name of the federated group which is the Principal Combined Fund Organization in that local Campaign.

(h) The Principal Combined Fund Organization shall issue a report to the local Federal Coordinating Committee within a reasonable time following the campaign setting forth the following information:

(1) Amounts contributed and pledged,

(2) Number of contributors,

(3) Amounts designated to each participating federated group and voluntary agency,

(4) Amounts designated to the Principal Combined Fund Organization, and

(5) Costs of administering the campaign, including the Central Receipt and Accounting Point.

(i) *CFC Committee.* Where necessary, the local Federal Coordinating Committee may designate a committee from among its principal members, called the CFC Committee, to give top leadership and direction to the planning, conduct and evaluation of the local combined campaign. The Federal Coordinating Committee, however, may not redelegate any final authority for the campaign to the CFC Committee. The Chairman of the Campaign need not be the Chairman of the organization designated as the local Federal Coordinating Committee.

(j) *Action Steps by the Local Federal Coordinating Committee*—(1) The Chairman of the local Federal Coordinating Committee is not authorized to establish a Local Joint Work Group of Federal representatives and representatives of the Principal Combined Fund Organization. The Chairman shall direct the Principal Combined Fund Organization to assemble necessary information and data, and to submit a plan detailing materials and a timetable for campaign arrangements. This shall include the dates for preparation, printing and distribution of materials, kick-offs, training sessions, report meetings and award ceremonies. All of these, including the specific materials to be used, shall be submitted to the full local Federal Coordinating Committee for approval on a day to be announced broadly to participating voluntary agencies and federated groups and to the Director. An adequate opportunity shall be provided for participating federated groups and voluntary agencies to review and comment on all proposals.

(2) The local Federal Coordinating Committee will set a date or dates each year for local eligibility hearings. Such meeting or meetings shall be reported to the Director, and given wide publicity in the local community and to the voluntary agencies and federated groups which have applied for eligibility.

(k) *Loaned Executive Program.* One or more loaned Federal executives may be used in a Combined Federal Campaign. The Loaned Executive Program was authorized by President Nixon in a memorandum to heads of departments and agencies dated March 3, 1971. A Loaned Executive may be detailed from his agency on a full or part-time basis, for a specific period of time, to conduct or assist in the operation of a Combined Federal Campaign. The employing agency will decide who will serve as a Loaned Executive, if anyone, and the length of the detail. Executives may not be loaned or assigned to any specific voluntary organization but only to the official Combined Federal Campaign group. When assigned to the CFC, the executive shall be placed on administrative leave.

§ 950.511 Basis local CFC ground rules.

(a) The arrangements outlined in §§ 950.511 through 950.525 constitute basic ground rules for the local Combined Federal Campaign. Certain local variations are permissible if

specifically authorized in this Subpart. However, any modification of ground rules in specific instances must be requested by Federal Coordinating Committees from the Director. Modifications will be granted only in the most exceptional circumstances.

(b) The local Federal Coordinating Committee will approve the:

(1) Campaign Name. The name will include the words "Combined Federal Campaign;" the year for which contributions are solicited; and approximate identification of the locality; as for example: "1981 San Antonio Area Combined Federal Campaign."

(2) Campaign Period. The solicitation period may be any period between September 1 and November 30.

(3) Campaign Area. The exact geographical area to be covered by the combined campaign will be determined nationally, taking into account past practice and the feasible scope for a single, coordinated campaign. The jurisdiction of the organization named as the local Federal Coordinating Committee will set the basic area of the Campaign, based upon past practices. Any changes in campaign area must be approved by the Director.

§ 950.513 Contributions.

(a) The contributor's information leaflet will clearly state that the Federal employee is encouraged to direct his gift to specific voluntary agencies. A single form of pledge card and leaflet-brochure will be produced under standards set in this Part, and approved by the Director. The leaflet will explain that when such gifts are earmarked to a specific recipient, the Principal Combined Fund Organization will remit such funds, less approved administrative costs, in accordance with the donor's wishes as those funds are collected. The leaflet will also clearly state that when the Federal employee decides not to designate, the gift will be deemed designated to the Principal Combined Fund Organization for distribution.

(b) Several boxes will be provided on the pledge form so that the donor may indicate his choice, if any, of one or more of the voluntary agencies listed to receive all or part of his gift. A minimum of five boxes for such purposes will be shown on the face of and on all copies of the pledge card itself. Separate designation slips are not authorized under any circumstances. The pledge card must be arranged so that each Federal employee receives the pertinent CFC and voluntary agency information and the pledge card as a single package (as examples, inserted in a slot or pocket in the contributor's information leaflet).

(c) If contributions are designated to organizations not participating in the local CFC, they will not be accepted but will be returned to the contributor.

§ 950.515 Dollar goals.

(a) A dollar goal for the overall combined campaign is recommended. Generally, it provides a focus for group spirit and unity of purposes that contributes materially to success. By apportioning the goal equitably among the Federal offices and installations, each Federal agency shares responsibility in the team effort and has a mark with which to gauge its progress.

(b) In developing the proposed goal, the local Federal Coordinating Committee should take into account past giving experience in local Federal campaigns, the needs and reasonable expectations of the voluntary agencies in the current campaign situation, and the probability of a substantial increase in the level of giving due to the single campaign and payroll payment plan. The objective should be to set a goal that is attainable, which can be exceeded in an enthusiastic and purposeful campaign.

(c) Dollar goals are not required. An alternative approach is to rely on "suggested giving" as the principal incentive. For example, the "goal" could be 75 percent participation at the suggested giving level.

§ 950.157 Suggested giving guides and voluntary giving.

(a) Suggested giving guides for contributions are authorized for local construction. Guides for cash giving or direct-payment pledges may be included in terms of percent of annual income, number of hours pay, or suggested size of gift in relation to various income levels. Guides may be printed in the contributor's leaflet or on the pledge form. They will be accompanied by a statement explaining that the guide is provided because employees often ask for one, but that the decision to give and the amount is up to each employee.

(b) Federal agencies are not authorized to furnish individual employee suggested giving guides based upon the employee's specific pay or grade; a guide of this kind is comparable to an individual quota or assessment, which is prohibited.

(c) The contributor's leaflet or the pledge form must include the express statement that the employee has the right to make his gift confidentially in a sealed envelope which will be delivered unopened to the Combined Federal Campaign headquarters.

§ 950.519 Central receipt and accounting for contributions.

(a) The Principal Combined Fund Organization shall provide and administer the Central Receipt and Accounting Point or it may arrange for an appropriate financial institution to provide such service on it behalf, under the direction of the local Federal Coordinating Committee. Any charges by such institution to provide the necessary services are the responsibility of the Principal Combined Fund Organization and should be included in the latter organization's administrative costs factor.

(b) The central accounting point will tabulate all contributions designated to specified agencies on the pledge cards and then tabulate the contributions designated to the Principal Combined Fund Organization. The amounts payable to the specified voluntary agencies are subject to deduction "shrinkage" and of the approval percentage, if any, for reimbursement of administrative costs to the Principal Combined Fund Organization.

(c) Provision must be made by the Principal Combined Fund Organization for the audit of CFC funds. If the CFC is over $100,000, and independent audit must be performed. Copies of the audits must be submitted to appropriate local Federal officials and made available for inspection by any voluntary agency or federation participating in the CFC.

(d) In addition to the usual method of cash contribution and direct payment of pledges, the use of voluntary payroll withholding is authorized for members of the uniformed services and civilian personnel at CFC locations. Local voluntary agencies may decide whether or not to provide for direct payment of pledges; however, cash contributions must be permitted. Keyworker collection of installment pledges is prohibited.

§ 950.521 Campaign and publicity materials.

(a) Campaign and publicity materials will be developed in the local area under direction of the local Federal Coordinating Committee, and will be printed and supplied by the Principal Combined Fund Organization. All disputes over materials will be resolved by the local Federal Coordinating Committee, except that failure to follow this Part or other directive of the Director may be appealed to the Director. All publicity materials must have the approval of the local Federal Coordinating Committee before being used.

(b) Distribution of any bona fide education material of the voluntary

agencies or provision of other services to employees at Federal establishments must be handled through the Federal agency occupational health units, and not the CFC coordinators. While there is no intent to restrict the normal educational or service activities that voluntary agencies provide in Federal agencies, no special distribution of materials or services should be planned within Federal facilities during the campaign, giving undue publicity to a particular voluntary agency or category of voluntary agencies during the campaign period. Violation of this requirement by any voluntary agency may be grounds for the local Federal Coordinating Committee to disqualify the voluntary agency from further participation in the local CFC for that year after due notice to the voluntary agency concerned.

(c) A single Contributor's Information Leaflet, a one-part list of participating voluntary agencies, and a single, joint Pledge Form and Payroll Withholding Authorization (the latter two preferably to be placed in an insert slot or otherwise assembled in the former) are to be distributed by keyworkers to each potential contributor. The Pledge Form and Payroll Withholding Authorization must be one form. All CFC literature, keyworker solicitors, and materials released as a part of the campaign must inform employees of their right to make a choice and will provide full information about the voluntary agencies, federated groups and the Principal Combined Fund Organization. Employees will be informed that while the Federal Government encourages its employees to make a choice, it does not mandate that they choose.

(d) Campaign materials must constitute a simple and attractive package that has fund-raising appeal and essential working information. Treatment should focus on the combined campaign and homogeneous appeal without undue use of voluntary agency symbols or other distractions that compete for the contributor's attention. Extraneous instructions concerning the routing of forms, tallying of contributors, etc., which are primarily for keyworkers, must be avoided.

(e) Specific campaign and publicity materials: (1) Contributor's Leaflet.

(i) This will be the only informational material distributed to individual contributors. It will describe the CFC arrangement, explain the payroll deduction privilege, and will include the information required by § 950.513 of this Part. The leaflet should be constructed to contain a pocket or a slot to hold the CFC pledge card.

(ii) The leaflet will provide instructions about how an employee may obtain more specific information about voluntary agencies participating in the campaign, their programs, and their finances. It will also inform employees of their right to pursue complaints of undue pressure or coercion in Federal fundraising activities. The leaflet will advise civilian employees to consult with their personnel offices and military personnel with their commanding officers to identify the organization handling such complaints in their respective Federal agency.

(iii) A Privacy Act notice must be printed on the leaflet.

(2) Separate list of participating voluntary agencies.

(i) This brochure will list each voluntary agency approved by the appropriate Federal officials for participation in the CFC with a brief statement of about 30 words on its programs. Opposite the name of each voluntary agency a number will be provided beginning with the number 101 so that contributors desiring to indicate a choice of agency or agencies to whom they wish their gift to be directed may insert such number or numbers in the designation boxes provided for that purpose on the pledge card. Each voluntary agency which is a member of a federated group shall be entitled, at its local option, to have that group designation added, in parenthesis, at the end of its statement.

(ii) The listing of voluntary agencies will also include therein the following generic titles reflecting the approved categories of services as a means to assist employees in making rational designations: children and family services, community coordination services, local federal personnel services, provision of basic needs and economic opportunity, health services/services to handicapped, international services, neighborhood services, acquisition of knowledge and skills, youth and recreation services, specialized and miscellaneous services. The order of assignment of these categories, and the order of voluntary agencies under them, will be reassigned by lot each year by the local Federal Coordinating Committee.

(iii) Federated groups will be listed, in an order set by lot each year, at the end of the list of voluntary agencies, under the title "Campaign Groups," with identification numbers keyed to the numbers of their participating federated groups. The federated group which is the Principal Combined Fund Organization will be so identified.

(iv) An illustration of the prescribed format is shown below.

Children & Family Services

101 (name of agency and group affiliation) (description of program)
102 (name of agency and group affiliation) (description of program)
103 (name of agency and group affiliation) (description of program)

Community Coordination

201 (name of agency and group affiliation) (description of program)
202 (name of agency and group affiliation) (description of program)
203 (name of agency and group affiliation) (description of program)

Local Federal Personnel Services

301 (name of agency and group affiliation) (description of program)
302 (name of agency and group affiliation) (description of program)
303 (name of agency and group affiliation) (description of program)

* * * * *

Campaign Groups

701 International Service Agencies
702 National Service Agencies
703 National Health Agencies
704 American Red Cross
705 United Way/Community Chest, etc. of———

(The statement: "This group also has been designated as the Principal Combined Fund Organization for ———" shall be added after the title of federated organization serving that function.)

(3) Pledge Form and Payroll Withholding Authorization.

(i) When completed, this working form will go to the Central Receipt and Accounting Point for the local area.

The format for the pledge card is set by the Director and is available from the Office of Personnel Management.

(ii) One copy of this form will be used as the Payroll Withholding Authorization. When completed, this copy will go to the contributor's payroll office. Since there are some 1,400 separate payroll offices serving Federal personnel, the withholding authorization must be in a standard format and bear adequate identification of the local campaign.

(iii) The name and mailing address of the local CFC Central Receipt and Accounting Point will be printed at the top of the form. The name must be the same as that for the campaign and include the year: for example, "1981 San Antonio Area Combined Federal Campaign."

(iv) The box entitled "Identification No." will be used for the contributor's Social Security Number, except in the case of Federal agencies that have a separate payroll identification

numbering system. There is no requirement to use this space and it should only be used when it aids in accounting or campaign management.

(f) Other campaign materials that are authorized include: (1) *Chairman's Guide.* For use of campaign chairmen in individual Federal installations;

(2) *Keyworker's Guide.* Instructions for keyworkers about CFC arrangements, solicitation methods, and forwarding procedures;

(3) *Keyworker's Report Envelope.* With tally sheets (which may be printed on the envelope) on which the keyworker will list the names of contributors or the number of confidential envelopes enclosed;

(4) *Miscellaneous Campaign Items.* Contributor's receipts, window stickers, posters, progress charts, awards, etc.;

(5) *Publicity Items.* News stories and fillers for the local press and house organs, employee letters, speeches of campaign leaders, division chairmen, films, television and radio material supporting the campaign; and

(6) *Awards.* To recognize campaign achievements by Federal agencies, Federal agency chairmen, etc. Awards should be identified as "Combined Federal Campaign" awards. The presentation of awards and plaques by individual voluntary agencies or categories of voluntary agencies for CFC accomplishments is not permitted.

(g) National materials provided and made available for use by local CFCs will be developed by an organization named by the Director. The Director will provide opportunity for comment on such materials by interested parties prior to approve. He must approve all material prior to use.

§ 950.523 Payroll Withholding.

The following policies and procedures are authorized for payroll withholding operations in accordance with office of Personnel Management regulations in 5 CFR Part 550, Pay Administration.

(a) *Applicability.* Voluntary payroll allotments will be authorized by all Federal departments and agencies for payment of charitable contributions to local Combined Federal Campaign organizations.

(b) *Allotters.* The allotment privilege will be made available to Federal personnel as follows:

(1) Employees whose net pay regularly is sufficient to cover the allotment are eligible. An employee serving under an appointment limited to 1 year or less may make an allotment to a Combined Federal Campaign when an appropriate official of the employing Federal agency determines the employee will continue his employment for a period sufficient to justify an allotment. (This includes part-time and intermittent employees who are regularly employed.)

(2) Members of the Uniformed Services are eligible, excluding those on only short-term assignment (less than 3 months). (The Department of Defense has modified its military pay allotment regulations to authorize allotments for CFR charitable contributions by uniformed service members.)

(c) *Authorization.* (1) Allotments will be wholly voluntary and will be based upon contributors' individual written authorizations.

(2) Authorization forms in standard format will be printed by the Principal Combined Fund Organization at each location. The forms and other campaign materials will be distributed to employees when charitable contributions are solicited.

(3) Completed authorization forms should be transmitted to the contributors' servicing payroll offices as promptly as possible, preferably by December 15. However, if forms are received after that date they should be accepted and processed by payroll offices.

(d) *Duration.* Authorizations will be in the form of a term allotment for one full year—26, 24 or 12 pay periods depending upon the allotter's pay schedule—starting with the first pay period begining in January and ending with the last pay period that begins in December. (The standardization of beginning and ending dates, except for individual discontinuances, is intended to simplify payroll operations and minimize costs.) However, the fact that an employee or military member will not be on duty for the full year should not preclude acceptance of a payroll allotment if he has sufficient time in service remaining to make the allotment practicable. Three months or more would be considered a reasonable period of time for which to accept an allotment.

(e) *Amount.* (1) Allotters will make a single allotment which is apportioned into equal amounts for deductions each pay period during the year.

(2) The minimum amount for allotment will be determined by the local Federal Coordinating Committee but will be not less than $1.00 bi-weekly, with no restriction on size of increment above the minimum.

(3) No change of amount will be authorized during the term of an allotment.

(4) For the purpose of simplicity and economy in payroll operations, no deduction will be made for any period in which the allotter's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustment will be made in subsequent periods to make up for deductions missed.

(f) *Remittance.* (1) One check will be sent by the payroll office each pay period, in the gross amount of deductions on the basis of current authorizations, to the Central Receipt and Accounting Point at each location for which the payroll office has received allotment authorizations.

(2) The check will be accompanied by a statement identifying the agency and the number of employee deductions. There will be no listing of allotters included or of allotter discontinuances.

(g) *Discontinuance.* (1) Allotments will be discontinued automatically:

(i) On expiration of the one-year withholding period:

(ii) On death, retirement, or separation of allotter from the Federal Service.

(2) The allotter may revoke his authorization at any time by requesting it in writing from the payroll office. Discontinuance will be effective the first pay period beginning after receipt of the written revocation in the payroll office.

(3) A discontinued allotment will not be reinstated.

(h) *Transfer.* (1) When an allotter moves to another organizational unit served by a different payroll office in the same CFC location, whether in the same office or a different department or agency, his allotment authorization will be transferred to the new payroll office.

(2) When there is a delay in receiving the transferred authorization in the new payroll office, or when the allotter moves to a location covered by another CFC, the allotter should be permitted to complete a new authorization for the remainder of the one-year withholding period, which will supersede and revoke his previous authorization.

(3) When the allotter moves to a location not covered by a CFC, the allotment will automatically be terminated unless expressly continued by the individual.

(i) *Accounting.* (1) Federal payroll offices will oversee establishment of individual allotment accounts, deductions each pay period, and reconciliation of employee accounts in accordance with agency and General Accounting Office requirements. The payroll office will accept responsibility for the accuracy of remittances, as supported by current allotment authorizations, and internal accounting and auditing requirements.

(2) The Principal Combined Fund Organization is responsible for the accuracy of transmittal of contributions. It shall transmit at least monthly for

campaigns of $100,000 or more or quarterly if less than that amount, minus only the shrinkage factor and approved fee for administrative cost reimbursement. It shall remit contributions, less approved administrative costs and shrinkage, to each agency or to the federated group, if any, of which the agency is a member if all member agencies of that federated group, participating in the local campaign, agree. It shall notify the federated groups, as soon as practicable after the completion of the campaign (but in no case more than 60 days thereafter), of the amounts, if any, designated to them and their member agencies and of the amounts of deemed-designated contributions, if any, allocated to them and their member agencies.

(3) Federated and national voluntary agencies, or their designated agents, will accept responsibility for: (i) the accuracy of distribution among the voluntary agencies of remittances from the Principal Combined Fund Organization; and (ii) arrangements for independent audit agreed upon by the participating voluntary agencies.

§ 950.525 National coordination and reporting.

(a) The Office for Regional Operations, U.S. Office of Personnel Management, is responsible under the Director for CFC arrangements.

(b) All local coordinating committees are required to notify the Office for Regional Operations of their compaign areas, their chairman's name and address, and the address of their Central Receipt and Accounting Point.

(c) All chairmen of local Federal Coordinating Committees are required to furnish reports of campaign results to the Office of Regional Operations by January 15 of each year. A reporting format will be furnished to CFC locations prior to that date requesting information on the results of the campaign, including the following: (1) Basic data (number solicited, number of contributors);

(2) Payroll deductions (number authorizing, total pledged);

(3) Designations;

(4) Amount of undersignated receipts received by Principal Combined Fund Organization;

(5) Campaign costs; and

(6) Narrative summary evaluation of CFC arrangement based upon campaign experience. A copy of the report will be furnished to the local Federal Coordinating Committee, the Principal Combined Fund Organization, and a copy will be made available for inspection by other participating voluntary agencies and federated groups.

(d) All local activities will be coordinated with the national campaign under procedures issued by the Director through the Federal Personnel Manual system and a handbook of instructions (or other appropriate issuance) for use by participating voluntary organizations.

(e) Any decision of a local Federal Coordinating Committee that is appealed to the Director by any charitable agency or charitable federated group or by any applicant for solicitation privileges in a local campaign shall be given due weight by the Director. Any such appeal shall be looked upon with disfavor unless it raises a substantial question of fairness, construction of these regulations, or application of the policies, procedures, directives, and guidance of the Director. Unless the Director orders otherwise, all burdens of proof, of persuasion, and of going forward shall be borne by the appellant. An appeal may be dismissed as untimely unless it is received by the Director within the ten (10) days next following after the appellant has received actual or constructive notice of the decision from which the appeal is taken. Every appeal shall be submitted in writing; shall set forth a concise statement of the decision from which the appeal is taken, the grounds for the appeal, and the relief sought by the appellant; and shall be accompanied by written proof that copies thereof have been served upon the local Federal Coordinating Committee and any other proper party in interest whose participation in the appeal may be appropriate for the just disposition thereof. The local Federal Coordinating Committee and any other proper party in interest may respond to the appeal. Every response, to be timely, shall be received by the Director within the five (5) days next following after the respondent has received actual or constructive notice of the appeal. Every response shall be submitted in writing; shall set forth a concise statement of the facts and arguments that the respondent believes are material; and shall be accompanied by written proof that copies thereof have been served upon the appellant and any other proper party in interest. The Director may, for good cause, extend or shorten the time limits herein set forth and waive requirements for written submissions and proofs of service. The Director may, in his sole discretion, review any decision of a local Federal Coordinating Committee and stay any decision of a local Federal Coordinating Committee pending his review thereof. All decisions of the Director shall be final, and shall be executed forthwith by the local Federal Coordinating Committee or by such other person or entity as the Director may direct to do so.

[FR Doc. 83-20941 Filed 7-29-83; 11:20 am]

BILLING CODE 6325-01-M

Reader Aids

Federal Register
Vol. 48, No. 148
Monday, August 1, 1983

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Printing schedules and pricing information	523-3419
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Corrections	523-5237
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FEDERAL REGISTER PAGES AND DATES, AUGUST

34723-34928.....1

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday. This is a voluntary program. (See OFR NOTICE 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/SECRETARY	USDA/ASCS		DOT/SECRETARY	USDA/ASCS
DOT/COAST GUARD	USDA/FNS		DOT/COAST GUARD	USDA/FNS
DOT/FAA	USDA/REA		DOT/FAA	USDA/REA
DOT/FHWA	USDA/SCS		DOT/FHWA	USDA/SCS
DOT/FRA	MSPB/OPM		DOT/FRA	MSPB/OPM
DOT/MA	LABOR		DOT/MA	LABOR
DOT/NHTSA	HHS/FDA		DOT/NHTSA	HHS/FDA
DOT/RSPA			DOT/RSPA	
DOT/SLSDC			DOT/SLSDC	
DOT/UMTA			DOT/UMTA	

TABLE OF EFFECTIVE DATES AND TIME PERIODS—AUGUST 1983

This table is for determining dates in documents which give advance notice of compliance, impose time limits on public response, or announce meetings.

Agencies using this table in planning publication of their documents must allow sufficient time for printing production.

In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or a holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

Dates of FR publication	15 days after publication	30 days after publication	45 days after publication	60 days after publication	90 days after publication
August 1	August 16	August 31	September 15	September 30	October 31
August 2	August 17	September 1	September 16	October 3	October 31
August 3	August 18	September 2	September 19	October 3	November 1
August 4	August 19	September 6	September 19	October 3	November 2
August 5	August 22	September 6	September 19	October 4	November 3
August 8	August 23	September 7	September 22	October 7	November 7
August 9	August 24	September 8	September 23	October 11	November 7
August 10	August 25	September 9	September 26	October 11	November 8
August 11	August 26	September 12	September 26	October 11	November 9
August 12	August 29	September 12	September 26	October 11	November 10
August 15	August 30	September 14	September 29	October 14	November 14
August 16	August 31	September 15	September 30	October 17	November 14
August 17	September 1	September 16	October 3	October 17	November 15
August 18	September 2	September 19	October 3	October 17	November 16
August 19	September 6	September 19	October 3	October 18	November 17
August 22	September 6	September 21	October 6	October 21	November 21
August 23	September 7	September 22	October 7	October 24	November 21
August 24	September 8	September 23	October 11	October 24	November 22
August 25	September 9	September 26	October 11	October 24	November 23
August 26	September 12	September 26	October 11	October 25	November 25
August 29	September 13	September 28	October 13	October 28	November 28
August 30	September 14	September 29	October 14	October 31	November 28
August 31	September 15	September 30	October 17	October 31	November 29

CFR CHECKLIST; 1982/83 ISSUANCES

This checklist, prepared by the Office of the Federal Register, is published in the first issue of each month. It is arranged in the order of CFR titles, and shows the revision date and price of the volumes of the Code of Federal Regulations issued to date for 1982/83. New units issued during the month are announced on the back cover of the daily **Federal Register** as they become available.

For a checklist of current CFR volumes comprising a complete CFR set, see the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $615 domestic, $153.75 additional for foreign mailing.

Order from Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

CFR Unit (Rev. as of Jan. 1, 1983):

Title	Price
1-2	$6.00
3	6.00
4	7.50
5 Parts:	
1-1199	8.50
1200-end	6.00
7 Parts:	
0-45	9.00
46-51	7.50
52	9.00
53-209	7.50
210-299	7.00
300-399	5.50
400-699	6.50
900-999	8.50
1000-1059	7.50
1060-1119	6.50
1120-1199	7.00
1200-1499	7.00
1500-1899	6.50
1900-1944	8.00
1945-end	7.00
8	6.50
9 Parts:	
1-199	7.50
200-end	7.50
10 Parts:	
0-199	9.00
200-399	7.50
400-499	6.50
500-end	7.00
12 Parts:	
1-199	7.00
200-299	8.00
300-499	7.00
500-end	8.00
13	8.00
14 Parts:	
1-59	7.00
60-139	7.00
140-199	5.50
200-1199	7.00
1200-end	6.50
15 Parts:	
0-299	6.50
300-399	7.00
400-end	7.50
16 Parts:	
0-149	7.00
150-999	7.00
CFR INDEX	9.50

CFR Unit (Rev. as of Apr. 1, 1983):

18 Parts:	
1-149	7.00
400-end	6.50
20 Parts:	
1-399	5.50
400-499	7.00
500-end	7.50
21 Parts:	
1-99	6.00
100-169	6.50
170-199	6.50
200-299	4.75
300-499	8.00
500-599	6.50
600-799	5.00
800-1299	6.00
1300-end	5.00
22	8.50
23	7.00
24 Parts:	
0-199	6.00
500-799	5.00
1700-end	6.00
26 Parts:	
1 (§§ 1.301-1.400)	6.00

CFR Unit (Rev. as of July 1, 1982):

28	8.00
29 Parts:	
0-99	9.00
100-499	6.00
500-899	8.50
900-1899	6.50
1900-1910	9.00
1911-1919	5.50
1920-end	8.50
30 Parts	
0-199	8.00
200-end	10.00
31 Parts:	
0-199	7.00
200-end	9.00
32 Parts:	
1-39, Vol. I (rev. 9/1/82)	9.00
1-39, Vol. II (rev. 9/1/82)	11.00
1-39, Vol. III (rev. 9/1/82)	10.00
40-399	13.00
400-699	10.00
700-799	8.50
800-999	8.00
1000-end	7.00
33 Parts:	
1-199	9.00
200-end	8.00
34 Parts:	
1-399	13.00
400-end	8.50
35	6.50
36 Parts:	
1-199	7.00
200-end	7.50
37	7.00
38 Parts:	
0-17	8.00
18-end	7.00
39	7.00
40 Parts:	
0-51	8.50
52	9.00
53-80	8.50
81-99	8.50
100-149	7.50
150-189	7.50
190-399	7.50
400-424	8.00
425-end	7.50
41 Chapters:	
1 (1-1 to 1-10)	8.50
1 (1-11 to App.)	7.50
3-6	8.50
7	5.50
8	5.50
9	8.00
10-17	7.50
18, Vol. I (rev. 12/31/82)	7.50
18, Vol. II (rev. 12/31/82)	8.00
18, Vol. III (rev. 12/31/82)	7.50
19-100	8.00
101	9.00
102-end	7.00

CFR Unit (Rev. as of Oct. 1, 1982):

42 Parts:	
1-60	7.50
61-399	7.00
400-end	9.50
43 Parts:	
1-999	7.00
1000-3999	8.50
4000-end	7.00
44	7.50
45 Parts:	
1-199	7.00
200-499	6.00
500-1199	7.50
1200-end	7.50
46 Parts:	
1-29	6.00
30-40	5.50
41-69	7.50
70-89	6.00
90-109	6.50
110-139	5.00
140-155	7.00
156-165	7.50
166-199	7.00
200-399	8.50
400-end	7.00
47 Parts:	
0-19	8.50
20-69	9.00
70-79	8.00
80-end	9.00
49 Parts:	
1-99	6.50
100-177	9.00
178-199	8.00
200-399	7.50
400-999	8.00
1000-1199 (rev. 11-1-82)	7.50
1200-1299	7.50
1300-end	7.50
50 Parts:	
1-199	7.00
200-end	8.00

MICROFICHE EDITION OF THE CFR:

The CFR is now available on microfiche from the Superintendent of documents, Government Printing Office, Washington, D.C. 20402, at the following prices:

1981

Complete set (one-time mailing):
$155.00 (domestic).
Individual copies—$2.00 each (domestic).

1982

Subscription (mailed as issued):
$250.00 (domestic).
Individual copies—$2.25 each (domestic).

Note: The Office of the Federal Register proposes to terminate the formal program of agency publication on assigned days of the week. See 48 FR 19283, April 28, 1983.

List of Public Laws

Last Listing July 28, 1983

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents. U.S. Government Printing Office, Washington, D.C. 20402 (phone 202-275-3030).

S.J. Res. 77/Pub. L. 98-60 Designating "National Animal Agriculture Week". (July 27, 1983; 97 Stat. 297) Price: $1.50

S. 459/Pub. L. 98-61 To authorize and direct the Secretary of the Interior to convey, by quitclaim deed, all right, title, and interest of the United States in and to certain lands that were withdrawn or acquired for the purpose of relocating a portion of the city of American Falls out of the area flooded by the American Falls Reservoir. (July 28, 1983; 97 Stat. 298) Price: $1.50